

Sixty-third
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1085

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact a new subsection to section 6-01-02 and section
2 6-03-59.2 of the North Dakota Century Code, relating to providing a definition for a financial
3 corporation and to authorize lease financing of public facilities by a state-chartered bank; to
4 amend and reenact sections 6-01-01, 6-01-04, 6-01-04.3, 6-01-05, 6-01-06, 6-01-09,
5 subsection 1 of section 6-01-10, sections 6-01-13, 6-01-14, 6-01-15, 6-01-16, 6-03-05, 6-03-11,
6 6-03-13, 6-03-27, 6-03-37, 6-05-04.1, 6-05-15.1, 6-05-26, 6-05-28, 6-05-29, and 6-08-27 of the
7 North Dakota Century Code, relating to the management and control of entities regulated by
8 the department of financial institutions, the powers and duties of the state banking board and
9 state credit union board, assessment of civil money penalties, the taking of testimony and
10 enforcement of orders, the appointment of receivers, the supervision and examination by the
11 commissioner of financial institutions, the records kept and reports made by the commissioner
12 of financial institutions, the appointment of an assistant commissioner and assignment of titles
13 within the department of financial institutions, the reports of deputies of the commissioner of
14 financial institutions, the prohibition of financial interest by officers and employees of the
15 department of financial institutions in entities regulated by the department of financial
16 institutions, the salaries of deputies of the commissioner of financial institutions, the regulation
17 and limitation of loans on real estate, the conversion, consolidation, or merger of banking
18 institutions, the removal to a new location of a banking association, requirements regarding how
19 the list of shareholders of a banking institution is to be kept and when it is to be filed with the
20 commissioner of financial institutions, reserve funds of banking associations, the right of action
21 against security deposits of trust companies, responsibilities of trust companies to a beneficiary
22 of a trust, reports regarding the increase in capital stock of trust companies to the state banking
23 board, fees paid to the department of financial institutions by trust companies, the duty of the
24 commissioner of financial institutions when an examination of a trust company discloses a

1 violation of law, the authorization and application by a nonresident bank or trust company
2 intending to establish a place of business, branch office, or agency in the state.

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

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

6 **6-01-01. Management and control - State department of financial institutions - Local**
7 **ordinances preempted.**

8 The state department of financial institutions is under the supervision of the state banking
9 board, state credit union board, and a chief officer designated as the commissioner of financial
10 institutions. The state department of financial institutions has charge of the execution of all laws
11 relating to state banks, trust companies, credit unions, building and loan associations, mutual
12 investment corporations, mutual savings corporations, banking institutions, and other financial
13 corporations, exclusive of the Bank of North Dakota. A local governing body may not adopt or
14 enforce a resolution or an ordinance regulating a financial institution, financial corporation, or
15 credit union.

16 **SECTION 2.** A new subsection to section 6-01-02 of the North Dakota Century Code is
17 created and enacted as follows:

18 "Financial corporation" means all entities regulated by the department of financial
19 institutions, excluding financial institutions and credit unions.

20 **SECTION 3. AMENDMENT.** Section 6-01-04 of the North Dakota Century Code is amended
21 and reenacted as follows:

22 **6-01-04. Powers and duties of the state banking board and state credit union board.**

23 The state banking board may adopt rules for the government of financial
24 corporationsinstitutions and trust companies mentioned in section 6-01-01 to the extent the
25 rules do not conflict with any law of this state or of the United States. The state banking board
26 shall make and enforce such orders as are necessary or proper to protect the public and the
27 depositors or creditors of those financial ~~corporations~~ and institutions and trust companies.

28 The same powers are given to the state credit union board with reference to credit unions
29 as are granted to the state banking board with reference to financial ~~corporations~~ institutions and
30 trust companies named in this chapter.

