

# BANKS AND BANKING

## CHAPTER 81

HOUSE BILL NO. 1213  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking  
and Financial Institutions)

### BANK REGULATION

AN ACT to amend and reenact subsection 4 of section 6-01-07.1, subsection 8 of section 6-01-17.1, sections 6-03-12, 6-03-28, 6-03-36, and 6-03-63 of the North Dakota Century Code, relating to department of banking and financial institutions' records, application fees, transfer of assets on consolidation or merger of a bank or trust company, bank capital and dividends, and interest on deposits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-01-07.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner may, in the commissioner's discretion, furnish information and enter into sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, or any state bank or credit union supervisors of other states.

SECTION 2. AMENDMENT. Subsection 8 of section 6-01-17.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A banking association's application to establish customer electronic funds transfer centers, a fee not to exceed one thousand five hundred dollars.

SECTION 3. AMENDMENT. Section 6-03-12 of the North Dakota Century Code is amended and reenacted as follows:

6-03-12. Transfer of assets on consolidation or merger. All of the rights, property, franchises, and interests of the consolidating or merging bank or trust company in and to every species of property, including all choses in action thereto belonging, are deemed to be transferred to and vested in the bank or trust company into which it is consolidated or merged without other instrument of transfer, and the. The consolidated bank or trust company shall hold and enjoy the same and all rights, property, franchises, and interests in the same manner and to the same extent as were held and enjoyed by the bank or trust company so consolidated or merged therewith, including the holding and performing by any bank or trust company of any and all trust and fiduciary relations whatsoever as to and for which

either or any of the banks or trust companies so consolidating or merging may have been appointed, nominated, or designated by any will, agreement, conveyance, or otherwise, whether or not such trust or fiduciary relationship has come into being or has taken effect at the time of the consolidation or transfer. The merging bank or trust company, however, shall transfer all of its real property to the surviving consolidated bank or trust company by good and sufficient deed of conveyance, and for that and other purposes, it remains a body corporate until dissolved in the manner provided in chapter 6-07, or if no assets or liabilities remain, until the certificate is canceled by the secretary of state.

SECTION 4. AMENDMENT. Section 6-03-28 of the North Dakota Century Code is amended and reenacted as follows:

6-03-28. Shares - Value and transfer - Shareholder's obligation. The capital stock of each association must be divided into shares of not less than ten dollars each, and is deemed personal property and transferable on the books of the association in such manner as may be prescribed by its bylaws or articles of incorporation. A transfer of shares is not valid except between the parties thereto until the transfer is entered upon the books of the association, and is not valid against the association or any creditor thereof while the registered holder of the shares is indebted to the bank as principal debtor, surety, guarantor, or otherwise. No dividend, interest, or profit may be paid on any stock of the bank or bank holding company as long as any past due liability of the shareholder continues, but such dividend, interest, or profit must be retained by the association and applied to the discharge of the past due liability. Every person or corporation becoming a shareholder by any transfer, shall succeed, in proportion to the shares acquired by him, to all rights and liabilities of prior holders of the shares existing by reason of ownership thereof, and no change may be made in the articles of incorporation or bylaws of the association by which the rights, remedies, or security of its existing creditors shall be impaired.

SECTION 5. AMENDMENT. Section 6-03-36 of the North Dakota Century Code is amended and reenacted as follows:

6-03-36. Capital must be maintained - Dividends prohibited under certain conditions.

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. Except as provided in subsection 4, no dividend may be paid which exceeds the following amount:
  - a. An association's retained net profits for the period beginning January one of the year for which the proposed dividends are declared and ending as of the date used to determine shareholders of record; plus
  - b. The association's retained net profits for the preceding two calendar years as reported in the year end call report; less
  - c. Any required transfers to:

- (1) Surplus;
  - (2) Funds for the retirement of preferred stock, capital notes, and debentures.
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, unrealized losses from investment in shares of investment companies registered under the investment companies act of 1940, and all federal and state taxes.
4. Payment of a dividend which exceeds the calculated amount in subsection 2 may be made only with prior approval of the state banking board.

SECTION 6. AMENDMENT. Section 6-03-63 of the North Dakota Century Code is amended and reenacted as follows:

6-03-63. Interest on deposits - Rates payable - Penalty. No state banking association may pay interest on deposits, directly or indirectly, at rates greater than authorized by the state banking board. ~~The board may grant permission to pay a rate of interest exceeding four percent on deposits; but the rate so granted shall be uniform within any county.~~ The board's authorization of interest rates is not subject to the public notice and public hearing requirements of chapter 28-32. Any officer, director, or employee of any association violating the provisions of this section, directly or indirectly, is guilty of a class B misdemeanor.

Approved March 19, 1991  
Filed March 19, 1991

## CHAPTER 82

SENATE BILL NO. 2173  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

### TRUST COMPANY POWERS

AN ACT to amend and reenact sections 6-02-01, 6-03-02.2, 6-05-01, 6-05-03, 6-06-06.1, and 7-02-08.1 of the North Dakota Century Code, relating to a trust company engaging in bank business, issuance of certificates of deposits, and application information and capital requirements for the organization of a trust company; and to repeal section 6-05-08.1 of the North Dakota Century Code, relating to certificates of deposit.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-02-01 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-02-01. Compliance with chapters required - Penalty for noncompliance.

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 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.
2. 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 this section may not be enforced against it during the life of such charter, 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 this section, during the period of noncompliance, shall prominently and continuously display 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 BANKING AND FINANCIAL

INSTITUTIONS". Such language must be displayed as prominently thereon as is other matter therein.

