

BANKS AND BANKING

CHAPTER 77

SENATE BILL NO. 2176

(Senator Klein)

(Representative N. Johnson)

FINANCIAL INSTITUTION REGULATION

AN ACT to create and enact section 6-03-02.3 of the North Dakota Century Code, relating to parity of state and national bank powers; to amend and reenact sections 6-01-01 and 6-03-38 and subsection 11 of section 6-06-06 of the North Dakota Century Code, relating to the exclusivity of state regulation of financial institutions and credit unions and the uses of bank assets; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

6-01-01. Management and control - State department of financial institutions - Local ordinances preempted. The state department of financial institutions is under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of financial institutions, ~~and known as the state examiner. Whenever the term state examiner is used in this code, it means the commissioner of financial institutions.~~ The state department of financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota. A local governing body may not adopt or enforce a resolution or an ordinance regulating a financial institution or credit union.

SECTION 2. Section 6-03-02.3 of the North Dakota Century Code is created and enacted as follows:

6-03-02.3. Parity for state and national banks. Subject to authorization by the state banking board, acting by order or rule, a state bank has the same powers as a national bank and may engage directly or indirectly in any activity in which a bank could engage if the state bank were nationally chartered.

SECTION 3. AMENDMENT. Section 6-03-38 of the North Dakota Century Code is amended and reenacted as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty. ~~No~~ Except as otherwise authorized under this title, a bank, except as otherwise authorized in this title, may not employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it a bank employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that

~~banks a bank~~ subject to the laws of the federal government ~~are~~ is permitted to do so, a state bank may purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount determined by the state banking board, but in no event more than ten percent of the bank's capital and surplus. Further, ~~no~~ A bank may not invest its the bank's assets or funds in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market. A bank may invest in subsidiary organizations, when the activities of such organizations are incidental or complementary to the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary organizations, and to examine ~~its the organizations'~~ records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, ~~it the state banking board~~ may direct the bank to divest itself of such subsidiary investments. ~~In addition, the state banking board has power to authorize state banks to engage directly or indirectly in any activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code.~~ Any officer, director, or employee of any bank who invests or uses ~~its the bank's~~ funds contrary to this title is guilty of a class A misdemeanor.

SECTION 4. AMENDMENT. Subsection 11 of section 6-06-06 of the North Dakota Century Code is amended and reenacted as follows:

11. ~~Credit unions~~ Subject to authorization by the state credit union board, acting by order or rule, a state credit union has the same powers as a federal credit union and may engage in any activity in which they a credit union could engage if they the credit union were federally chartered; subject to rules that the state credit union board shall adopt.

Approved April 9, 2007

Filed April 10, 2007

CHAPTER 78

SENATE BILL NO. 2295

(Senators Klein, Nelson)

(Representatives Boe, Delzer, Wrangham)

CREDIT UNION CONVERSION TO BUILDING AND LOAN ASSOCIATION

AN ACT to amend and reenact subsection 1 of section 6-01-01.1 and sections 6-03-02.2, 6-06-06.1, 6-06-35, and 6-09-36 of the North Dakota Century Code, relating to conversion of a state credit union to a building and loan association and repealed building and loan association law references; to repeal title 7 of the North Dakota Century Code, relating to building and loan associations; to provide for a department of financial institutions study and report to the legislative council; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-01-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, ~~7-05~~, 13-03.1, 13-04.1, 13-05, 13-08, and 13-09.

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 section~~ section 6-06-06.1 ~~and 7-02-08.4~~. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 3. 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 any "corporate central credit union" or "central credit union" may be waived under section 6-06-40, or as authorized under ~~sections section~~ section 6-03-02.2 ~~and 7-02-08.4~~. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 4. AMENDMENT. Section 6-06-35 of the North Dakota Century Code is amended and reenacted as follows:

6-06-35. Conversion from state to federal credit union and from federal to state credit union and from state credit union to building and loan association.

1. A state credit union may be converted into a federal credit union under the laws of the United States by complying with the following requirements:
 - a. The proposition for such conversion must first be approved, and a date set for a vote thereon by the members either at a meeting to be held on such date or by written ballot to be filed on or before such date, by a majority of the directors of the state credit union. Written notice of the proposition and of the date set for the vote must then be delivered in person to each member or mailed to each member at the address for such member appearing on the records of the credit union, not more than thirty nor less than seven days prior to such date. Approval of the proposition for conversion must be by the affirmative vote of two-thirds of the members present at the meeting.
 - b. A statement of the results of the vote, verified by the affidavits of the president or vice president and the secretary, must be filed with the state credit union board within ten days after the vote is taken.
 - c. Promptly after the vote is taken and in no event later than ninety days thereafter, if the proposition for conversion was approved by such vote, the credit union shall take such action as may be necessary under the applicable federal law to make it a federal credit union, and within ten days after receipt of the federal credit union charter there must be filed with the state credit union board a copy of the charter thus issued. Upon such filing, the credit union must cease to be a state credit union.
 - d. Upon ceasing to be a state credit union, such credit union is no longer subject to any of the provisions of the North Dakota credit union law. The successor federal credit union is vested with all of the assets and shall continue to be responsible for all of the obligations of the state credit union to the same extent as though the conversion had not taken place.
2. 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 commissioner to conduct an examination prior to the conversion date.

The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of 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.

