

February 5, 2007

PROPOSED AMENDMENTS TO SENATE BILL NO. 2390

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 1 of section 6-02-01 and section 6-05-02 of the North Dakota Century Code, relating to the use of terms for bank, annuity, safe deposit, surety, and trust company regulation purposes; and to declare an emergency.

SECTION 1. AMENDMENT. Subsection 1 of section 6-02-01 of the North Dakota Century Code is amended and reenacted as follows:

1. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter or authorized to take on banking powers under this section, except national banking corporations, banks organized under the laws of another state, domestic or foreign bank holding companies, their affiliates, bona fide financial institution trade associations and their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "bank", "banker", or "banking", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a bank until and unless such business is regularly organized or authorized under this chapter. Upon written request, the commissioner may grant an exemption to this section if the commissioner finds that use of the words "bank", "banker", "banking", or words of like import are not reasonably likely to cause confusion or lead the public to believe that the person requesting the exemption is a banking institution or is conducting a business subject to the jurisdiction of the department. In granting an exemption under this section, the commissioner may restrict or condition the exemption and use of the name or word or the activities of an exempt person as the commissioner considers appropriate to protect the public interest.

SECTION 2. AMENDMENT. Section 6-05-02 of the North Dakota Century Code is amended and reenacted as follows:

6-05-02. Compliance with chapter required - Penalty for noncompliance.

No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chapter, state banks or trust companies authorized to engage in trust activities under the laws of another state, their affiliates, bona fide banking institution trade associations and their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "trust", "trust company", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a trust company until and unless such business is regularly organized and authorized under this chapter. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter, the provisions of this section may not be enforced against it during the life of such charter. However, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions of this section, during the period of

noncompliance, shall display, prominently and continuously in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF FINANCIAL INSTITUTIONS", and such language must be displayed thereon as prominently as any other matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section, shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is in whole or in part of the nature of a trust company, or that it is under the supervision of the state banking board or the commissioner. Upon written request, the commissioner may grant an exemption to this section if the commissioner finds that use of the words "trust", "trust company", or words of like import, are not reasonably likely to cause confusion or lead the public to believe that the person requesting the exemption is a banking institution or is conducting a business subject to the jurisdiction of the department. In granting an exemption under this section, the commissioner may restrict or condition the exemption and use of the name or word or the activities of an exempt person as the commissioner considers appropriate to protect the public interest.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly