

BANKS AND BANKING

CHAPTER 74

HOUSE BILL NO. 1131

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact a new subsection to section 6-01-02 of the North Dakota Century Code, relating to the definition of market value; to amend and reenact subsection 2 of section 6-01-03, and sections 6-01-04.1 and 6-01-04.2, subsection 1 of section 6-01-04.3, and sections 6-06-06, 6-06-08.4, 6-06-10, 6-06-11, 6-06-14, and 6-06-36 of the North Dakota Century Code, relating to state credit union board member experience, clarification of regulated entities, civil money penalties, credit union board powers, prompt corrective actions relating to credit unions, use of electronic communications for credit union meetings, election or appointment of credit union committees, credit union supervision of loans, and credit union mergers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³¹ **SECTION 1.** A new subsection to section 6-01-02 of the North Dakota Century Code is created and enacted as follows:

"Market value" means the highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting upon compulsion and both exercising reasonable judgment.

SECTION 2. AMENDMENT. Subsection 2 of section 6-01-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The state credit union board consists of the commissioner and four members to be appointed by the governor. Two of the members of the state credit union board must have at least ~~three~~five years' experience as an officer, director, or committee member of a North Dakota state-chartered credit union, one member of the board must have had at least ~~three~~five years' experience as an officer, director, or committee member of a state-chartered or a federally chartered credit union, and one member of the board must be a laymember from the public at large. The term of office of appointed board members is five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the governor shall appoint an individual to fill the vacancy for the unexpired term. The commissioner chairs the board and the attorney general is, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary. The members of the state credit union board are entitled to receive the same remuneration as is provided for the members of the state banking board. The state credit union board shall hold meetings in March, June, September, and December of each year and

³¹ Section 6-01-02 was also amended by section 1 of Senate Bill No. 2096, chapter 76.

special meetings at the call of the commissioner in such places as the commissioner may designate within the state.

SECTION 3. AMENDMENT. Section 6-01-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The department of financial institutions or the board may issue and serve, upon any current or former officer, director, or employee of a financial corporation ~~or, financial institution, or credit union~~ subject to its jurisdiction and upon a financial corporation ~~or, financial institution, or credit union~~ involved, a complaint order stating the basis for the board's or the department's belief that:
 - a. ~~That~~ the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:
 - a- (1) Violating any law, regulation, board order, or written agreement with the board;
 - b- (2) Engaging or participating in any unsafe or unsound practice; ~~or,~~
 - e- (3) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
 - b. The term of the suspension or removal from employment and participation within the conduct of the affairs of a financial corporation, financial institution, or credit union.
2. The complaint order must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the current or former officer, director, or employee of a financial corporation ~~or, financial institution, or credit union~~. The current or former officer, director, or employee may waive the thirty-day notice requirement.
3. If no hearing is requested within twenty days of the date the complaint order is served upon the current or former officer, director, or employee, or if a hearing is held and the board finds that the record so warrants, and if the board finds that a financial corporation ~~or, financial institution, or credit union~~ has suffered or will probably suffer significant loss or other significant damage or that the interest of its depositors, shareholders, members, or creditors could be seriously prejudiced, it may enter ~~an~~ a final order suspending or removing the current or former officer, director, or employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon service on the current or former officer, director, or employee and upon a financial corporation ~~or, financial institution, or credit union~~. A consent order is effective as agreed.
5. Any current or former officer, director, or employee suspended or removed from any position pursuant to this section is not eligible, while under

suspension or removal, to ~~occupy any position within~~ be employed or otherwise participate in the affairs of any financial corporation ~~or, financial institution in North Dakota, or credit union or any other entity licensed by the department of financial institutions~~ until the suspension or removal is terminated by the department of financial institutions or board.

6. When any current or former officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation ~~or, financial institution, or credit union~~ is charged with a felony in state or federal court, involving dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in a financial corporation's ~~or, financial institution's, or credit union's~~ affairs. The order is effective immediately upon service of the order on a financial corporation ~~or, financial institution, or credit union~~ and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction, a federal pretrial diversion, or similar state order or judgment is entered, the board may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner or the board from pursuing administrative or civil remedies.

SECTION 4. AMENDMENT. Section 6-01-04.2 of the North Dakota Century Code is amended and reenacted as follows:

6-01-04.2. Cease and desist orders.

1. The department of financial institutions or the board may issue and serve upon a financial corporation ~~or, financial institution, or credit union~~ subject to its jurisdiction a complaint stating the factual basis for the department's or board's belief that the financial corporation ~~or, financial institution, or credit union~~ is engaging in any of the following conduct:
 - a. An unsafe or unsound practice.
 - b. A violation in the past or on a continuing basis of any law, regulation, board order, or written agreement entered into with the board.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the financial corporation ~~or, financial institution, or credit union~~. The financial corporation ~~or, financial institution, or credit union~~ may waive the thirty-day notice requirement.
3. If the financial corporation ~~or, financial institution, or credit union~~ fails to respond to the complaint within twenty days of its service, or if a hearing is held and the board concludes that the record so warrants, the board may enter an order directing the financial corporation ~~or, financial institution, or credit union~~ to cease and desist from engaging in the conduct which was the subject of the complaint and hearing and to take corrective action.
4. The commissioner or the board may enter an emergency, temporary cease and desist order if the commissioner or the board finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation ~~or, financial institution, or credit union~~, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation ~~or, financial institution, or credit union~~. An

emergency, temporary cease and desist order is effective immediately upon service on the financial corporation ~~or, financial institution, or credit union~~ and remains in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. The financial corporation, financial institution, or credit union upon which such an order is served may apply to the district court of the county in which the financial corporation ~~or, financial institution, or credit union~~ is located for an order enjoining the operation of the emergency, temporary order. The application for injunction and procedure upon application must comply with the requirements of section 6-07-14.

SECTION 5. AMENDMENT. Subsection 1 of section 6-01-04.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner or the board may assess a civil money penalty against a financial institution or financial corporation, including state-chartered banks, credit unions, trust companies, and savings and loan associations, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial ~~institution or corporation,~~ financial institution, or credit union upon finding one or more of the following:
 - a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
 - b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;
 - c. Payment of dividends in violation of section 6-03-36;
 - d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
 - e. Loans to directors, officers, and employees in violation of section 6-03-60;
 - f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70;
 - g. Violations of loan limitations under subsection 1 of section 6-06-12 or North Dakota Administrative Code section 13-03-16-03, 13-03-16-05, or 13-03-16-08;
 - h. Loans in violation of section 6-06-14 or subsection 2 of section 13-03-16-02 of the North Dakota Administrative Code or subsection 2 of section 13-03-16-05 of the North Dakota Administrative Code; or
 - i. Failure to file notice of change of control under section 6-08-08.1.

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

6-06-06. Powers of credit unions.

A credit union has the following powers:

1. To receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within its membership.
2. To make loans to members.
3. To make loans to a cooperative society or other organization having membership in the credit union.
4. To deposit its moneys in ~~state and national banks and financial institutions, trust companies and central credit unions, corporate central credit unions, and the Bank of North Dakota~~ authorized to receive deposits.
5. To invest in the following:
 - a. In bonds of the United States without limitation in securities issued as direct obligations by the United States government or any agency thereof and in any trust established for investing directly or collectively in such securities.
 - b. In bonds or evidences of debt of this state or in bonds of states of the United States.
 - c. In bonds or certificates of indebtedness of any county, city, or school district in this state, issued pursuant to authority of law, but not to exceed thirty percent of the assets of any credit union may be invested in such bonds or certificates of indebtedness.
 - d. In notes or bonds secured by mortgage or deed of trust upon unencumbered, improved real estate in this state, if such investment does not exceed sixty-five percent of the ~~actual cash~~ market value of the property mortgaged, and fire and tornado insurance policies are maintained and deposited as collateral to such mortgage, subject to such restriction and regulations as may be imposed by the state credit union board.
 - e. In notes or bonds secured by a security interest or lien upon unencumbered personal property, if the investment does not exceed ninety percent of the ~~actual cash~~ market value of the property secured.
 - f. In first lien, public utility, industrial, corporation, or association bonds, notes, or other evidences of debt issued by corporations located in the United States of America to the extent authorized by the state credit union board.
 - g. Subject to rules of the state credit union board, in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permissible under this section.
 - h. In investments or insurance products otherwise prohibited by section 6-06-06 if the investments are directly related to a benefit plan for credit union employees.
6. To borrow money as limited in this chapter.

7. Subject to such regulations as the state credit union board may prescribe, insurance obtained under title 1 of the National Housing Act must be deemed adequate security.
8. To sue and be sued.
9. A credit union may invest in a credit union office building, including the lot, piece, or parcel of land on which the same is located, and in furniture and fixtures, to the extent authorized by regulations issued by the state credit union board.
10. Every state credit union has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:
 - a. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
 - b. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
 - c. Such as it purchases at sales under judgments, decrees, or mortgages held by the credit union, or purchases to secure debts due to it.

~~Upon~~Within sixty days of the transfer to other real estate owned, a current appraisal performed by an independent qualified appraiser must be obtained for all property recorded at or below the lower of twenty five thousand dollars or ten percent of the credit union's equity must be conducted by a state licensed individual who is independent of the transaction for all real estate recorded at or above one hundred thousand dollars or through a market evaluation performed by a qualified individual who is independent of the transaction for all real estate recorded below one hundred thousand dollars. Except as otherwise provided by chapter 10-06.1, a state credit union may hold possession of any real estate acquired after July 1, 1991, under mortgage, or title and possession of any real estate purchased to satisfy indebtedness, for a period not to exceed five years. Except as otherwise provided by chapter 10-06.1, real estate acquired before July 1, 1991, may be held for a period not exceeding five years from July 1, 1991. The commissioner may extend the real estate holding period up to an additional five years upon formal request by a credit union if the credit union has made a good-faith attempt to dispose of the real estate within the five-year period, or disposal within the five-year period would be detrimental to the credit union. Within thirty days after receipt of an adverse decision, the credit union may appeal that decision to the state credit union board.

11. 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 a credit union could engage if the credit union were federally chartered.
12. To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated or as determined by the board by order or rule.

SECTION 7. AMENDMENT. Section 6-06-08.4 of the North Dakota Century Code is amended and reenacted as follows:

6-06-08.4. Prompt corrective action.

Whenever the state credit union board determines that any credit union under its supervision does not have adequate capital, the state credit union board, without a hearing, may declare that the credit union is either undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purposes of this section, a credit union is undercapitalized if it either has a net worth ratio of less than six percent or fails to meet any applicable risk-based net worth requirement established by the board by rule. A credit union is significantly undercapitalized if it has a net worth ratio of less than four percent or has a net worth ratio of less than five percent and fails to submit an acceptable net worth restoration plan or materially fails to implement a plan accepted by the board. A credit union is critically undercapitalized if it has a net worth ratio of less than two percent or such higher net ratio, not exceeding three percent, as the board may specify. The board, by order, may require a credit union that is undercapitalized to annually set aside as net worth an amount equal to up to four tenths percent of its total assets. For purposes of this section, the net worth categories are defined as:

1. Well capitalized. A credit union with a net worth ratio of seven percent or greater which meets any applicable risk-based net worth requirement.
2. Adequately capitalized. A credit union with a net worth ratio six percent or more but less than seven percent which meets any applicable risk-based net worth requirement as defined by the state credit union board by rule.
3. Undercapitalized. A credit union with a net worth ratio of four percent or more but less than six percent or fails to meet any risk-based net worth requirement.
4. Significantly undercapitalized. A credit union with a net worth ratio of two percent or more but less than four percent, fails to increase its net worth, or fails to submit or materially implement a net worth restoration plan.
5. Critically undercapitalized. A credit union with a net worth ratio less than two percent.