- b. When the commissioner has been satisfied that all of such requirements and all other requirements of the North Dakota law have been complied with, the commissioner shall notify the applicants and the state credit union board of that fact, and the board shall instruct the secretary of state to issue a charter in accordance with section 6-06-02. Upon issuance of the charter, the federal credit union shall become a state credit union and ceases to be a federal credit union. The state credit union is vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.
3. After July 31, 2009, a state credit union may convert to a building and loan association by complying with the following requirements:
 - a. The proposal for a conversion first must be approved and a date set for a vote on the proposal by the members either at a meeting to be held on such date or by written ballot to be filed on or before such date by a majority of the directors of the credit union. Approval of the proposal for the conversion must be by the affirmative vote of two-thirds of the members voting.
 - b. A state credit union that proposes to convert to a building and loan association shall submit notice to each of the credit union's members who are eligible to vote on the matter of the credit union's intent to convert:
 - (1) Ninety days before the date of the member vote on the conversion;
 - (2) Sixty days before the date of the member vote on the conversion; and
 - (3) Thirty days before the date of the member vote on the conversion.
 - c. A state credit union that proposes to convert to a building and loan association shall submit a notice to the state credit union board of the credit union's intent to convert at least ninety days before the date of the completion of the conversion.
 - d. Upon completion of a conversion, the state credit union is no longer subject to any of the provisions of chapter 6-06.
 - e. A director or senior management official of a state credit union may not receive any economic benefit in connection with a conversion of the state credit union other than reasonable director fees and

reasonable compensation and other benefits paid to directors or senior management officials of the converted institution in the ordinary course of business. As used in this subdivision, the term senior management official means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as may be defined by the state credit union board.

- f. Before January 1, 2009, the state credit union board shall adopt rules applicable to state credit union conversion to a building and loan association which are consistent with the conversion rules of the national credit union administration.
- g. The commissioner shall review the methodology by which the conversion member vote was taken and procedures applicable to the member vote. The commissioner shall report the commissioner's findings to the state credit union board. If the commissioner or the state credit union board disapproves of the methods by which the conversion member vote was taken or procedures applicable to the member vote, the member vote must be retaken as directed by the commissioner or the state credit union board.

SECTION 5. AMENDMENT. Section 6-09-36 of the North Dakota Century Code is amended and reenacted as follows:

6-09-36. Bank of North Dakota - Custodian of securities. Notwithstanding any other provision of law to the contrary, the Bank of North Dakota shall replace the state treasurer as the custodian of all securities that are required to be deposited with the state except that the state treasurer is the custodian of all securities resulting from the investment of funds by the state treasurer, or except as otherwise required by this section and sections 6-05-04, 6-05-05, 6-05-27, ~~7-07-03, 7-07-04, 7-07-12,~~ 39-16-10, 39-16.1-15, subsection 1 of section 39-16.1-17, and subsection 1 of section 39-16.1-19.

SECTION 6. REPEAL. Title 7 of the North Dakota Century Code is repealed.

SECTION 7. DEPARTMENT OF FINANCIAL INSTITUTIONS STUDY OF BUILDING AND LOAN ASSOCIATIONS - REPORT TO LEGISLATIVE COUNCIL. During the 2007-08 interim, the commissioner of financial institutions shall study the state's building and loan association law and mutual savings banks law and how these laws relate to conversions of state credit unions to building and loan associations or mutual savings banks. Before July 1, 2008, the commissioner shall report to the legislative council on the outcome of the study and present any proposed legislation the department of financial institutions determines is necessary to replace North Dakota Century Code title 7.

SECTION 8. EFFECTIVE DATE. Sections 1, 2, 3, 5, and 6 of this Act become effective on August 1, 2009.

Approved April 12, 2007
Filed April 13, 2007

CHAPTER 79

SENATE BILL NO. 2192 (Senator Nething)

ELECTRONIC RECORDS AND SIGNATURES RECOGNITION

AN ACT to create and enact five new subsections to section 6-01-02 and a new section to chapter 6-08 of the North Dakota Century Code, relating to the legal recognition of electronic records and signatures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Five new subsections to section 6-01-02 of the North Dakota Century Code are created and enacted as follows:

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic communication" means any form of communication, not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and may be directly reproduced in paper form by the recipient through an automated process.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

SECTION 2. A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Legal recognition of electronic records and electronic signatures. A record or signature on a record or document may not be denied legal effect or enforceability solely because it is in electronic form. A contract between a financial institution and another person may not be denied legal effect or enforceability solely because an electronic record was used in its formation. If a provision requires a

record to be in writing, an electronic record satisfies the requirement. If a provision requires a signature, an electronic signature satisfies the requirement.

Approved April 26, 2007

Filed April 27, 2007

CHAPTER 80

HOUSE BILL NO. 1062

(Industry, Business and Labor Committee)

(At the request of the Department of Financial Institutions)

BANK BRANCHING, INFORMATION, AND PER DIEM

AN ACT to amend and reenact subsection 1 of section 6-01-03, subsection 4 of section 6-01-07.1, and sections 6-01-09 and 6-08.4-03 of the North Dakota Century Code, relating to per diem of state banking board and state credit union board members, information and sharing agreements with other entities, the timeframe of examinations of financial institutions, and approval of interstate branches by state banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. The state banking board consists of the commissioner and six members to be appointed by the governor, four of whom must each have had at least five years' experience in an executive capacity in the management of a state bank in the state of North Dakota, one of whom must have at least five years' experience in an executive capacity in the management of any state or national bank in North Dakota, and one of whom must be a laymember from the public at large. The term of office of the members of the board, other than the commissioner, is for a period of five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the vacancy must be filled by appointment by the governor for the unexpired term. The commissioner is the chairperson of the board and the attorney general is, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary. The board shall hold regular meetings in January, March, May, July, September, and November of each year and special meetings at the call of the commissioner in such place as the commissioner may designate within the state of North Dakota. The members of the board, other than the commissioner, shall receive ~~fifty~~ one hundred dollars per day while attending meetings, or in the performance of such special duties as the board may direct. Expense reimbursements for meals, lodging, and transportation must be at the same rate as those allowed state employees.

