

# BANKS AND BANKING

## CHAPTER 79

### HOUSE BILL NO. 1441

(Representatives Keiser, Clayburgh, Coats)  
(Senators Mutch, Nething, Tallackson)

## INTERSTATE BANKING AND BRANCHING

AN ACT to create and enact two new sections to chapter 6-03, a new section to chapter 6-08, three new sections to chapter 6-08.3, and chapter 6-08.4 of the North Dakota Century Code, relating to bank powers and interstate banking and branching; to amend and reenact sections 6-01-02, 6-01-09, 6-01-17, 6-01-17.1, 6-01-17.2, 6-01-18, subsection 8 of section 6-03-02, sections 6-03-13.1, 6-03-13.4, 6-07-04.2, 6-08.3-01, 6-08.3-04, 6-08.3-13, 6-10-03, 57-35-02.1, and 57-35.2-02.2 of the North Dakota Century Code, relating to interstate banking and branching and taxation of financial institutions; to repeal sections 6-03-14, 6-03-14.1, 6-03-15, 6-03-16, 6-03-17, 6-03-18, 6-03-19, 6-08.3-02, 6-08.3-03, 6-08.3-05, 6-08.3-06, 6-08.3-10, 6-08.3-11, 6-08.3-12, and 6-08.3-14 of the North Dakota Century Code, relating to banking; and to provide an effective date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-01-02 of the 1993 Supplement to 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.

- ~~4~~ 5. "Banking department" means the state department of banking and financial institutions.
- ~~5~~ 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.
- ~~6~~ 8. "Commissioner " means the commissioner of banking and financial institutions.
- ~~6~~ 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.
- ~~7~~ 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.
- ~~7~~ 11. "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.
12. "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.
- ~~8~~ 13. "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.
- ~~8~~ 14. "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].
- ~~9~~ 15. "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

**SECTION 2. AMENDMENT.** Section 6-01-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-09.** Supervision and examination by commissioner of banking and financial institutions. The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and institutions ~~placed, out-of-state branches of financial corporations and institutions, and branches of out-of-state state-chartered banks, savings and loan associations, or savings banks~~ within the jurisdiction of the board. Either the commissioner or one or more examiners shall visit each of the state banking associations and other corporations ~~and~~, associations

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

**SECTION 3. AMENDMENT.** Section 6-01-17 of the 1993 Supplement to 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 placed under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by the provisions of 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 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 ~~shall be~~ 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 ~~or,~~ 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 to the state treasurer and deposited in the financial institutions regulatory fund.

<sup>28</sup> SECTION 4. AMENDMENT. Section 6-01-17.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-17.1. Application fees - Cost of transcript.** The following fees must accompany an application presented to the state banking board, state credit union board, or commissioner and must be paid by the commissioner into the financial institutions regulatory fund:

1. For a certificate of authority to organize a banking association, a fee of five thousand dollars, paid by the applicants.
2. A banking association's application for authority to remove its business to some place within the state other than the town in which it is presently located and to change its name, a fee of two thousand five hundred dollars.
3. National bank conversion to a state bank, a fee of two thousand five hundred dollars.
4. Application by two or more banks to merge or consolidate, a fee of one thousand five hundred dollars ~~for each merging bank.~~
5. Application by a person to sell, dispose, or purchase an association, banking institution, or holding company, a fee of five hundred dollars unless a hearing is held before the board in which case the fee is two thousand dollars.
6. A banking association's application to establish and operate a separate facility ~~for drive-in and walkup service,~~ a fee of one thousand five hundred dollars.
7. ~~A banking association's application to establish and operate a paying and receiving station, a fee of one thousand five hundred dollars.~~
- ~~8.~~ A banking association's application to establish customer electronic funds transfer centers, a fee not to exceed five hundred dollars.
- ~~9.~~ 8. For a certificate of authority to organize an annuity, safe deposit, surety or trust company, a fee of five thousand dollars.
- ~~10.~~ 9. A banking association's application for authority to exercise trust powers, a fee of one thousand five hundred dollars.
- ~~11.~~ 10. Application to organize a credit union, a fee of three hundred dollars, paid by the applicants.
- ~~12.~~ 11. Application for a credit union to establish a branch, a fee of three hundred dollars.

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<sup>28</sup> Section 6-01-17.1 was also amended by section 1 of House Bill No. 1236, chapter 80.

- ~~12~~ 12. Application by a credit union to expand its field of membership, a fee of one hundred fifty dollars.
- ~~13~~ 13. Application by a federal credit union to convert to a state credit union, a fee of three hundred dollars.
- ~~14~~ 14. For a certificate of authority to organize a savings and loan association, a fee of five thousand dollars.
- ~~15~~ 15. A savings and loan association's application to establish and operate a branch office, a fee of one thousand five hundred dollars.

The commissioner may cause a certified transcript to be prepared for any hearing conducted on an application. The costs for the original and up to six copies of the transcript must be paid by the applicant.

**SECTION 5. AMENDMENT.** Section 6-01-17.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-17.2. Additional assessment of banks and interstate branches.** Where the commissioner determines that more than one visit, inspection, or examination is necessary to promote the safety and soundness of a state banking association or a branch of an out-of-state state bank during a twelve-month period, ~~such the~~ state banking association or branch shall pay to the state treasurer a fee for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with each additional visit, inspection, or examination and report of examination and for time used by each deputy examiner, or other person ~~or persons~~ in making and otherwise preparing and typing the reports of examination herein provided for. Fees for ~~such the~~ visit, inspection, or examination must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visit, inspection, or examination provided for by this section. A state banking association or branch of an out-of-state state bank shall pay such assessment or fee within ten days of receiving a billing from the commissioner. Fees must be deposited in the financial institutions regulatory fund. The state treasurer shall report ~~such the~~ payments of fees to the commissioner, and if any ~~such~~ corporation or institution or branch is delinquent more than twenty days in making ~~such the~~ payment, the board may make an order suspending the functions of ~~such the~~ delinquent corporation or institution or branch until payment of the amount due. The commissioner may assess a penalty of five dollars a day additional for the delay. The state banking board may waive or postpone the collection of this special assessment if ~~such the~~ assessment would place an undue burden on the state banking association or branch.

