

BANKS AND BANKING

CHAPTER 111

SENATE BILL NO. 2406
(Senators Wogsland, Hilken)
(Representatives Hedstrom, Laughlin, Lang)

BANK AND FINANCIAL INSTITUTION DEFINITIONS

AN ACT to create and enact two new subsections to section 6-01-02 and a new section to chapter 6-02 of the North Dakota Century Code, relating to definitions of national banks and financial institutions and qualifications of banks; and to amend and reenact subsection 2 of section 6-01-02 of the North Dakota Century Code, relating to the definition of banks.

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

SECTION 1. AMENDMENT. Subsection 2 of section 6-01-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- "Bank" means any national bank, national banking association, ~~firm~~, or corporation, state bank, state banking association, savings bank, or trust company, whether organized under the laws of this state or of the United States, engaged in the business of banking.

SECTION 2. Two new subsections to section 6-01-02 of the 1983 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.

"National bank" or "national banking association" mean an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].

SECTION 3. A new section to chapter 6-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Non-bank bank not qualified to do business. It is unlawful for any organization, association, or corporation, which owns or controls an institution insured by the federal deposit insurance corporation, to own or control an institution insured by the federal deposit insurance corporation or eligible to be insured by the federal deposit insurance corporation which accepts deposits that the depositor has a legal right to withdraw on demand or engages in the business of making commercial loans but does not do both.

CHAPTER 112

HOUSE BILL NO. 1123
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANKING OR CREDIT UNION BOARD MEMBER COMPENSATION

AN ACT to amend and reenact subsection 1 of section 6-01-03 of the North Dakota Century Code, relating to compensation for members of the state banking board and the state credit union board.

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

SECTION 1. AMENDMENT. Subsection 1 of section 6-01-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The state banking board shall consist of the commissioner and six members to be appointed by the governor, four of whom shall each have had at least five years' experience in an executive capacity in the management of a state bank in the state of North Dakota, one of whom shall have had at least five years' experience in an executive capacity in the management of any state or national bank in North Dakota, and one of whom shall be a lay member from the public at large. The term of office of the members of the board, other than the commissioner, shall be for a period of five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the vacancy shall be filled by appointment by the governor for the unexpired term. The commissioner shall be the chairperson of the board and the attorney general shall be, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary. The board shall hold regular meetings in January, March, May, July, September, and November of each year and special meetings at the call of the commissioner in such place as the commissioner may designate within the state of North Dakota. The members of the board, other than the commissioner, shall receive fifty dollars per day and ~~their actual necessary expenses for transportation~~ while attending meetings, or in the performance of such special duties as the board may direct. ~~In the event of travel by automobile, they shall receive the same mileage expense allowed state employees. Expense reimbursements for meals, lodging, and transportation shall be at the same rate as those allowed state employees.~~

Approved March 27, 1985

CHAPTER 113

HOUSE BILL NO. 1122
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

REMOVAL OF FINANCIAL INSTITUTION OFFICERS, DIRECTORS, AND EMPLOYEES

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the power of the state banking board, and the state credit union board to remove officers, directors, and employees of financial corporations or institutions.

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

SECTION 1. A new section to chapter 6-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Removal of officers, directors, and employees of financial corporations or institutions.

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.
2. The complaint shall contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing shall be set not less than thirty days after the

- date the complaint is served upon the officer, director, or employee of the financial corporation or institution. The officer, director, or employee may waive the thirty day notice requirement.
3. If no hearing is requested within twenty days of the date the complaint is served upon the officer, director, or employee, or if a hearing is held and the board finds that the record so warrants, and if the board finds that the financial corporation or institution has suffered or will probably suffer significant loss or other significant damage or that the interest of its depositors, shareholders, members, or creditors could be seriously prejudiced, it may enter an order suspending or removing the officer, director, or employee.
 4. A contested or default suspension or removal order shall be effective immediately upon service on the officer, director, or employee and upon the financial corporation or institution. A consent order is effective as agreed.
 5. Any officer or director suspended or removed from office pursuant to this section shall not be eligible, while under suspension, for reelection to any official position within a financial corporation or institution in North Dakota for a period not exceeding three years from the effective date of the suspension or removal.
 6. When any officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation or institution is charged with a felony in state or federal court, involving conduct related to the financial corporation or institution, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the financial corporation's or institution's affairs. The order shall be effective immediately upon service of the order on the financial corporation or institution and the person charged, and shall remain in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction is entered, the board may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge shall not preclude the commissioner or the board from pursuing administrative or civil remedies.

Approved March 14, 1985

CHAPTER 114

HOUSE BILL NO. 1124
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

CEASE AND DESIST ORDERS TO FINANCIAL INSTITUTIONS

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the power of the state banking board, state credit union board, and the commissioner to issue cease and desist orders.

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

SECTION 1. A new section to chapter 6-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

Cease and desist orders.

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 or board's belief that the financial corporation or institution is engaging in any of the following conduct:
 - a. An unsafe or unsound practice; or
 - 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.
2. The complaint shall contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing shall be set not less than thirty days after the date the complaint is served upon the financial corporation or institution. The financial corporation or institution may waive the thirty day notice requirement.
3. If the financial corporation or institution fails to respond to the complaint within twenty days of its service, or if a hearing is held and the board concludes that the record so warrants, the board may enter an order

directing the financial corporation or institution to cease and desist from engaging in the conduct which was the subject of the complaint and hearing and to take corrective action.

4. The commissioner may enter an emergency, temporary cease and desist order if the commissioner finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation or institution, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation or institution. An emergency, temporary cease and desist order shall be effective immediately upon service on the financial corporation or institution and shall remain in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. Within ten days of the emergency, temporary cease and desist order a financial corporation or institution may appeal the entry of an emergency, temporary cease and desist order to the district court for the county in which the financial corporation or institution has located its main office.

Approved March 14, 1985

CHAPTER 115

SENATE BILL NO. 2122
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FINANCIAL INSTITUTION EXAMINATIONS

AN ACT to amend and reenact sections 6-01-09 and 6-09-29 of the North Dakota Century Code, relating to the frequency of examinations of state chartered banking associations, the Bank of North Dakota, and other corporations and associations under the jurisdiction of the commissioner of banking and financial institutions.

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

SECTION 1. AMENDMENT. Section 6-01-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-09. Supervision and examination by commissioner of banking and financial institutions. The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions placed within the jurisdiction of the board. Either the commissioner or one or more examiners shall visit each of the state banking associations and other corporations and associations placed under the commissioner's jurisdiction at least once each ~~eighteen~~ thirty months to examine their affairs and ascertain their financial condition. The visits shall be made without previous notice to the corporation or institution to be examined. The commissioner shall inspect and verify the assets and liabilities of the institution to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions, and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether such methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing such corporations and institutions, and for such purpose the commissioner may examine the officers, agents, and employees of such corporations and institutions and all persons doing business

therewith. The commissioner shall report the condition of such corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as, in its discretion, the exigencies may demand.

SECTION 2. AMENDMENT. Section 6-09-29 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-29. Department of banking and financial institutions and the industrial commission responsible for examinations and audit reports. The industrial commission shall be responsible for contracting with a nongovernment certified public accounting firm to annually audit the Bank of North Dakota in accordance with generally accepted auditing standards, which shall include inspection and verification of the assets in its possession and under its control with sufficient thoroughness to ascertain with reasonable certainty whether the valuations are carried correctly on its books. The auditor so hired shall audit the Bank's methods of operation and accounting, shall report the results to the industrial commission as soon as practicable, and shall furnish one copy to the legislative assembly. The costs of such audit shall be paid for by the Bank of North Dakota. The department of banking and financial institutions, through the commissioner, shall be responsible for an annual performing an examination of the Bank of North Dakota at least once each twenty-four months and for any investigation of the Bank which may be necessary. The results of this examination results, and any necessary investigation, shall be reported to the industrial commission as soon as practicable and to the legislative assembly. Fees for such examinations shall be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of one hundred thirty-five dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for the time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examinations herein provided for required by this section.