SECTION 2. AMENDMENT. Subsection 4 of section 6-01-07.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The commissioner may 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, any other federal government agency, insurance commissioner, office of the securities commissioner, regulatory trade associations, or any state bank or credit

union supervisors or supervisors of other licensed entities of other states.

SECTION 3. AMENDMENT. Section 6-01-09 of the North Dakota Century Code is amended and reenacted as follows:

6-01-09. Supervision and examination by commissioner of financial institutions. The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions, out-of-state branches of financial corporations and institutions, and branches of out-of-state state-chartered banks, savings and loan associations, or savings banks within the jurisdiction of the board. Either the commissioner or one or more examiners shall visit each of the state banking associations and other corporations, associations, and branches under the commissioner's jurisdiction at least once each ~~thirty~~ thirty-six months to examine their affairs and ascertain their financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing those corporations and institutions, and for that purpose the commissioner may examine the officers, agents, and employees of the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner shall report the condition of the corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as the exigencies may demand.

SECTION 4. AMENDMENT. Section 6-08.4-03 of the North Dakota Century Code is amended and reenacted as follows:

6-08.4-03. Authority of state banks to establish interstate branches. Notwithstanding section 6-08.4-02, a North Dakota state-chartered bank, with approval of the commissioner or board, may establish, acquire, retain, and operate one or more branches in a state other than this state. An application must be filed with the commissioner or board at the time an application is filed with the responsible federal regulatory authority. The North Dakota state-chartered bank must also comply with section 6-03-11 or 6-03-13.3, as applicable. The commissioner or board may approve the transaction if the commissioner or board finds that:

1. The proposed transaction will not be detrimental to the safety and soundness of the North Dakota state-chartered bank;
2. Any new officers and directors are qualified, and possess appropriate experience and financial responsibility; and
3. The proposed transaction is consistent with the convenience and needs of the communities to be served by the bank in this state and is otherwise in the public interest.

If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the board by filing a notice of appeal with the commissioner within twenty days after the commissioner has notified the applicant bank of the decision.

Approved March 13, 2007

Filed March 14, 2007

CHAPTER 81

HOUSE BILL NO. 1369

(Representatives Clark, Boe, Dietrich, Haas)
(Senator Krebsbach)

FINANCIAL TERMS USE

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 use of terms for bank, annuity, safe deposit, surety, and trust company regulation purposes; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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", or "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 bank, holding company, trade association, or affiliate authorized under this section 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" or "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 trust company, banking institution trade association, or affiliate authorized under this section 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.

Approved March 23, 2007

Filed March 23, 2007

CHAPTER 82

HOUSE BILL NO. 1301

(Representatives Keiser, Vigesaa)

(Senator Klein)

HEALTH SAVINGS ACCOUNT CUSTODIAN

AN ACT to amend and reenact subsection 7 of section 6-03-02 of the North Dakota Century Code, relating to the power of a bank to serve as a custodian for health savings accounts and health care cost funding accounts; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 6-03-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Exercise, as determined by the board by order or rule, all the incidental powers as are necessary to carry on the business of banking, including discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of health savings or similar health care cost funding accounts, retirement fund contracts, or pension programs, and such custodial accounts are exempt from chapter 6-05; and providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide those services within this state. A bank that provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make the equipment and service available for use by customers of any other bank upon the request of the other bank to share its use and the agreement of the other bank to share pro rata all costs incurred in connection with its installation and operation, and the electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. The electronic operations at premises separate from its banking house or duly authorized facility must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board adopts.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 6, 2007

Filed March 7, 2007

CHAPTER 83

SENATE BILL NO. 2182

(Senators Nelson, Hacker, Heitkamp)
(Representatives Delmore, Dosch, Ruby)

BANK OPERATIONS DURING EPIDEMIC OR EMERGENCY

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to bank operations in the case of an epidemic or other emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

Operations during epidemic or emergency - Notice to commissioner. A bank that operates physical facilities in any area that is experiencing an epidemic or other emergency may adjust the bank's operations in any manner that is reasonable to protect the bank's customers, employees, assets, or business. Under this section a bank may temporarily close or relocate offices, employees, or operations; restrict access to offices or services; and change the manner in which the bank provides banking services. A bank shall notify the commissioner of any actions the bank takes under the authority of this section. The bank shall give the commissioner notice promptly and in any case within three business days of the bank's decision to adjust the bank's operations. The notice must describe the bank's actions and the expected duration of the bank's adjusted operations. Unless extended by the commissioner, a bank's authority to change the bank's operations under this section may not exceed sixty days.

Approved April 12, 2007
Filed April 13, 2007

CHAPTER 84

HOUSE BILL NO. 1253

(Representative Kretschmar)

FINANCIAL INSTITUTION RECORD SEARCH PAYMENTS

AN ACT to amend and reenact section 6-03-76 of the North Dakota Century Code, relating to payments for financial institutions records search services.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-76 of the North Dakota Century Code is amended and reenacted as follows:

6-03-76. Records search reimbursement. Any ~~bank~~ financial institution authorized to do business in this state ~~shall~~ must be reimbursed as follows for all records searches done at the request of any state agency or any branch of the state government except the department of human services. Further, any federal agency or any branch of the federal government ~~shall~~ must also make such reimbursement if authorized to do so:

1. For search and processing time at the rate of ~~ten~~ thirty dollars per hour per person, computed on the basis of ~~two~~ seven dollars and fifty cents per quarter hour, limited to the total amount of personnel time spent in locating, retrieving, reproducing, packaging, and preparing for shipment documents or information requested.
2. For making copies of duplicates of required or requested documents at the rate of fifteen cents per page.
3. For making copies of photographs, films, and other materials at the actual cost incurred by the ~~bank~~ financial institution.

The ~~bank~~ financial institution ~~shall~~ must be reimbursed for all actual mailing or transportation expenses incurred in conveying the requested or required materials to the requesting agency. The reimbursement provisions of this section shall not apply to standard ~~bank~~ confirmations.