A credit union may be reclassified into the next subordinate net worth category by the commissioner or the state credit union board if it is determined that the credit union is in an unsafe or unsound condition or has not corrected unsafe or unsound practices of which it was, or should have been, aware. The board or commissioner may require a credit union that is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized to increase its net worth. Additionally, the board or commissioner may require a credit union that is undercapitalized credit union, significantly undercapitalized, or critically undercapitalized to submit an acceptable net worth restoration plan to the board within the time allowed by the board commissioner. For a significantly undercapitalized credit union that has no reasonable prospect of becoming adequately capitalized or a critically undercapitalized credit union, the board may take possession of the credit union, appoint a conservator or liquidating agent for the credit union, or take such other action as the board determines would be appropriate to resolve the problems of the credit union.

A credit union that is the subject of such a board declaration may ask for a hearing before the board within five days after service upon it of the board's declaration. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board

shall enter a final order. The institution may appeal the order to the district court of Burleigh County, within ten days after the order is served upon it. The appeal is governed by chapter 28-32.

SECTION 8. AMENDMENT. Section 6-06-10 of the North Dakota Century Code is amended and reenacted as follows:

6-06-10. General and special meetings - Notice - Quorum - Voting privileges.

General and special meetings may be held in the manner and for the purposes indicated in the bylaws of the credit union. Ten days before any regular or special meeting, written notice thereof must be mailed or sent by an electronic communication to each member and, in the case of a special meeting, the notice must state clearly the purpose of the meeting and what matters will be considered thereat. The members present at a general or special meeting constitute a quorum for the transaction of the business of the credit union. At all meetings, a member has but a single vote, whatever the member's shareholdings. There is no voting by proxy, but any firm, society, or corporation having a membership in the credit union may cast its vote by one person upon presentation by that person to the credit union of written authority from such firm, society, or corporation. The credit union may allow members to vote by mail ballot or electronic ballot for directors and committee members.

SECTION 9. AMENDMENT. Section 6-06-11 of the North Dakota Century Code is amended and reenacted as follows:

6-06-11. Annual meetings - Election of directors - Election or appointment of committees.

The organization meeting of the members of a credit union shall be the first annual meeting. At its annual meeting, its members shall elect a board of directors of not less than five members and a credit committee of not less than three members, unless the bylaws of the credit union provide that the credit union may not have a credit committee. A supervisory committee of not less than three members must be elected at the annual meeting, unless the bylaws of the credit union provide that the supervisory committee members be appointed by the board of directors of the credit union or the bylaws provide that the credit union may not have a supervisory committee. In the event the bylaws do not provide for a supervisory committee, then the duties and powers of a supervisory committee, as described in section 6-06-15, are the responsibility of the board of directors. The directors and committee members if any, shall hold office for such terms, respectively, as provided by the bylaws of the credit union and until their successors qualify. A record of the names and addresses of the officers and members of the board and committees must be filed with the commissioner within ten days after their election or appointment. Notice of any change in membership on the board or committees by appointment to fill an unexpired term or otherwise must be filed with the commissioner within ten days of such change.

If the bylaws of the credit union provide for a credit committee, then pursuant to the provisions of the bylaws, the board of directors may appoint or the members may elect a credit committee which consists of an odd number of members of the credit union, but which may not include more than one loan officer. The method used must be set forth in the bylaws.

If the credit committee is dispensed with in the bylaws, a credit manager, under the general supervision of the board of directors, may be empowered to approve or disapprove loans subject to the policies and conditions prescribed by the board of

directors. The president or other qualified senior management official may serve as the credit manager. If a credit manager is provided in lieu of ~~an elected~~ credit committee, the credit manager may appoint one or more loan officers with the power to approve or disapprove loans, and may establish an internal credit committee comprised of designated credit union staff with the power to approve or disapprove loans, subject to such limitations or conditions as the credit manager and board of directors prescribes.

SECTION 10. AMENDMENT. Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans.

The credit committee has general supervision over all loans to members, ~~and unless the credit union does not have a credit committee, in which case the~~ general supervision of loans is the responsibility of the credit manager appointed by the board of directors. If the credit union has a credit committee, it shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to any "corporate central" or "corporate" credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee or credit manager and must set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee or credit manager may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is subject to limits approved in loan policy by the board of directors of the credit union. Security under this section includes an assignment of shares or deposits, ~~an endorsement made on the note by a responsible person,~~ and such other security as the committee or credit manager in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee or by the credit manager, except that the credit committee or credit manager may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the ~~credit committee~~ board of directors, or in excess of the limit if the excess is fully secured by unpledged shares. An individual may not disburse funds of the credit union for any loan that has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer, unless the credit committee is made up of credit union employees appointed by the credit manager. Every loan by a credit union to, or guaranteed by, its directors, officers, managers, and committee members shall be current as outlined on the terms of the loan agreement and must be made on substantially the same terms, including interest rates, fee structure, and collateral, as those prevailing at the time for comparable transactions with other persons and ~~must~~ shall be in strict conformity with the credit union's policies, rules, and regulations.

SECTION 11. AMENDMENT. Section 6-06-36 of the North Dakota Century Code is amended and reenacted as follows:

6-06-36. Merger.

Any credit union chartered under this chapter or under Act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover

all reasonable expenses of the department of 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. The secretary of state shall charge a fee of fifty dollars for all services in connection with a merger authorized by the state credit union board, including filing of a certificate of organization or bylaws, and issuing or canceling charters.

Upon approval by the state credit union board of a merger application under this section, the former main office and facilities of the credit union merged will become branches of the continuing credit union and the continuing credit union is not required to file an application for any branches acquired in the merger transaction.

Approved March 28, 2011

Filed March 28, 2011

CHAPTER 75

SENATE BILL NO. 2104

(Industry, Business and Labor Committee)
(At the request of the State Treasurer)

AN ACT to amend and reenact section 6-01-17 and subdivision a of subsection 1 of section 13-04.1-11 of the North Dakota Century Code, relating to a yearly assessment of banks and interstate branches and investigation and examination authority of money brokers; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-17 of the North Dakota Century Code is amended and reenacted as follows:

6-01-17. Yearly assessment of banks and interstate branches.

