

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1060

Introduced by

Legislative Council

(Government Organization Committee)

1 A BILL for an Act to amend and reenact subsection 2 of section 6-01-03, sections 6-01-04,
2 6-01-04.3, subsection 7 of section 6-03-02, sections 6-03-07, 6-03-21, subsection 1 of section
3 6-03-47.2, sections 6-03-69, 6-03-71, subsections 5 and 6 of section 6-06-02, subsection 12 of
4 section 6-06-06, subsection 1 of section 6-06-08, sections 6-06-19, 6-06-21.1, and 6-06-26 of
5 the North Dakota Century Code, relating to the membership of the state credit union board and
6 the powers and duties of the state banking board and state credit union board; and to repeal
7 section 6-06-18 of the North Dakota Century Code, relating to state credit union board approval
8 of interest rates.

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

10 **SECTION 1. AMENDMENT.** Subsection 2 of section 6-01-03 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 2. The state credit union board consists of the commissioner and four members to be
13 appointed by the governor ~~from a panel of five names of persons, residents of~~
14 ~~North Dakota, to be furnished to the governor by the North Dakota credit union~~
15 ~~league.~~ Two of the members of the state credit union board must have at least
16 three years' experience as an officer, director, or committee member of a North
17 Dakota state-chartered credit union, one member of the board must have had at
18 least three years of experience as an officer, director, or committee member of a
19 federally chartered credit union, and one member of the board must be a lay
20 member from the public at large. ~~The panel of names submitted to the governor~~
21 ~~by the North Dakota credit union league must consist of persons whose~~
22 ~~qualifications satisfy the requirements created by the specific vacancy being filled.~~
23 ~~Appointments~~ The term of office of appointed board members is for a term of five
24 ~~years. The members of the board serving in office on July 1, 1979, shall continue~~

1 ~~to serve until the end of their respective terms. The appointments of the two~~
2 ~~additional members are effective July 1, 1979, except that these two additional~~
3 ~~members shall choose by lot which shall serve for two and three years~~
4 ~~respectively. In case of a vacancy in such the board, by death, resignation, or~~
5 ~~removal of an appointed member, the governor shall appoint an individual to fill the~~
6 ~~vacancy must be filled by appointment by the governor for the unexpired term.~~
7 ~~The commissioner is chairperson of such~~ chairs the board and the attorney
8 general is, ex officio, the attorney for ~~such the~~ board. The assistant commissioner
9 shall serve as its secretary. The members of the state credit union board ~~shall are~~
10 entitled to receive the same remuneration as is provided for the members of the
11 state banking board. The state credit union board shall hold meetings in March,
12 June, September, and December of each year and special meetings at the call of
13 the commissioner in such places as the commissioner may designate within the
14 state ~~of North Dakota.~~

15 **SECTION 2. AMENDMENT.** Section 6-01-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **6-01-04. Powers and duties of the state banking board and state credit union**
18 **board.** The board ~~has power to make such~~ may adopt rules and regulations for the
19 government of financial corporations mentioned in section 6-01-01 ~~as in its judgment may seem~~
20 ~~wise and expedient, but such to the extent the rules and regulations may do~~ not conflict with
21 any law of this state or of the United States. ~~The board shall review all reports made by the~~
22 ~~financial corporations and institutions under its jurisdiction and all reports of regular and special~~
23 ~~examinations thereof made by the commissioner, and shall approve or disapprove such~~
24 ~~reports.~~ The board shall make and enforce such orders as, ~~in its judgment, may be~~ are
25 necessary or proper to protect the public and the depositors or creditors of ~~said those~~ financial
26 corporations and institutions.

27 The same powers are given to the state credit union board with reference to credit
28 unions as are ~~herein~~ granted to the state banking board with reference to financial corporations
29 named in this chapter.

30 **SECTION 3. AMENDMENT.** Section 6-01-04.3 of the 1995 Supplement to the North
31 Dakota Century Code is amended and reenacted as follows:

6-01-04.3. Assessment of civil money penalties.

