

Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2096

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to amend and reenact section 6-01-02, subsection 4 of section 6-03-02, and
2 sections 6-03-08, 6-03-13, and 6-03-59 of the North Dakota Century Code, relating to capital
3 definitions, bank powers to elect employees, bank powers as to real estate, removal of banks to
4 new locations, and loan limitations.

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

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

8 **6-01-02. Definitions.**

9 As used in this title, unless the context or subject matter otherwise requires:

- 10 1. "Association", "banking association", or "state banking association" means any
11 corporation organized under the laws of this state covering state banking associations,
12 and all corporations, limited liability companies, partnerships, firms, or associations
13 whose business in whole or in part consists of the taking of money on deposit, except
14 national banks, trust companies, and the Bank of North Dakota.
- 15 2. "Bank" means any national bank, national banking association, corporation, state
16 bank, state banking association, or savings bank, whether organized under the laws of
17 this state or of the United States, engaged in the business of banking.
- 18 3. "Bank holding company" means bank holding company as defined in 12 U.S.C.
19 1841(a)(1).
- 20 4. "Banking" means the business of receiving deposits, making loans, discounting
21 commercial paper, issuing drafts, traveler's checks, and similar instruments, handling
22 and making collections, cashing checks and drafts, and buying and selling exchange.
- 23 5. "Banking department" means the state department of financial institutions.

- 1 6. "Banking institution" means any bank, trust company, or bank and trust company
2 organized under the laws of this state.
- 3 7. "Branch" means a place of business where deposits are received, checks paid, or
4 money lent as a result of a bank that was merged into another bank pursuant to an
5 interstate merger.
- 6 8. "Commissioner" means the commissioner of financial institutions.
- 7 9. "Corporate central credit union" means a credit union operated for the primary purpose
8 of serving corporate accounts. A credit union is deemed to be a corporate central
9 credit union when its total dollar amount of outstanding corporate loans plus corporate
10 share and deposit holdings is equal to or greater than seventy-five percent of its
11 outstanding loans plus share and deposit holdings.
- 12 10. "Credit union" means a cooperative, nonprofit association organized for the purposes
13 of encouraging thrift among its members, creating a source of credit at a fair and
14 reasonable rate of interest, and providing an opportunity for its members to improve
15 their economic and social condition.
- 16 11. "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).
- 17 12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
18 optical, electromagnetic, or similar capabilities.
- 19 ~~12-13.~~ "Electronic communication" means any form of communication, not directly involving
20 the physical transmission of paper that creates a record that may be retained,
21 retrieved, and reviewed by a recipient of the communication and may be directly
22 reproduced in paper form by the recipient through an automated process.
- 23 ~~13-14.~~ "Electronic record" means a record created, generated, sent, communicated, received,
24 or stored by electronic means.
- 25 ~~14-15.~~ "Electronic signature" means an electronic sound, symbol, or process attached to or
26 logically associated with a record and signed or adopted by a person with the intent to
27 sign the record.
- 28 ~~15-16.~~ "Financial institution" means any bank, industrial loan company, or savings and loan
29 association organized under the laws of this state or of the United States.

1 ~~16-17.~~ "Merger" or "merge" means the merging or consolidation of two or more banks
2 including the purchase of all or substantially all of the assets and assumption of
3 liabilities of a bank, facility, or branch.

4 ~~17-18.~~ "Mutual investment corporation" or "mutual savings corporation" means a corporation
5 organized to engage in the investment or savings business, but having no capital
6 stock or a nominal capital stock.

7 ~~18-19.~~ "National bank" or "national banking association" means an institution chartered by the
8 comptroller of the currency under the National Bank Act [12 U.S.C. 24].

9 ~~19-20.~~ "Record" means information that is inscribed on a tangible medium or that is stored in
10 an electronic or other medium and is retrievable in perceivable form.