Every state banking association and banking institution under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by this title, including the Bank of North Dakota and every branch of an out-of-state state bank, shall pay a yearly assessment. This assessment is to be determined by the state banking board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered banks and branches of out-of-state state banks, including the authority to enter into cooperative fee sharing agreements and assessment of associated travel costs with other state bank supervisors. Assessment fees may not be computed on the combined assets of the bank and its trust department for those banks and branches exercising trust powers. Fees for the examination of the trust department must be computed in accordance with section 6-05-28. The assessment must be paid to the ~~state treasurer~~department of financial institutions within thirty days of each June thirtieth. Institutions and branches that have not been examined by the commissioner or the state banking board for three years prior to any assessment date shall not be required to pay the assessment. ~~The state treasurer shall report such payments of fees to the commissioner, and if~~ any such corporation or institution or branch is delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation, institution, or branch until payment of the amount due. The commissioner may assess a penalty of five dollars for each day that the assessment fee is delinquent. All fees and penalties under this section must be ~~paid~~deposited with the state treasurer and deposited in the financial institutions regulatory fund.

³² **SECTION 2. AMENDMENT.** Subdivision a of subsection 1 of section 13-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

- a. May make such public or private investigation within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order

³² Section 13-04.1-11 was also amended by section 10 of Senate Bill No. 2124, chapter 105.

hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be ~~paid to the state treasurer and~~ deposited in the financial institutions regulatory fund.

SECTION 3. EFFECTIVE DATE. This Act becomes effective June 1, 2011.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 76

SENATE BILL NO. 2096

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³³ **SECTION 1. AMENDMENT.** Section 6-01-02 of the North Dakota Century Code is amended and reenacted as follows:

6-01-02. Definitions.

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

1. "Association", "banking association", or "state banking association" means any corporation organized under the laws of this state covering state banking associations, and all corporations, limited liability companies, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.
2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, or savings bank, whether organized under the laws of this state or of the United States, engaged in the business of banking.
3. "Bank holding company" means bank holding company as defined in 12 U.S.C. 1841(a)(1).
4. "Banking" means the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, traveler's checks, and similar instruments, handling and making collections, cashing checks and drafts, and buying and selling exchange.
5. "Banking department" means the state department of financial institutions.
6. "Banking institution" means any bank, trust company, or bank and trust company organized under the laws of this state.
7. "Branch" means a place of business where deposits are received, checks paid, or money lent as a result of a bank that was merged into another bank pursuant to an interstate merger.

³³ Section 6-01-02 was also amended by section 1 of House Bill No. 1131, chapter 74.

8. "Commissioner" means the commissioner of financial institutions.
9. "Corporate central credit union" means a credit union operated for the primary purpose of serving corporate accounts. A credit union is deemed to be a corporate central credit union when its total dollar amount of outstanding corporate loans plus corporate share and deposit holdings is equal to or greater than seventy-five percent of its outstanding loans plus share and deposit holdings.
10. "Credit union" means a cooperative, nonprofit association organized for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to improve their economic and social condition.
11. "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).
12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- ~~42-13~~. "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.
- ~~43-14~~. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
- ~~44-15~~. "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.
- ~~45-16~~. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.
- ~~46-17~~. "Merger" or "merge" means the merging or consolidation of two or more banks including the purchase of all or substantially all of the assets and assumption of liabilities of a bank, facility, or branch.
- ~~47-18~~. "Mutual investment corporation" or "mutual savings corporation" means a corporation organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock.
- ~~48-19~~. "National bank" or "national banking association" means an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].
- ~~49-20~~. "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.
- ~~20-21~~. "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of Federal Regulations, part 325, in effect on August 1, 20092011.

~~24-22.~~ "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

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

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

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

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

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

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

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

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

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

An association organized to do business in any city in this state, and which has sold or converted its business to a national bank or to any other banking association which is continued at the same place, may not use its charter to recommence business at another place without first obtaining the consent of the state banking board. When a banking association which has not so converted or sold its business is located at a place where there is not, or can reasonably project that there will not be, sufficient business for the profitable conduct of a bank, such association may apply to the state banking board for authority to remove its business to some other place within the state and to change its name if desired, and upon the approval of such

application, by the board and the proper amendment of the articles of incorporation, the board may issue authority for such removal and change. No such association, however, is permitted to remove its business to any city unless it has the full amount of capital stock and surplus required by this title for a new organization in such city. A banking association may apply to the state banking board for authority to move its main office to any location currently being operated by the banking association as a facility.

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

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

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

Approved April 26, 2011

Filed April 26, 2011

CHAPTER 77

SENATE BILL NO. 2158

(Senators Krebsbach, Olafson, Larsen)
(Representatives Keiser, N. Johnson, Kingsbury)

AN ACT to amend and reenact subsections 2, 4, and 5 of section 6-08-16 and subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check with nonsufficient funds or without an account; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁴ **SECTION 1. AMENDMENT.** Subsections 2, 4, and 5 of section 6-08-16 of the North Dakota Century Code are amended and reenacted as follows:

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.
 - a. The person is also liable for collection fees or costs, not in excess of ~~thirty~~thirty-five 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. If the state's attorney or holder determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subdivision.
 - b. 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.
 - c. If the person does not pay the instrument in full and any collection fees or costs not in excess of ~~thirty~~thirty-five 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.

³⁴ Section 6-08-16 was also amended by section 1 of House Bill No. 1080, chapter 106.

- d. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
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 ~~thirty~~thirty-five 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. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. 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 ~~ninetyone~~ninetyone hundred twenty 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. Subsections 4, 5, and 6 of section 6-08-16.2 of the North Dakota Century Code are amended and reenacted as follows:

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of ~~thirty~~thirty-five dollars per instrument, which are recoverable by the holder of the instrument, or the holder's agent or representative. If the state's attorney or holder determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or its agent or representative written notice of the fraud and upon receipt of the notice that holder or its agent or representative may not collect fees or costs under this subsection. 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. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. A criminal complaint for violating this section must be executed within ~~ninety~~ one hundred twenty 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 ~~thirty~~ thirty-five dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 78

SENATE BILL NO. 2081

(Agriculture Committee)
(At the request of the Bank of North Dakota)

AN ACT to amend and reenact subsection 5 of section 6-09-15.5 and subsection 2 of section 6-09.11-06 of the North Dakota Century Code, relating to the term of loans for beginning farmers and the family farm loan program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 6-09-15.5 of the North Dakota Century Code is amended and reenacted as follows:

5. The maximum term of a real estate loan is ~~twenty-five~~thirty years. The maximum term of a farm equipment or livestock loan is seven years.