Approved March 22, 1985

CHAPTER 116

SENATE BILL NO. 2124
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK DIRECTOR OATH AND STOCK OWNERSHIP

AN ACT to amend and reenact section 6-03-04 of the North Dakota Century Code, relating to the filing of a bank director's oath of office; and to repeal section 6-03-03 of the North Dakota Century Code, relating to the requirement that bank directors own qualifying shares of the capital stock of the bank for which the person is a director or an equivalent interest in any company which has control over the bank.

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

SECTION 1. AMENDMENT. Section 6-03-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-04. Director's oath of office - Filing. Every director, when elected or appointed, shall take an oath that he the director shall, so far as the duty devolves upon him a director, diligently and honestly will administer the affairs of the association; that he and will not knowingly violate or willingly permit to be violated any of the provisions of this title; that he is a bona fide owner of the number of shares of stock, required by this title to become a director, standing in his own name on the books of the association; and that said stock is in his possession and control and is not hypothecated or 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, at once shall be transmitted to the state examiner commissioner to be filed in his the commissioner's office.

SECTION 2. REPEAL. Section 6-03-03 of the 1983 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 22, 1985

CHAPTER 117

SENATE BILL NO. 2326
(Lodoen)

BANK REAL ESTATE OWNERSHIP

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to the limitation on the amount of real estate owned or carried by banking associations.

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

SECTION 1. AMENDMENT. Section 6-03-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-05. Loans on real estate - Regulation - Limitation - Amortized loans provided for. No association shall own or carry among its assets at any one time loans dependent primarily upon real estate security in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of sixty-six and two-thirds percent of the amount of its time and savings deposits, whichever is the greater. Before any such loan is made the board of directors shall appoint a committee which shall make actual inspection of the security offered and shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board to determine if the loan shall be granted. Such written report shall be made a permanent record in the bank's files and shall be made available to the commissioner. No director shall act as an appraiser of his own property nor of property offered as security for loans the proceeds of which are to be used for his benefit. No unamortized loan secured by realty may be made for a period exceeding five years in an amount exceeding fifty percent of the appraised value of the real estate offered as security.

Any such loan may be made in an amount not to exceed ninety percent of the appraised value of the real estate offered as security ~~and for a term not longer than thirty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan unless the amount above this limitation is government guaranteed or insured by a private mortgage loan~~ within a period of not more than thirty years.

Approved March 30, 1985

CHAPTER 118

SENATE BILL NO. 2123
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK INVESTMENTS

AN ACT to amend and reenact section 6-03-07 of the North Dakota Century Code, relating to state banking association investments in banking facilities, furniture, and fixtures.

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

SECTION 1. AMENDMENT. Section 6-03-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-07. Investment in banking facility, furniture, and fixtures -
Limitation. No state banking association shall invest in a banking
facility and in furniture and fixtures used in such banking
facility, an amount which will exceed the amount of the capital
stock of such bank more than one hundred percent of the amount of
its unimpaired capital stock and surplus in a banking facility,
furniture, and fixtures without the approval of the state banking
board.

Approved March 22, 1985

CHAPTER 119

HOUSE BILL NO. 1372
(Wald)

SALE OF CERTIFICATES OF DEPOSIT

AN ACT to create and enact a new section to chapter 6-03, a new section to chapter 6-05, a new section to chapter 6-06, and a new section to chapter 7-02 of the North Dakota Century Code, relating to the sale of certificates of deposit by banking institutions, the Bank of North Dakota, credit unions, and savings and loan associations; and to provide a penalty.

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

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by financial institutions authorized to issue certificates of deposit and chartered to do business in this state under this chapter 1, or as authorized under sections 2, 3, and 4 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 2. A new section to chapter 6-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by the Bank of North Dakota, and by annuity, safe deposit, surety, and trust companies authorized to issue certificates of deposit and organized to do business in this state under this chapter or having federal deposit insurance corporation insurance of deposits, or as authorized by sections 1, 3, and 4 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 3. A new section to chapter 6-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this

state by credit unions authorized to issue certificates of deposit, and which are organized to do business in this state under this chapter or under the Federal Credit Union Act, and whose accounts are insured by the national credit union administration, except that the requirement for insurance of accounts for the North Dakota central credit union may be waived under section 6-06-40, or as authorized under sections 1, 2, and 4 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 4. A new section to chapter 7-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by savings and loan associations authorized to issue certificates of deposit and organized to do business in this state under this chapter or having federal savings and loan insurance of accounts, or as authorized by sections 1, 2, and 3 of this Act. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

Approved March 27, 1985

CHAPTER 120

SENATE BILL NO. 2128
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK SHAREHOLDER LISTS

AN ACT to amend and reenact section 6-03-27 of the North Dakota Century Code, relating to lists of shareholders for banking institutions.

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

SECTION 1. AMENDMENT. Section 6-03-27 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-27. List of shareholders to be kept and filed.

1. The president or cashier of every banking ~~association~~ institution formed pursuant to the provisions of this title, at all times, shall keep a true and correct list of the names and post-office addresses of all shareholders of such ~~association~~ banking institution, with the amount of stock held by each, the date of transfer, and to whom transferred, which list shall be verified on the thirty-first day of December of each year. A copy of ~~such~~ the verified list shall be filed in the office of the commissioner on the same date.
2. Whenever a change in control occurs, a letter indicating the parties involved in the change, the amount of the stock, the date of the transfer, and to whom transferred shall be forwarded to the commissioner within ten days of such change. For purposes of this subsection "control" ~~shall mean the power to direct the management or policies of the banking association or by acting through one or more persons, of the power to vote twenty-five percent or more of any class of voting securities of the banking association or banking institution, controlling in any manner the election of a majority of the directors of the association or banking institution, or directing the management or policies of the association or banking institution.~~ means owning or controlling directly or indirectly, to direct the management or policies of the banking association or by acting through one or more persons, of the power to vote twenty-five percent or more of any class of voting securities of the banking association or banking institution, controlling in any manner the election of a majority of the directors of the association or banking institution, or directing the management or policies of the association or banking institution.

Approved March 22, 1985

CHAPTER 121

SENATE BILL NO. 2125
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

BANK LOANS ON SHARES

AN ACT to amend and reenact section 6-03-33 of the North Dakota Century Code, relating to bank loans on security of the shares of the bank's stock or the stock of a holding company which controls the bank.

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

SECTION 1. AMENDMENT. Section 6-03-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-33. Loans on shares prohibited - Disposal of stock acquired. No association or banking institution shall make any loan or discount on the security of the shares of its own stock, or of the stock of any holding company which controls the association or banking institution, nor be a purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith. Stock so acquired shall be sold or disposed of at public or private sale within thirty days after it is acquired, and if not sold within such time, it shall be canceled and deducted from the capital stock of the association, banking institution, or holding company, and the association, banking institution, or holding company shall notify the ~~state examiner~~ commissioner in writing of such cancellation. For the purpose of this section, "control" means ownership, or control directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of the association or banking institution, of the power to control in any manner the election of a majority of the directors of the association or banking institution, or to direct the management or policies of the association or banking institution.

Approved March 22, 1985

CHAPTER 122

SENATE BILL NO. 2121
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

DIVIDEND PAYMENT PROHIBITION

AN ACT to amend and reenact section 6-03-36 of the North Dakota Century Code, relating to prohibition of payment of dividends by banking institutions under certain conditions.

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

SECTION 1. AMENDMENT. Section 6-03-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-36. Capital must be maintained - Dividends prohibited under certain conditions. No association and no officer thereof, while the association continues its banking operations, shall withdraw or permit to be withdrawn any portion of its capital in the form of dividends or otherwise, if losses have been sustained at any time by an association in an amount equal to or exceeding its undivided profits then on hand, no dividend shall be made, and no dividend shall be made by any association in an amount greater than its net profits on hand after its losses and bad debts have been deducted therefrom. All debts due to an association made or continued in violation of any of the provisions of this title shall be considered bad debts within the meaning of this section, and the state banking board shall ascertain and designate such bad debts, and shall make and enforce any orders and institute any proceedings necessary to dispose of the same or to convert them into good assets.

