

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1060
(Legislative Council)
(Government Organization Committee)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

2. The state credit union board consists of the commissioner and four members to be appointed by the governor ~~from a panel of five names of persons, residents of North Dakota, to be furnished to the governor by the North Dakota credit union league.~~ Two of the members of the state credit union board must have at least three years' experience as an officer, director, or committee member of a North Dakota state-chartered credit union, one member of the board must have had at least three years of experience as an officer, director, or committee member of a federally chartered credit union, and one member of the board must be a lay member from the public at large. ~~The panel of names submitted to the governor by the North Dakota credit union league must consist of persons whose qualifications satisfy the requirements created by the specific vacancy being filled.~~ Appointments The term of office of appointed board members is for a term of five years. ~~The members of the board serving in office on July 1, 1979, shall continue to serve until the end of their respective terms. The appointments of the two additional members are effective July 1, 1979, except that these two additional members shall choose by lot which shall serve for two and three years respectively.~~ In case of a vacancy in such the board, by death, resignation, or removal of an appointed member, the governor shall appoint an individual to fill the vacancy must be filled by appointment by the governor for the unexpired term. The commissioner ~~is chairperson of such~~ chairs the board and the attorney general is, ex officio, the attorney for ~~such the~~ board. The assistant commissioner shall serve as its secretary. The members of the state credit union board ~~shall be entitled to~~ receive the same remuneration as is provided for the members of the state banking board. The state credit union board shall hold meetings in March, June, September, and December of each year and special meetings at the call of the commissioner in such places as the commissioner may designate within the state ~~of North Dakota.~~

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

6-01-04. Powers and duties of the state banking board and state credit union board. The board ~~has power to make such~~ may adopt rules and regulations for the government of financial corporations mentioned in section 6-01-01 ~~as in its judgment may seem wise and expedient, but such to the extent the rules and regulations may do~~ not conflict with any law of this state or of the United States. ~~The board shall review all reports made by the financial corporations and institutions under its jurisdiction and all reports of regular and special examinations thereof made by the commissioner, and~~

~~shall approve or disapprove such reports.~~ The board shall make and enforce such orders as, ~~in its judgment, may be~~ are necessary or proper to protect the public and the depositors or creditors of ~~said those~~ financial corporations and institutions.

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

SECTION 3. AMENDMENT. Section 6-01-04.3 of the 1995 Supplement to the North 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 refused to take corrective action that the respondent was capable of taking at the time.
3. If the respondent fails to answer the complaint within twenty days of its service, ~~or if the~~ commissioner or board may enter an order imposing civil money penalties upon the respondent. If a hearing is held and the board concludes that the record so warrants, the board may enter an order imposing civil money penalties upon the respondent. The assessment order is effective and enforceable immediately upon service or upon a date specified in the order, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

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

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

7. To exercise, ~~by its board of directors or duly authorized officers or agents subject to law as determined by the board by order or rule,~~ all ~~such the~~ incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from ~~the provisions of chapter 6-05;~~ providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide ~~such those~~ services within this state. A bank ~~which that~~ provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make ~~such the~~ equipment and service available for use by customers of any other bank upon the request of ~~such the~~ other bank to share its use and the agreement of ~~such the~~ other bank to share pro rata all costs incurred in connection with its installation and operation, and ~~such the~~ electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. ~~Such~~ The electronic operations at premises separate from its banking house or duly authorized facility, must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board ~~shall adopt~~ adopts. A financial institution engaging in electronic funds transfers in this state may impose a transaction fee for the use of an electronic funds transfer facility if the imposition of the fee is disclosed at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the transaction fee. The fee may be in addition to any other charge imposed by the operator at an electronic funds transfer facility or by any other financial institution.

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

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

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

6-03-21. Impairment of capital - Dividends stopped - Action by board - Restoration. Whenever the capital of any state banking association becomes impaired or the capital stock reduced below the amount required by this title or by the articles of incorporation, no dividend may be declared nor distribution of profits made thereafter while any debts of the association remain unsatisfied, nor until ~~such the~~ impairment or deficiency is made good. Whenever it appears that the capital of any state banking association has become impaired or its capital stock reduced, the commissioner shall report the same to the state banking board immediately. ~~Such board~~ The commissioner thereupon shall issue and enforce the necessary order restraining the declaring of dividends and requiring that ~~such the~~ impairment or deficiency be made good. ~~Such~~ The impairment or deficiency must be made good within

sixty days thereafter, or the commissioner, upon the order or direction of the state banking board, may take charge of ~~such the~~ state banking association and proceed to liquidate the ~~same association~~ as in case of insolvency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6-06-19. Authority to borrow - Limitation - Exception. A credit union may borrow money from any source, but the total borrowings may not exceed twenty-five percent of its assets unless the commissioner authorizes a larger amount. The ~~state credit union board, in the exercise of its discretion, or commissioner~~ may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which is limited to borrowing up to five times its capital, surplus, and reserve fund. For the purposes of this section, capital, surplus, and reserve fund for a corporate central credit union includes statutory or regulatory reserves, reserves established for contingencies or any other purposes, undivided earnings, all sums on deposit by other credit unions which are permanent capital base funds as defined by the bylaws of the corporate central credit union, or any other funds being held by the corporate central credit union for the purpose of maintaining a capital base.

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

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

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

6-06-26. Dividends. A credit union, upon action by its board of directors, may declare a dividend to be paid from the remaining net earnings or, in the absence of sufficient net earnings, as

authorized by the ~~state credit union~~ board or commissioner. The board of directors shall establish the dividend and the dividend period. The members may fix the maximum rate of dividends ~~which shall to~~ be paid. ~~Such~~ The dividends must be paid from the net earnings of the credit union, after establishing a special reserve for delinquent loans as required by the ~~state credit union~~ board or commissioner. A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. Interest refunds may be made to borrowers only after provision has been made for a special reserve for delinquent loans if required by the ~~state credit union~~ board or commissioner.

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

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1060.

House Vote: Yeas 79 Nays 11 Absent 8

Senate Vote: Yeas 48 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,

at _____ o'clock _____ M.

Secretary of State