1 **SECTION 4. AMENDMENT.** Section 6-01-04.3 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **6-01-04.3. Assessment of civil money penalties.**

4 1. The commissioner or the board may assess a civil money penalty against a financial
5 institution ~~or, financial corporation, including state-chartered banks, credit unions, trust~~
6 ~~companies, and savings and loan associations~~ or credit union, or an officer, director,
7 employee, agent, or person participating in the conduct of the affairs of the financial
8 corporation, financial institution, or credit union upon finding one or more of the
9 following:

- 10 a. Failure to comply with a permanent or temporary cease and desist order that has
11 been voluntarily consented to or issued pursuant to section 6-01-04.2;
- 12 b. Failure to comply with a final order that has been voluntarily consented to or
13 issued following formal proceedings under chapter 28-32;
- 14 c. Payment of dividends in violation of section 6-03-36;
- 15 d. Loans and leases to one borrower or concern which exceed the limitations set
16 forth in sections 6-03-59 and 6-03-59.1;
- 17 e. Loans to directors, officers, and employees in violation of section 6-03-60;
- 18 f. The intentional filing of inaccurate or misleading call reports required by section
19 6-03-70 or 6-06-08;
- 20 g. Violations of loan limitations under subsection 1 of section 6-06-12 or North
21 Dakota Administrative Code section 13-03-16-03, 13-03-16-05, or 13-03-16-08;
- 22 h. Loans in violation of section 6-06-14 or subsection 2 of section 13-03-16-02 of
23 the North Dakota Administrative Code or subsection 2 of section 13-03-16-05 of
24 the North Dakota Administrative Code; or
- 25 i. Failure to file notice of change of control under section 6-08-08.1.

26 2. The commissioner or the board commences administrative proceedings to assess civil
27 money penalties by serving a complaint on the respondent stating the factual basis for
28 the commissioner's or board's belief that a violation has occurred and the amount of
29 civil penalties that the complaint seeks to impose. The complaint must contain a notice
30 of an opportunity for an administrative hearing conducted under chapter 28-32. The
31 date for the hearing must be set not less than thirty days after the date the complaint is

1 served upon the respondent. If assessment of civil money penalties are proposed
2 based on conditions described in subdivisions c through i of subsection 1, a complaint
3 may not be filed unless the respondent has been provided with prior orders,
4 examination reports, or other written communications, and has willfully refused to take
5 corrective action that the respondent was capable of taking at the time.

- 6 3. If the respondent fails to answer the complaint within twenty days of its service, the
7 commissioner or board may enter an order imposing civil money penalties upon the
8 respondent. If a hearing is held and the board concludes that the record so warrants,
9 the board may enter an order imposing civil money penalties upon the respondent.

10 The assessment order is effective and enforceable immediately upon service or upon
11 a date specified in the order, and remains effective and enforceable until it is stayed,
12 modified, terminated, or set aside by action of the board or a reviewing court.

- 13 4. In determining the amount of civil penalty imposed, the commissioner or board shall
14 consider ~~the~~whether good faith of ~~the financial institution or the person being~~
15 ~~assessed~~was exercised, and the gravity of the violation and any previous violations.
16 The commissioner or board may not impose a civil money penalty in excess of five
17 thousand dollars for each occurrence and one hundred dollars per day for each day
18 that the violation continues after service of an order. Any civil money penalties
19 collected under this section must be paid to the ~~state treasurer~~department of financial
20 institutions and deposited in the financial institutions regulatory fund.

21 **SECTION 5. AMENDMENT.** Section 6-01-05 of the North Dakota Century Code is amended
22 and reenacted as follows:

23 **6-01-05. Taking of testimony and enforcement of orders.**

24 The state banking board, the state credit union board, the commissioner, and the deputy
25 examiners each have the power to subpoena witnesses, administer oaths, and generally to do
26 and perform any and all acts and things necessary to the complete performance of the powers
27 and duties imposed upon them in this title, and to enforce the provisions of law relating to
28 financial corporations, financial institutions, and credit unions. For the purpose of enabling them
29 to perform all the duties imposed upon them, the provisions of section 27-10-23 are applicable
30 to their proceedings. Any and all orders made by the issuing board or commissioner are
31 operative immediately and remain in full force until modified, amended, or annulled by the

1 issuing board, commissioner, or by a court of competent jurisdiction in an action commenced by
2 the party against whom such order has been issued.