3. 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 any 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 way or manner as to lead the public to believe that its business is in whole or in part of the nature of a bank, or that it is under the supervision of the state banking board or the commissioner.
4. Any trust company duly granted a charter to engage in banking business upon compliance with this chapter is subject to the state banking board in its banking operations as is the case for other chartered banks, and all the laws relating to banks in this title are thereafter applicable. Any trust company desiring to take on banking powers shall apply to the state banking board for a hearing upon the application pursuant to section 6-02-06. If the determination of the board is in favor of the applicant, the board shall make its order authorizing the applicant to engage in the business of banking. The order must be recorded in the office of the register of deeds of the county in which the trust company is established, and must be transmitted to the secretary of state who shall record and carefully preserve the order in his office, and shall certify the facts to the state banking board. Thereafter the trust company is subject to the jurisdiction of the state banking board as to its banking operations the same as state banking associations. The provisions of sections 6-02-02, 6-02-03, 6-02-04, 6-02-05, 6-02-07, and 6-02-09 are not applicable to trust companies granted authority to engage in the business of banking by the state banking board.

SECTION 2. AMENDMENT. Section 6-03-02.2 of the North Dakota Century Code is amended and reenacted as follows:

6-03-02.2. 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, or as authorized under sections ~~6-05-00.1~~, 6-06-06.1, and 7-02-08.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 3. AMENDMENT. Section 6-05-01 of the North Dakota Century Code is amended and reenacted as follows:

6-05-01. Who may form - Corporation has perpetual existence. Any number of persons, not less than nine, at least three of whom must be residents of this state, may associate themselves and form a corporation for the purpose of transacting business as an annuity, safe deposit, and trust company. Its existence shall be perpetual.

At the time and place stated, and through any sources of information at its command, the board diligently shall inquire examine and consider all relevant factors including whether the place where such company is proposed to be located is in need of a further annuity, safe deposit, and trust company, whether the proposed institution is adapted to the filling of such need, and whether the proposed incorporators are possessed of such character, integrity, reputation, and financial standing as shown by a detailed financial statement to be furnished by them, that their connection with the company will be beneficial to the public welfare of the community in which such company is proposed to be established. The board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed institution, and any reasons advanced by any person why such institution should not be permitted to be organized. At the termination of such hearing, the board shall make a brief statement in writing of its conclusions, and if it finds that the proposed institution should not be permitted to organize, it shall state briefly the reasons why. A copy of such conclusions either shall be endorsed upon or attached to the organization certificate, together with the refusal or grant of permission to the proposed incorporators to present the said organization certificate to the secretary of state. A determination in favor of such organization must be joined in by all the members of the board.

Any banking association organized under chapter 6-02 may apply to the state banking board for a hearing as provided for in this section and an order authorizing the applicant to transact business as a trust company. If the determination of the board is in favor of the applicant the board shall make its order authorizing the applicant to engage in the business of a trust company upon its showing full compliance with sections 6-05-03, 6-05-04, and 6-05-05 except the capital stock of the banking association shall not be required to be divided in shares of one hundred dollars each as provided by section 6-05-03. Sections 6-05-06 and 6-05-07 are not applicable to banking associations granted authority to engage in the business of a trust company by the state banking board. Thereafter such banking association shall be subject to the jurisdiction of the state banking board as to its trust company operations the same as trust companies organized under chapter 6-05.

Any corporation organized and authorized to transact the business of fidelity insurance and corporate suretyship prior to July 1, 1983, pursuant to the former sections 6-05-08 and 6-05-19 through 6-05-24 and sections 6-05-30 through 6-05-33 may continue to operate under the provisions of those sections as they existed on June 30, 1983.

**SECTION 4. AMENDMENT.** Section 6-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-05-03. Capital stock - Amount - Par value - Paid-in capital required.** The amount of capital stock of any such corporation may not be less than one hundred thousand dollars, and the same must be divided into shares of one hundred dollars each. No such corporation is authorized to transact any business or exercise any powers as such until the aforesaid minimum amount of capital stock has been subscribed for, and not less than fifty thousand dollars thereof actually has been paid in, invested, and deposited as provided in this chapter. The state banking board may require such additional capital, surplus, and undivided profits as it may determine necessary to properly serve the area and to protect the public interests. The state banking board shall take into consideration peer group ratios, or

federal standards and guidelines, when determining whether any additional capital is required.

SECTION 5. AMENDMENT. Section 6-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-06.1. 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 6-03-02.2, ~~6-05-08.1~~, and 7-02-08.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 6. AMENDMENT. Section 7-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

7-02-08.1. 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 6-03-02.2, ~~6-05-08.1~~, and 6-06-06.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 7. REPEAL. Section 6-05-08.1 of the North Dakota Century Code is repealed.

Approved April 5, 1991  
Filed April 8, 1991

## CHAPTER 83

HOUSE BILL NO. 1147

(Committee on Industry, Business and Labor)

(At the request of the Department of Banking and Financial Institutions)

### REAL ESTATE LOAN APPRAISALS

AN ACT to amend and reenact sections 6-03-05 and 6-03-08 of the North Dakota Century Code, relating to appraisals prior to loans on real estate.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

6-03-05. Loans on real estate - Regulation - Limitation. No association may 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 nontransaction 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 an appraisal must be conducted by a licensed or certified appraiser if required by federal law or, if not so required, by an individual or appraisal committee who is independent of the transaction. The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, 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 or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. No director may 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 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.