**SECTION 6. AMENDMENT.** Section 6-01-18 of the North Dakota Century Code is amended and reenacted as follows:

**6-01-18. Reports and examinations of institutions by federal deposit insurance corporation, other state supervisors, or federal reserve system.** The commissioner; ~~in the commissioner's discretion,~~ may accept, in lieu of any examination authorized or required by this title to be conducted by the department of any banking institution, the examination that may have been made of ~~such the~~ institution within a reasonable period by the federal deposit insurance corporation, any other state supervisor, or the federal reserve system, if a copy of ~~such the~~ examination is furnished to the commissioner. The commissioner; ~~in the commissioner's discretion,~~ also may accept any report relative to the condition of any banking institution which

may have been obtained by ~~said that~~ corporation or system within a reasonable period in lieu of any similar report ~~which that~~ the commissioner is authorized by this title to require of ~~such the~~ institution, if a copy of ~~such the~~ report is furnished to the commissioner. The commissioner may furnish to ~~said the~~ corporation or system, or to any official or examiner ~~thereof~~, a copy or copies of any or all examinations made of any banking institutions and of any or all reports made by them, and may give access to and disclose to ~~said the~~ corporation or system, or any official or examiner ~~thereof~~, any and all information possessed by the office of the commissioner with reference to the conditions or affairs of any ~~such~~ institution insured with the federal deposit insurance corporation. ~~Nothing in this~~ This section ~~may be construed to~~ does not limit the duty of any banking institution in this state, the deposits of which are to any extent insured under the provisions of the federal act creating the federal deposit insurance corporation, or of any amendment of or substitution for ~~the same that act~~, to comply with the provisions of ~~said that~~ act, its amendments or substitutions, or the requirements of ~~said the~~ corporation relative to examinations and reports, nor ~~to~~ limit the powers of the commissioner with reference to examinations and reports under this title.

<sup>29</sup> SECTION 7. AMENDMENT. Subsection 8 of section 6-03-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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<sup>29</sup> Section 6-03-02 was also amended by section 1 of House Bill No. 1271, chapter 83, and section 1 of Senate Bill No. 2342, chapter 82.

**SECTION 8.** A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

Subsidiary depository institutions as agents. Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and any other obligations as an agent for a depository institution affiliate, subject to any requirements established by the board by rule. Notwithstanding any other law, a bank acting as an agent under this section may not be considered to be a branch of the affiliate. However, a depository institution may not conduct any activity as an agent that it is prohibited from conducting as a principal under any federal or state law.

**SECTION 9. AMENDMENT.** Section 6-03-13.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-13.1. Separate facilities authorized. Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 and under the supervision of the state banking board, and any national bank doing business in this state, may maintain and operate separate and apart from its banking house facilities for drive-in and walkup services, in addition to such service at its main banking house, and at its paying and receiving stations, if any. A separate facility must be within the corporate city limits of the main banking house or within three miles (4.83 kilometers) of such city but may not be within the corporate limits of another city. Any activity incidental to the business of banking may be transacted at a separate facility including receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and receiving payments payable at the bank. Whenever any banking institution that has been granted approval to establish and maintain a facility deems it advisable to discontinue the maintenance of the facility, the banking institution may apply to the state banking board for cancellation and the board may order the cancellation approval within the time the board specifies. The banking institution shall publish notice of the application as required by the board by rule.

**SECTION 10. AMENDMENT.** Section 6-03-13.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-13.4. Effect of authority. Nothing in sections 6-03-13.1 and 6-03-13.3 authorizes the maintenance or operation of a branch bank, but a facility authorized under those sections may be supplementary or in addition to paying and receiving stations permitted under section 6-03-14. Every paying and receiving station, banking house or office, or drive-in and walkup facility existing on August 1, 1996, must be considered a separate facility approved by the state banking board or the comptroller of the currency, as the case may be, under this chapter. A facility approved under this section may continue to provide from the facility those services or functions as were permitted to be provided before August 1, 1996. National banking associations located in this state have the same, but no greater right by virtue of sections 6-03-13.1 and 6-03-13.3 as banks organized under the laws of this state.

**SECTION 11.** A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

Branch conversions. Notwithstanding section 6-03-13.1, any bank organized under chapter 6-02, any national bank doing business in this state, or a bank established in this state by a bank holding company doing business in this state as of

January 1, 1995, may convert a branch of a federal savings and loan association located in this state which was in existence as of March 1, 1995, purchased by the bank between January 1, 1995, and August 1, 1996, into a facility of the bank to be maintained at the same branch location if the acquisition and conversion does not violate the deposit limitations provisions contained in sections 13 and 17 of this Act and the acquisition and conversion of the branch is approved by the appropriate regulatory agencies.

**SECTION 12. AMENDMENT.** Section 6-07-04.2 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-07-04.2. Acquisition of an institution.** The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may permit the acquisition of the financial institution. The state banking board may grant approval under this chapter for applications for the organization of a state bank; ~~establishment of a paying and receiving station;~~ or establishment of a ~~drive-in facility facilities.~~ The receiver of an insolvent institution or board, when acting under the provisions of this section, may reject any and all bids.