Approved March 6, 2007
Filed March 7, 2007

CHAPTER 85

SENATE BILL NO. 2151

(Senators Krebsbach, Horne, J. Lee)
(Representatives N. Johnson, Keiser, Thorpe)

NSF AND CLOSED ACCOUNT CHECK FEES

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to increasing fees and costs for checks issued on closed accounts and accounts with insufficient funds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation, make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, electronic funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:
 - a. An infraction if the amount of insufficient funds or credit is not more than fifty dollars;
 - b. A class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
 - c. A class A misdemeanor if the amount of insufficient funds or credit is more than two hundred fifty dollars but not more than five hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or
 - d. A class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient funds check, draft, or order.

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of ~~twenty-five~~ thirty dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. If the person does not pay the instrument in full and any collection fees or costs not in excess of ~~twenty-five~~ thirty dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, electronic funds transfer authorization, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.

4. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, 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 notified that a check dated _____,
 _____, 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 or agent or representative)
 sufficient moneys to pay such instrument in full and any collection
 fees or costs not in excess of ~~twenty-five~~ thirty dollars.

The notice of dishonor also may 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.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 4. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time bars the criminal charge under this section.

SECTION 2. AMENDMENT. Section 6-08-16.2 of the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account - Financial liability - Penalty - Exceptions.

1. As used in this section unless the context otherwise requires:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, electronic funds transfer authorization, or order for the payment of money.
 - d. "Issues" means draws, utters, electronically authorizes, or delivers.
2. A person who, for that person or as 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 that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1, and 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.
3. A person who, for 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 five hundred dollars or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred dollars, and 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.
4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of ~~twenty-five~~ thirty dollars per instrument, which are recoverable by the holder of the instrument, or the holder's agent or representative. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of two hundred dollars or three times the amount of the instrument.

5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 6. A criminal complaint for violating this section must be executed within ninety days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed-account instrument.
6. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, 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 Instrument

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____
 You are according to law notified that an instrument dated _____,
 _____, 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 or agent or representative)
 sufficient moneys to pay such instrument in full and any collection
 fees or costs not in excess of ~~twenty five~~ thirty 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 March 5, 2007

Filed March 6, 2007

CHAPTER 86

SENATE BILL NO. 2300 (Senators Klein, Dever, Robinson) (Representatives Boe, Kasper, Wald)

INTERSTATE BRANCHING BY BANKS

AN ACT to amend and reenact sections 6-08.4-01 and 6-08.4-06 of the North Dakota Century Code, relating to interstate branching by banks; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08.4-01 of the North Dakota Century Code is amended and reenacted as follows:

6-08.4-01. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Affiliate" means a company that controls, is controlled by, or is under common control with another company.
2. "Bank" means insured bank depository institution as defined in 12 U.S.C. 1813(c)(2), but the term does not include "foreign bank" as defined in 12 U.S.C. 3101(7), except any foreign bank organized under the laws of a territory of the United States, the deposits of which are insured by the federal deposit insurance corporation.
3. "Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.
- ~~2.~~ 4. "Home state" means:
 - a. With respect to a national bank, the state in which the main office is located; and
 - b. With respect to a state bank, the state by which the bank is chartered.
- ~~3.~~ 5. "Transaction" means a bank's establishment, operation, and, as applicable, retention of a bank branch office in a state other than its home state, whether de novo, by acquisition of a separate branch office, or through a merger of a North Dakota bank with another bank.

SECTION 2. AMENDMENT. Section 6-08.4-06 of the North Dakota Century Code is amended and reenacted as follows:

6-08.4-06. Powers.

1. An out-of-state state-chartered bank that establishes, acquires, and retains one or more branches in this state under this chapter may conduct any activities at the branch or branches that are authorized

under the laws for North Dakota state banks, except to the extent those activities may be prohibited by the laws, rules, or orders of the home state applicable to the out-of-state state-chartered bank.

2. A North Dakota state-chartered bank may conduct any activities at any branch outside this state which are permissible for an out-of-state state-chartered bank where the branch is located, except to the extent those activities are expressly prohibited by North Dakota law, rule, or order.
3. A bank may not establish or maintain a branch in this state on the premises or property or within one mile [1.60 kilometers] of the premises or property of an affiliate if the affiliate engages in commercial activities.

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

Approved April 30, 2007
Filed May 1, 2007

CHAPTER 87

HOUSE BILL NO. 1088

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

BND ALTERNATIVE AND VENTURE CAPITAL INVESTMENTS

AN ACT to amend and reenact subdivision c of subsection 4 of section 6-09-15 of the North Dakota Century Code, relating to defining eligible investments with the North Dakota alternative and venture capital investments; and to repeal section 6-09-40 of the North Dakota Century Code, relating to reimbursement of Bank losses for the new venture capital program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³ **SECTION 1. AMENDMENT.** Subdivision c of subsection 4 of section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

- c. In North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, not to exceed ten million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments and early-stage capital funds. The Bank may invest a maximum of two hundred thousand dollars per biennium in North Dakota-based venture capital entities that make investments in companies located outside North Dakota. The Bank may allow for third-party management of the funds invested under this subdivision if the management is provided by the North Dakota development fund, incorporated, or a third party that is located in the state and that has demonstrated fund management experience.

SECTION 2. REPEAL. Section 6-09-40 of the North Dakota Century Code is repealed.

Approved April 11, 2007
Filed April 13, 2007

³³ Section 6-09-15 was also amended by section 23 of House Bill No. 1014, chapter 14, section 4 of Senate Bill No. 2214, chapter 293, and section 5 of Senate Bill No. 2214, chapter 293.