SECTION 2. AMENDMENT. Section 6-03-08 of the North Dakota Century Code is amended and reenacted as follows:

6-03-08. Powers as to other real estate. Every state banking association has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:



1. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
3. Such as it purchases at sales under judgments, decrees, or mortgages held by the association, or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal must be conducted by a licensed or certified appraiser if required by federal law, or if not so required, by an individual who is independent of the transaction.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 84

HOUSE BILL NO. 1254  
(Carlisle)

### **BANK LOANS AND ADVANCES**

AN ACT to repeal section 6-03-05.1 of the North Dakota Century Code, relating to additional optional loans and advances by banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 6-03-05.1 of the North Dakota Century Code is repealed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 85

HOUSE BILL NO. 1222

(Committee on Industry, Business and Labor)

(At the request of the Department of Banking and Financial Institutions)

### FINANCIAL INSTITUTION MERGER OR CONSOLIDATION

AN ACT to amend and reenact sections 6-03-11, 6-03-13.5, subdivision a of subsection 2 of section 6-06-35, sections 6-06-36, and 6-06.1-05 of the North Dakota Century Code, relating to consolidation or merger of banking institutions, examination fees for national bank conversion or merger into a state-chartered bank, conversion or merger of a federal credit union into a state credit union, and examination fees of a credit union in liquidation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-11 of the North Dakota Century Code is amended and reenacted as follows:

6-03-11. Conversion, consolidation, or merger. Any two or more banking institutions as defined in section 6-01-02 upon making application to the state banking board ~~and upon notice and a hearing as provided by sections 6-02-05 and 6-02-06~~ may consolidate or merge if authorized by the board into one banking institution under the charter of either existing banking institution on such terms and conditions as lawfully may be agreed upon by a majority of the board of directors of each banking institution proposing to consolidate or merge subject to rules adopted by the state banking board. Before becoming final, such consolidation or merger must be ratified and confirmed by the vote of the shareholders of each such banking institution owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors. Notice of such meeting and of the purpose thereof must be given to each shareholder of record by registered or certified mail at least ten days prior to the meeting. The shareholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. The capital stock and surplus of such consolidated banking institution must not be less than that required under this title for the organization of a banking institution of the class of the largest consolidating banking institution. Immediately after the consolidation or merger a full report thereof including a statement of the assets and liabilities of the consolidated banking institution must be made to the commissioner by the surviving banking institution. Any banking institution may without approval by any state authority convert into or merge or consolidate with a national banking association as provided by federal law. A national bank proposing to merge into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

**SECTION 2. AMENDMENT.** Section 6-03-13.5 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-13.5. National bank conversion to state bank.** A national bank located in this state which follows the procedure prescribed by federal law to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the state banking board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A national bank proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

**SECTION 3. AMENDMENT.** Subdivision a of subsection 2 of section 6-06-35 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. A federal credit union, organized under the laws of the United States may be converted into a state credit union by (1) complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being a federal credit union, (2) filing with the state credit union board proof of such compliance, satisfactory to the commissioner, (3) filing with the commissioner an organization certificate and bylaws, both in triplicate, as required by section 6-06-02, and (4) granting discretionary authority to the department commissioner to conduct an examination prior to the conversion date, if determined necessary by the department. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

**SECTION 4. AMENDMENT.** Section 6-06-36 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-36. Merger.** Any credit union chartered under this chapter or under act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

SECTION 5. AMENDMENT. Section 6-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

6-06.1-05. Examinations in voluntary liquidation. When deemed advisable by the commissioner, an examination of the books and records of a credit union may be made prior to, during, or following completion of voluntary liquidation. A fee for each examination must be assessed at the rate currently in effect for examinations of operating credit unions. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

Approved March 7, 1991

Filed March 7, 1991

## CHAPTER 86

SENATE BILL NO. 2060  
(Legislative Council)  
(Interim Jobs Development Commission)

### BANK SEPARATE FACILITIES

AN ACT to amend and reenact sections 6-03-13.1, 6-03-13.3, and 6-03-13.4 of the North Dakota Century Code, relating to separate bank facilities; and to repeal section 6-03-13.2 of the North Dakota Century Code, relating to limitations on drive-in bank facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-13.1 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.1. Separate drive-in facility facilities authorized. Every ~~Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02, and under the supervision of the state banking board, and any national bank doing business in this state, may, upon compliance with sections 6-03-13.1 through 6-03-13.4,~~ maintain and operate separate and apart from its banking house one facility ~~facilities~~ for drive-in and walkup service, in addition to such service at its main banking house, and at its paying and receiving stations, if any. The A separate facility must be within the corporate city limits of the main banking house or within three miles [4.83 kilometers] of such city but may not be within the corporate limits of another city. ~~One additional separate drive-in and walkup facility may be maintained and operated not more than one thousand five hundred feet {457.2 meters} from its main banking house by any bank that does not have a drive-in facility at its main banking house.~~ The services rendered at the a separate facility are limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, and receiving payments payable at the bank.

SECTION 2. AMENDMENT. Section 6-03-13.3 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.3. Facts considered for approval. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to sections section 6-03-13.1 ~~through 6-03-13.4,~~ or to move a facility previously established to another location, it shall apply to the state banking board or the comptroller of the currency, as the case may be, for such authority and provide the board with such relevant information as the board may reasonably request. In determining whether or not to approve the application for such facility, the banking board shall take into consideration the following facts:

1. The convenience, needs, and welfare of the people of the community and area served.

2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by the approval of the application.

SECTION 3. AMENDMENT. Section 6-03-13.4 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.4. Effect of authority. Nothing in sections 6-03-13.1 ~~through 6-03-13.4~~ may be deemed to and 6-03-13.3 authorize the maintenance or operation of a branch bank, but a facility authorized ~~hereunder~~ under those sections may be supplementary or in addition to paying and receiving stations permitted under section 6-03-14. National banking associations located in this state have the same, but no greater right by virtue of sections 6-03-13.1 ~~through 6-03-13.4~~ and 6-03-13.3 as banks organized under the laws of this state.