3 **SECTION 6. AMENDMENT.** Section 6-01-06 of the North Dakota Century Code is amended
4 and reenacted as follows:

5 **6-01-06. Appointment of receivers.**

6 The state banking board and state credit union board, except as otherwise provided in this
7 title, ~~has~~have authority and power to appoint, by ~~its~~their own order, receivers for insolvent
8 ~~corporations or~~financial institutions defined in this title ~~and credit unions under their regulatory~~
9 supervision. Such receivers have the same power and authority, and their acts have the same
10 validity, as if they had been appointed under and by the direction of a district court. Nothing
11 herein contained may be construed so as to take away from the courts the power to appoint
12 receivers of such ~~corporations or~~financial institutions and credit unions at any stage of the
13 proceedings and thus to terminate the receivership ordered by the board.

14 **SECTION 7. AMENDMENT.** Section 6-01-09 of the North Dakota Century Code is amended
15 and reenacted as follows:

16 **6-01-09. Supervision and examination by commissioner of financial institutions.**

17 The commissioner shall exercise a constant supervision over the business affairs of all
18 financial corporations ~~and,~~ financial institutions, and credit unions, including all out-of-state
19 branches of financial corporations ~~and,~~ financial institutions, ~~and branches of out-of-state~~
20 ~~state-chartered banks, savings and loan associations, or savings banks within the jurisdiction of~~
21 ~~the board~~credit unions. Either the commissioner or one or more examiners shall visit each of
22 ~~the state banking associations and other corporations, associations, and branches under the~~
23 ~~commissioner's jurisdiction~~financial institution at least once each thirty-six months to examine
24 ~~their~~its affairs and ascertain ~~their~~its financial condition. The commissioner shall inspect and
25 verify the assets and liabilities of the institution and branches to ascertain with reasonable
26 certainty that the value of the assets and the amounts of the liabilities are correctly carried on its
27 books. The commissioner shall examine the validity of mortgages held by savings institutions
28 and shall see that all of the mortgages are properly recorded. The commissioner shall
29 investigate the method of operation and conduct of the corporations and institutions and their
30 systems of accounting to ascertain whether the methods conform to the law and sound banking
31 usage and principles. The commissioner shall inquire into and report any infringement of the

1 laws governing those corporations and institutions, and for that purpose the commissioner may
2 examine the officers, agents, and employees of the corporations and institutions and all persons
3 doing business therewith. The commissioner may examine, or cause to be examined, or review
4 the books and records of any subsidiary corporation of a bank under the commissioner's
5 supervision and may require the bank to provide information on the holding company that owns
6 the bank. The commissioner shall report the condition of the corporations and institutions,
7 together with the commissioner's recommendations or suggestions in connection therewith, to
8 the state banking board, and the board may take such action as the exigencies may demand.

9 **SECTION 8. AMENDMENT.** Subsection 1 of section 6-01-10 of the North Dakota Century
10 Code is amended and reenacted as follows:

11 1. The assistant commissioner shall act as secretary and keep all proper records and
12 files pertaining to the duties and work of the ~~office of the assistant-~~
13 ~~commissioner~~department of financial institutions and the proceedings of the board.
14 The commissioner shall report to the board annually, touching on all the
15 commissioner's official acts and those of the deputy examiners, giving abstracts of
16 statistics and of the conditions of the various institutions to which the commissioner's
17 duties relate, and making such recommendations and suggestions as the
18 commissioner may determine proper.