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

**SECTION 13.** A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Limitation on control of deposits. No financial institution or financial institution holding company may acquire direct or indirect ownership or control of more than twenty-five percent of North Dakota deposits through the direct or indirect acquisition of an interest in, ownership of, or control over another financial institution in this state. No financial institution or financial institution holding company may purchase the assets and assume the liabilities of a banking house or facility of any financial institution located in this state if the consummation of the acquisition results in the acquiring financial institution or financial institution holding company having direct or indirect interest in, ownership of, or control over more than twenty-five percent of North Dakota deposits. No financial institution may establish a facility outside the corporate city limits of the location of the main banking house or any authorized facility if the financial institution or its financial institution holding company has a direct or indirect interest in, ownership of, or control over more than twenty-five percent of North Dakota deposits. For purposes of this chapter, "North Dakota deposits" means North Dakota deposits as that term is defined in section 6-08.3-01.

**SECTION 14. AMENDMENT.** Section 6-08.3-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08.3-01. Definitions.** In this chapter, unless the context otherwise requires:

1. "Bank" means a bank, as that term is defined in section 6-01-02, which:

a. Has federal deposit insurance corporation insurance of deposits;



- b. Accepts deposits that the depositor has a legal right to withdraw on demand; and
  - c. Engages in the business of making commercial loans. "Adequately capitalized" means a level of capitalization that meets or exceeds all applicable federal regulatory capital standards.
2. "Bank holding company" means a bank holding company as defined in the Bank Holding Company Act of 1956, as amended [ch. 240, 70 Stat. 133; 12 U.S.C. 1841].
3. "Board" means the state banking board.
4. 3. "Commissioner" means the commissioner of banking and financial institutions.
5. "Control" means, with respect to a bank or bank holding company:
- a. Ownership; control; or power to vote, directly or indirectly, or acting through one or more other persons; twenty-five percent or more of any class of voting securities;
  - b. Control in any manner over the election of a majority of the directors; or
  - c. Power to exercise, directly or indirectly, a controlling influence over management and policies.
6. "Equity capital" means the sum of common stock, preferred stock, and surplus and undivided profits.
7. "Located in this state" means:
- a. A bank of which the organizational certificate identifies an address in this state as the principal place of conducting the business of banking; or
  - b. A bank holding company, with banking subsidiaries, the majority of deposits of which are in this state.
8. "Reciprocating state" is a state that authorizes the acquisition, directly or indirectly, or control of banks in that state by a bank or bank holding company located in this state under conditions similar to those imposed by the laws of this state as determined by the board.
9. "Reciprocating state bank holding company" means a bank holding company that conducts its operations principally in a reciprocating state; the reciprocating state is the state in which the operations of the company's banking subsidiaries are the largest in terms of total deposits; and the company is not owned or controlled by a company having its principal place of business in other than a reciprocating state.
4. "Default" means default as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].

5. "Depository institution" means depository institution as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
6. "Depository institution holding company" means depository institution holding company as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
7. "Deposit" means deposit as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
8. "Federal reserve" means the board of governors of the federal reserve system or any successor thereto.
9. "In danger of default" means in danger of default as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813].
10. "North Dakota deposits" means all deposits held at branches or offices located in this state of all depository institutions, based upon the public reports most recently filed with the appropriate regulatory agency.

SECTION 15. A new section to chapter 6-08.3 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Application to acquire a state-chartered bank. An out-of-state bank holding company may acquire a North Dakota state-chartered bank pursuant to the approval process applicable for in-state acquisitions and under the conditions of this chapter. An out-of-state bank holding company shall provide notice to the board at the time an application is filed with the applicable federal regulatory agency to acquire a North Dakota bank.

SECTION 16. A new section to chapter 6-08.3 of the 1993 Supplement of the North Dakota Century Code is created and enacted as follows:

Reporting requirements. An out-of-state bank holding company that filed an application under chapter 6-08.3 which was approved by the board before September 29, 1995, shall comply with the reporting requirements of section 6-08.3-09 for a period of five years from the date that the application was approved or longer if extended by the board due to noncompliance with the requirements of chapter 6-08.3 or order of the board approving the application.

SECTION 17. A new section to chapter 6-08.3 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Deposit limitation.

1. A depository institution or depository institution holding company may not consolidate or merge with, or acquire a North Dakota depository institution or a depository institution holding company that controls a North Dakota depository institution if the federal reserve, comptroller of the currency, federal deposit insurance corporation, or office of thrift supervision, as the case may be, determines that the depository institution or a depository institution holding company will control more than twenty-five percent of North Dakota deposits.
2. The federal reserve, comptroller of the currency, or federal deposit insurance corporation, as the case may be, may approve an acquisition

or merger under this title without regard to the limitations of this section, if the transaction involves an acquisition or merger:

- a. Of one or more depository institutions in default or in danger of default; or
- b. With respect to which assistance is provided under section 13(c) of the Federal Deposit Insurance Act [12 U.S.C. 1823(c)].

**SECTION 18. AMENDMENT.** Section 6-08.3-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08.3-04. New bank application.** Any application to organize a state-chartered bank under this title may include control by a reciprocating state bank an out-of-state bank holding company if, in addition to the conditions in chapter 6-02 ~~and~~, the application does not present any facts that would be grounds for disapproval in ~~section 6-08.3-03~~.

**SECTION 19. AMENDMENT.** Section 6-08.3-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08.3-13. Interstate banking authorization.** This chapter specifically authorizes, in accordance with section 3 of the Bank Holding Company Act of 1956, [12 U.S.C. 1842] and section 101 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [Pub. L. 103-328; 108 Stat. 2338], reciprocate interstate banking in this state. Except as authorized under this title, this chapter does not authorize the establishment in this state of branch offices of a banking subsidiary of any out-of-state bank holding company making an acquisition under this chapter.

**SECTION 20.** Chapter 6-08.4 of the North Dakota Century Code is created and enacted as follows:

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

1. "Bank" means insured bank as defined in 12 U.S.C. 1813(h), but the term does not include "foreign bank" as defined in 12 U.S.C. 3101(7), except any foreign bank organized under the laws of a territory of the United States, the deposits of which are insured by the federal deposit insurance corporation.
2. "Home state" means:
  - a. With respect to a national bank, the state in which the main office is located; and
  - b. With respect to a state bank, the state by which the bank is chartered.