SECTION 4. REPEAL. Section 6-03-13.2 of the North Dakota Century Code is repealed.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 87

HOUSE BILL NO. 1241

(Committee on Industry, Business and Labor)

(At the request of the Department of Banking and Financial Institutions)

### **BANK INSOLVENCY, ACQUISITION, AND RECEIVERSHIP**

AN ACT to amend and reenact sections 6-03-57, 6-05-34, 6-07-03, 6-07-04.2, 6-07-13, and 6-07-38 of the North Dakota Century Code, relating to bank insolvency, acquisition, receiver bonds, and closing of receivership; and to repeal sections 6-07-09, 6-07-21, 6-07-22, 6-07-23, 6-07-24, 6-07-25, 6-07-26, 6-07-27, 6-07-28, 6-07-29, 6-07-34, 6-07-35, 6-07-36, 6-07-37, 6-07-39, 6-07-40, 6-07-41, 6-07-42, 6-07-43, and 6-07-45 of the North Dakota Century Code, relating to bank foreclosure, receivers, and closing of receivership.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-57 of the North Dakota Century Code is amended and reenacted as follows:

6-03-57. Foreclosure of pledge contracts. Except as otherwise provided in chapter 6-07, no pledge made by an association may be foreclosed except by an action in equity brought in the district court of the county in which the pledgor association is located, except where assets are pledged by a state banking association in order to secure borrowed money or the obligation of the association on rediscounted paper, the rights of the pledgee must be determined by the terms of the agreement of pledge, and if the pledged assets are outside of this state, the foreclosure of the pledge is governed by the laws of the state where the pledge is located, and ~~sections 6-07-21 to 6-07-29, inclusive, of this title do not apply.~~

SECTION 2. AMENDMENT. Section 6-05-34 of the North Dakota Century Code is amended and reenacted as follows:

6-05-34. Other code provisions applicable to corporations doing business under this chapter. The provisions of title 10, as it may be amended from time to time, governing profit corporations, and sections 6-01-06, 6-01-09, 6-03-11, 6-03-12, 6-03-27, 6-03-33, 6-03-34, 6-03-35, 6-03-41, 6-03-42, 6-03-51, 6-03-52, 6-03-53, 6-03-54, 6-03-55, 6-03-56, 6-03-57, 6-03-58, 6-03-61, 6-03-62, 6-03-63, 6-03-64, 6-03-65, 6-03-70, 6-03-72, 6-07-01, 6-07-02, 6-07-04, 6-07-05, 6-07-06, ~~6-07-21, 6-07-23, 6-07-24, 6-07-25, 6-07-26, 6-07-27, 6-07-28, 6-07-29,~~ 6-08-03, 6-08-06, 6-08-09, 6-08-14, and 6-08-20 are applicable to and must be observed by all corporations organized under this chapter, except as to provisions thereof inconsistent with the provisions of this chapter.

SECTION 3. AMENDMENT. Section 6-07-03 of the North Dakota Century Code is amended and reenacted as follows:

6-07-03. Banks insolvent, when. A bank is deemed insolvent:



1. When the actual ~~cash market~~ value of its assets is insufficient to pay its liabilities;
2. When it is unable to meet the demands of its creditors in the usual and customary manner;
3. When it fails to make good its reserve as required by law; or
4. When it fails to comply with any lawful order of the state banking board within any time specified therein.

SECTION 4. AMENDMENT. Section 6-07-04.2 of the North Dakota Century Code is amended and reenacted as follows:

6-07-04.2. Acquisition of an institution. The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may permit the acquisition of the financial institution. ~~In considering potential acquisition, the receiver of an insolvent institution or the board, when acting under the provisions of this section, shall entertain bids from potential purchasers in the following manner:~~

- ~~1. First consideration must be given to bids to purchase any or all of the total assets and liabilities made by any of the following, which intend to operate the acquired institution as a bank:~~
  - ~~a. An individual or individuals desiring to acquire control of the institution.~~
  - ~~b. A new bank organized under chapter 6-02.~~
  - ~~c. A bank holding company the home state of which is North Dakota.~~
- ~~2. Second consideration must be given to banks acquiring any or all of the total assets and liabilities of the institution to operate it as a paying and receiving station, in which case the bids must be considered in the following order:~~
  - ~~a. Banks qualifying to acquire the institution under section 6-03-14.~~
  - ~~b. North Dakota banks within a seventy five mile radius of the insolvent or failing institution.~~
  - ~~c. Banks within the state of North Dakota.~~

The receiver of an insolvent institution or board when acting under the provisions of this section, may accept a bid of a lower order bidder under subsection 1 or 2, provided the bid is otherwise acceptable and is for an amount at least ten percent greater than a bid of a higher order. The state banking board may grant approval under this chapter for applications for the organization of a state bank, establishment of a paying and receiving station, or establishment of a drive-in facility. The receiver of an insolvent institution or board when acting under the provisions of this section, may reject any and all bids.

The procedure for acquisition to operate as a bank or a paying and receiving station procedures may be modified by the state banking board to the extent the board deems necessary under the circumstances. No notice of application need be given and no public hearing need be held. Notwithstanding section sections 6-03-14 and 6-03-18, a paying and receiving station may be authorized. A paying and receiving station established by acquisition under this section shall not be required to discontinue operation by commencement of business by a banking institution at the same place.

SECTION 5. AMENDMENT. Section 6-07-13 of the North Dakota Century Code is amended and reenacted as follows:

6-07-13. Administrative receiver to furnish bond. Every receiver appointed by the state banking board except the federal deposit insurance corporation, before entering upon the discharge of his duties and before proceeding to liquidate the affairs of any bank, ~~shall~~ may be required by the board to furnish a bond executed by the state bonding fund or by some surety company authorized to do business in this state, running to the state of North Dakota, in a penal sum set by the state banking board, for the faithful discharge of his duties in connection with liquidating the affairs of said bank and the accounting for all moneys coming into his hands. Such bond must be approved as to form by the attorney general and must be filed with the commissioner. The cost of such bond must be paid from the assets of the bank being liquidated, and suit may be maintained on the bond by any person injured by a breach of the conditions thereof.