1. No director or officer of an association may permit the impairment of an association's capital by the payment of dividends or otherwise.
2. No dividend may be paid in an amount which exceeds the total of the association's net profits for the year combined with its retained net profits for the preceding two years less any required transfers to surplus or a fund for the retirement of any preferred stock, capital notes, or debentures, without the approval of the state banking board.

3. For the purpose of this section, "net profits" means the remainder of all earnings from the association's current annual operations plus actual recoveries of past losses on loans, investments, and other assets, after deducting from the total, all current operating expenses, actual losses, accrued dividends on preferred stock, if any, accrued interest on capital notes and debentures, and all federal and state taxes.

Approved March 22, 1985

CHAPTER 123

SENATE BILL NO. 2126
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and Financial Institutions)

BANKING BOARD POWERS

AN ACT to amend and reenact section 6-03-38 of the North Dakota Century Code, relating to the power of the state banking board to authorize activities for state chartered banks.

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

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

6-03-38. Assets not to be used in other business - Exceptions - Penalty. No bank, except as otherwise authorized in this title, shall employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor shall it employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association, provided, however, that 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 in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the Small Business Investment Act of 1958, and any amendments thereto, or chapter 10-30 of the North Dakota Century Code, but in no event shall any state bank hold shares in 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 shall be 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, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board shall have the same power to make rules and regulations for the subsidiary corporations, and to examine its records and affairs, as it has for other financial corporations under the provisions of section 6-01-04. In the event that 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 to the above, the state banking

board shall have power to ~~issue regulations authorizing~~ authorize state banks to engage 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 shall invest or use its funds contrary to the provisions of this title shall be guilty of a class A misdemeanor.

Approved March 22, 1985

CHAPTER 124

SENATE BILL NO. 2127
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and Financial Institutions)

BANK LOAN LIMITATIONS

AN ACT to amend and reenact section 6-03-59 of the North Dakota Century Code, relating to bank loan limitations; and to provide an effective date.

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

SECTION 1. AMENDMENT. Section 6-03-59 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-59. Loan limitation to one person borrower or concern. The total direct, indirect, or contingent liability of any person, corporation, company, or firm borrower to any state banking association shall not exceed at any time twenty-five percent of the unimpaired capital and surplus of such association. The liability of a firm shall include the liabilities of the several members thereof for money borrowed and on paper purchased by the association upon which they are liable as makers. For the purpose of this section the total liability of a borrower includes the liabilities of any separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The discount of bills of exchange drawn in good faith against actual existing values, loans secured by bills of lading drawn against produce in transit, and loans secured by bonded warehouse receipts or elevator storage tickets covering produce actually in storage shall not be considered as money borrowed if all paper relating to such transactions is made payable to, and such paper and the security therefor remains in the possession and control of the association until the advance or debt is paid. An association may discount commercial or business paper actually owned by the person negotiating it without such discounting being deemed an addition to any loan made to the negotiator.

SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1986.

Approved March 27, 1985

CHAPTER 125

HOUSE BILL NO. 1125
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

CREDIT UNION POWERS

AN ACT to amend and reenact subsection 11 of section 6-06-06 of the North Dakota Century Code, relating to the powers of state chartered credit unions.

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

SECTION 1. AMENDMENT. Subsection 11 of section 6-06-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

11. The state credit union board may authorize credit Credit unions to may engage in any activity in which they could engage if they were federally chartered.

Approved March 14, 1985

CHAPTER 126

SENATE BILL NO. 2129
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

FINANCIAL INSTITUTION SALE NOTICE

AN ACT to amend and reenact section 6-08-08.1 of the North Dakota Century Code, relating to notices of changes in control of associations, banking institutions, and their holding companies.

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

SECTION 1. AMENDMENT. Section 6-08-08.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-08.1. Sale or purchase of associations, banking institutions, or holding companies - Notification to commissioner - Hearing.

1. No person, acting directly or indirectly or through or in concert with one or more other persons, shall sell or otherwise dispose of an association, or banking institution, or purchase or otherwise acquire control of a an association or banking institution without notifying unless the state banking board has been given at least sixty days prior written notice of the proposed disposition or acquisition. The written notice shall include such information as the state banking board shall specify.
2. Within thirty days after the date of mailing the notification, the transaction shall be deemed approved, unless the board issues an order calling a hearing. If a hearing is called by the board, the parties to the transaction shall be given at least a ten-day written notice of the time, date, and place of the hearing, to be held before the board, to examine into the following matters:

- a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers.
- b. Whether the qualifications of management include adequate experience with financial institutions or other approved related experience.
- c. Whether the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.

The determination to call a hearing may be made by the commissioner after consulting the board members and an order calling a hearing may be issued by the board without a formal meeting.

3. If the evidence produced at the hearing establishes that the character, reputation, general fitness, financial standing, and responsibility of the persons proposed as stockholders, directors, or officers is such that the interests of other stockholders, depositors, creditors, and the general public might be jeopardized by the change in control and management, then the board, within ~~five~~ ten business days of the date of the hearing, shall issue its order disapproving the transaction and shall notify the parties ~~thereto~~. If no order is issued within ten business days after the hearing is held, the transaction is deemed approved by the board. Any decision of the board shall be reviewable under the provisions of chapter 28-32.
4. For purposes of this section, "control" means ~~the direct or indirect ownership of, or control of, or directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting shares at the election of directors of the securities of an association, banking institution, controlling holding company, or the direct or indirect power to control in any manner the election of a majority of the directors of an association or one bank holding company, banking institution, or to direct the management or policies of an association or banking institution, whether by individuals, corporations, partnerships, trusts, or other entities or organizations of any type. "Holding company" means any partnership, corporation, business trust, association, or entity or organization of any type which controls an association or banking institution.~~

Approved March 22, 1985

CHAPTER 127

HOUSE BILL NO. 1072
(Legislative Council)
(Interim Judiciary "B" Committee)

DISHONORED CHECKS

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to issuing checks with insufficient funds or without an account; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 6-08-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for himself, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of such making, drawing, uttering, or delivery, or at the time of presentation for payment if made within one week after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is a class B misdemeanor.
2. The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the check, draft, or order.
- ~~2-~~ ~~If full payment of the instrument and collection fees is not made within ten days from receipt of the notice of dishonor,~~ a civil penalty is also recoverable by civil action by the holder of the check, draft, or order. 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.

- 3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.
- 4. A notice of dishonor must may be sent mailed by the holder of the check upon dishonor, prior to the institution of a criminal proceeding, the. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice to must be in substantially the following form:

Notice of Dishonored Check

Date -----
 Name of Issuer -----
 Street Address -----
 City and State -----

You are according to law hereby notified that a check dated -----, 19----, 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)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ten dollars. ~~Payment to holder of the face amount of the instrument, plus any collection fees or costs, not exceeding the additional sum of ten dollars, shall constitute a defense to a criminal charge brought hereunder if paid within ten days from receipt of this notice of dishonor. If payment of the above amounts is not made within ten days from receipt of this notice of dishonor, a civil penalty of the lesser of one hundred dollars or three times the amount of the instrument will be assessed.~~

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 or civil penalty authorized by this section.

- 5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution ~~if the issuer does not pay to the holder sufficient moneys to pay the check within ten days~~

from receipt of the notice. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time shall ~~be~~ bars the criminal charge under this section.

* SECTION 2. AMENDMENT. Section 6-08-16.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for himself or as agent or representative of another, issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument with intent to defraud, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument with intent to defraud, or at the time of presentation for payment if made within one week after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the instrument. ~~If full payment of the instrument and collection fees is not made within ten days from receipt of the notice of dishonor, a~~ A civil penalty is also recoverable by civil action by the

* NOTE: Section 6-08-16.2 was also amended by section 1 of Senate Bill No. 2355, chapter 128.

holder of the check, draft, or order. 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.