CHAPTER 88**HOUSE BILL NO. 1135**

(Industry, Business and Labor Committee)
(At the request of the Agriculture Commissioner)

BND UNOBLIGATED FUNDS TRANSFER

AN ACT to create and enact a new subsection to section 6-09-15.5 of the North Dakota Century Code, relating to the transfer of unobligated Bank of North Dakota funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-09-15.5 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law, the Bank may transfer any unobligated funds to the value-added agriculture equity loan program for the purpose of interest buydown on a loan made for investment in a feedlot or dairy operation. Fund transfers under this subsection may not exceed one million dollars during a biennium.

Approved March 21, 2007
Filed March 21, 2007

CHAPTER 89

HOUSE BILL NO. 1091

(Finance and Taxation Committee)
(At the request of the Bank of North Dakota)

HIGHER EDUCATION SAVINGS PLAN

AN ACT to create and enact a new subdivision to subsection 1 of section 57-38-01.2, a new subdivision to subsection 2 of section 57-38-30.3, and a new subsection to section 57-38-57 of the North Dakota Century Code, relating to an individual income tax deduction for contributions to the North Dakota higher education savings plan; to amend and reenact section 6-09-38 of the North Dakota Century Code, relating to administrative fees of the North Dakota higher education savings plan and tax deductions for contributions to the plan; to provide a continuing appropriation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-38 of the North Dakota Century Code is amended and reenacted as follows:

6-09-38. North Dakota higher education savings plan - Administration - Rules - Continuing appropriation. The Bank of North Dakota shall adopt rules to administer manage, promote, and market a North Dakota higher education savings plan. The Bank shall ensure that the North Dakota higher education savings plan is maintained in compliance with internal revenue service standards for qualified state tuition programs. The Bank, as trustee of the North Dakota higher education savings plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan or for other programs deemed to promote attendance at an institution of higher education. Administrative fees received by the Bank are appropriated on a continuing basis to be used as provided in this section. Contributions made during the taxable year to a higher education savings plan administered by the Bank, pursuant to the provisions of the plan, are eligible for an income tax deduction as provided in chapter 57-38. Information related to contributions is confidential except as is needed by the tax commissioner for determining compliance with the income tax deduction provided in chapter 57-38.

³⁴ **SECTION 2.** A new subdivision to subsection 1 of section 57-38-01.2 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.

³⁴ Section 57-38-01.2 was also amended by section 43 of House Bill No. 1018, chapter 18, and section 1 of House Bill No. 1393, chapter 513.

³⁵ **SECTION 3.** A new subdivision to subsection 2 of section 57-38-30.3 of the North Dakota Century Code is created and enacted as follows:

Reduced by the amount up to a maximum of five thousand dollars, or ten thousand dollars if a joint return is filed, for contributions made under a higher education savings plan administered by the Bank of North Dakota, pursuant to section 6-09-38.

SECTION 4. A new subsection to section 57-38-57 of the North Dakota Century Code is created and enacted as follows:

The tax commissioner may disclose a taxpayer's name, address, and identification number to the Bank of North Dakota for the sole purpose of administering the tax deduction for contributions to the North Dakota higher education savings plan.

SECTION 5. EFFECTIVE DATE. Sections 1, 2, and 3 of this Act are effective for contributions made to a higher education savings plan administered by the Bank of North Dakota after December 31, 2006, and are effective for taxable years beginning after December 31, 2006.

Approved March 30, 2007

Filed March 30, 2007

³⁵ Section 57-38-30.3 was also amended by section 46 of House Bill No. 1018, chapter 18, section 2 of House Bill No. 1393, chapter 513, section 2 of House Bill No. 1403, chapter 519, section 1 of House Bill No. 1412, chapter 523, section 8 of Senate Bill No. 2032, chapter 520, section 1 of Senate Bill No. 2079, chapter 522, and section 2 of Senate Bill No. 2082, chapter 521.

CHAPTER 90

SENATE BILL NO. 2104

(Industry, Business and Labor Committee)
(At the request of the Agriculture Commissioner)

LIVESTOCK AND DAIRY FARMING LOAN GUARANTEES

AN ACT to amend and reenact section 6-09-41 of the North Dakota Century Code, relating to loan guarantees for livestock and dairy farming and related equipment and facilities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-41 of the North Dakota Century Code is amended and reenacted as follows:

6-09-41. (Effective through June 30, 2009) Livestock loan guarantee program - Establishment - Rules.

1. The Bank of North Dakota shall establish and administer a ~~livestock~~ loan guarantee program that is designed to expand livestock feeding and dairy farming in this state.
2. Under the program, the Bank may guarantee a loan made by a bank, a credit union, a savings and loan association, or any other lending institution in this state to the owner of a commercial ~~feedlot that backgrounds or feeds cattle to harvest ready weight~~ livestock feeding operation or to the owner of a new or expanding dairy operation. In the event of a default, the Bank shall pay to the lender the amount agreed upon, provided that the amount may not exceed eighty-five percent of the principal due the lender at the time the claim is approved.
3. The Bank shall adopt rules governing additional terms, conditions, and procedures necessary to meet the requirements of this section. ~~The rules must include an administrative fee payable to the Bank and must provide that equity requirements may not exceed fifteen percent.~~

Approved March 5, 2007

Filed March 6, 2007

CHAPTER 91

SENATE BILL NO. 2156

(Senators Klein, Heitkamp)
(Representatives Brandenburg, Dosch)

CLEAN RENEWABLE ENERGY BONDS

AN ACT to amend and reenact subsections 4 and 5 of section 6-09.4-03 of the North Dakota Century Code, relating to issuance of clean renewable energy bonds by the public finance authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 6-09.4-03 of the North Dakota Century Code are amended and reenacted as follows:

4. "Municipal security" means an evidence of indebtedness issued by a political subdivision, including a clean renewable energy bond issued under 26 U.S.C. 54 [Pub. L. 109-58; 119 Stat. 991], and a revenue agreement entered into by a contracting party as those terms are used in chapter 40-57, but does not generally include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as a qualified small issue bond as defined under 26 U.S.C. 144(a) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, or as an "exempt facility bond" as defined under 26 U.S.C. 142(a)(4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:
 - a. A facility for the furnishing of water.
 - b. A wastewater facility.
 - c. A solid waste disposal facility.
5. "Political subdivision" means:
 - a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
 - b. The state department of health, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
 - (1) Operating any public water system that is subject to chapter 61-28.1.
 - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
 - c. The Bank of North Dakota for purposes of the revolving loan fund program established by chapter 61-28.2.