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

2. Except as otherwise provided:
 - a. A loan under this chapter must be repayable in installments and may have a term up to ~~twenty~~thirty years.
 - b. All or part of a loan under this chapter may be repaid at any time, subject to conditions set forth in the mortgage.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 79

SENATE BILL NO. 2078

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

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to residential mortgages originated by the Bank of North Dakota; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³⁵ **SECTION 1.** A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Residential mortgages.

1. The Bank may establish a residential mortgage loan program under which the Bank may originate residential mortgages if private sector mortgage loan services are not reasonably available. Under this program a local financial institution may assist the Bank in taking a loan application, gathering required documents, ordering required legal documents, and maintaining contact with the borrower.
2. If the Bank establishes a program under this section, at a minimum the program must provide:
 - a. The Bank originate no more than eight million dollars in conventional rural residential mortgages;
 - b. An applicant must be referred to the Bank by a local financial institution and the Bank may not have received from any other local financial institution an objection to the Bank's program;
 - c. The loan application must be for an owner-occupied primary residence;
 - d. The Bank provide all regulatory disclosures, process and underwrite the loan, prepare closing documents, and disburse the loan; and
 - e. The terms of the loan originated by the Bank must provide:
 - (1) The amount of the loan may not exceed two hundred thousand dollars;
 - (2) The term of the loan may not exceed thirty years;
 - (3) The rate of the loan must be equal to the Bank's market rate;

³⁵ Section 6-09-44 was also created by section 1 of Senate Bill No. 2150, chapter 147.

(4) The maximum loan to value may not exceed eighty percent of appraised value; however, a local financial institution may take a second mortgage that does not exceed a combined loan to value of ninety-five percent; and

(5) Standard credit underwriting and documentation applies.

3. The Bank may sell eligible first-time home buyer loans to the North Dakota housing finance agency.

SECTION 2. EFFECTIVE DATE. This Act becomes effective July 1, 2011.

SECTION 3. EXPIRATION DATE. This Act is effective through July 31, 2013, and after that date is ineffective.

SECTION 4. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 80

HOUSE BILL NO. 1428

(Representatives Monson, Damschen)
(Senator Olafson)

AN ACT to amend and reenact section 6-09.4-23 of the North Dakota Century Code, relating to authority to withhold school district state aid.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-23 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-23. Evidences of indebtedness - Authority to withhold school district state aid.

1. If the public finance authority or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the public finance authority, school district, or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15.1-27 until the payment of the principal or interest has been made to the public finance authority or the paying agent, or until the public finance authority, school district, or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15.1-27 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
2. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the public finance authority or the paying agent. The public finance authority or the paying agent shall apply the funds to payments that the school district is required to make to the public finance authority or the paying agent.
3. If funds are withheld from a school district and made available to the public finance authority or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the public finance authority or the paying agent, may withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction and made available to the public finance authority or a paying agent under this section.

4. Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the public finance authority and the state board of public school education for the benefit of the public finance authority and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the public finance authority and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the public finance authority and the state board of public school education, those funds must be transferred to the public finance authority upon certification by the public finance authority that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the public finance authority bonds issued to purchase the municipal securities for which the escrow fund was established.

5. The superintendent of public instruction shall develop detailed procedures for school districts to notify the superintendent of public instruction that they have obligated themselves to be bound by the provisions of this section; procedures for school districts, paying agents, and the public finance authority to notify the superintendent of public instruction of potential defaults and to request payment under this section; and procedures for the state to expedite payments to prevent defaults.

Approved April 25, 2011
Filed April 25, 2011

CHAPTER 81

SENATE BILL NO. 2121

(Human Services Committee)
(At the request of the Bank of North Dakota)

AN ACT to repeal chapter 6-09.6 of the North Dakota Century Code, relating to the developmentally disabled facility loan program; and to provide for the sale of loans and transfer of proceeds to the common schools trust fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Chapter 6-09.6 of the North Dakota Century Code is repealed.

SECTION 2. DEVELOPMENTALLY DISABLED FACILITY REVOLVING LOAN FUND - AUTHORITY TO SELL LOANS - TRANSFERS. The executive director of the department of human services shall sell such loans in the developmentally disabled facility revolving loan fund created under section 6-09.6-01.2 to the Bank of North Dakota which shall provide \$1,293,211, or so much of the sum as may be necessary, with the proceeds to be deposited in the common schools trust fund.

Approved April 19, 2011
Filed April 19, 2011

CHAPTER 82

SENATE BILL NO. 2306

(Senators Wanzek, Erbele, Grindberg)
(Representatives Brandenburg, Headland, Pollert)

AN ACT to amend and reenact sections 6-09.7-02, 6-09.7-03, and 6-09.7-05 of the North Dakota Century Code, relating to the fuel production facility loan guarantee program; to repeal section 6-09.7-08 of the North Dakota Century Code, relating to state funding limitations for recipients of fuel production facility loan guarantees; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.7-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-02. Powers and duties of the Bank of North Dakota.

The Bank of North Dakota may:

1. Guarantee the loan of money by eligible banks, credit unions, and savings and loan associations, upon such terms, conditions, and procedures as it may establish in accordance with the provisions of this chapter, to any qualified person to assist that person in constructing an agriculturally derived fuel production ~~facilities of a size to serve the community in or near which the facility is located~~facility. The facility must use ~~grain-related and biomass farm products~~ for agriculturally derived fuel production.
2. Take, hold, and administer, on behalf of the state from any source, any property, or any interest ~~therein~~in the property, and the income therefrom, either absolutely or in trust, for any purpose of the guarantee loan program; provided, that no guarantee obligation of the Bank is payable out of any moneys of the Bank except those made available to ~~the Bank~~the Bank under this chapter.
3. Adopt standards governing the qualifications and financial needs of applicants, ~~and~~; establish a method of application for the guaranteeing of loans ~~which that~~ may be made by banks, credit unions, farm credit associations, and savings and loan associations; ~~and adopt any other standards as may be necessary to administer properly~~ and adopt any other standards as may be necessary to administer ~~properly~~ this chapter.