- 3. The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made constitutes an inference of intent to defraud.
- 4. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution ~~if the issuer does not pay to the holder sufficient moneys to pay the check within ten days from receipt of the notice of dishonor.~~ A criminal complaint for violation of subdivision b of subsection 2 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. Failure to execute a complaint within the time set forth in this subsection ~~shall constitute a bar to bars~~ any criminal charges under subdivision b of subsection 2.
- 5. A notice of dishonor ~~must~~ may be sent mailed by the holder 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 -----
 Street Address -----
 City and State -----

You are according to law hereby notified that a check dated -----, 19----, 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 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 ten dollars. ~~Payment to holder of the face amount of the instrument, plus any collection fees or costs, not exceeding the additional sum of ten dollars, shall constitute a defense to a criminal charge brought hereunder if paid within ten days from receipt of this notice of dishonor. If payment of the above amounts is not made within ten days from receipt of the notice of dishonor, a~~

civil penalty of the lesser of one hundred dollars or three times the amount of the instrument will be assessed.

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.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 128

SENATE BILL NO. 2355
(Senators D. Meyer, Maixner)
(Representatives R. Anderson, Knudson, Vander Vorst)

NSF CHECK PENALTY

AN ACT to amend and reenact section 6-08-16.2 of the North Dakota Century Code, relating to issuing checks with insufficient funds or without an account; and to provide a penalty.

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

* SECTION 1. AMENDMENT. Section 6-08-16.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for himself or as agent or representative of another, issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument with intent to defraud, the drawer does not have an account with the bank or depository on which the instrument is drawn; or

* NOTE: Section 6-08-16.2 was also amended by section 2 of House Bill No. 1072, chapter 127.

b. At the time of issuing the instrument with intent to defraud, or at the time of presentation for payment if made within ~~one week~~ five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the instrument.

3. A person who, for himself or an agent or representative of another, willfully as defined in 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:

a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or

b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ten dollars, which are recoverable by civil action by the holder of the instrument.

4. If full payment of the instrument and collection fees is not made within ten days from receipt of the notice of dishonor, a civil penalty is recoverable by civil action by the holder of the ~~check, draft, or order~~ 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.

3- 5. The fact that payment has been refused by a drawee because of insufficient funds or because the drawer has no account with the drawee from which payment could legally be made constitutes an inference of intent to defraud.

4- 6. An agent acting for the receiver of a ~~check~~ an instrument issued in violation of this section may present the ~~check~~ instrument to the state's attorney for prosecution ~~if the issuer does not pay to the holder sufficient moneys to pay the check within ten days from receipt of the notice of dishonor~~. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the

drawer of the instrument receives notice, from the holder, of nonpayment. Failure to execute a complaint within the time set forth in this subsection shall constitute a bar to bars any criminal charges under subdivision b of subsection 2 or subdivision b of subsection 3.

- 5- 7. A notice of dishonor must may be sent by the holder of the check instrument upon dishonor. The notice must be in substantially the following form:

Notice of Dishonored Check

Date -----

Name of Issuer -----

Street Address -----

City and State -----

You are according to law hereby notified that a check dated -----, 19----, 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 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 ten dollars. Payment to holder of the

face amount of the instrument, plus any collection

fees or costs, not exceeding the additional sum of

ten dollars, shall constitute a defense to a

criminal charge brought hereunder if paid within

ten days from receipt of this notice of dishonor.

If payment of the above amounts is not made within

ten days from receipt of the notice of dishonor, a

civil penalty of the lesser of one hundred dollars

or three times the amount of the instrument will

be assessed.

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 11, 1985

CHAPTER 129

SENATE BILL NO. 2386
(Parker)

BANK CUSTOMER RECORDS DISCLOSURE

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the disclosure of customer financial institution records; and to provide a penalty.

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

SECTION 1. A new chapter to title 6 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in this chapter:

1. "Customer" means any person who has transacted or is transacting business with, or has used or is using the services of, a financial institution, or for whom a financial institution has acted 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.
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:
 - 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, association, trust, or other legal entity.

Exemptions. This chapter does not apply to any of the following:

1. The preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or the examination of such information by an accountant engaged by the financial institution to perform an audit.
2. The examination of any customer information by, or the furnishing of customer information to, any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of his duties.
3. The publication of data derived from customer information where the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the uniform commercial code concerning the dishonor of any negotiable instrument.
6. The exchange in the regular course of business of customer credit information between a financial institution and other financial institutions or commercial entities, directly, or through a customer reporting agency.

7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of either of the following:
 - a. The name of any person who, either directly or indirectly, has obtained financing through the Bank of North Dakota.
 - b. The amount of any financing obtained either directly or indirectly through the Bank of North Dakota.
8. An examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.

Duty of confidentiality. A financial institution may not disclose customer information to any person, governmental agency or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this Act.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this Act.
4. For the purpose of reporting a suspected violation of the law in accordance with this Act.

Consent.

1. No consent or waiver shall be required as a condition of doing business with any financial institution, and any consent or waiver obtained from a customer as a condition of doing business with a financial institution shall not be deemed a consent of the customer for the purpose of this Act.
2. A valid consent must be in writing and signed by the customer. In consenting to disclosure of customer information, a customer may specify any of the following:
 - a. The time during which such consent will operate.
 - b. The customer information to be disclosed.
 - c. The persons, governmental agencies or law enforcement agencies to which disclosure may be made.

Government access.

1. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to either of the following:
 - a. The consent of the customer, in accordance with this Act.
 - b. Valid legal process, in accordance with this section.
2. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a judicial or administrative subpoena duces tecum served on the financial institution, if all of the following are met:
 - a. There is reason to believe that the customer information sought is relevant to a proper law enforcement objective or is otherwise authorized by law.
 - b. A copy of the subpoena has been personally served on the customer, or his legal representative, or has been mailed to the customer or his legal representative at his last-known address on or before the date of the subpoena, together with a notice that describes the nature of the inquiry, the specific customer information sought, and a description of the customer's right to challenge the subpoena pursuant to this Act.
 - c. Ten days have passed from the date of personal service of the subpoena on the customer or his legal representative, or fourteen days have passed from the date the subpoena was mailed to the customer or his legal representative, and the customer has not exercised his right to challenge the subpoena pursuant to this section.
3. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a search warrant if it obtains the search warrant pursuant to the rules of criminal procedure of this state. Examination of the customer information may occur as soon as it is reasonably practicable after the warrant is served on the financial institution. The law enforcement agency or governmental agency must mail a copy of the warrant and a notice specifying the nature of the information obtained to the customer or his legal representative within thirty days of the time the financial institution complies with the search warrant. A court of competent jurisdiction may delay the notice requirement as provided for in this section. In no event

may notification be delayed for more than one year following the seizure pursuant to the search warrant.

4. a. Within ten days of personal service of the judicial or administrative subpoena upon the bank and the customer or his legal representative, or fourteen days from the date of the subpoena if the subpoena is mailed to the customer or his legal representative, the customer may file a motion to quash the subpoena, with copies of the motion to quash served on the governmental agency or law enforcement agency and on the financial institution. If the subpoena issues from a court, the motion should be filed in that court. If the subpoena issues from a governmental agency or law enforcement agency, the motion shall be filed in a court of competent jurisdiction. The financial institution shall not disclose the information until the motion has been heard and decided.
- b. The motion shall be accompanied by an affidavit stating both of the following:
 - (1) The applicant is the customer about whom the customer information pertains.
 - (2) The applicant's reasons for believing that the material sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law.
- c. During the period for filing the motion to quash, and continuing until the final ruling on the motion, upon the customer's request, the financial institution shall supply the customer with a copy of the customer information sought.
- d. The judge or magistrate shall grant the motion if either of the following is met:
 - (1) The information sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law.
 - (2) There has not been substantial compliance with the provisions of this Act.
5. a. Upon petition of the governmental agency or law enforcement agency, the customer notice requirements of this Act may be delayed by a court of competent jurisdiction if all of the following are met:
 - (1) The investigation conducted is within the authority of the governmental agency or law enforcement agency.

- (2) The disclosure sought is pursuant to a proper law enforcement objective or is otherwise authorized by law.
 - (3) The provision of notice to the customer would seriously impede the investigatory process.
- b. Notice may be delayed under this subsection for no more than thirty days. Upon application of the governmental agency or law enforcement agency, notice may be delayed for two additional thirty-day periods.
 - c. When the court grants the petition to delay notice, a copy of the court order shall be attached to the summons or subpoena and served on the financial institution.

Suspicion of unlawful conduct.