- d. The state water commission for purposes of the revolving loan fund program established by chapter 61-28.1.
- e. A qualified borrower within the meaning of 26 U.S.C. 54(j)(5) [Pub. L. 109-58; 119 Stat. 995].

Approved April 30, 2007

Filed May 1, 2007

CHAPTER 92

HOUSE BILL NO. 1096

(Government and Veterans Affairs Committee)
(At the request of the Public Finance Authority)

PUBLIC FINANCE AUTHORITY RECORDS AND PROGRAM LIMITS

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to confidentiality of certain commercial or financial information held by the public finance authority; and to amend and reenact section 8 of chapter 90 of the 2005 Session Laws, relating to program limits for the purchase or issuance of qualified small issue bonds or municipal industrial revenue bonds by the public finance authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of certain public finance authority records. Commercial or financial information of a contracting party provided to the public finance authority as part of any qualified small issue bonds or municipal industrial revenue bonds purchased or issued by the public finance authority, whether obtained directly or indirectly, are confidential records. Confidential records do not include routine credit inquiries; records required to be disclosed by due legal process; the name, address, and contact information of a contracting party; or the amount loaned to a contracting party.

SECTION 2. AMENDMENT. Section 8 of chapter 90 of the 2005 Session Laws is amended and reenacted as follows:

SECTION 8. MUNICIPAL BOND BANK PUBLIC FINANCE AUTHORITY PROGRAM LIMITS. Any qualified small issue bonds or municipal industrial revenue bonds purchased or issued by the ~~municipal bond bank public finance authority~~ under this Act may not exceed two million dollars per political subdivision or other contracting party, as the case may be, and twenty million dollars in total for the biennium beginning July 1, ~~2005~~ 2007, and ending June 30, ~~2007~~ 2009, except that these limits do not apply to revenue bonds issued by the ~~municipal bond bank public finance authority~~ under chapter 40-57 if the industrial commission approves a resolution under the second sentence of subsection 4 of section 6-09.4-10 making that subsection inapplicable to bonds issued under the resolution.

Approved March 7, 2007
Filed March 8, 2007

CHAPTER 93**HOUSE BILL NO. 1061**

(Representative Koppelman)

(At the request of the Bank of North Dakota)

BND AGRICULTURAL LOAN GUARANTEE MAXIMUM

AN ACT to amend and reenact section 6-09.7-09 of the North Dakota Century Code, relating to the maximum amount of Bank of North Dakota agricultural real estate loans; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.7-09 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-09. (~~Effective through July 31, 2007~~) Agricultural real estate loans - Guarantee. The Bank of North Dakota may guarantee the loan of money by banks, credit unions, lending institutions that are part of the farm credit system, and savings and loan associations in this state to eligible persons for the purchase of agricultural real estate or the restructuring of agricultural real estate loans, provided the transactions do not exceed a loan-to-value ratio of eighty percent and further provided that no single loan exceed four hundred thousand dollars. The Bank of North Dakota may have no more than five eight million dollars in outstanding loan guarantees under this section. The Bank of North Dakota may establish additional terms, conditions, and procedures, as necessary to meet the requirements of this section.

Approved March 15, 2007

Filed March 15, 2007

CHAPTER 94

HOUSE BILL NO. 1100

(Industry, Business and Labor Committee)
(At the request of the Bank of North Dakota)

AGRICULTURAL LOAN PROGRAM REVISIONS

AN ACT to amend and reenact subsection 1 of section 6-09.9-02, subsection 1 of section 6-09.11-06, and subsection 1 of section 6-09.13-02 of the North Dakota Century Code, relating to definitions for the family farm survival act, loan restrictions for financial assistance for family farmers, and interest rates of loans for the agriculture partnership in assisting community expansion program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.9-02 of the North Dakota Century Code is amended and reenacted as follows:

1. "Farmer" means a resident of this state who owns or operates an existing farm or ranch operation, and has a debt-to-asset ratio of fifty percent or greater or a net worth of less than three hundred thousand. The industrial commission may adopt additional eligibility criteria in determining who is a farmer eligible for loans under this chapter.

SECTION 2. AMENDMENT. Subsection 1 of section 6-09.11-06 of the North Dakota Century Code is amended and reenacted as follows:

1. A loan under this chapter may not be greater than the lesser of ~~one~~ two hundred fifty thousand dollars or ninety percent of the appraised value of the security given for the loan, with the actual percentage to be determined by the Bank of North Dakota. The Bank may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to purchase a participation interest in a loan under this chapter.