19 **SECTION 9. AMENDMENT.** Section 6-01-13 of the North Dakota Century Code is amended
20 and reenacted as follows:

21 **6-01-13. Commissioner - Appointment of ~~deputies~~assistant commissioner and**
22 **assignment of titles within the department.**

23 The commissioner may appoint, remove, and assign appropriate titles to such deputy
24 examiners and such other employees as in the commissioner's judgment may be necessary for
25 the proper discharge of the business of the department of financial institutions. The
26 commissioner may select and designate one of said deputy examiners to be ~~chief deputy-~~
27 ~~examiner and~~the assistant commissioner to act during the absence or disability of the
28 commissioner, and in such cases the ~~deputy examiner~~assistant commissioner so designated
29 has charge of the office and shall administer its affairs. The ~~chief deputy examiner~~assistant
30 commissioner shall perform such duties as may be prescribed by the commissioner.

1 **SECTION 10. AMENDMENT.** Section 6-01-14 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **6-01-14. Deputies controlled by commissioner - Reports.**

4 Each deputy examiner provided for in this title is under the direct orders and instructions of
5 the commissioner, and shall report to the commissioner during or immediately after the
6 completion of each examination of each financial corporation ~~or, financial~~ institution, ~~or credit~~
7 union examined by the deputy examiner, together with such recommendations and suggestions
8 as the deputy examiner may deem advisable. Such report must be in such form as may be
9 prescribed by the commissioner ~~or, the state banking board, or state credit union board.~~

10 **SECTION 11. AMENDMENT.** Section 6-01-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **6-01-15. Officers and employees to be disinterested.**

- 13 1. No officer or employee of this department may have any interest, directly or indirectly,
14 in any financial corporation or financial institution within the jurisdiction of the
15 department of financial institutions, nor in any corporation or institution engaged wholly
16 or in part in the writing or issuing of bonds of or for any such corporation or institution
17 or any officer or employee thereof. Provided, however, this prohibition does not apply
18 to membership in a state-chartered credit union or savings and loan association.
- 19 2. For purposes of this section, "interest" means ownership of or investment in such
20 corporations or institutions.

21 **SECTION 12. AMENDMENT.** Section 6-01-16 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **6-01-16. Salaries of commissioner's deputies.**

24 The salary of the ~~chief deputy examiner~~ assistant commissioner and the salary of each other
25 deputy must be fixed by the commissioner within the limits of the legislative appropriation for
26 such salaries. In addition to the amounts herein specified, each deputy must be allowed the
27 deputy's actual and necessary traveling expenses when engaged in the discharge of the
28 deputy's duties. The salaries of all clerks, stenographers, and other assistants must be fixed by
29 the commissioner within the limits of the legislative appropriation therefor.

30 **SECTION 13. AMENDMENT.** Section 6-03-05 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **6-03-05. Loans on real estate - Regulation - Limitation.**

2 1. Before any real estate loan equal to or more than two hundred fifty thousand dollars
3 is made, an appraisal must be conducted by a licensed or certified appraiser if
4 required by the federal Financial Reform, Recovery, and Enforcement Act of 1989
5 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.]. A

6 2. Before any real estate loan that does not meet the requirements of subsection 1 is
7 made, a bank must obtain an appropriate evaluation of real property collateral for
8 transactions ~~that do not require~~if an appraisal by a licensed or certified appraiser is not
9 obtained. The

10 3. Regardless of the value of a real estate loan, the commissioner may requireissue an
11 order requiring an appraisal by a licensed or certified appraiser when necessary to
12 address safety and soundness concerns. Any real estate loan made must conform to
13 loan-to-value limits as established by rule by the state banking board under chapter
14 28-32.

15 **SECTION 14. AMENDMENT.** Section 6-03-11 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **6-03-11. Conversion, consolidation, or merger.**

18 Any two or more banking institutions ~~as defined in section 6-01-02~~ upon making application
19 to the state banking board may consolidate or merge if authorized by the board into one
20 banking institution under the charter of either existing banking institution on such terms and
21 conditions as lawfully may be agreed upon by a majority of the board of directors of each
22 banking institution proposing to consolidate or merge subject to rules adopted by the state
23 banking board. Before becoming final, such consolidation or merger must be ratified and
24 confirmed by the vote of the shareholders of each such banking institution owning at least
25 two-thirds of its capital stock outstanding at a meeting to be held on the call of the directors.
26 Notice of such meeting and of the purpose thereof must be given to each shareholder of record
27 by registered or certified mail at least ten days prior to the meeting. The shareholders may
28 unanimously waive such notice and may consent to such meeting and consolidation or merger
29 in writing. The capital stock and surplus of such consolidated banking institution must not be
30 less than that required under this title for the organization of a banking institution of the class of
31 the largest consolidating banking institution. Immediately after the consolidation or merger a full