**6-08.4-02. Interstate mergers.** Effective May 31, 1997, the responsible federal regulatory authority may approve a merger transaction under the Federal Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 87; 12 U.S.C. 1811 et seq.] between a North Dakota bank and an out-of-state bank.

6-08.4-03. Authority of state banks to establish interstate branches by merger. Notwithstanding section 6-08.4-02, effective May 31, 1997, a North Dakota state-chartered bank, with approval of the board, may establish, maintain and operate one or more branches in a state other than this state pursuant to an interstate merger in which the North Dakota state-chartered bank is the resulting bank. An application must be filed with the board at the time an application is filed with the responsible federal regulatory authority. The North Dakota state-chartered bank must also comply with section 6-03-11. The board may approve the interstate merger if the board finds that:

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

6-08.4-04. Interstate merger transactions and branching permitted. Effective May 31, 1997, one or more North Dakota banks may merge with one or more out-of-state banks under this chapter, and an out-of-state bank resulting from an interstate merger may maintain and operate branches of a merged North Dakota bank in this state if the conditions and filing requirements of this title are met.

6-08.4-05. Notice and filing requirements. Any out-of-state bank that will be the resulting bank pursuant to an interstate merger involving a North Dakota bank must notify and submit a copy of its interstate merger application to the board of the proposed merger not later than the date on which it files the application with the responsible federal regulatory authority.

6-08.4-06. Powers.

1. An out-of-state state-chartered bank that establishes and maintains one or more branches in this state under this chapter may conduct any activities at the branch or branches that are authorized under the laws for North Dakota state banks, except to the extent those activities may be prohibited by the laws, rules, or orders of the home state applicable to the out-of-state state-chartered bank.
2. A North Dakota state-chartered bank may conduct any activities at any branch outside this state which are permissible for an out-of-state state-chartered bank where the branch is located, except to the extent those activities are expressly prohibited by North Dakota law, rule, or order.

6-08.4-07. Enforcement. If the board or commissioner determines that a branch maintained by an out-of-state state-chartered bank is being operated in violation of any provision of North Dakota law, or that the branch is being operated in an unsafe and unsound manner, the board or commissioner has the same authority to take all enforcement actions as if the branch were a North Dakota state-chartered bank.

**SECTION 21. AMENDMENT.** Section 6-10-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-10-03. Limit on license.** No license may be granted for the purpose of conducting such business in any city wherein there already is operating a state or national bank; or an authorized ~~paying and receiving station~~ separate facility. In the event that a national or state bank or an authorized ~~paying and receiving station~~ separate facility is authorized to do, and does commence doing business in any city where a license has been granted to operate a business under this section, such license may not thereafter be renewed.

**SECTION 22. AMENDMENT.** Section 57-35-02.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-35-02.1. Imposition of tax after merger ~~or~~, consolidation, or branching.** Any banking institution or national bank that enters a consolidation or merger with one or more ~~other such~~ institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred. If a bank establishes one or more separate facilities in this state pursuant to sections 6-03-13.1 through 6-03-13.3 and section 11 of this Act after June 30, 1995, the bank shall pay taxes due under this chapter after the establishment of the separate facility or facilities in the manner and on the basis taxes would have been paid if the separate facility or facilities were created by merger or consolidation pursuant to section 6-03-14.1.

**SECTION 23. AMENDMENT.** Section 57-35.2-02.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-35.2-02.2. Payment of taxes after merger ~~or~~, consolidation, or branching.** Any banking institution or national bank that enters a consolidation or merger with one or more ~~other such~~ institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred. If a bank establishes one or more separate facilities in this state pursuant to sections 6-03-13.1 through 6-03-13.3 and section 11 of this Act after June 30, 1995, the bank shall pay taxes due under this chapter after the establishment of the separate facility or facilities in the manner and on the basis taxes would have been paid if the separate facility or facilities were created by merger or consolidation pursuant to section 6-03-14.1.

**SECTION 24. REPEAL.** Sections 6-03-14, 6-03-14.1, 6-03-15, 6-03-16, and 6-03-18 of the North Dakota Century Code and sections 6-03-17 and 6-03-19 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 25. REPEAL.** Sections 6-08.3-02, 6-08.3-03, 6-08.3-05, 6-08.3-06, 6-08.3-10, 6-08.3-11, 6-08.3-12, and 6-08.3-14 of the 1993 Supplement to the North Dakota Century Code are repealed.

**SECTION 26. EFFECTIVE DATE.** Sections 8, 14, 15, 16, 18, 19, and 25 of this Act become effective on September 29, 1995; sections 4, 7, 9, 10, 12, 21, and 24 of this Act become effective on August 1, 1996; section 20 of this Act becomes effective on May 31, 1997; and sections 22 and 23 of this Act become effective for taxable years beginning after December 31, 1995.

Approved April 6, 1995

Filed April 6, 1995

## CHAPTER 80

## HOUSE BILL NO. 1236

(Representative Berg)

(Senator Lips)

## TRUST COMPANY SUBSIDIARIES AND OFFICES

AN ACT to create and enact a new subsection to section 6-01-17.1, two new sections to chapter 6-05, a new section to chapter 57-35, and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to application fees for trust companies, the establishment of multiple offices of a trust company, the engagement in business through operating subsidiaries of a trust company, and the taxation of trust companies; to amend and reenact subsection 2 of section 57-35-01 and subsection 4 of section 57-35.2-01 of the North Dakota Century Code, relating to the taxation of trust companies; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>30</sup> SECTION 1. A new subsection to section 6-01-17.1 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

A trust company's application or notification to establish an operating subsidiary or branch office, a fee of five hundred dollars.

SECTION 2. A new section to chapter 6-05 of the North Dakota Century Code is created and enacted as follows:

Multiple offices or places of business - Application to state banking board - Hearing.