1. The ~~state banking commissioner or the board~~ and the ~~state credit union board~~ may assess a civil money penalty against a financial institution or financial corporation, including state-chartered banks, credit unions, trust companies, and savings and loan associations, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial institution or corporation, upon finding one or more of the following:
 - a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
 - b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;
 - c. Payment of dividends in violation of section 6-03-36;
 - d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
 - e. Loans to directors, officers, and employees in violation of section 6-03-60;
 - f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70;
 - g. Violations of loan limitations under subsection 7 of section 6-06-12;
 - h. Loans in violation of section 6-06-14; or
 - i. Failure to file notice of change of control under section 6-08-08.1.
2. The ~~commissioner or the board shall commence~~ commences administrative proceedings to assess civil money penalties by serving a complaint on the respondent stating the factual basis for the commissioner's or board's belief that a violation has occurred and the amount of civil penalties that the ~~board~~ complaint seeks to impose. The complaint must contain a notice of an opportunity for an administrative hearing conducted under chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the respondent. If assessment of civil money penalties are proposed based on conditions described in subdivisions c through i of subsection 1 of this section, a complaint may not be filed unless the respondent has been provided with prior orders, examination reports, or other written communications, and has willfully

1 refused to take corrective action that the respondent was capable of taking at the
2 time.

3 3. If the respondent fails to answer the complaint within twenty days of its service, ~~or~~
4 if the commissioner or board may enter an order imposing civil money penalties
5 upon the respondent. If a hearing is held and the board concludes that the record
6 so warrants, the board may enter an order imposing civil money penalties upon the
7 respondent. The assessment order is effective and enforceable immediately upon
8 service or upon a date specified in the order, and remains effective and
9 enforceable until it is stayed, modified, terminated, or set aside by action of the
10 board or a reviewing court.

11 4. In determining the amount of civil penalty imposed, the commissioner or board
12 shall consider the good faith of the financial institution or the person being
13 assessed, the gravity of the violation and any previous violations. The
14 commissioner or board may not impose a civil money penalty in excess of five
15 thousand dollars for each occurrence and one hundred dollars per day for each
16 day that the violation continues after service of an order. Any civil money penalties
17 collected under this section must be paid to the state treasurer and deposited in
18 the financial institutions regulatory fund, ~~if the fund is established by the legislative~~
19 ~~assembly.~~

20 **SECTION 4. AMENDMENT.** Subsection 7 of section 6-03-02 of the 1995 Supplement
21 to the North Dakota Century Code is amended and reenacted as follows:

22 7. To exercise, ~~by its board of directors or duly authorized officers or agents subject~~
23 ~~to law~~ as determined by the board by order or rule, all ~~such~~ the incidental powers
24 as are necessary to carry on the business of banking, including: discounting and
25 negotiating promissory notes, bills of exchange, drafts, and other evidences of
26 debt; receiving deposits; buying and selling exchange, coin, and bullion; and
27 loaning money upon real or personal security, or both; soliciting and receiving
28 deposit in the nature of custodial accounts funded only in savings accounts or
29 certificates of deposit for the purpose of retirement fund contracts or pension
30 programs, and such custodial accounts are exempt from ~~the provisions of~~ chapter
31 6-05; providing services to its customers involving electronic transfer of funds to

1 the same extent that other financial institutions chartered and regulated by an
2 agency of the federal government are permitted to provide ~~such~~ those services
3 within this state. A bank ~~which~~ that provides electronic funds transfer equipment
4 and service to its customers, at premises separate from its main banking house or
5 duly authorized facility approved by the state banking board, must make ~~such~~ the
6 equipment and service available for use by customers of any other bank upon the
7 request of ~~such~~ the other bank to share its use and the agreement of ~~such~~ the
8 other bank to share pro rata all costs incurred in connection with its installation and
9 operation, and ~~such~~ the electronic operations are not deemed to be the
10 establishment of a branch, nor of a separate facility. ~~Such~~ The electronic
11 operations at premises separate from its banking house or duly authorized facility,
12 must be considered a customer electronic funds transfer center and may be
13 established subject to rules that the state banking board ~~shall adopt~~ adopts. A
14 financial institution engaging in electronic funds transfers in this state may impose
15 a transaction fee for the use of an electronic funds transfer facility if the imposition
16 of the fee is disclosed at a time and in a manner that allows the user to terminate
17 or cancel the transaction without incurring the transaction fee. The fee may be in
18 addition to any other charge imposed by the operator at an electronic funds
19 transfer facility or by any other financial institution.