1 report thereof, including a statement of the assets and liabilities of the consolidated banking
2 institution, must be made to the commissioner by the surviving banking institution. Any banking
3 institution may without approval by any state authority convert into or merge or consolidate with
4 a national banking association as provided by federal law. A national bank proposing to merge
5 into a state-chartered bank shall grant the commissioner discretionary authority to conduct an
6 examination. The commissioner shall set fees for such examination at an hourly rate sufficient
7 to cover all reasonable expenses of the department of financial institutions associated with the
8 examination. Fees must be collected by the commissioner, ~~transferred to the state treasurer,~~
9 and deposited in the financial institutions regulatory fund.

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

12 **6-03-13. Conversion to national bank - Sale of bank - Removal to new location.**

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

28 **SECTION 16. AMENDMENT.** Section 6-03-27 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **6-03-27. List of shareholders to be kept and filed.**

2 1. The president or cashier of every banking institution formed pursuant to the provisions
3 of this title, at all times, shall keep a true and correct list of the names and post-office
4 addresses of all shareholders of such banking institution, with the amount of stock
5 held by each, the date of transfer, and to whom transferred, which list shall be verified
6 on the thirty-first day of December of each year. A copy of the verified list shall be filed
7 in the office of the commissioner on the same date.

8 2. ~~Whenever a change in control occurs, a letter indicating the parties involved in the~~
9 ~~change, the amount of the stock, the date of the transfer, and to whom transferred~~
10 ~~must be forwarded to the commissioner within ten days of such change. For purposes~~
11 ~~of this subsection, "control" means owning or controlling directly or indirectly or by~~
12 ~~acting through one or more persons, of the power to vote twenty-five percent or more~~
13 ~~of any class of voting securities of the association or banking institution, controlling in~~
14 ~~any manner the election of a majority of the directors of the association or banking~~
15 ~~institution, or directing the management or policies of the association or banking~~
16 ~~institution.~~

17 3. The commissioner may request at least annually a list of all shareholders of a bank
18 holding company controlling a state-chartered banking institution.

19 **SECTION 17. AMENDMENT.** Section 6-03-37 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **6-03-37. Reserve funds.**

22 Every banking association shall have on hand at all times in available funds an amount
23 which equals ~~a percentage of its demand deposits and amounts due to other banks, plus a~~
24 ~~percentage of its time deposits. Such percentage must be set by the state banking board. Such~~
25 ~~reserve funds may consist of cash on hand and balances due to the association from the Bank~~
26 ~~of North Dakota, a federal reserve bank, or good solvent state or national banks, approved by~~
27 ~~the commissioner for such purposes and located in such cities as will facilitate banking~~
28 ~~exchange. The commissioner, whenever the commissioner deems it necessary, may require~~
29 ~~such banking association, on fifteen days' notice in writing, to increase such reserve~~
30 ~~requirements to not more than twenty percent of its demand deposits nor more than ten percent~~
31 ~~of its time deposits. Cash items must not be included in computing reserve, and no association~~

1 may carry as cash, or as cash items, any paper or other matter except legitimate bank-
2 exchange which will be cleared on the same or the next succeeding day. Whenever its reserve-
3 funds are below the required amount, no dividend may be paid.

4 If on any one day, reserves do not meet the requirements, it is not a violation of this section
5 provided that the average reserve for the period starting on Thursday of the same calendar
6 week and ending on the second Wednesday following, equals or exceeds the minimum-
7 requirements.