1. A trust company may establish and maintain for itself and its operating subsidiary organizations one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States upon written application to the department of banking and financial institutions for approval from the state banking board. The application must include the information specified by the board.
2. Notice of the application to establish and maintain an office or place of business must be published as required by the state banking board.
3. Within ten business days after receipt of the application by the department of banking and financial institutions, the commissioner shall determine if the application is complete and shall notify the trust company of the determination. If within the ten business days the commissioner determines the application is incomplete, the

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<sup>30</sup> Section 6-01-17.1 was also amended by section 4 of House Bill No. 1441, chapter 79.

commissioner shall request the additional information necessary to complete the application. Within ten days after receipt of the additional information, the commissioner shall notify the trust company by mail of the commissioner's determination of completeness. Within sixty days after the date for the mailing of a notice of completeness by the commissioner, the state banking board either shall approve the application or shall notify the trust company that a hearing on the application will be required.

4. Any hearing required by the state banking board must be commenced and concluded by issuance of the order of the board within ninety days after the date for the mailing of a notice of completeness by the commissioner. If the hearing is not concluded within this ninety-day period, the application is deemed approved by the board.
5. The state banking board may disapprove the application if it finds, after a hearing:
  - a. The establishment and maintenance of the office or place of business will jeopardize the solvency of the trust company; or
  - b. The operation of more than one office or place of business by the trust company will place the company in an unsafe and unsound condition.

SECTION 3. A new section to chapter 6-05 of the North Dakota Century Code is created and enacted as follows:

Structure of trust company - Operating subsidiaries - Notice - Hearing - Supervision.

1. A trust company may conduct its business directly or through one or more operating subsidiary organizations, including a limited purpose bank that is established under the laws of a jurisdiction other than this state. The activities of an operating subsidiary of a trust company must be limited to those activities in which the trust company itself could engage.
2. A trust company that desires to establish or acquire an operating subsidiary must submit a written notification to the department of banking and financial institutions not less than thirty days before the trust company's investment in the subsidiary organization is made. The notification must include the information specified by the state banking board.
3. Within ten business days after receipt of the notification by the department, the commissioner shall determine if the notice is complete and shall notify the trust company of the determination. If within the ten business days the commissioner determines that the notice is incomplete, the commissioner shall request the additional information necessary to complete the notice. Within ten days after receipt of the additional information, the commissioner shall notify the trust company by mail of the commissioner's determination of completeness. The commissioner shall inform the state banking board of the receipt of a completed notice. Upon expiration of thirty days from the date for the mailing of a notice of completeness, the trust company's investment in the operating



subsidiary in accordance with its notice is deemed approved by the state banking board, unless within that thirty-day period the state banking board has served the trust company with a notice of hearing on the company's proposed investment.

4. Any hearing required by the state banking board must be commenced and concluded by the issuance of the order of the board within ninety days after the date for the mailing of a notice of completeness by the commissioner. If the hearing is not concluded within the ninety-day period, the investment by the trust company is deemed approved by the state banking board.
5. The state banking board may prohibit the trust company's investment in an operating subsidiary organization if it finds after a hearing:
  - a. The investment will jeopardize the solvency of the trust company; or
  - b. The operation of the trust company through the subsidiary organization will place the trust company in an unsafe and unsound condition.
6. The state banking board has the same authority to examine and supervise an operating subsidiary as exists for the trust company.

**SECTION 4. AMENDMENT.** Subsection 2 of section 57-35-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Trust company" includes any trust company organized under the laws of this state with its principal place of, the United States, another state, a foreign country, or a dependency or insular possession of the United States, and doing business in this state.

**SECTION 5.** A new section to chapter 57-35 of the North Dakota Century Code is created and enacted as follows:

Imposition of tax on interstate trust companies. If the provisions of this chapter do not fairly represent the extent of the trust company's business activity in this state, the tax commissioner may require, with respect to all or any part of the trust company's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the trust company's income.

**SECTION 6. AMENDMENT.** Subsection 4 of section 57-35.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Trust company" means any trust company organized under the laws of this state, any other state, or of the United States, with a place of a foreign country, or a dependency or insular possession of the United States, and doing business in this state.

**SECTION 7.** A new section to chapter 57-35.2 of the North Dakota Century Code is created and enacted as follows:

Imposition of tax on interstate trust companies. If the provisions of this chapter do not fairly represent the extent of the trust company's business activity in this state, the tax commissioner may require, with respect to all or any part of the

trust company's business activity, if reasonable, the employment of another method to effectuate an equitable allocation and apportionment of the trust company's income.

**SECTION 8. EFFECTIVE DATE.** Sections 4, 5, 6, and 7 of this Act are effective for taxable years beginning after December 31, 1994.

Approved March 29, 1995

Filed March 29, 1995

**CHAPTER 81****SENATE BILL NO. 2364**

(Senators Traynor, Grindberg)  
(Representative Mahoney)

**BANK OFFICER AND DIRECTOR LIABILITY**

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to liability of bank officers and directors; and to provide for retroactive application.

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

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

**Liability of bank officers and directors.** No claim or action seeking to recover money damages may be brought by the federal deposit insurance corporation, resolution trust corporation, or other federal banking regulatory agency against any director or officer, including any former director or officer, of any insured financial depository institution unless the claim or action arises out of the gross negligence, or willful or intentional misconduct of the officer or director during the term of office with the insured financial institution.