20 **SECTION 5. AMENDMENT.** Section 6-03-07 of the 1995 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **6-03-07. Investment in banking facility, furniture, and fixtures - Limitation.** No
23 state banking association may invest more than one hundred percent of the amount of its
24 unimpaired capital stock and surplus in a banking facility, furniture, fixtures, and equipment
25 without the approval of the commissioner or the state banking board.

26 **SECTION 6. AMENDMENT.** Section 6-03-21 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **6-03-21. Impairment of capital - Dividends stopped - Action by board -**
29 **Restoration.** Whenever the capital of any state banking association becomes impaired or the
30 capital stock reduced below the amount required by this title or by the articles of incorporation,
31 no dividend may be declared nor distribution of profits made thereafter while any debts of the

1 association remain unsatisfied, nor until ~~such~~ the impairment or deficiency is made good.
2 Whenever it appears that the capital of any state banking association has become impaired or
3 its capital stock reduced, the commissioner shall report the same to the state banking board
4 immediately. ~~Such board~~ The commissioner thereupon shall issue and enforce the necessary
5 order restraining the declaring of dividends and requiring that ~~such~~ the impairment or deficiency
6 be made good. ~~Such~~ The impairment or deficiency must be made good within sixty days
7 thereafter, or the commissioner, upon the order or direction of the state banking board, may
8 take charge of ~~such~~ the state banking association and proceed to liquidate the ~~same~~
9 association as in case of insolvency.

10 **SECTION 7. AMENDMENT.** Subsection 1 of section 6-03-47.2 of the 1995
11 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 12 1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a
13 nationally recognized rating service approved by the ~~state banking board~~
14 commissioner, provided that ~~such~~ the investments may not ~~be made to~~ exceed for
15 any one corporation twenty-five percent of the unimpaired capital and surplus of
16 the banking association; and

17 **SECTION 8. AMENDMENT.** Section 6-03-69 of the 1995 Supplement to the North
18 Dakota Century Code is amended and reenacted as follows:

19 **6-03-69. Report of examining committee.** The board of directors shall ~~be~~
20 ~~responsible for submitting~~ submit to the ~~state banking board~~ commissioner a report of
21 examining committee on forms provided by the commissioner. The report ~~shall~~ must reflect the
22 results of a careful and thorough examination of the assets of the bank including loans and
23 discounts of every nature and the securities and collaterals belonging ~~thereto~~ to the bank. The
24 valuation of the assets of the bank ~~shall~~ must be compared with the records of the bank. The
25 report ~~shall~~ must be made a part of the minutes of a regular meeting of the board of directors.
26 The commissioner may refuse to accept ~~such~~ the report if found to be not in accordance with
27 acceptable accounting principles.

28 Any of the following methods may be used to conduct the examination required by this
29 section:;

- 1 1. Examination by the board of directors or its examining committee. When this
- 2 method is employed, the examination must be conducted and the report submitted
- 3 in July of each year.
- 4 2. Examination on an annual basis by an independent certified public accountant or
- 5 firms composed of such accountants, or auditors of the bank's holding company, if
- 6 any.
- 7 3. Examination by an autonomous internal audit control system. The individual
- 8 directing the internal audit control system shall submit to the board of directors
- 9 each quarter an interim report as to the degree of compliance with the internal
- 10 audit control system and shall express an opinion as to the adequacy of the
- 11 internal controls. A complete report ~~shall~~ must be submitted annually to the board
- 12 of directors.

13 **SECTION 9. AMENDMENT.** Section 6-03-71 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **6-03-71. Bonds of officers and employees.** All officers and employees of any state
16 banking association, before entering upon their duties, shall furnish a ~~good and sufficient~~ bond
17 to the association in ~~such the~~ such the sum and upon ~~such the~~ such the conditions as ~~may be~~ required by the
18 board of directors in keeping with rules ~~and regulations relative thereto~~ established by the state
19 banking board. All ~~such~~ bonds must be approved by the board of directors of ~~such the~~ such the
20 association and are subject to the approval of the ~~state banking board~~ commissioner. A record
21 of the approval of ~~such the~~ such the bonds by the board of directors of the association must be made on
22 the records of the bank, and ~~such the~~ such the bonds must be filed with the ~~state banking board~~
23 commissioner. Stockholders of ~~such the~~ such the banks are not eligible as bondsmen for ~~such the~~ such the
24 officers.