8 The commissioner must notify any association whose reserve is below the amount required-
9 to make good such reserve, and if such association fails to do so for a period of thirty days after
10 such notice, the state banking board may impose a penalty of not less than one hundred dollars
11 or an amount equal to seven percent per annum based on the average deficiency for the period
12 of deficiency, whichever is greater, which must be collected in the same manner as other
13 penalties prescribed in this title meets the requirements of the board of governors of the federal
14 reserve system.

15 **SECTION 18.** Section 6-03-59.2 of the North Dakota Century Code is created and enacted
16 as follows:

17 **6-03-59.2. Lease financing of public facilities.**

18 A state-chartered bank may purchase or construct a municipal building, school building, or
19 other similar public facility and, as holder of legal title, lease the facility to a municipality or other
20 public authority having resources sufficient to make all rental payments as they become due.
21 The lease agreement must provide that the lessee will become the owner of the building or
22 facility upon the expiration of the lease. All leases provided in accordance with this section must
23 be subject to the bank's legal lending limit.

24 A governing body of a political subdivision may not enter an agreement with a federally
25 chartered financial institution or state-chartered bank for lease of any property or structure to be
26 used by the political subdivision unless the agreement has been approved by a vote of at least
27 sixty percent of the qualified electors of the political subdivision voting on the question if the
28 agreement is for acquisition, improvements, or construction of any property or structure for
29 which an election would be required if the municipality undertook the acquisition or construction
30 project through issuance of bonds of the municipality. The governing body of a city or county
31 may not supersede this section under home rule authority.

1 **SECTION 19. AMENDMENT.** Section 6-05-04.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **6-05-04.1. Right of action against deposit.**

4 The security deposited with the ~~state treasurer~~department of financial institutions as
5 provided in section 6-05-04 must be held by the ~~state treasurer~~department of financial
6 institutions for the benefit of any person making any transfer or deposit of money or property in
7 the state of North Dakota to or with any trust company and who suffers loss or damage because
8 of the breach of any trust committed by such trust company. Any judgment obtained by any
9 such person from any court of competent jurisdiction may be satisfied from the security
10 deposited with the ~~state treasurer~~department of financial institutions.

11 **SECTION 20. AMENDMENT.** Section 6-05-15.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **6-05-15.1. Corporate trustee - Investment of trust funds - Commingling funds.**

14 Any trust company may invest all moneys received by it in authorized securities, and shall
15 be responsible to the owner or ~~cestui que~~beneficiary of a trust for the validity, regularity, quality,
16 value, and genuineness of these investments and securities so made, and for the safekeeping
17 of the securities and evidences thereof. When special directions are given in any order,
18 judgment, decree, will, or other written instrument as to the particular manner or the particular
19 class or kind of securities or property in which any investment must be made, it shall follow such
20 directions, and in such case it is not further responsible by reason of the performance of such
21 trust. In all other cases it may invest funds held in any trust capacity in authorized securities
22 using its best judgment in the selection thereof, and shall be responsible for the validity,
23 regularity, quality, and value thereof at the time made, and for their safekeeping. Whether it be
24 the sole trustee or one of two or more cotrustees, it may invest in fractional parts of, as well as
25 in whole, securities, or may commingle funds for investment. If it invests in fractional parts of
26 securities or commingles funds for investment, all of the fractional parts of such securities, or
27 the whole of the funds so commingled must be owned and held by the trust company in its
28 several trust capacities, and it is liable for the administration thereof in all respects as though
29 separately invested. Funds so commingled for investment must be designated collectively as a
30 common trust fund. It may, in its discretion, retain and continue any investment and security or

1 securities coming into its possession in any fiduciary capacity. The foregoing applies as well
2 whether a corporation trustee is acting alone or with an individual cotrustee.

3 **SECTION 21. AMENDMENT.** Section 6-05-26 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **6-05-26. Increase in capital stock - Action by stockholders - Report to state**
6 **~~treasurer~~banking board.**

7 The capital stock of such a corporation may be increased from time to time by a majority
8 vote of its stockholders. Such action may be taken at any regularly called general or special
9 meeting held upon sixty days' notice, when in the notice of such meeting the object thereof has
10 been set out fully. No such increase of capital stock is valid unless paid in, in cash, and reported
11 to the state ~~treasurer~~banking board in writing, verified by the oath of the president, secretary, or
12 managing officer of the corporation.