SECTION 6. AMENDMENT. Section 6-07-38 of the North Dakota Century Code is amended and reenacted as follows:

6-07-38. Closing of receiverships - Sale of assets - Notice. Every receivership must be terminated within five ten years of the date of the appointment of the first receiver for said bank. If ninety days prior to the expiration of said five-year ten-year period any assets remain in the hands of the receiver, he shall cause notice of sale thereof at public auction to be given by publishing notice thereof in a newspaper in the county wherein the bank was located once each week for three successive weeks prior to the date set for sale, and such assets may be sold to the highest bidder. Such sale may be had at any earlier time when ordered by the court having jurisdiction. When the receivership of a closed bank is terminated, all books, records, documents, and other property of such bank, and any dividends unclaimed, must be delivered over by such receiver to the commissioner and his receipt taken therefor by the receiver. Such receipt must be filed in the district court having jurisdiction, and the discharge of the receiver, whether he be an administrative or judicial receiver, must be approved by such court before it becomes final. The commissioner is custodian of all books, records, documents, and other property of such bank and of the dividends unclaimed upon the winding up of the receivership proceedings, and is vested with title to any assets belonging to such bank and not distributed in such receivership, and he has full power and authority to convert such assets into cash. ~~He also~~ The commissioner has authority to execute all deeds, satisfactions, assignments, or other documents required for the purpose of transferring undistributed assets or for the purpose of correcting public records and quieting title to property in which the insolvent bank has or has had an apparent interest. Any moneys collected by the commissioner prior to July 1, 1975, after the termination of a receivership must be paid into the general fund of the state. ~~Any moneys collected by the commissioner after July 1, 1975, after the termination of a receivership must be paid to~~

the commissioner of university and school lands. The commissioner may waive any of the requirements of this section in cases where the federal deposit insurance corporation is the receiver.

SECTION 7. REPEAL. Sections 6-07-09, 6-07-21, 6-07-22, 6-07-23, 6-07-24, 6-07-25, 6-07-26, 6-07-27, 6-07-28, 6-07-29, 6-07-34, 6-07-35, 6-07-36, 6-07-37, 6-07-39, 6-07-40, 6-07-41, 6-07-42, 6-07-43, and 6-07-45 of the North Dakota Century Code are repealed.

Approved March 8, 1991  
Filed March 8, 1991

## CHAPTER 88

SENATE BILL NO. 2189  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking  
and Financial Institutions)

### CREDIT UNION PROPERTY DIVESTITURE

AN ACT to amend and reenact subsections 10 and 11 of section 6-06-06 of the North Dakota Century Code, relating to the powers of a credit union.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 10 and 11 of section 6-06-06 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. Every state credit union has the power to purchase, hold and convey other real estate as herein provided, and not otherwise:
  - a. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
  - b. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
  - c. Such as it purchases at sales under judgments, decrees, or mortgages held by the credit union, or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal performed by an independent qualified appraiser must be obtained for all property recorded at or below the lower of twenty-five thousand dollars or ten percent of the credit union's equity. Except as otherwise provided by chapter 10-06, a state credit union may hold possession of any real estate acquired after the effective date of this Act under mortgage, or title and possession of any real estate purchased to satisfy indebtedness, for a period not to exceed five years. Except as otherwise provided by chapter 10-06, real estate acquired before the effective date of this Act may be held for a period not exceeding five years from the effective date of this Act. The commissioner may extend the real estate holding period up to an additional five years upon formal request by a credit union if the credit union has made a good faith attempt to dispose of the real estate within the five-year period, or disposal within the five-year period would be detrimental to the credit union. Within thirty days after receipt of an adverse decision, the credit union may appeal that decision to the state credit union board.

11. Credit unions may engage in any activity in which they could engage if they were federally chartered, subject to rules that the state credit union board shall adopt.

Approved March 14, 1991

Filed March 15, 1991

## CHAPTER 89

HOUSE BILL NO. 1261  
(Representatives Clayburgh, Larson, Gates)  
(Senator Stenehjem)

## NSF CHECK COLLECTION FEES

AN ACT to amend and reenact subsections 2 and 4 of section 6-08-16 and subsections 2, 3, and 7 of section 6-08-16.2 of the North Dakota Century Code, relating to fees for collection costs on checks or drafts issued without sufficient funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 2 and 4 of section 6-08-16 of the 1989 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. The person is also liable for collection fees or costs, not in excess of ~~ten~~ fifteen dollars, which are recoverable by civil action by the holder of the check, draft, or order. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. 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.
4. A notice of dishonor may be 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. 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~~ fifteen dollars.

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.

SECTION 2. AMENDMENT. Subsections 2, 3, and 7 of section 6-08-16.2 of the North Dakota Century Code are amended and reenacted as follows:

2. A person who, for ~~himself~~ that person 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
- b. At the time of issuing the instrument with intent to defraud, 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~~ fifteen dollars, which are recoverable by civil action by the holder of the instrument.

3. A person who, for ~~himself~~ that person or an agent or representative of another, willfully as defined in section 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~~ fifteen dollars, which are recoverable by civil action by the holder of the instrument.

7. A notice of dishonor may be mailed by the holder of the instrument 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~~ Instrument

Date -----  
Name of Issuer -----  
Street Address -----  
City and State -----  
You are according to law hereby notified that a  
~~check~~ an instrument 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~~ fifteen dollars.

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 8, 1991  
Filed April 8, 1991



## CHAPTER 90

HOUSE BILL NO. 1596  
(Representatives Scherber, Belter)  
(Senator Graba)

### ESCROW ACCOUNT INTEREST

AN ACT to create and enact a new section to title 6, a new section to title 7, and a new section to title 47 of the North Dakota Century Code, allowing banking institutions, credit unions, savings and loan associations, and other persons to pay interest on escrow accounts related to mortgages on residences.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Interest on banking institution and credit union escrow accounts related to mortgages on residences - Rate payable. Before the mortgage is executed by the mortgagor, each banking institution and credit union intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall notify the mortgagor whether the institution or credit union offers interest on the escrow account funds. Each banking institution and credit union that maintains an escrow account shall annually furnish each mortgagor with a detailed statement showing all debits and credits to the escrow account and the method used in computing the interest, if interest is offered.