25 **SECTION 10. AMENDMENT.** Subsections 5 and 6 of section 6-06-02 of the 1995
26 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 27 5. The ~~commissioner board~~, within thirty days after the receipt of certificate and
- 28 bylaws, shall determine whether they comply and are consistent with ~~the~~
- 29 ~~provisions and purposes of~~ this chapter.
- 30 6. The ~~commissioner shall notify the applicants and the state credit union board of his~~
- 31 ~~decision, and if it is favorable, the board shall instruct the secretary of state to~~

1 issue a charter, which must be attached to the certificate of organization and
2 returned, together with the bylaws, to the applicants upon payment of a filing fee of
3 thirty dollars to the secretary of state.

4 **SECTION 11. AMENDMENT.** Subsection 12 of section 6-06-06 of the 1995
5 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6 12. To exercise any incidental power necessary or requisite to enable the credit union
7 to carry out effectively the business for which it is incorporated, or as determined
8 by the board by order or rule.

9 **SECTION 12. AMENDMENT.** Subsection 1 of section 6-06-08 of the 1995
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

27 **SECTION 13. AMENDMENT.** Section 6-06-19 of the 1995 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **6-06-19. Authority to borrow - Limitation - Exception.** A credit union may borrow
30 money from any source, but the total borrowings may not exceed twenty-five percent of its
31 assets unless the commissioner authorizes a larger amount. The ~~state credit union board~~, in

1 ~~the exercise of its discretion, or commissioner~~ may suspend or restrict the borrowing powers of
2 a credit union. The limitation on borrowing does not apply to a corporate central credit union
3 which is limited to borrowing up to five times its capital, surplus, and reserve fund. For the
4 purposes of this section, capital, surplus, and reserve fund for a corporate central credit union
5 includes statutory or regulatory reserves, reserves established for contingencies or any other
6 purposes, undivided earnings, all sums on deposit by other credit unions which are permanent
7 capital base funds as defined by the bylaws of the corporate central credit union, or any other
8 funds being held by the corporate central credit union for the purpose of maintaining a capital
9 base.

10 **SECTION 14. AMENDMENT.** Section 6-06-21.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **6-06-21.1. Amount and manner of establishing special reserves for delinquent**
13 **loans and investments.** Whenever the reserve, required by section 6-06-21 is inadequate for
14 bad loans or investments, a special reserve for delinquent loans and investments must be
15 established. The amount of ~~such the~~ reserve must be determined by the ~~state credit union~~
16 ~~board or commissioner.~~ The ~~state credit union board is hereby granted the authority to may~~
17 ~~adopt such rules and regulations as it deems advisable~~ for the establishment of special
18 reserves for delinquent loans and investments.

19 **SECTION 15. AMENDMENT.** Section 6-06-26 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **6-06-26. Dividends.** A credit union, upon action by its board of directors, may declare
22 a dividend to be paid from the remaining net earnings or, in the absence of sufficient net
23 earnings, as authorized by the ~~state credit union board or commissioner.~~ The board of
24 directors shall establish the dividend and the dividend period. The members may fix the
25 maximum rate of dividends ~~which shall to be paid.~~ ~~Such~~ The dividends must be paid from the
26 net earnings of the credit union, after establishing a special reserve for delinquent loans as
27 required by the ~~state credit union board or commissioner.~~ A credit union, upon action of its
28 board of directors, may authorize an interest refund to members of record at the close of
29 business the last day of any dividend period in proportion to the interest paid during that
30 dividend period. Interest refunds may be made to borrowers only after provision has been

1 made for a special reserve for delinquent loans if required by the ~~state credit union~~ board or
2 commissioner.

3 **SECTION 16. REPEAL.** Section 6-06-18 of the North Dakota Century Code is
4 repealed.