**SECTION 2. RETROACTIVE APPLICATION OF ACT.** This Act is retroactive in application.

Approved March 2, 1995  
Filed March 3, 1995

## CHAPTER 82

### SENATE BILL NO. 2342

(Senator W. Stenehjem)

## BANK AND TRUST COMPANY INVESTMENTS

AN ACT to amend and reenact sections 6-03-02 and 6-05.1-03 of the North Dakota Century Code, relating to conflict of interest for banks acting as fiduciaries in investment in securities.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>31</sup> SECTION 1. AMENDMENT. Section 6-03-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-02. Powers.** After an association has made and filed articles of association and an organization certificate, it becomes a body corporate, and as such, and in the name designated in the certificate, it, subject to section 6-03-01, has the power:

1. ~~Repeated by S.L. 1973, ch. 80, § 21.~~
- 2- To have succession for a period of twenty-five years from its organization, unless it is sooner dissolved according to the provisions of this title, or unless its franchise becomes forfeited by some violation of law.
- 3- 2. To make contracts.
- 4- 3. To sue and be sued.
- 5- 4. To 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.
- 6- 5. To provide, by its board of directors, bylaws not inconsistent with the laws of this state to regulate the manner in which its directors and officers must be elected or appointed. Vacancies in the board of directors, not exceeding one-third of the whole membership thereof in any calendar year, must be filled by a majority vote of the remaining members. The bylaws must provide a method for filling vacancies exceeding that number.

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<sup>31</sup> Section 6-03-02 was also amended by section 1 of House Bill No. 1271, chapter 83, and section 7 of House Bill No. 1441, chapter 79.

- ~~7~~ 6. To provide, by its board of directors, bylaws not inconsistent with the laws of this state to regulate the manner in which its stock and property must be transferred, its business conducted, and the privileges granted to it by law exercised and enjoyed.
- ~~8~~ 7. To exercise, by its board of directors or duly authorized officers or agents subject to law, all such incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from the provisions of chapter 6-05; providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide such services within this state. A bank which provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized paying and receiving station or facility approved by the state banking board, must make such equipment and service available for use by customers of any other bank upon the request of such other bank to share its use and the agreement of such other bank to share pro rata all costs incurred in connection with its installation and operation, and such electronic operations are not deemed to be the establishment of a branch, nor of a paying and receiving station, nor of a separate facility. Such electronic operations at premises separate from its banking house or duly authorized paying and receiving station or facility, must be considered a customer electronic funds transfer center and may be established subject to rules and regulations that the state banking board shall adopt.
- ~~9~~ 8. To enter into contracts, incur obligations, and generally to perform all acts necessary or appropriate to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may be or become available or may inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators under the provisions of the federal act creating the federal deposit insurance corporation or under any other act or regulation of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments thereto or substitution therefor, when authorized so to do by its board of directors.
- ~~10~~ 9. To subscribe for and acquire any stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.
- ~~11~~ 10. To take, receive, and hold United States postal savings deposits, and to take any action necessary to procure the deposit of the same.
- ~~12~~ 11. To enter into the business of dealing in securities and stock for the purpose of purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of individual and institutional customers and to provide portfolio investment advisory,

management, information, forecasting, and research services to such customers in combination with or separate from such purchases and sales.

~~12.~~ 12. To exercise fiduciary powers upon application as provided under section 6-05-01 as the board may prescribe by rule.

13. To invest all moneys received by it in a trust, in authorized securities, and be responsible to the owner or a third-party beneficiary for the validity, regularity, quality, value, and genuineness of these investments and securities at the time made and for the safekeeping of these securities and the evidences of the securities. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment may be made, a bank shall follow this direction and, in such case, it is not further responsible by reason of the performance of the trust. A bank may retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. For the faithful discharge of its duties and the discharge of its trust, it is entitled to reasonable compensation or an amount as has been or may be agreed upon by the parties and all necessary expenses, with legal interest on those amounts. The trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940 [Pub. L. 76-686; 54 Stat. 789; 15 U.S.C. 80a-1 - 80a-52]. The fact that the banking institution, or an affiliate of the banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise, and receiving compensation for the services does not preclude the trustee from investing in the securities of that investment company or trust. The banking institution and trust shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation, and the relationship of ownership. No compensation or commission paid or agreed to be paid to it for the negotiation of a loan or the execution of a trust may be deemed interest within the meaning of the law, nor may any excess thereof over the legal rate be deemed usury.

**SECTION 2. AMENDMENT.** Section 6-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**6-05.1-03. Permissible business of subsidiary trust companies.** The permissible business of a subsidiary trust company is to engage in such trust business as may be engaged in by a trust company pursuant to section 6-05-08. A subsidiary trust company may not exercise any of the powers provided in subsection § 7 of section 6-03-02, nor conduct commercial banking business, but may maintain deposits of funds of fiduciary accounts not currently invested.

Approved April 4, 1995  
Filed April 4, 1995

**CHAPTER 83****HOUSE BILL NO. 1271**

(Representative Keiser)

**ELECTRONIC FUNDS TRANSFER FEES**

AN ACT to amend and reenact subsection 8 of section 6-03-02 of the North Dakota Century Code, relating to fees charged by banks for the use of electronic funds transfer equipment.

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

<sup>32</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 6-03-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. To exercise, by its board of directors or duly authorized officers or agents subject to law, all such incidental powers as are necessary to carry on the business of banking, including: discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; and loaning money upon real or personal security, or both; soliciting and receiving deposit in the nature of custodial accounts funded only in savings accounts or certificates of deposit for the purpose of retirement fund contracts or pension programs, and such custodial accounts are exempt from the provisions of chapter 6-05; providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide such services within this state. A bank which provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized paying and receiving station or facility approved by the state banking board, must make such equipment and service available for use by customers of any other bank upon the request of such other bank to share its use and the agreement of such other bank to share pro rata all costs incurred in connection with its installation and operation, and such electronic operations are not deemed to be the establishment of a branch, nor of a paying and receiving station, nor of a separate facility. Such electronic operations at premises separate from its banking house or duly authorized paying and receiving station or facility, must be considered a customer electronic funds transfer center and may be established subject to rules and regulations that the state banking board shall adopt. A financial institution engaging in electronic funds transfers in this state may impose a transaction fee for the use of an electronic funds transfer facility if the imposition of the fee is disclosed at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the

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<sup>32</sup> Section 6-03-02 was also amended by section 1 of Senate Bill No. 2342, chapter 82, and section 7 of House Bill No. 1441, chapter 79.

transaction fee. The fee may be in addition to any other charge imposed by the operator at an electronic funds transfer facility or by any other financial institution.