SECTION 2. AMENDMENT. Section 6-09.7-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-03. Extent of loan guarantee.

The extent of the loan guarantee under this chapter may not exceed twenty-five percent of the total loan. The maximum dollar amount of any guarantee on a single loan may not exceed ~~twelve~~ million five hundred thousand dollars. The extent of the value of all loan guarantees under this chapter may not, at any one time, exceed ~~ten~~twenty-five million dollars.

³⁶ **SECTION 3. AMENDMENT.** Section 6-09.7-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-05. Establishment and maintenance of adequate guarantee funds - Use of lands and minerals trust.

The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. ~~The guarantee reserve fund must be maintained~~ Bank may request the director of the office of management and budget to transfer funds from the lands and minerals trust created by section 15-08.1-08 and any moneys transferred from the lands and minerals trust to maintain ~~the~~ to maintain twenty-five percent of the guarantee reserve fund balance. ~~Transfers from the lands and minerals trust may not exceed a total of six million two hundred fifty thousand dollars.~~ Moneys in the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program shall be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula which will assure, as determined by the Bank, an adequate amount of reserve.

SECTION 4. REPEAL. Section 6-09.7-08 of the North Dakota Century Code is repealed.

SECTION 5. EXPIRATION DATE. This Act is effective through July 31, 2013, and after that date is ineffective.

Approved April 20, 2011
Filed April 20, 2011

³⁶ Section 6-09.7-05 was also amended by section 4 of House Bill No. 1451, chapter 483.

CHAPTER 83

HOUSE BILL NO. 1462

(Representatives Froseth, Anderson, Conklin, Onstad)
(Senators Wanzek, Triplett)

AN ACT to create and enact a new section to chapter 6-09.10 of the North Dakota Century Code, relating to compensation for members of the credit review board; to amend and reenact sections 4-24-13, 6-08.1-02, 6-08.1-03, 6-09.10-01, 6-09.10-02, 6-09.10-02.1, 6-09.10-03, 6-09.10-04, 6-09.10-04.1, 6-09.10-06, 6-09.10-10, 6-09.10-11, and 6-09.11-04 of the North Dakota Century Code, relating to the agricultural mediation service; to repeal sections 6-09.10-05, 6-09.10-07, 6-09.10-08, and 6-09.11-10 of the North Dakota Century Code, relating to the home-quarter fund; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-24-13 of the North Dakota Century Code is amended and reenacted as follows:

4-24-13. Genetically modified seed - Patent infringement - Sampling - Mediation.

1. For purposes of this section, farmer means the person responsible for planting a crop on, managing the crop, and harvesting the crop from land on which a patent infringement is alleged to have occurred.
2. a. Before a person holding a patent on a genetically modified seed may enter upon any land farmed by another for the purpose of obtaining crop samples to determine whether patent infringement has occurred, the person holding the patent:
 - (1) Shall notify the agriculture commissioner in writing of the person's belief that a patent infringement has occurred and include facts from the allegation;
 - (2) Shall notify the farmer in writing of the allegation that a patent infringement has occurred and request written permission to enter upon the farmer's land; and
 - (3) Must obtain the written permission of the farmer.
- b. If the farmer withholds written permission, the person holding a patent may petition the state district court for an order granting permission to enter upon the farmer's land.
3. The farmer may accompany the person holding the patent at the time any samples are taken.
4. If requested by the farmer or the person holding the patent, the state seed commissioner shall accompany the person holding the patent at the time any sample is taken. The state seed commissioner may impose a fee for providing

that service. The patent holder and the farmer shall each pay one-half of the fee charged by the commissioner.

5. If the person holding a patent believes that the crop from which samples are to be taken may be subject to intentional damage or destruction, the person may seek a protection order from the state district court. The protection order may not interrupt or interfere with normal farming practices, including harvest and tillage.
6. The person holding the patent may take samples from a standing crop, from representative standing plants in the field, or from crops remaining in the field after harvest.
7. The person holding the patent may obtain no more samples than those reasonably necessary to make a determination regarding patent infringement. An equal number of samples must remain in the custody of the state seed commissioner or the farmer for future comparison and verification purposes. All samples taken must be placed in containers, labeled as to the date, time, and location from which they were taken, and the labels must be signed by the farmer, the person who took the samples, and the state seed commissioner if the commissioner was present at the time the samples were taken. The patent holder and the farmer shall share equally the cost of the containers needed for the second set of samples which are retained by the state seed commissioner or the farmer. The farmer and the person holding the patent shall share equally the cost of the containers and the cost of obtaining the samples.
8. Within sixty days from the date the samples are taken, an independent laboratory shall conduct all tests to determine whether patent infringement has occurred. The person holding the patent shall notify the farmer of the test results, by certified mail or by any other method of delivery for which a signature is required, within twenty-one days from the date the results were reported to the person holding the patent.
9. The parties may participate in mediation at any time. The mediation must be conducted by a mediator jointly selected by the farmer and the person holding the patent. If the farmer and the person holding the patent are unable to select a mediator, the mediation must be conducted by an independent agricultural mediation service.
10. If the case is not settled after mediation, either party may file a claim for relief with the federal district court having jurisdiction over the claim. Unless otherwise specified in a contract between the farmer and the person holding the patent, the appropriate state district court is the one that has jurisdiction over that portion of this state in which the farmer's land is located.

SECTION 2. AMENDMENT. Section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6-08.1-02. Exemptions.