SECTION 3. AMENDMENT. Subsection 1 of section 6-09.13-02 of the North Dakota Century Code is amended and reenacted as follows:

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.13-03. ~~Interest charged by the lenders must be set by the financial institution and matched by the Bank of North Dakota. The rate may be fixed or variable.~~

Approved March 12, 2007
Filed March 13, 2007

CHAPTER 95

HOUSE BILL NO. 1342

(Representatives Griffin, S. Meyer, Uglen)
(Senators Behm, Erbele, Taylor)

CREDIT REVIEW BOARD DUTIES

AN ACT to amend and reenact section 6-09.10-02.1 of the North Dakota Century Code, relating to duties of the credit review board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-02.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-02.1. Additional duties of board. In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
3. ~~Recommend policies and procedures regarding the adult farm management program to the state board for career and technical education.~~
4. ~~Participate in a farm management delivery system coordinated by the state board for career and technical education among the adult farm management program, agricultural mediation service, and North Dakota state university. The system must be available to any farmer and may be funded from moneys available in the fund described in this chapter, fees paid by farmers, or other sources.~~

Approved March 9, 2007

Filed March 12, 2007

CHAPTER 96

HOUSE BILL NO. 1341

(Representatives Griffin, S. Meyer, Uglen)
(Senators Behm, Erbele, Taylor)

AGRICULTURAL MEDIATION SERVICE ELIGIBILITY

AN ACT to amend and reenact sections 6-09.10-03 and 6-09.10-04 of the North Dakota Century Code, relating to persons eligible for mediation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-03 of 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 chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service. The commissioner 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, negotiators, and mediators who may mediate disputes involving farmers and others, either of whom may request assistance or other persons eligible for mediation with an agency of the United States department of agriculture. The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service. Fees charged to the farmer's creditors mediation participants 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~~ seventy-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 2. AMENDMENT. Section 6-09.10-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04. Request for assistance - Negotiation - Mediation. Any farmer, creditor, or other person dealing with a farmer, or other person eligible for mediation with an agency of the United States department of agriculture may request assistance from the administrator. Upon receipt of the request, and upon consent of the farmer and the other person all parties to mediation, the negotiator or mediator shall encourage and assist the farmer and the other person to reach parties in reaching a voluntary settlement.

Approved March 5, 2007

Filed March 6, 2007

CHAPTER 97

SENATE BILL NO. 2120

(Senator Holmberg)

(At the request of the Bank of North Dakota)

BEGINNING ENTREPRENEUR LOAN GUARANTEE PROGRAM CAPS

AN ACT to amend and reenact subdivision c of subsection 1 of section 6-09.15-01 and section 6-09.15-03 of the North Dakota Century Code, relating to definitions and Bank of North Dakota participation caps for the beginning entrepreneur loan guarantee program; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subdivision c of subsection 1 of section 6-09.15-01 of the North Dakota Century Code is amended and reenacted as follows:

- c. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than ~~one~~ two hundred thousand dollars; ~~not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.~~

SECTION 2. AMENDMENT. Section 6-09.15-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.15-03. Application for guarantee - Term - Annual fee. A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of up to one hundred thousand dollars. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. The Bank may not guarantee more than ~~four~~ eight million dollars in loans outstanding under the beginning entrepreneur loan guarantee program.

SECTION 3. EMERGENCY. Section 2 of this Act is declared to be an emergency measure.

Approved March 2, 2007
Filed March 2, 2007

CHAPTER 98

SENATE BILL NO. 2180

(Senators Klein, Wanzek, Wardner)
(Representatives Belter, Brandenburg, Pollert)

BIOFUEL PACE FUND USES

AN ACT to amend and reenact sections 6-09.17-01, 6-09.17-02, 6-09.17-03, and 6-09.17-04 of the North Dakota Century Code, relating to the biofuel partnership in assisting community expansion fund; to provide for a legislative council study; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.17-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.17-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Biodiesel production facility" means a producer of a biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines. The facility must be located in this state and:
 - a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or
 - b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
2. "Biodiesel Biofuel partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel and ethanol production facilities, to grain handling facilities, and to livestock operations as provided under this chapter.
2. "Biodiesel production facility" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.
3. "Community" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area. "Biofuels retailer" means a retailer that dispenses and distributes biodiesel fuel and gasoline blends with greater than sixty percent ethanol.
4. "Ethanol production facility" means a producer of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product

for use in internal combustion engines. The facility must be located in this state and:

- a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or
 - b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
5. "Grain handling facility" means a grain storage facility licensed under chapter 60-02 or 60-02.1 which provides condominium storage of grain that is principally intended for the production of biofuels.
6. "Livestock operation" means a livestock feeding, handling, milking, or holding operation located in this state which uses as part of its operation a byproduct produced at a biodiesel or an ethanol production facility.

SECTION 2. AMENDMENT. Section 6-09.17-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.17-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

- 1. "Biodiesel production facility" means a producer of a biodegradable, combustible liquid fuel that is derived from vegetable oil or animal fat and which is suitable for blending with diesel fuel for use in internal combustion diesel engines. The facility must be located in this state and:
 - a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or
 - b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
- 2. "~~Biodiesel Biofuel~~ partnership in assisting community expansion fund" or "fund" means a fund established to buy down the interest rate on loans to biodiesel and ethanol production facilities and to livestock operations as provided under this chapter.
- 2- "~~Biodiesel production facility~~" means a corporation, limited liability company, partnership, individual, or association involved in production of diesel fuel containing at least five percent biodiesel meeting the specifications adopted by the American society for testing and materials.
- 3. "~~Community~~" means the city or county in which an eligible biodiesel production facility is located, or a local development corporation, community organization, or any other group whose interest is in the economic growth of the area. "Ethanol production facility" means a producer of agriculturally derived denatured ethanol that is suitable for blending with a petroleum product for use in internal combustion engines. The facility must be located in this state and:
 - a. Agricultural producers must hold at least ten percent of the ownership interest in the facility; or

- b. Residents of this state must own at least fifty percent of the ownership interest of the facility.
4. "Livestock operation" means a livestock feeding, handling, milking, or holding operation located in this state which uses as part of its operation a byproduct produced at a biodiesel or an ethanol production facility.