Approved March 24, 1995

Filed March 27, 1995



**CHAPTER 84****HOUSE BILL NO. 1263**

(Representative Keiser)

**BANK REAL ESTATE LOAN LIMITATIONS**

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to real estate mortgages.

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

**SECTION 1. AMENDMENT.** Section 6-03-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-05. Loans on real estate - Regulation - Limitation.** Before any real estate loan in excess of one hundred thousand dollars is made an appraisal must be conducted by a licensed or certified appraiser as required by the Federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.] or, if not so required, by an individual or appraisal committee who is independent of the transaction. The selected appraiser or appraisal committee shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors or its loan committee, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board or its loan committee to determine if the loan shall be granted. Such written report must be made a permanent record in the bank's files and must be made available to the commissioner. ~~No unamortized loan secured by realty may be made for a period exceeding five years and may not exceed fifty percent of the appraised value of the Any real estate offered as security loan made must conform to loan-to-value limits as established by rule by the state banking board under chapter 28-32.~~

~~Any amortized real estate loan may be made in an amount not to exceed ninety percent of the appraised value of the real estate offered as security unless the amount above this limitation is government guaranteed or insured by a private mortgage loan within a period of not more than thirty years.~~

Approved March 24, 1995

Filed March 27, 1995

## CHAPTER 85

## HOUSE BILL NO. 1175

(Representative Clayburgh)

## BANK RELOCATION, DIVIDENDS, AND LOANS TO OFFICERS

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to relocation of a bank facility due to an emergency; and to amend and reenact sections 6-03-36 and 6-03-60 of the North Dakota Century Code, relating to the payment of dividends by a banking institution or association and loans to directors, officers, and employees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Temporary relocation of bank operations. In the event of an emergency, a bank may apply to the commissioner to relocate its main banking house, banking house or office, paying and receiving station, or drive-in and walk-up facility until the former location is repaired to allow bank operations to resume. No notice or public hearing need be held to act upon the temporary relocation request.

SECTION 2. AMENDMENT. Section 6-03-36 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. No director or officer of an association may permit the impairment of an association's capital by the payment of dividends or otherwise.
2. Except as provided in subsection 4, no dividend may be paid which exceeds the following amount:
  - a. An association's ~~retained~~ net profits for the period beginning January one of the year for which the proposed dividends are declared and ending as ~~of reported in the date used to determine shareholders of record~~ most recent quarter-end call report; plus
  - b. The association's ~~retained~~ net profits for the preceding two calendar years as reported in the yearend call report; less
  - c. Any required transfers to:
    - (1) Surplus;
    - (2) Funds for the retirement of preferred stock, capital notes, and debentures.
3. For the purpose of this section, "net profits" means the ~~remainder of all earnings from the association's current annual operations plus actual~~

recoveries of past losses on loans, investments, and other assets; after deducting from the total, all current operating expenses; actual losses; accrued dividends on preferred stock, if any; accrued interest on capital notes and debentures; unrealized losses from investment in shares of investment companies registered under the Investment Companies Act of 1940; and all federal and state taxes institution's net profits after taxes prior to extraordinary items less dividends as reported on the call reports.

4. Payment of a dividend which exceeds the calculated amount in subsection 2 may be made only with prior approval of the commissioner or state banking board.

**SECTION 3. AMENDMENT.** Section 6-03-60 of the North Dakota Century Code is amended and reenacted as follows:

**6-03-60. Loans to and purchases from directors, executive officers, and employees principal shareholders - Restrictions - Conditions - Penalty - Civil liability.** No director or managing officer of any state banking association; nor the commissioner, assistant commissioner, nor deputy examiners; shall be permitted to borrow an amount in excess of twenty-five thousand dollars from any state banking association without first obtaining the approval of a majority of the board of directors of said banking association; excluding from such majority any director whose application is to be acted upon; and no action upon any loan herein provided for shall be taken by the board in the presence of the applicant. Every loan shall be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and shall be in strict conformity with the association's rules and regulations. No executive officer of any state banking association shall borrow from or otherwise become indebted to any state banking association of which he is an executive officer in amounts or in an aggregate amount which exceed those authorized by the state banking board; for any loan or extension of credit, including loans secured by a first mortgage on the officer's residence, or a loan or extension of credit to finance the education of the officer's children. At no time shall may any combination of loans or extensions of credit or both made by a state banking association to an officer of that association exceed the limitation on loans to one person or concern specified in section 6-03-59, federal law, or federal rule. The chairman of the board, the president, every vice president, the cashier, the secretary, and the treasurer of a company or bank are considered executive officers, unless (1) the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company; from participation; other than in the capacity of a director, in major policymaking functions of the bank or company; and (2) the officer does not actually participate therein.

No director, officer, or employee of a bank shall sell to such bank, directly or indirectly, any mortgage, bond, note, stock, or other property whatsoever without first obtaining the written approval of the board of directors. The action of the board of directors in connection with the loans and discounts required under this section shall be made a matter of permanent record in the minute books of the banking association. Any shareholder, officer, or director of any banking association who knowingly shall violate the provisions of this section shall be held

liable in his personal and individual capacity for all loss or damage which the association or any person shall sustain in consequence thereof and shall be guilty of a class B misdemeanor. The commissioner may require, at any time, the payment or repurchase of loans, securities, or obligations herein referred to.