SECTION 2. A new section to title 7 of the North Dakota Century Code is created and enacted as follows:

Interest on savings and loan association escrow accounts related to mortgages on residences - Rate payable. Before the mortgage is executed by the mortgagor, every savings and loan association intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall notify the mortgagor whether the association offers interest on the escrow account funds. Each savings and loan association that maintains an escrow account shall annually furnish each mortgagor with a detailed statement showing all debits and credits to the escrow account and the method used in computing the interest, if interest is offered.

SECTION 3. A new section to title 47 of the North Dakota Century Code is created and enacted as follows:

Interest on other escrow accounts related to mortgages on residences - Rate payable. Before the mortgage is executed by the mortgagor, every residential mortgagee, including any insurance company whose articles of incorporation are filed under section 26.1-01-03 or who is required to obtain

a certificate of authority under section 26.1-01-05, intending to maintain an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall notify the mortgagor whether it offers interest on the escrow account funds. The mortgagee shall annually furnish each mortgagor with a detailed statement showing all debits and credits to the account and the method used in computing the interest, if interest is offered.

Approved April 10, 1991  
Filed April 10, 1991

## CHAPTER 91

SENATE BILL NO. 2059  
(Legislative Council)  
(Interim Jobs Development Commission)

### INTERSTATE BANKING

AN ACT to authorize reciprocal interstate banking; and to create and enact a new section to chapter 57-35 and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to taxation of banks engaged in interstate banking.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. In this Act, unless the context otherwise requires:

1. "Bank" means a bank, as that term is defined in section 6-01-02, which:
  - a. Has federal deposit insurance corporation insurance of deposits;
  - b. Accepts deposits that the depositor has a legal right to withdraw on demand; and
  - c. Engages in the business of making commercial loans.
2. "Bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended [ch. 240, 70 Stat. 133; 12 U.S.C. 1841].
3. "Board" means the state banking board.
4. "Commissioner" means the commissioner of banking and financial institutions.
5. "Control" means, with respect to a bank or bank holding company:
  - a. Ownership, control, or power to vote, directly or indirectly, or acting through one or more other persons, twenty-five percent or more of any class of voting securities;
  - b. Control in any manner over the election of a majority of the directors; or
  - c. Power to exercise, directly or indirectly, a controlling influence over management and policies.
6. "Equity capital" means the sum of common stock, preferred stock, and surplus and undivided profits.

7. "Located in this state" means:
  - a. A bank of which the organizational certificate identifies an address in this state as the principal place of conducting the business of banking; or
  - b. A bank holding company, with banking subsidiaries, the majority of deposits of which are in this state.
8. "Reciprocating state" is a state that authorizes the acquisition, directly or indirectly, or control of banks in that state by a bank or bank holding company located in this state under conditions similar to those imposed by the laws of this state as determined by the board.
9. "Reciprocating state bank holding company" means a bank holding company that conducts its operations principally in a reciprocating state, the reciprocating state is the state in which the operations of the company's banking subsidiaries are the largest in terms of total deposits, and the company is not owned or controlled by a company having its principal place of business in other than a reciprocating state.

**SECTION 2. Application to acquire a bank or bank holding company.**

1. A reciprocating state bank holding company may, through a purchase of stock or assets of a bank or bank holding company or through a merger with a bank holding company, acquire an interest in an existing bank or banks located in this state if the company meets the conditions and requirements of this Act and, if the interest acquired will result in the reciprocating state bank holding company obtaining control of the bank or banks, the company files an application with the board on forms prescribed by the board.
2. An application under subsection 1 must contain the following information:
  - a. The identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including any material business activities and affiliations during the past five years, a description of any material pending legal or administrative proceedings in which the person is a party, and any criminal indictment or conviction of that person by a state or federal court.
  - b. A statement of the assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the fiscal years, all prepared in accordance with generally accepted accounting principles consistently applied, and a current statement of the assets and liabilities for each person, together with related statements of income, sources, and application of funds as of a date not more than ninety days prior to the date of the filing of the application.

- c. The terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made.
  - d. The identity, source, and amount of the funds or other consideration to be used in making the acquisition, and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with those persons.
  - e. Any plans or proposals that an acquiring party making the acquisition may have to liquidate the bank, sell its assets or merge it, or make any other major change in its business or corporate structure or management.
  - f. The identification of any person employed, retained, or to be compensated by the acquiring party, or by any person on the acquiring party's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation.
  - g. Copies of all invitations, tenders, or advertisements making tender offers to stockholders for purchase of their stock to be used in connection with the proposed acquisition.
  - h. A statement of how the acquisition will bring net new funds into this state. The description of net new funds must be filed with the application and annually thereafter stating the amount of capital funds, including the increase in equity capital, which will result from the acquisition of a bank. The level of total equity capital must exceed three million dollars for a new chartered bank and one million dollars for an acquired bank. The description must state the net increase in loanable funds expressed as an increase in the total loan to total asset ratio of loans and assets in this state. The statement must also include a discussion of initial capital structure, loan policy, investment policy, dividend policy, and the general plan of business, including the full range of consumer and business services that will be offered.
  - i. A statement of how the acquisition of the bank located in the state by a reciprocating state bank holding company will provide a level of developmental loans as required by the board by rule. The reciprocating state bank holding company shall establish and maintain a percentage of developmental loans to total loans at a level no less than the percentage of developmental loans to total loans of the bank company's consolidated statement with all of its bank subsidiaries.
  - j. Additional information required by the board by rule or by specific request.
3. The board shall act on the application within thirty days after the end of the public comment period provided in section 10 of this Act. The board may extend the thirty-day period an additional

thirty days if the board determines that any material information submitted is substantially inaccurate or the applicant has not furnished all the information required. All applications must be accompanied by an application fee of five thousand dollars payable to the state treasurer and deposited into the financial institutions' regulatory fund. Compliance with sections 2 through 5 of this Act satisfies the requirements of section 6-08-08.1. The state banking board may alter the procedures under this Act in the case of an insolvent institution acquisition by merger, consolidation, or purchase of assets and assumption of liabilities. No notice of application need be given and no public hearing need be held in the case of an acquisition of an insolvent institution.