1. Nothing in this Act precludes a financial institution from initiating contact with, and thereafter communicating with and disclosing customer information to, a law enforcement agency when the financial institution reasonably believes that the customer about whom such information pertains:
 - a. Is engaged in unlawful activity; or,
 - b. Is defrauding the financial institution.
2. Conviction of the customer or admission by the customer shall be conclusive of the reasonableness of the disclosure for purposes of this section.
3. The burden is on the financial institution to show that at the time the disclosure was made, the disclosure was reasonable for the purposes of this section.

Cost reimbursement. Any governmental agency, law enforcement agency or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution.

Liability.

1. A financial institution, governmental agency, law enforcement agency, or any other person is liable to the customer for intentional violations of this Act in an amount equal to the greater of the following:
 - a. One thousand dollars.
 - b. Actual damages caused by the disclosure of the customer information.
2. Any financial institution, governmental agency, law enforcement agency or other person that takes any action pursuant to this Act, relying in good faith on any provision of this Act, may not be held liable to any

CHAPTER 130

SENATE BILL NO. 2196
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

EXPORT TRADING COMPANY STOCK PURCHASE

AN ACT to provide for the purchase of stock in an export trading company by the Bank of North Dakota.

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

SECTION 1. Bank of North Dakota purchase of export trading company stock - Limitation. The Bank of North Dakota may invest in an export trading company organized and doing business in this state through the purchase of shares of stock, except that all investments in such stock shall not exceed two percent of the Bank's consolidated capital and surplus.

Approved March 28, 1985

CHAPTER 131

SENATE BILL NO. 2207
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

BANK RECORDS CONFIDENTIALITY

AN ACT to create and enact a new subsection to section 6-09-35 of the North Dakota Century Code, relating to the confidentiality of Bank records.

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

SECTION 1. A new subsection to section 6-09-35 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The report by a Bank officer or member of the Bank's advisory board of directors concerning personal financial statements.

Approved March 22, 1985

CHAPTER 132

SENATE BILL NO. 2451
(Holmberg)

MUNICIPAL SECURITY DEFINED

AN ACT to amend and reenact subsection 5 of section 6-09.4-03 of the North Dakota Century Code, relating to the definition of a municipal security; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 5 of section 6-09.4-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Municipal security" means a bond or evidence of debt issued by a political subdivision and payable from taxes or from rates, charges, ~~or~~ assessments, or distributions of revenue pursuant to a state appropriation or statutory or constitutional provision or under currently existing contracts of the bureau of Indian affairs, but does not include bonds issued pursuant to chapter 40-57, and also means a pledge of property or revenues by a municipal pipeline authority.

SECTION 2. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 29, 1985

CHAPTER 133

SENATE BILL NO. 2191
(Committee on State and Federal Government)
(At the request of the Bank of North Dakota)

MUNICIPAL BOND BANK RESERVE FUND

AN ACT to create and enact a new subsection to section 6-09.4-10 of the North Dakota Century Code, relating to the requirements of the reserve fund for the North Dakota municipal bond bank; to amend and reenact subsection 2 of section 6-09.4-10 of the North Dakota Century Code, relating to the requirements of the reserve fund for the North Dakota municipal bond bank; and to declare an emergency.

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

SECTION 1. AMENDMENT. Subsection 2 of section 6-09.4-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Moneys in said fund at any time in excess of the required debt service reserve or in excess of the amount permissible under the Internal Revenue Code may be withdrawn at any time by the bond bank and transferred to any other fund or account of the bond bank. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the yield may cause the bonds to be taxable under the Internal Revenue Code, then at the discretion of the bond bank no reserve fund need be established prior to the issuance of bonds or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.

SECTION 2. A new subsection to section 6-09.4-10 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

If the maturity of a series of bonds of the bond bank is three years or less from the date of issuance of the bonds, the bond bank may determine that no reserve fund need be established for that respective series of bonds. If such a determination is made, holders of that respective series of bonds shall have no interest in or claim on existing reserve funds established for the security of the holders of previously issued bond bank bonds, and shall have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the bond bank.

SECTION 3. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved March 22, 1985

CHAPTER 134

SENATE BILL NO. 2249
(Committee on Social Services and Veterans Affairs)
(At the request of the Department of Human Services)

DEVELOPMENTALLY DISABLED FACILITY LOAN
FUND

AN ACT authorizing a developmentally disabled facility loan fund program for the establishment by nonprofit corporations of facilities for the developmentally disabled, chronically mentally ill, and physically disabled persons; authorizing the board of university and school lands to invest in a developmentally disabled facility loan fund program; to create and enact a new chapter to title 25 of the North Dakota Century Code, relating to appointment of receivers for facilities for developmentally disabled clients; to amend and reenact section 6-09.6-03 of the North Dakota Century Code, relating to the amount, terms, and conditions of the loans made under the developmentally disabled facility loan fund; and to provide an appropriation.

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

SECTION 1. Developmentally disabled facility loan program no. 3. There is hereby created a developmentally disabled facility loan fund program no. 3 for the purpose of making loans to nonprofit corporations, organized in the localities in which facilities are proposed to be located, for project costs, including the cost of real estate, construction, reconstruction, acquisition, furnishings, and equipment, and administrative costs related to the establishment thereof, of facilities for developmentally disabled, chronically mentally ill, and physically disabled persons. The loan fund may borrow an amount not to exceed \$4,951,145 from the common school trust fund to finance the program. The loan fund program shall be administered by the Bank of North Dakota in the same manner the Bank administers the program established by section 6-09.6-01 and 6-09.6-02 through 6-09.6-05, except that all payments of principal and interest shall be credited by the Bank to the lands and minerals trust fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 2. Loan authority. The board of university and school lands is hereby authorized to invest in an amount not to

exceed \$4,951,145 from the common school trust fund in the developmentally disabled facility loan fund program no. 3. The term of this investment may not exceed twenty-five years and the rate of interest may not exceed twelve percent. The common school trust fund shall have a security interest in the properties of the lands and minerals trust fund in the amount of the loan.

SECTION 3. AMENDMENT. Section 6-09.6-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.6-03. Amount of loan - Terms and conditions. Loans in an amount not exceeding three-fourths of project costs, including the cost of construction, reconstruction, acquisition, furnishings, equipment, and administrative cost related to the establishment of the project, and the cost or value of real estate upon which the facility is located, shall be made by the Bank of North Dakota from the fund maintained pursuant to ~~section~~ sections 6-09.6-01, 6-09.6-01.1, and section 1 of this Act. Such loans shall bear interest at a rate of ~~five~~ ten and one-half percent for loans relating to facilities for developmentally disabled persons and five percent for loans relating to facilities for physically disabled persons and chronically mentally ill persons, and shall be repayable in the manner prescribed by the Bank of North Dakota within a period of not more than twenty-five years. In addition, in consideration of the granting of a loan under this chapter, each nonprofit corporation shall execute a contract with the state to operate the facility in accordance with the standards prescribed for the licensing of the facility by the state department of human services. The contract shall also provide that if the use of the facility is discontinued or diverted to purposes other than those proposed in the loan application without the express consent of the state department of human services, the full amount of the loan provided under this chapter shall immediately become due and payable. The Bank of North Dakota may annually deduct, as a service fee for administering the revolving fund maintained under section 6-09.6-01, one-half of one percent of the principal balance of the outstanding loans from the revolving fund as a service fee for administering the revolving fund. Payments of interest and principal on loans made under this chapter section 6-09.6-01 shall be made to the Bank of North Dakota and credited to the revolving fund. Payments of principal and interest on loans made under section 6-09.6-01.1 and section 1 of this Act shall be credited by the Bank to the lands and minerals trust fund after the Bank has deducted a service fee for administering the program equivalent to an annual fee of one-half of one percent of the principal balance of the outstanding loans.

SECTION 4. A new chapter to title 25 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

1. "Department" means the department of human services.

2. "Treatment or care center" means any hospital, home, or other premises, operated to provide relief, care, custody, treatment, day activity, work activity, or extended employment services to developmentally disabled persons.

