

HOUSE BILL NO. 1152

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to amend and reenact section 6-01-04.1 of the North Dakota Century Code,
2 relating to the removal of officers, directors, and employees of financial corporations or
3 institutions.

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

5 **SECTION 1. AMENDMENT.** Section 6-01-04.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **6-01-04.1. Removal of officers, directors, and employees of financial corporations**
8 **or institutions.**

- 9 1. The department of financial institutions or the board may issue and serve, upon
10 any current or former officer, director, or employee of a financial corporation or
11 institution subject to its jurisdiction and upon ~~the~~ a financial corporation or
12 institution involved, a complaint stating the basis for the board's or the
13 department's belief that the current or former officer, director, or employee is
14 engaging, or has engaged, in any of the following conduct:
- 15 a. Violating any law, regulation, board order, or written agreement with the
16 board;
 - 17 b. Engaging or participating in any unsafe or unsound practice; or
 - 18 c. Performing any act of commission or omission or practice which is a breach of
19 trust or a breach of fiduciary duty.
- 20 2. The complaint must contain a notice of opportunity for hearing pursuant to chapter
21 28-32. The date for the hearing must be set not less than thirty days after the date
22 the complaint is served upon the current or former officer, director, or employee of
23 ~~the~~ a financial corporation or institution. The current or former officer, director, or
24 employee may waive the thirty-day notice requirement.

- 1 3. If no hearing is requested within twenty days of the date the complaint is served
2 upon the current or former officer, director, or employee, or if a hearing is held and
3 the board finds that the record so warrants, and if the board finds that ~~the~~ a
4 financial corporation or institution has suffered or will probably suffer significant
5 loss or other significant damage or that the interest of its depositors, shareholders,
6 members, or creditors could be seriously prejudiced, it may enter an order
7 suspending or removing the current or former officer, director, or employee.
- 8 4. A contested or default suspension or removal order is effective immediately upon
9 service on the current or former officer, director, or employee and upon ~~the~~ a
10 financial corporation or institution. A consent order is effective as agreed.
- 11 5. Any current or former officer or director suspended or removed from office
12 pursuant to this section is not eligible, while under suspension, for reelection to any
13 official position within a financial corporation or institution in North Dakota ~~for a~~
14 ~~period not exceeding three years from the effective date of the suspension or~~
15 ~~removal~~ until the suspension or removal is terminated by the department of
16 financial institutions or board.
- 17 6. When any current or former officer, director, employee, or other person
18 participating in the conduct of the affairs of a financial corporation or institution is
19 charged with a felony in state or federal court, involving dishonesty or breach of
20 trust, the commissioner may immediately suspend the person from office or
21 prohibit the person from any further participation in ~~the~~ a financial corporation's or
22 institution's affairs. The order is effective immediately upon service of the order on
23 ~~the~~ a financial corporation or institution and the person charged, and remains in
24 effect until the criminal charge is finally disposed of or until modified by the board.
25 If a judgment of conviction, a federal pretrial diversion, or similar state order or
26 judgment is entered, the board may order that the suspension or prohibition be
27 made permanent. A finding of not guilty or other disposition of the charge does not
28 preclude the commissioner or the board from pursuing administrative or civil
29 remedies.