This chapter does not apply to any of the following:

1. The disclosure of necessary customer information in the preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such

- information or in the examination of such necessary information by an accountant engaged by the financial institution to perform an audit.
2. The disclosure of necessary customer information in the examination of any customer information by or the furnishing of customer information to any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of that person's duties.
 3. The publication of data derived from customer information if the data cannot be identified to any particular customer or account.
 4. Any acts required of the financial institution by the Internal Revenue Code.
 5. Disclosures permitted under the Uniform Commercial Code concerning the dishonor of any negotiable instrument.
 6. The exchange in the regular course of business of necessary customer credit information between a financial institution and other financial institutions or commercial entities, directly or through a customer reporting agency.
 7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of the following:
 - a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.
 - b. The amount of any financing or security referenced in subdivision a.
 - c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.
 - d. The program under which any financing or security referenced in subdivision a was made.
 - e. Recipient reports and grantor reports as required under chapter 54-60.1.
 8. The disclosure of customer information in the examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
 9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.
 10. Disclosure by a financial institution to the agriculture commissioner that it has given a customer notice of the availability of the North Dakota ~~agricultural~~ mediation service.

11. The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.
12. A disclosure of customer information under section 502(e) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1436; 15 U.S.C. 6802(e)]. A disclosure under this subsection must comply with the rules adopted under section 6-08.1-10.
13. A disclosure made to the disciplinary board of the North Dakota supreme court or another state's authority with responsibility for enforcing rules of professional conduct for lawyers regarding dishonor of an instrument issued against any trust account maintained by an attorney or law firm, as these terms are defined in section 6-08-16.2.

SECTION 3. AMENDMENT. Section 6-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

6-08.1-03. Duty of confidentiality.

A financial institution may not disclose customer information to any person, governmental agency, or law enforcement agency unless the disclosure is made in accordance with any of the following:

1. Pursuant to consent granted by the customer in accordance with this chapter.
2. To a person other than a governmental agency or law enforcement agency pursuant to valid legal process.
3. To a governmental agency or law enforcement agency pursuant to valid legal process in accordance with this chapter.
4. For the purpose of reporting a suspected violation of the law in accordance with this chapter.
5. For the purpose of notifying the agriculture commissioner that a financial institution has notified a customer of the availability of the North Dakota ~~agricultural~~ mediation service.
6. As part of the disclosure made of deposits of public corporations with financial institutions in the security pledge schedule verified by the custodian of securities pursuant to section 21-04-09.
7. For purposes of reporting suspected exploitation of a disabled adult or vulnerable elderly adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of a disabled adult or vulnerable elderly adult or to make any report to a governmental agency or law enforcement agency.

SECTION 4. AMENDMENT. Section 6-09.10-01 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-01. Definitions.

As used in this chapter, unless the context requires otherwise:

1. "Board" means the credit review board, or its authorized agent when applicable.
2. "Farmer" means a person who is or was involved in the production of an agricultural commodity or livestock.
3. "Fund" means the home quarter purchase fund.
4. "Home quarter" means a single contiguous tract of not more than one hundred sixty acres [64.75 hectares] which serves as the base unit of a farm and upon which the farm residence and buildings are located.
5. "Person" means an individual, corporation, limited liability company, partnership, or other legal entity.

SECTION 5. AMENDMENT. Section 6-09.10-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-02. Credit review board.

1. The board consists of ~~six members. The governor, the attorney general, and the agriculture commissioner shall each appoint two members to the board. The governor and attorney general shall each appoint one member with:~~
 - a. One individual who has experience as a director or officer of a financial institution and one member, appointed by the governor;
 - b. One individual who has experience as a director or officer of a financial institution, appointed by the attorney general;
 - c. One individual actively engaged in farming in the state. ~~The agriculture commissioner shall appoint two members who are, appointed by the governor;~~
 - d. One individual actively engaged in farming in the state, appointed by the attorney general; and
 - e. Two individuals actively engaged in farming in the state. ~~No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board, appointed by the agriculture commissioner.~~
2. A board member may not be an employee or official of the state during the member's term of office.
3. The credit review term of office for members of the board members shall serve terms of ~~is~~ two years. An individual may serve consecutive terms.
4.
 - a. Annually, the board shall elect one member to serve as the chairman.
 - b. The chairman shall call all meetings of the board.

SECTION 6. 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.

SECTION 7. 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 Establishment - Administration - 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.~~

1. ~~The agriculture commissioner shall establish an agricultural and administer a mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems.~~
2. ~~The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner and shall hire staff, negotiators, and mediators who may mediate disputes involving farmers or other persons eligible for mediation with an agency of the United States department of agriculture, and other necessary personnel.~~
3. ~~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 mediation participants are limited to establish the fees to be paid by those using the North Dakota mediation service. The fees, which must be used to support continuation of the service, may not exceed twenty-five dollars per hour, each, for the time spent in mediation sessions.~~
4. ~~The board shall adopt policies governing the North Dakota mediation service's negotiators, staff, and mediators hired under this section. Board members are entitled to receive one hundred thirty 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, and other personnel, as well as the nature and scope of all mediation efforts.~~

SECTION 8. A new section to chapter 6-09.10 of the North Dakota Century Code is created and enacted as follows:

Board compensation.

Each member of the board is entitled to receive compensation in the amount of one hundred thirty-five dollars per day plus reimbursement for expenses as provided

by law for state officers if the member is attending meetings or performing duties directed by the board.

SECTION 9. 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~~A farmer, creditor, person dealing with a farmer, ~~or other person eligible for mediation with an agency of the United States department of agriculture, a landowner, or an owner, lessee, or lessor of mineral interests~~ may request assistance from the ~~administrator~~North Dakota mediation service. Upon receipt of the request, and upon consent of all parties to mediation, the ~~negotiator or mediator shall encourage and~~administrator of the North Dakota mediation service may assign a negotiator or mediator to assist the parties in reaching a voluntary settlement.

SECTION 10. AMENDMENT. Section 6-09.10-04.1 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-04.1. Liability.

The board, commissioner, administrator, ~~staff,~~ negotiators, ~~and mediators, and other personnel~~ are not subject to any liability arising from any actions ~~undertaken~~ regarding a farmer, creditor, or other person or omissions in attempting to reach a settlement.