Conditions for appointment of receiver. When the department has revoked the license of a treatment or care center, or when the operator of a center has requested, the department may file a petition with the district court to place the center under the control of a receiver if necessary to protect the health or safety of clients at the center. The court may grant the petition upon a finding that the health or safety of the clients at the center would be seriously threatened if a condition existing at the time the petition was filed is permitted to continue. Such a finding may be based upon evidence concerning the physical plant, the program and services offered by the center, but not solely upon evidence that a center:

1. Has been denied a license to operate as a center, or has had a previously issued license revoked; or
2. Has been denied certification as an intermediate care facility for the mentally retarded, or has lost or had revoked such certification.

Appointment of receiver. The court shall appoint as receiver the executive director of the department who shall designate a qualified individual not employed by this state or its political subdivisions, or a nonprofit organization to execute the receivership. The receiver appointed by the court shall use the income and assets of the treatment or care center to maintain and operate the center and to attempt to correct the conditions which constitute a threat to the clients. The receiver may not liquidate the assets of the treatment or care center.

Termination of receivership. The receivership shall be terminated when the receiver and the court certify that the conditions which prompted the appointment have been corrected, when the license is restored, when a new license is issued, or, in the case of an election by the owner or owners to discontinue operation, when the clients are safely placed or provided services in other centers.

Accounting. Upon the termination of the receivership, the receiver shall render a complete accounting to the court and shall dispose of surplus funds as the court directs.

SECTION 5. APPROPRIATION. There is hereby appropriated out of any moneys in the lands and minerals trust fund, not otherwise appropriated, the sum of \$400,000 or so much thereof as may be necessary, for the purpose of making payments of principal and interest to the common school trust fund on any loans made from it pursuant to section 1 of this Act, for the biennium beginning July 1, 1985, and ending June 30, 1987.

Approved April 16, 1985

CHAPTER 135

HOUSE BILL NO. 1043
(Legislative Council)
(Interim Agriculture Committee)

BEGINNING FARMER LOAN PROGRAM

AN ACT to amend and reenact sections 6-09-15.5, 6-09.8-01, 6-09.8-04, 6-09.8-06, subdivision m of subsection 1 of section 57-38-01.2, and section 57-38-67 of the North Dakota Century Code, relating to beginning farmer programs, loan guarantees, loan funds, and tax exemptions; to provide an appropriation; and to declare an emergency.

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

SECTION 1. AMENDMENT. Section 6-09-15.5 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read 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 loans to North Dakota beginning farmers, as defined under subsection 2 of section 57-38-67, for the purchase of agricultural real estate. 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 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 ~~thirty-five~~ fifty percent of the appraised value of the agricultural real

estate to be acquired with the loan proceeds, with the actual percentage to be determined by the Bank. A loan must bear interest at a rate as determined by the Bank, which may vary from loan to loan and which may be below the market rate. The term of a loan may not exceed forty years. The Bank may do all things and acts, may take such security, and may establish additional terms and conditions as deemed necessary to make a loan under the provisions of this section. The Bank may take a second mortgage as security for a loan from the fund if a beginning farmer's real estate financing involves a loan from a source other than the state.

4. A loan made from the fund must bear interest at a maximum rate of four percent per year for the first ten years of the loan and at a rate of six percent per year after ten years.
5. The maximum term of the loan is ten years unless at the end of the ten-year term the commissioner of agriculture extends the loan for a five-year period.

SECTION 2. AMENDMENT. Section 6-09.8-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.8-01. Definitions. As used in this chapter, unless the context or subject matter requires otherwise:

1. "Beginning farmer" means a person who qualifies as a beginning farmer under subsection 2 of section 57-38-67.
2. "Lender" means any lending institution which is regulated or funded under the laws of ~~North Dakota~~ this state or the United States and which has provided financing to a beginning farmer for the purchase of farm real estate qualified agricultural property.
3. "Loan guarantee" means an agreement that in the event of default by a beginning farmer under a contract for deed ~~or~~ a note and mortgage, or other loan or financing agreement, the Bank shall pay the seller or lender ninety percent of the amount of principal due the seller or lender on a real estate transaction and up to fifty percent of the amount of principal due the seller or lender on a personal property loan at the time the claim is approved from the loan guarantee fund.
4. "Qualified agricultural property" means real estate or depreciable personal property used in the production of agricultural products. Depreciable personal property means personal property that may be depreciated under generally accepted accounting principles and is designed for use in more than one production year.

5. "Seller" means any person, association, partnership, or corporation which has provided financing to a beginning farmer for the purchase of farm real estate qualified agricultural property or which has entered into a contract for deed with a beginning farmer for the sale and purchase of farm agricultural real estate.

SECTION 3. AMENDMENT. Section 6-09.8-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.8-04. Application for guarantee. Any lender or seller may apply to the Bank for a loan guarantee. A loan guarantee ~~shall~~ may not be approved if the purchase price of the farm real estate qualified agricultural property exceeds its appraisal value for real estate, or its fair market value for all other property. Guarantees for depreciable personal property loans may only be given for loans made under chapter 4-36.

SECTION 4. AMENDMENT. Section 6-09.8-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.8-06. Termination. A loan guarantee may be terminated by the Bank upon the sale, exchange, assignment, or transfer of the beginning farmer's interest in the farm real estate qualified agricultural property and ~~shall~~ must be terminated if the Bank determines that the loan guarantee was obtained by fraud or material misrepresentation of which the lender or seller has actual knowledge.

SECTION 5. AMENDMENT. Subdivision m of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

- m. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a notarized statement from the buyer certifying that he the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer ~~shall~~ must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person,

including ~~his~~ the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings ~~shall~~ may not be included. This statement ~~shall~~ must be filed along with the income tax return. For the purposes of this subdivision, "beginning farmer" means any person who is:

- (1) ~~is a~~ A resident of this state-;
- (2) ~~Receives~~ Receiving more than half ~~his~~ of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision-;
- (3) ~~Intends~~ Intending to use any farmland ~~that he wishes to purchase or rent to be purchased or rented~~ for agricultural purposes-;
- (4) ~~Has had~~ Except for contracts for deed entered into prior to July 1, 1985, having adequate training, ~~by experience or education,~~ in the type of farming operation which ~~he the person~~ the person wishes to begin- through satisfactory participation in the adult farm management education program of the state board of vocational education or an equivalent program approved by the commissioner of agriculture; and
- (5) ~~Has~~ Having, including the net worth of ~~his~~ any dependents and spouse, ~~if any,~~ a net worth of less than one hundred thousand dollars.

SECTION 6. AMENDMENT. Section 57-38-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-38-67. Definitions applicable to sections 57-38-67 through 57-38-70. As used in sections 57-38-67 through 57-38-70, unless the context otherwise requires:

1. "Agricultural purposes" means production of agricultural crops, livestock or livestock products, poultry or poultry products, and fruit or other horticultural crops.
2. "Beginning farmer" means any person who is:
 - a. ~~is a~~ A resident of this state-;
 - b. ~~Receives~~ Receiving more than half ~~his~~ of that person's gross annual income from farming, unless the person

initially commences farming during the tax year for which a deduction will be claimed under sections 57-38-67 through 57-38-70-;

- c. Intends Intending to use any farmland that he wishes to purchase or rent to be purchased or rented for agricultural purposes-;
 - d. Has had Except for tax-exempt transactions entered into prior to July 1, 1985, having adequate training, by experience or education, in the type of farming operation which he the person wishes to begin on the purchased or rented land referred to in subdivision c- through satisfactory participation in the adult farm management education program of the state board of vocational education or an equivalent program approved by the commissioner of agriculture; and
 - e. Has Having, including his the net worth of any dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.
3. "Landowner" means any individual, partnership, trust, or estate owning land in North Dakota, except that any individual, partnership, trust, or estate that acquires such land for the purpose of obtaining the income tax deduction provided for in sections 57-38-67 through 57-38-70 shall are not be deemed to be a landowner.

SECTION 7. APPROPRIATION. There is hereby appropriated all moneys remaining in the beginning farmer loan guarantee fund created by section 6-09.8-03 as of the effective date of this Act, to the beginning farmer revolving loan fund established under section 6-09-15.5. The Bank of North Dakota shall make such transfers as are necessary to implement this section.