**SECTION 3. Disapproval - Grounds.** The board shall disapprove any proposed acquisition if the board determines that:

1. The financial condition of any acquiring person may jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;
2. The competence, experience, and integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit the person to control the bank;
3. The acquisition will result in undue concentration of resources or substantial lessening of competition in this state;
4. The acquisition will result, at the time of such acquisition, in the reciprocating state bank holding company controlling more than nineteen percent of the aggregate of all deposits located in this state in all state and national banks, including savings and loan associations and savings banks, based upon the public reports most recently filed with the appropriate regulatory agency, and the commissioner may request, quarterly or annually, the amount of deposits held by state and federal savings and loan associations and savings banks in North Dakota offices or banks;
5. The application fails to demonstrate adequately that the acquisition would bring net new funds into this state; or
6. The application is incomplete or any acquiring party neglects, fails, or refuses to furnish the information required by the board.

**SECTION 4. New bank application.** Any application to organize a bank under title 6 may include control by a reciprocating state bank holding company if, in addition to the conditions in chapter 6-02 and the application does not present any facts that would be grounds for disapproval in section 3 of this Act.

**SECTION 5. Applicant capital requirement.** A reciprocating state bank holding company may not acquire a bank or bank holding company located in this state if immediately before and after the acquisition the reciprocating state bank holding company has in the aggregate a ratio of total capital to total assets of less than six percent, as measured and applied in accordance

with regulations of the board of governors of the federal reserve system in effect on the date of the filing of an application under this Act.

SECTION 6. Notice of disapproval - Hearing.

1. Within three days after the board's decision to disapprove an application, the board shall notify the applicant in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.
2. Within ten days after receipt of notice of disapproval, the applicant may request a hearing on the proposed acquisition. At the conclusion of the hearing, the board shall by order approve or disapprove the application on the basis of the record made at the hearing.
3. The bank holding company that is the subject of the order may seek judicial review at any time within ninety days after the date of an order lawfully issued under this Act.

SECTION 7. Divestiture - Cease and desist.

1. If a reciprocating state bank holding company makes an acquisition other than in full compliance with the requirements and procedures of this Act, the board may, by order:
  - a. Immediately require the reciprocating state bank holding company to divest itself of its direct or indirect ownership or control of any bank located in this state; or
  - b. Require the reciprocating state bank holding company to cease and desist the violations by a certain date.
2. The order is subject to the procedures applicable to cease and desist proceedings under section 6-01-04.2 and any applicable rules.

SECTION 8. Supervision - Examinations. The commissioner may enter into cooperative and reciprocal agreements with federal or other state bank regulatory authorities for exchange or acceptance of reports of examination and other records from the authorities in lieu of conducting examinations of acquiring reciprocating state bank holding companies. The commissioner may enter into joint actions with federal or other state bank regulatory authorities to carry out responsibilities under this Act and assure compliance with the laws of this state.

SECTION 9. Reports. A reciprocating state bank holding company that directly or indirectly, through any subsidiary, acquires a bank pursuant to this Act shall file with the board copies of all regular and periodic reports that the bank holding company is required to file under section 13 or 15(d) of the Securities and Exchange Act of 1934, as amended [ch. 404; 48 Stat. 881; 15 U.S.C. 78m and 78o(d)], but excluding any portions not available to the public, and such other reports as the board may require by rule.

SECTION 10. Public information and participation - Notice.

1. The board shall make available to the public at reasonable cost copies of all applications, including supporting documents and any other information required to be submitted to the board.
2. Upon the filing of an application:
  - a. An applicant shall publish in a newspaper of general circulation, to be designated by the board, notice of the proposed acquisition as prescribed by the board by rule.
  - b. The commissioner shall prepare and update with each new application a bulletin listing all pending applications. The bulletin must be published and mailed without charge to any person upon request.
  - c. The board shall accept public comment on an application for a period of not less than thirty days from the date of the final publication required by subdivision a or thirty days after the date the bulletin listing the application as required by subdivision b is available, whichever is later.

SECTION 11. Exception. If the board of directors of a bank or bank holding company located in this state adopts a resolution to except the bank or bank holding company from being acquired under this Act and files a certified copy of the resolution with the state banking board in person or by certified mail, the bank or bank holding company may not be acquired under this Act. The board of directors may revoke the resolution by filing a certified copy of the revocation with the state banking board in person or by certified mail.

#### SECTION 12. Reporting of loans.

1. Each financial institution and credit union located in this state shall report to the state banking board on August 31, 1991, and on August thirty-first of each year thereafter, the total dollar amount of loans outstanding as of the previous June thirtieth and the aggregate dollar amount of loans outstanding in each of the following three geographical areas: this state; other states, the District of Columbia, the Commonwealth of Puerto Rico, and territories and insular possessions subject to the jurisdiction of the United States; and outside the United States.
2. As used in this section, "loans" excludes federal funds and outstandings on bank credit or debit cards.
3. For purposes of this section, a loan is outstanding in a geographical area if the address of the borrower is in that area. A loan is outstanding in this state if the address of at least one of the borrowers or a substantial portion of the collateral is located in this state.
4. A bank located in this state which is controlled by a bank holding company is not required to file such a report if the holding company files one report in the aggregate for all banks located in this state which are controlled by such bank holding company.



SECTION 13. Interstate banking authorization. This Act authorizes, in accordance with section 3 of the Bank Holding Company Act of 1956, as amended [12 U.S.C. 1842], reciprocal interstate banking in this state. Except as authorized under title 6, this Act does not authorize the establishment in this state of branch offices of a banking subsidiary of any out-of-state bank holding company making an acquisition under this Act.

SECTION 14. Provisions not severable. Notwithstanding section 1-02-20, if any provision of this Act is determined by any court of competent or final jurisdiction to be invalid or unconstitutional, this entire Act is void from the effective date of the final determination.