SECTION 11. AMENDMENT. Section 6-09.10-06 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-06. Fund - Appropriation.

1. ~~A revolving fund must be maintained at the Bank of North Dakota for the subsidy of interest rates on home quarter purchases and coordination and operation of a farm management delivery system as provided in this chapter. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund are hereby~~On July 1, 2011, the state treasurer shall transfer any moneys remaining in the home-quarter fund to the agriculture commissioner.

2. Any moneys transferred, as required by subsection 1, are appropriated to the agriculture commissioner, for the purposes of this chapter. ~~Any moneys generated by the farm management delivery system must be transferred to the state board for career and technical education and allocated by the state board for career and technical education to the adult farm management program, the agricultural mediation services, and North Dakota state university for expenses related to the jointly developed and implemented farm management delivery system.~~

2-3. The board~~If it appears to the board that the moneys appropriated to the agriculture commissioner for the North Dakota mediation service are insufficient, the agriculture commissioner may petition the emergency commission for a transfer from the state contingency fund whenever it appears to the board that the moneys remaining in the fund are not sufficient to meet demands on the fund. The emergency commission may grant the transfer request, or so much thereof of the request as may be necessary, if it~~

finds that an emergency situation exists in the industry of farming, due to increasing numbers of farm foreclosures requests for mediation.

3. ~~The board and the Bank of North Dakota shall enter into an agreement through which the Bank shall supervise and monitor the payment and repayment of interest subsidies approved by the board.~~

SECTION 12. AMENDMENT. Section 6-09.10-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-10. Mediation - Open records and meetings exception.

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

SECTION 13. AMENDMENT. Section 6-09.10-11 of the North Dakota Century Code is amended and reenacted as follows:

6-09.10-11. Agriculture commissioner - Authorization to receive and expend moneys.

The agriculture commissioner ~~is authorized to may~~ receive and expend any ~~federal, private, or other funds~~public or nonpublic moneys that become available for the purpose of defraying the expenses of the ~~agricultural~~North Dakota mediation service.

SECTION 14. AMENDMENT. Section 6-09.11-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.11-04. Loans to farmers - Purposes.

The following purposes are eligible to be funded by bond proceeds or loan participations under this chapter:

1. Purchasing agricultural real estate-;
2. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer-;
3. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil-;
4. Purchasing farm equipment-;
5. Purchasing livestock-;

-
6. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agricultural real or personal property owned or purchased by the farmer; and
 7. ~~Purchasing the farmer's home quarter pursuant to chapter 6-09.10.~~
 8. Restructuring operating debt carryover.

SECTION 15. REPEAL. Sections 6-09.10-05, 6-09.10-07, 6-09.10-08, and 6-09.11-10 of the North Dakota Century Code are repealed.

Approved April 26, 2011
Filed April 26, 2011

CHAPTER 84

SENATE BILL NO. 2342

(Senators Miller, Dotzenrod, Luick)
(Representatives Headland, Kingsbury, Paur)

AN ACT to create and enact a new subsection to section 6-09.13-03 of the North Dakota Century Code, relating to eligible uses of the agriculture partnership in assisting community expansion fund; to amend and reenact subsection 3 of section 6-09.13-01 of the North Dakota Century Code, relating to eligible uses for the agriculture partnership in assisting community expansion fund; and to provide for a legislative management study.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 6-09.13-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Farm business" means any business conducted by the farmer or farmer's family, which is integrated into the farm operation and is intended to supplement farm income to allow the farmer to continue farming. ~~¶The term~~ may include nontraditional agricultural, manufacturing, processing, value-added processing, targeted service industries, or other activities calculated to produce income, ~~and subsurface field tiling projects.~~

SECTION 2. A new subsection to section 6-09.13-03 of the North Dakota Century Code is created and enacted as follows:

Subsurface field tiling projects.

SECTION 3. LEGISLATIVE MANAGEMENT STUDY - SUBSURFACE FIELD TILING. During the 2011-12 interim, the legislative management shall consider studying the laws and rules relating to subsurface field tiling. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

Approved April 20, 2011
Filed April 21, 2011

CHAPTER 85

HOUSE BILL NO. 1096

(Judiciary Committee)

(At the request of the Bank of North Dakota)

AN ACT to amend and reenact section 6-09-27, subsection 3 of section 6-09.15-01, and section 6-09.15-03 of the North Dakota Century Code, relating to venue of civil actions involving the Bank of North Dakota and the beginning entrepreneur loan guarantee program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-27 of the North Dakota Century Code is amended and reenacted as follows:

6-09-27. Civil actions on Bank transactions - Name of parties - Service - Venue.

1. Civil actions may be brought against the state of North Dakota on account of claims for relief claimed to have arisen out of transactions connected with the operation of the Bank of North Dakota upon condition that the provisions of this section are complied with. In such actions, the state must be designated as "The State of North Dakota, doing business as The Bank of North Dakota". The actions may be brought in the same manner and are subject to the same provisions of law as other civil actions. The action must be brought in Burleigh County except as provided in section 28-04-01 or except as provided in subsection 2.
2. If the Bank seeks to participate in a loan that involves multiple banks and if the loan documents require the Bank to agree that civil actions will be commenced in a state outside of North Dakota, the Bank may agree to venue outside of North Dakota if approved by the attorney general.

SECTION 2. AMENDMENT. Subsection 3 of section 6-09.15-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Loan guarantee" means an agreement that in the event of default by a beginning entrepreneur under a note and mortgage or other loan or financing agreement, the Bank of North Dakota shall pay the lender the amount agreed upon up to ~~eighty five percent~~ percentage to be determined by the Bank of the amount of principal due the lender on a loan at the time the claim is approved from the loan guarantee fund.

SECTION 3. 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~~ amount to be determined by the Bank. 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. Total outstanding guarantees under this program at the time of issuance may not exceed five percent of the Bank's tier one capital as defined by the department of financial institutions.

Approved April 8, 2011
Filed April 11, 2011