SECTION 8. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 136

HOUSE BILL NO. 1404
(Representatives Nicholas, O. Hanson, Nowatzki)
(Senators Thane, W. Meyer, Tweten)

FAMILY FARM SURVIVAL ACT

AN ACT to adopt the Family Farm Survival Act of 1985 and to provide participation in short-term loans to farmers and agribusinesses; to create and enact a new section to chapter 4-36 of the North Dakota Century Code, relating to a bond reserve fund; to amend and reenact section 4-36-03, subsection 6 of section 4-36-04, sections 4-36-06, 4-36-07, 4-36-08, 4-36-12, 4-36-24, and 4-36-25 of the North Dakota Century Code, relating to the Agricultural Development Act; to provide appropriations; and to declare an emergency.

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

SECTION 1. Short title. This Act may be known as the Family Farm Survival Act of 1985.

SECTION 2. Definitions. In sections 1 through 7 of this Act, unless the context or subject matter otherwise requires:

1. "Agribusiness" means a locally owned business operation, located within this state, which is primarily engaged in providing services, materials, or equipment for the production, processing or transportation of agriculture products.
2. "Farmer" means a resident of this state who owns or operates an existing farm or ranch operation, and has a debt-to-asset ratio of fifty percent or greater or has suffered some form of unavoidable natural or financial hardship in at least one of the past four years.
3. "Operating loan" means a loan or extension of credit with a term of one year or less made by a nongovernmental financial institution to a farmer or agribusiness for the operation of an existing farm or ranch operation or agribusiness. An operating loan includes a farmer's home administration or small business administration subordinated operating loan and guaranteed operating loan,

and may be further defined by rule of the industrial commission.

SECTION 3. Operating loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota shall make available an appropriate amount of funds to purchase participation interests in operating loans to farmers and agribusinesses. Interest charged on a participation interest purchased by the Bank under this section may not exceed eight percent per annum, plus necessary and reasonable fees as determined by the industrial commission.
2. The amount of a participation interest purchased by the Bank under this section may not be greater than sixty-five percent of the loan amount or two hundred thousand dollars, whichever is less. The term of any participation interest purchased under this section may not exceed one year.
3. The Bank may not purchase a participation interest in a loan under this section until verification is received establishing that the farmer has obtained adequate crop or hail insurance which has been assigned to the primary lender, or that adequate insurance, as determined by the Bank, has been obtained by the agribusiness.

SECTION 4. Participation loans by private financial institutions.

1. The portion of the operating loan retained by a nongovernmental financial institution may not bear interest at an effective rate more than one and one-half percentage points per annum less than the interest rate computed and published monthly by the state commissioner of banking and financial institutions pursuant to section 47-14-09. The initial interest rate must be set on the date of the loan commitment and must be adjusted quarterly, based upon the last published interest rate computed by the commissioner.
2. All participation interests purchased are subject to the review and approval of the Bank.
3. The full amount of a loan qualifying for participation must be evidenced by one master note drawn by the financial institution to reflect both interest rates and to provide a schedule of payments to the financial institution and the Bank of North Dakota based upon pro rata shares of the loan participation.

SECTION 5. Interest buydown.

1. There is hereby established an interest rate buydown fund to be maintained by the industrial commission at the Bank of North Dakota.
2. The industrial commission may buydown or reduce the interest paid by a farmer or agribusiness on the Bank's portion of the participation operating loans by up to an additional five percentage points a year below the amount provided in section 3 of this Act.
3. Any interest buydown provided under this section must be repaid by the farmer or agribusiness not later than July 1, 1991, under terms approved by the Bank of North Dakota and pursuant to rules adopted by the industrial commission. Money collected under this subsection must be deposited in the fire and tornado fund in the state treasury.

SECTION 6. Agribusinesses. Not more than twenty percent of all participation interests purchased by the Bank of North Dakota under sections 1 through 7 of this Act may be in loans for agribusinesses.

SECTION 7. Rules. The industrial commission may adopt such rules and guidelines as are necessary to implement sections 1 through 6 of this Act.

* SECTION 8. AMENDMENT. Section 4-36-03 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-03. Terms defined. As used in this chapter, unless the context otherwise requires:

1. "Agriculture or agricultural enterprise" means and includes, but is not limited to, the real and personal property constituting farms, ranches, and other agricultural commodity producers; agriculturally related sewage, liquid and solid waste collection, disposal, treatment, and drainage services, and facilities; and agriculturally related antipollution and air, water, ground, and subsurface pollution abatement and control facilities and services.
2. "Bonds" means any bonds, notes, debentures, interim certificates, bond, grant and revenue anticipation notes, or any other evidences of indebtedness.
3. "Commission" means the industrial commission of North Dakota created pursuant to section 54-17-01.
4. "Contracting party" means any party to a lease, sales contract, or loan agreement except the commission.

* NOTE: Section 4-36-03 was also amended by section 1 of Senate Bill No. 2495, chapter 105.

5. "Lender" means any federal or state chartered bank, federal land bank, production credit association, bank for cooperatives, savings and loan association, building and loan association, small business investment company, or any other institution qualified within the state to originate and service loans, including, but not limited to, insurance companies, credit unions, and mortgage loan companies.
6. "Loan insurer" and "loan guarantor" mean an agency, department, administration, or instrumentality, corporate or otherwise, of or in the department of housing and urban development, the farmers home administration of the department of agriculture or the veterans administration of the United States of America, any private mortgage insurance company, or any other public or private agency which insures or guarantees loans.
7. "Operating loan" means an operating loan as defined under section 2 of this Act.
8. "State" means the state of North Dakota.

SECTION 9. AMENDMENT. Subsection 6 of section 4-36-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Enter into agreements with any department, agency, or instrumentality of the United States of America or this state and with lenders and enter into loan agreements with contracting parties for the purpose of planning, regulating, and providing for the financing and refinancing of any agricultural enterprise or an operating loan.

SECTION 10. AMENDMENT. Section 4-36-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-06. Commission - Loans to lenders - Conditions. The commission may make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by such lenders to make operating loans and loans for agricultural enterprises. Loan commitments or actual loans shall be originated through and serviced by any bank, trust company, savings and loan association, mortgage banker or other financial institution authorized to transact business in this state.

SECTION 11. AMENDMENT. Section 4-36-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-07. Commission - Invest in, purchase, or assign loans - Conditions. The commission may invest in, purchase, or make commitments to take

assignments of, operating loans and loans made by lenders for the construction, rehabilitation or purchase of agricultural enterprises. No loan shall be eligible for investment in, purchase, or assignment by the commission if the loan was made more than six months prior to the date of investment, purchase, or assignment by the commission.

SECTION 12. AMENDMENT. Section 4-36-08 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-08. Commission - Lender's requirements. Prior to exercising any of the powers authorized in sections 4-36-06 and 4-36-07, the commission shall require the lender to certify and agree that:

1. The loan is, or if the same has not been made will, at the time of making, be in all respects a prudent investment; and
2. Such lender will use the proceeds of such loan, investment, sale, or assignment within a reasonable period of time to make loans or purchase operating loans or loans to provide agricultural enterprises, or, if such lender has made a commitment to make operating loans or loans to provide agricultural enterprises on the basis of a commitment from the commission to purchase such loans, such lender will make such loans and sell the same to the commission within a reasonable period of time.

SECTION 13. AMENDMENT. Section 4-36-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-12. Commission - Bond issuance - Special obligations - How paid and secured. Bonds issued under this chapter shall not be payable from nor charged upon any funds other than the revenue pledged to the payment thereof, nor shall the commission be subject to any liability thereon. Such bonds shall not constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the commission, except those agricultural enterprises, or portions thereof, mortgaged or otherwise encumbered under the provisions and for the purposes of this chapter. The bonds may be additionally secured by a pledge of any grant, contribution, or guarantee from the federal government, the state, or any corporation, association, institution, or person.