SECTION 15. A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Imposition of tax after reciprocal interstate banking. If the provisions of this chapter do not fairly represent the extent of the bank's business activity in this state and the bank is subject to sections 1 through 13 of this Act, the tax commissioner may require, with respect to all or any part of the bank's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the bank's income.

SECTION 16. A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Payment of tax after reciprocal interstate banking. If the provisions of this chapter do not fairly represent the extent of the bank's business activity in this state and the bank is subject to sections 1 through 13 of this Act, the tax commissioner may require, with respect to all or any part of the bank's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the bank's income.

Approved March 14, 1991  
Filed March 15, 1991

## CHAPTER 92

HOUSE BILL NO. 1327  
(Representatives Wald, Oban, Martinson)  
(Senators Lips, Satrom, Heinrich)

### MUNICIPAL BOND BANK SECURITIES

AN ACT to amend and reenact section 6-09.4-06 of the North Dakota Century Code, relating to lending and borrowing powers of the municipal bond bank.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-06 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.4-06. Lending and borrowing powers generally. The bond bank is authorized to lend money to political subdivisions through the purchase and holding of municipal securities which, in the opinion of the attorney general, are properly eligible for purchase by the bond bank under this chapter. The bond bank is authorized to lend money to political subdivisions through the purchase and holding of municipal securities and for which the principal amount of any one issue does not exceed two hundred thousand dollars. However, the bond bank may lend money to political subdivisions, through the purchase and holding of securities issued by the political subdivisions without regard to the principal amount of the bonds issued, if the industrial commission approves a resolution that authorizes the bond bank to purchase and hold the securities. The authorizing resolution must state that the industrial commission has determined that private bond markets will not be responsive to the needs of the issuing political subdivision concerning the securities or, if it appears that the securities can be sold through private bond markets without the involvement of the bond bank, the authorizing resolution must state reasons for the bond bank's involvement in the bond issue. The bond bank may hold such municipal securities for any length of time it finds to be necessary. The bond bank, for the purposes authorized by this chapter, is authorized to issue its bonds payable solely from the revenues available to the bond bank which are authorized or pledged for payment of bond bank obligations, and to otherwise assist political subdivisions as provided in this chapter.

Bonds of the bond bank issued under this chapter are not in any way a debt or liability of the state and do not constitute a loan of the credit of the state or create any debt or debts, liability or liabilities, on behalf of the state, or constitute a pledge of the faith and credit of the state, but all such bonds are payable solely from revenues pledged or available for their payment as authorized in this chapter. Each bond must contain on its face a statement to the effect that the bond bank is obligated to pay such principal or interest, and redemption premium, if any, and that neither the faith and credit nor the taxing power of the state is pledged to the payment of the principal or the interest on such bonds. Specific funds pledged to fulfill the bond bank's obligations are obligations of the bond bank.

All expenses incurred in carrying out the purposes of this chapter are payable solely from revenues or funds provided or to be provided under this chapter and nothing in this chapter may be construed to authorize the bond bank to incur any indebtedness or liability on behalf of or payable by the state.

Approved April 3, 1991  
Filed April 4, 1991

## CHAPTER 93

SENATE BILL NO. 2215  
(Committee on Agriculture)  
(At the request of the Commissioner of Agriculture)

### AGRICULTURAL MEDIATION

AN ACT to amend and reenact sections 6-09.10-01, 6-09.10-03, 6-09.10-04, 6-09.10-04.1, and 6-09.10-10 of the North Dakota Century Code, relating to agricultural mediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-01. Definitions. As used in this chapter, 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 4 of subdivision b of subsection 15 of section 57-02-08.~~
- ~~3. 2. "Farmer" means a person who is or was involved in the production of an agricultural commodity as provided in paragraph 2 of subdivision b of subsection 15 of section 57-02-08 or livestock.~~
- ~~4. 3. "Fund" means the home-quarter purchase fund.~~
- ~~5. 4. "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.~~
- ~~5. "Person" means an individual, corporation, partnership, or other legal entity.~~

\* SECTION 2. AMENDMENT. Section 6-09.10-03 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this chapter. The department of agriculture shall administer the agricultural mediation service. The commissioner of agriculture shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff,

\* NOTE: Section 6-09.10-03 was also amended by section 7 of Senate Bill No. 2058, chapter 95.

negotiators, and mediators who may mediate between a farmer disputes involving farmers and the farmer's creditors others, either of whom may request assistance. The board may charge the farmer and each of the farmer's creditors others a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1991~~ 1993. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five 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 3. AMENDMENT. Section 6-09.10-04 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04. Request for assistance - Negotiation - Mediation. Any farmer ~~or~~ creditor, or other person dealing with a farmer may request the assistance from the administrator. Upon receipt of the request, and upon consent of the farmer and the ~~creditor~~ other person to mediation, the negotiator or mediator shall encourage and assist the farmer and the ~~farmer's creditors~~ other person to reach a voluntary settlement.

SECTION 4. AMENDMENT. Section 6-09.10-04.1 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04.1. Liability. The board, commissioner, administrator, staff, negotiators, and mediators are not subject to any liability arising from any actions undertaken on behalf of a farmer or between regarding a farmer and the farmer's creditors, creditor, or other person in attempting to reach a settlement.

SECTION 5. AMENDMENT. Section 6-09.10-10 of the 1989 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-10. Mediation - Open records and meetings exception. Information created, collected, and maintained by the agricultural mediation service regarding the finances of specific farmers and creditors in the course of any mediation is confidential and is not subject to the open records requirements of section 44-04-18. Such information may be released only upon written consent of all parties to the mediation or pursuant to an order issued by the court upon a showing of good cause. All mediation meetings, or and meetings involving the board, staff, negotiators, or mediators wherein the finances of specific farmers and, creditors, and others are discussed, are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19.

Approved April 5, 1991  
Filed April 8, 1991