13 **SECTION 22. AMENDMENT.** Section 6-05-28 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **6-05-28. Examination by commissioner - Fees - Power over business, officers, and**
16 **employees.**

17 The commissioner shall make a full, true, complete, and accurate examination and
18 investigation of the affairs of each corporation doing business under this chapter as often as the
19 commissioner deems necessary. Such examination must be made without previous notice to
20 the corporation to be examined. Fees for such examinations must be charged by the
21 department of financial institutions at an hourly rate to be set by the commissioner, sufficient to
22 cover all reasonable expenses of the department associated with the examinations provided for
23 by this section. Fees must be paid to the ~~state treasurer~~department of financial institutions and
24 deposited in the financial institutions regulatory fund. The commissioner, in the commissioner's
25 discretion, may accept, in lieu of any examination authorized or required by this title to be
26 conducted by the department of financial institutions, the examination that may have been
27 made of such institution within a reasonable period by the federal reserve bank or federal
28 deposit insurance corporation, if a copy of such examination is furnished to the commissioner.
29 The commissioner shall assume and exercise over each such corporation and its business,
30 officers, directors, and employees all the power and authority conferred upon the commissioner
31 over financial or moneyed corporations or associations.

1 **SECTION 23. AMENDMENT.** Section 6-05-29 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **6-05-29. Duty of commissioner when examination discloses violation of law.**

4 If it appears to the commissioner from any examination made by the commissioner that any
5 such corporation has committed a violation of the law or that it is conducting its business in an
6 unsafe or unauthorized manner, or that the deposit made by it with the ~~state~~
7 ~~treasurer~~department of financial institutions, as hereinbefore provided, is insufficient to protect
8 the interests of all concerned, the commissioner, by an order addressed to such corporation,
9 shall direct the discontinuance of such illegal or unsafe practice, and order it to conform with the
10 requirements of the law or to make a further deposit with the ~~state treasurer~~department of
11 financial institutions in an amount sufficient to insure the safety of its trusts, deposits, and
12 liabilities. Whenever any corporation refuses to comply with any such order, or whenever it
13 appears to the commissioner that it is unsafe or inexpedient for any such corporation to
14 continue to transact business, the commissioner shall communicate the facts to the attorney
15 general, who thereupon shall institute such proceedings against any such corporation as the
16 case may require.

17 **SECTION 24. AMENDMENT.** Section 6-08-27 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **6-08-27. Resident place of business, branch office, or agency ~~not~~ authorized - Acts-**
20 **~~prohibited~~Application.**

21 ~~The provisions of sections 6-08-25 through 6-08-28 may not be construed to permit a~~A bank
22 or trust company, organized and doing business under the laws of any other state, territory, or
23 district than the state of North Dakota, including a national bank doing business in any other
24 state, ~~to~~may establish in this state a place of business, branch office, or agency for the conduct
25 of business as a fiduciary ~~to the extent that the state, territory, or district in which such bank or~~
26 trust company is organized or has its principal place of business grants authority for a North
27 Dakota state-chartered bank or trust company to establish a place of business, branch office, or
28 agency for the conduct of business as a fiduciary within that state's, territory's, or district's
29 jurisdiction.

30 ~~No~~Prior to the establishment of any place of business, branch office, or agency, under this
31 section, a bank or trust company organized and doing business under the laws of any state or

Sixty-third
Legislative Assembly

1 territory of the United States of America, or of the District of Columbia, other than the state of
2 North Dakota, or a national bank doing business in any other state, territory, or district, ~~may act~~
3 ~~in a fiduciary capacity in this state, except pursuant to the provisions of sections 6-08-25-~~
4 ~~through 6-08-28~~ must submit a copy of its application to the North Dakota department of
5 financial institutions for review and comment.