³⁶ **SECTION 3. AMENDMENT.** Section 6-09.17-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.17-02. Biodiesel Biofuel partnership in assisting community expansion fund - Continuing appropriation - Administration. A Effective July 1, 2007, the biodiesel partnership in assisting community expansion fund is hereby established becomes the biofuel partnership in assisting community expansion fund. All moneys transferred into the fund, interest on fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. This fund is not subject to section 54-44.1-11 and any unexpended and unobligated balance in the fund at the end of the biennium must be transferred to the state general fund. The Bank of North Dakota shall administer the fund. Notwithstanding any other provision of law, the Bank may transfer any unobligated moneys between funds that have been appropriated by the legislative assembly for interest buydown in the biofuel partnership in assisting community expansion fund and the partnership in assisting community expansion fund.

SECTION 4. AMENDMENT. Section 6-09.17-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.17-03. Fund - Purpose - Interest rate buydown. Moneys in the biodiesel partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved. During the first year of a biennium, the total amount from the fund used for interest rate buydowns for biofuels retailers may not exceed two hundred fifty thousand dollars and the total amount from the fund used for interest rate buydowns for grain handling facilities may not exceed two hundred fifty thousand dollars. The total amount from the fund used for interest rate buydowns for grain handling facilities and biofuels retailers may not exceed five hundred thousand dollars per biennium.

SECTION 5. AMENDMENT. Section 6-09.17-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.17-03. Fund - Purpose - Interest rate buydown. Moneys in the biodiesel partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total

³⁶ Section 6-09.17-02 was also amended by section 24 of House Bill No. 1014, chapter 14.

loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved.

SECTION 6. AMENDMENT. Section 6-09.17-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.17-04. Fund moneys - Eligible uses.

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel or an ethanol production facility, to a grain handling facility, or to a livestock operation for the following eligible uses:
 - (1) Purchase or construction of real property and equipment.
 - (2) Expansion of facilities.
 - (3) ~~Working capital~~ Purchase or installation of equipment.
 - (4) ~~Inventory~~.
- b. The fund moneys may be used to participate in an interest rate buydown on a loan to a biofuels retailer for the purchase or installation of pumps and related equipment.
- c. The loan funds cannot may not be used to refinance any existing debt or for the relocation within this state of the business within North Dakota biodiesel or ethanol production facility, the grain handling facility, or the livestock operation.
2. ~~The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09.14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.~~
3. ~~The fund participation portion in the buydown must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.~~
4. ~~The maximum amount from the fund in the interest rate buydown for a biodiesel or ethanol production facility may not exceed four five hundred thousand dollars per loan and not more than one loan may be provided to any single biodiesel or ethanol production facility under this chapter. However, if the partnership in assisting community expansion fund does not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The maximum amount from the~~

fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter. The maximum amount from the fund in the interest rate buydown for a grain handling facility may not exceed fifty thousand dollars to any single facility. The maximum amount from the fund in the interest rate buydown for a biofuels retailer may not exceed ten thousand dollars to any single location of a biofuels retailer under this chapter.

3. The fund participation ~~must be~~ is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.
- 5- 4. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 7. AMENDMENT. Section 6-09.17-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.17-04. Fund moneys - Eligible uses.

1. a. The fund moneys may be used to participate in an interest rate buydown on a loan to a biodiesel or an ethanol production facility or to a livestock operation for the following eligible uses:
 - (1) Purchase or construction of real property and equipment.
 - (2) Expansion of facilities.
 - (3) ~~Working capital~~ Purchase or installation of equipment.
 - (4) ~~Inventory~~.
- b. The loan funds ~~cannot~~ may not be used to refinance any existing debt or for the relocation within this state of the ~~business within North Dakota~~ biodiesel or ethanol production facility or the livestock operation.
2. ~~The community shall determine the amount of the interest rate buydown and apply to the Bank of North Dakota for participation from the biodiesel partnership in assisting community expansion fund. The funds for the community's portion of the buydown may come from a local development corporation, contributions, community funds, future dedicated tax programs, or any other community source. Any community funds provided for a buydown under chapter 6-09.14 for a biodiesel production facility may be considered as funds for the community's portion of the buydown under this chapter for that facility.~~
- 3- The fund participation portion in the buydown ~~must be determined by the Bank of North Dakota based on economic conditions in the city or county in which the business is located.~~
- 4- The maximum amount from the fund in the interest rate buydown for a biodiesel or ethanol production facility may not exceed ~~four~~ five hundred thousand dollars ~~per loan and not more than one loan may be provided~~ to any single biodiesel or ethanol production facility under this chapter. ~~However, if the partnership in assisting community expansion fund does~~

~~not have adequate funds on hand for an interest rate buydown for a biodiesel production facility, the maximum amount from the fund under this subsection is increased to six hundred thousand dollars per loan. The community funds required for participation in the interest rate buydown are limited to the amount required when the fund provides two hundred fifty thousand dollars per loan. The maximum amount from the fund in the interest rate buydown for a livestock operation may not exceed two hundred fifty thousand dollars to any single livestock operation under this chapter.~~

~~3.~~ 3. The fund participation ~~must be~~ is limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.

~~5.~~ 4. The Bank of North Dakota shall adopt rules to implement this chapter.

SECTION 8. LEGISLATIVE COUNCIL STUDY - BIOFUELS. The legislative council shall consider studying, during the 2007-08 interim, the agronomic, economic, and environmental issues related to biofuels production in North Dakota, including the availability of feedstocks and other production resources, existing and future production capacity, farmer and processor contracting models, public and private financial incentives, and the transportation infrastructure necessary to meet optimum production and marketability levels for biofuels in this state. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-first legislative assembly.

SECTION 9. EFFECTIVE DATE. Sections 2, 5, and 7 of this Act become effective on August 1, 2009.

SECTION 10. EXPIRATION DATE. Sections 1, 4, and 6 of this Act are effective through July 31, 2009, and after that date are ineffective.

Approved April 27, 2007

Filed April 30, 2007