SECTION 14. AMENDMENT. Section 4-36-24 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-24. Bank of North Dakota - Authorization to exercise administrative powers - Payment of commission expenses - Reimbursement - Liability of state or political subdivision. The commission may delegate to the Bank of North Dakota, and the Bank of North Dakota is hereby authorized to

exercise, all administrative powers granted to the commission under this chapter. The Bank of North Dakota is further authorized to advance from its funds the amount necessary to permit the commission to issue its first series of bonds under this chapter which shall be refunded to the Bank of North Dakota by the commission upon issuance of said bonds. Thereafter, all expenses incurred by the commission in carrying out the provisions of this chapter shall be payable solely from funds provided under this chapter, and nothing in this chapter shall be construed to authorize the commission to incur indebtedness or liability on behalf of or payable by this state or any political subdivision of it.

SECTION 15. AMENDMENT. Section 4-36-25 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4-36-25. Commission - Bonds exempt from taxation - Exception. All bonds issued under this chapter, interest payable thereon and income derived therefrom except inheritance, estate, and transfer taxes, shall at all times be exempt from all taxes imposed by this state, any county, any city, or any other political subdivision of this state. Bonds may be issued under this chapter whereby the interest on the bonds is subject to federal income taxation.

SECTION 16. A new section to chapter 4-36 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reserve fund.

1. The commission may establish and maintain a reserve fund and may deposit moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited in the fund by terms of any contracts between the commission and its bondholders or any resolution of the commission pertaining to proceeds of bonds, moneys or funds of the commission which it determines to deposit, and moneys made available to the commission for the purposes of the fund from any other source, and may transfer funds from the interest rate buydown fund established in section 5 of this Act. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the payments become due and payable and for the retirement of bonds, including the payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity.
2. The commission may certify to the legislative assembly such amounts as are necessary to maintain the fund at a level necessary to secure the payment of the principal, premium, if any, and interest on its bonds.

SECTION 17. APPROPRIATION. There is hereby appropriated out of any moneys in the fire and tornado fund in the state treasury,

not otherwise appropriated, the sum of \$4,000,000, or so much thereof as may be necessary, to the interest rate buydown fund for the period beginning upon the effective date of this Act, and ending June 30, 1987. Upon expiration of this appropriation, the funds which remain in the interest rate buydown fund must be returned to the fire and tornado fund. Any interest generated from the interest rate buydown fund must be transferred to the fire and tornado fund upon expiration of this appropriation. The industrial commission shall by rule establish the priority of applications for interest rate buydowns under this Act, if appropriations are not sufficient to make loans to all applicants.

SECTION 18. APPROPRIATION. There is hereby appropriated out of any moneys in the fire and tornado fund in the state treasury, not otherwise appropriated, the sum of \$4,000,000, or so much thereof as may be necessary, to the extent that the fire and tornado fund balance does not drop below \$13,000,000, to the interest rate buydown fund for the period beginning July 1, 1986, and ending June 30, 1987. Upon expiration of this appropriation, the funds which remain in the interest rate buydown fund must be returned to the fire and tornado fund. Any interest generated from the interest rate buydown fund must be transferred to the fire and tornado fund upon expiration of this appropriation. The industrial commission shall by rule establish the priority of applications for interest rate buydowns under this Act, if appropriations are not sufficient to make loans to all applicants.

SECTION 19. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 15, 1985

CHAPTER 137

HOUSE BILL NO. 1494
(Brokaw, Richard, W. Williams, Watne, Lloyd)

FARM CREDIT REVIEW BOARD

AN ACT to establish a farm foreclosure negotiation board and a home-quarter purchase fund; and to provide an appropriation.

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

SECTION 1. Definitions. As used in this Act, unless the context requires otherwise:

1. "Board" means the credit review board, or its authorized agent where applicable.
2. "Farm" means a tract or tracts of land as provided in paragraph 1 of subdivision b of subsection 15 of section 57-02-08.
3. "Farmer" means a person involved in the production of an agricultural commodity, as provided in paragraph 2 of subdivision b of subsection 15 of section 57-02-08.
4. "Fund" means the home-quarter purchase fund.
5. "Home-quarter" means a single contiguous tract of not more than one hundred sixty acres [64.75 hectares] which serves as the base unit of a farm and upon which the farm residence and buildings are located.

SECTION 2. Credit review board. The governor shall appoint three members of the credit review board. One member of the board must have experience serving as a director or officer of a financial institution. Two members of the board must have experience in the operation of a farm. No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board. The governor shall appoint members to terms of four years. The governor shall appoint one member to serve as chairman of the board.

SECTION 3. Powers - Compensation and expenses. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this Act. The board shall serve as a negotiator between a farmer who is in danger of immediate foreclosure or who has received a notice of foreclosure on a farm and has petitioned the board, and any lender who holds a valid mortgage upon the property. The board may hire staff, subject to appropriations, to serve as negotiators for the board. Board members are entitled to receive fifty 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 4. Petition - Negotiation.

1. Any farmer may petition the board for aid after receipt of a notice of foreclosure, or if the farmer is in danger of immediate foreclosure. Upon receipt of the petition, the board or its authorized agent shall enter into negotiations with the lender, on behalf of the farmer.
2. The board or its authorized agent shall negotiate with the lender in an attempt to extend the term of the loan, reduce the dollar amount of payments under the loan, or otherwise negotiate a settlement that will allow the farmer to reside in the farm residence and allow the farmer to continue to produce agricultural commodities. Any change in the terms of the mortgage must be approved by the lender and the farmer.

SECTION 5. Interest rate buydowns by the board.

1. If the board, or its authorized agent, is unable to mediate a settlement in the negotiation of a farmer's debt, the board may approve the purchase, refinancing, or redemption of the farmer's home-quarter. If the board approves the purchase, refinancing, or redemption of the home-quarter, it shall subsidize the interest rate paid by the farmer after credit has been obtained by the farmer from any governmental or private financial institution or agency.
2. The board may only approve an interest subsidy if the farmer has the financial ability to meet all payments and financial responsibilities, including the payment of principal and interest on loans subsidized under this Act.

SECTION 6. Fund - Appropriation.

1. A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home-quarter purchases, as provided in this Act. All moneys transferred into the fund, interest upon moneys in the

fund, and payments to the fund are hereby appropriated for the purpose of providing subsidies in accordance with this Act.

2. The board may petition the emergency commission for a transfer from the state contingency fund whenever it appears to the board that the moneys remaining in the fund are not sufficient to meet demands on the fund. The emergency commission may grant the transfer request, or so much thereof as may be necessary, if it finds that an emergency situation exists in the industry of farming, due to increasing numbers of farm foreclosures.
3. 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 payments received on the fund.

SECTION 7. Interest rates - Repayment - Loan qualification. An interest subsidy may only be approved on the first fifty thousand dollars of principal loaned to the farmer for the purchase or refinancing of the home-quarter. For the first year after approval of any loan, the board shall subsidize ten percentage points per annum of the interest payments due from the farmer, not to exceed the amount of interest actually charged on the first fifty thousand dollars of principal. For the second and third years of the loan, the board shall subsidize six percentage points per annum of the interest payments due from the farmer, not to exceed the amount of interest actually charged on the first fifty thousand dollars of principal. The amount of any interest payments subsidized by the board must be added to the principal amount of the loan, and the lender shall repay this amount into the fund as it is repaid by the borrower. Loans approved by the board must be amortized and may have terms of up to forty years.

SECTION 8. Home-quarter - Appraised value The board shall determine the appraised value of home-quarters for the purposes of this Act. In determining appraised value, the board shall receive testimony, from either party, on the value of the home-quarter as a single tract of land.

SECTION 9. Rulemaking authority. The board may adopt rules under chapter 28-32 as are necessary to implement this Act.

SECTION 10. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$50,000, or so much thereof as may be necessary, to the credit review board for administrative expenses for the period beginning with the effective date of this Act, and ending June 30, 1987.

SECTION 11. TRANSFER - APPROPRIATION. There is hereby authorized the transfer to the home-quarter purchase fund the sum of \$2,000,000 from the accumulated and undivided profits of the Bank of North Dakota. Such moneys shall be transferred during the biennium

on a quarterly basis, beginning July 1, 1985, and ending June 30, 1987, upon order of the industrial commission, in amounts of \$250,000, or so much thereof as is available. Any funds transferred under this section are hereby appropriated to the home-quarter purchase fund for interest buydowns.

Approved April 15, 1985