11 ~~20-21.~~ "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of
12 Federal Regulations, part 325, in effect on August 1, ~~2009~~2011.

13 ~~21-22.~~ "Trust company" means any corporation formed for the purpose of transacting
14 business as an annuity, safe deposit, surety, or trust company.

15 **SECTION 2. AMENDMENT.** Subsection 4 of section 6-03-02 of the North Dakota Century
16 Code is amended and reenacted as follows:

17 4. Elect or appoint directors, such board to consist of any number of members, not less
18 than three nor more than twenty-five, a majority of whom must be residents of the
19 state of North Dakota, and, by such board of directors, to appoint a president, who
20 must be a member of said board, ~~a cashier~~, and such other employees as may be
21 required, to define their duties, to require bonds of them and fix the penalty thereof,
22 and to dismiss such officers and employees, or any of them, and appoint others to fill
23 their places.

24 **SECTION 3. AMENDMENT.** Section 6-03-08 of the North Dakota Century Code is amended
25 and reenacted as follows:

26 **6-03-08. Powers as to other real estate.**

27 Every state banking association has the power to purchase, hold, and convey other real
28 estate as herein provided, and not otherwise:

29 1. Such as is mortgaged to it in good faith by way of security for loans or for debts
30 previously contracted.

1 2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in
2 the course of its dealings.

3 3. Such as it purchases at sales under judgments, decrees, or mortgages held by the
4 association or purchases to secure debts due to it.

5 Upon transfer to other real estate owned, a current appraisal must be conducted by an
6 individual who is independent of the transaction. Notwithstanding other sections of this chapter,
7 ~~the commissioner may authorize~~ a bank may apply to the commissioner for authority to
8 exchange its interest in real property acquired in satisfaction of a debt previously contracted for
9 an interest in an entity that would dispose of the real property, subject to rules the state banking
10 ~~board may adopt. If the commissioner's decision with respect to an application is unfavorable,~~
11 the applicant bank may appeal the decision to the state banking board by filing a notice of
12 appeal with the commissioner within twenty business days after the commissioner has notified
13 the applicant bank of the decision.

14 **SECTION 4. AMENDMENT.** Section 6-03-13 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 **6-03-13. Conversion to national bank - Sale of bank - Removal to new location.**

17 An association organized to do business in any city in this state, and which has sold or
18 converted its business to a national bank or to any other banking association which is continued
19 at the same place, may not use its charter to recommence business at another place without
20 first obtaining the consent of the state banking board. When a banking association which has
21 not so converted or sold its business is located at a place where there is not, or can reasonably
22 project that there will not be, sufficient business for the profitable conduct of a bank, such
23 association may apply to the state banking board for authority to remove its business to some
24 other place within the state and to change its name if desired, and upon the approval of such
25 application, by the board and the proper amendment of the articles of incorporation, the board
26 may issue authority for such removal and change. No such association, however, is permitted to
27 remove its business to any city unless it has the full amount of capital stock and surplus
28 required by this title for a new organization in such city. A banking association may apply to the
29 state banking board for authority to move its main office to any location currently being operated
30 by the banking association as a facility.

1 **SECTION 5. AMENDMENT.** Section 6-03-59 of the North Dakota Century Code is amended
2 and reenacted as follows:

3 **6-03-59. Loan limitation to one borrower or concern.**

4 The total direct, indirect, or contingent liability of any borrower to any state banking
5 association shall not exceed at any time twenty-five percent of the association's ~~common stock,~~
6 ~~surplus, and undivided profits~~ tier 1 capital as of the most recent report of condition and income.
7 For the purpose of this section, the total liability of a borrower includes the liabilities of any
8 separate borrowers for which the repayment of separate loans or extensions of credit is
9 substantially from the same source and any credit exposure to a borrower arising from a
10 derivative transaction, repurchase agreement, reverse repurchase agreement, securities
11 lending transaction, or securities borrowing transaction between the state banking association
12 and the borrower.