Approved March 27, 1995

Filed March 27, 1995

**CHAPTER 86****HOUSE BILL NO. 1264**  
(Representative Keiser)**BANKING ASSOCIATION CALL REPORTS**

AN ACT to amend and reenact section 6-03-70 of the North Dakota Century Code, relating to the publication of call reports by state banking associations.

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

**SECTION 1. AMENDMENT.** Section 6-03-70 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-70. Reports - Regular and special - Publication - Penalty.** Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which must be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which must be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the commissioner within thirty days after receipt of the request for the same. ~~Each report, in a form prescribed by the commissioner, must be published within sixty days of the call date, at the expense of the association, in some newspaper in the city where such bank is located, and in case there is no such newspaper, then in a legal newspaper of the county in which such association is located.~~ The commissioner may request an amended call for reports filed in error and may require republication of the call report containing material errors. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the association. Every association which fails to make and transmit any report required by this section shall forfeit and pay to the state treasurer for deposit in the financial institutions regulatory fund a penalty of two hundred dollars for each delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 87****HOUSE BILL NO. 1247**

(Representative Martinson)

**TRUST COMPANIES**

AN ACT to amend and reenact sections 6-05-01, 6-05-04, and 59-04-21 of the North Dakota Century Code, relating to the formation of trust companies, surety deposits of trust companies, and expenses and attorney's fees for a trust estate.

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

**SECTION 1. AMENDMENT.** Section 6-05-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

**SECTION 2. AMENDMENT.** Section 6-05-04 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-05-04. Surety deposit investments required - Securities in which investment may be made.** Every corporation organized under this chapter and every foreign corporation before engaging in similar comparable activities within this state shall either deposit with any federal reserve bank, the Bank of North Dakota, or any other custodian approved by the commissioner, securities as provided by this section or pledge a certificate of deposit as provided by this section. The deposit or pledge may not be less than fifty thousand dollars or less than one-sixth of the par value of the capital stock of the corporation, whichever is the greater. However, no corporation is required to deposit or pledge more than five hundred thousand dollars. The deposit certificate or pledge agreement must authorize the commissioner to cause such deposit, in part or in whole, to be transferred to the commissioner upon the commissioner's demand. An original of ~~such~~ the deposit certificate of deposit or pledge must be furnished to the commissioner. ~~The securities so deposited~~ deposit or pledge must be:

1. Bonds of the United States or of this state;
2. Bonds of other states which have the approval of the state auditor and the commissioner of banking and financial institutions;
3. Bonds or obligations of any township, school district, city, or county within this state, whose total bonded indebtedness does not exceed five percent of the then assessed valuation thereof;
4. Bonds or promissory notes secured by first mortgages or deeds of trust upon unencumbered real estate situated within the state of North Dakota worth two and one-half times the amount of the obligation so secured;
5. Obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the African Development Bank;  
**or**
6. United States treasury bills or notes of an agency thereof;
7. Certificates of deposit fully insured by the federal deposit insurance corporation from banks located within this state; or
8. Certificates of deposit issued by the Bank of North Dakota.

**SECTION 3. AMENDMENT.** Section 59-04-21 of the North Dakota Century Code is amended and reenacted as follows:

59-04-21. Expenses and attorney's fees allowed. The trustee ~~shall~~ must be allowed all necessary expenses in the care, management, and settlement of the trust estate. ~~No compensation shall be allowed for attorney's services rendered to such trustee unless the same were performed by or under the direction of an attorney at law who is a resident of and admitted to practice in this state.~~ The trustee may pay attorney's fees and costs reasonably necessary in the performance of the trustee's duties.

Approved March 24, 1995

Filed March 27, 1995



**CHAPTER 88****HOUSE BILL NO. 1425**

(Representative Clayburgh)

(Senator Grindberg)

**TRUST FUND DEPOSITS**

AN ACT to create and enact a new section to chapter 6-05 of the North Dakota Century Code, relating to deposit of trust funds awaiting investment or distribution in affiliates.

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

**SECTION 1.** A new section to chapter 6-05 of the North Dakota Century Code is created and enacted as follows:

**Deposit of trust funds awaiting investment or distribution in affiliates.** A bank or trust company qualified to and acting as fiduciary or cofiduciary in this state may deposit trust funds awaiting investment or distribution in a bank, including, without limitation, a bank that owns or controls, or that is owned or controlled by a corporation that owns or controls, the bank or trust company.

Approved March 21, 1995

Filed March 23, 1995

**CHAPTER 89****HOUSE BILL NO. 1176****(Representative Clayburgh)****CREDIT UNION COMPUTER SERVICER  
EXAMINATIONS**

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to examination of credit union computer servicers.

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

**SECTION 1.** A new section to chapter 6-06 of the North Dakota Century Code is created and enacted as follows:

**Examination of credit union computer servicers.** The commissioner may conduct an examination or inspect the records and operation of any computer servicer providing data processing services for any credit union under the department of banking and financial institutions' jurisdiction.

Approved March 31, 1995

Filed March 31, 1995

**CHAPTER 90****SENATE BILL NO. 2287**

(Senators Tomac, St. Aubyn)

**CREDIT UNION OFFICER BORROWINGS LIMITATION**

AN ACT to amend and reenact section 6-06-20 of the North Dakota Century Code, relating to the borrowing of moneys by credit union directors and committee members.

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

**SECTION 1. AMENDMENT.** Section 6-06-20 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-20. Borrowings of directors and committee members limited - Repayment of loans.** No director or member of any committee may borrow from the credit union in which the director or member holds office more than ~~two thousand five hundred~~ ten thousand dollars plus pledged shares and deposits less any loan balance therein, unless the application is approved by three-fourths of the other members of the board of directors. The director or member may guarantee or endorse paper for other borrowers. A borrower may repay the borrower's loan in whole or in part on any day that the office of the credit union is open for business.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 91****HOUSE BILL NO. 1438**

(Representative Mickelson)

(Senator Krebsbach)

**CHECKS ISSUED WITHOUT ACCOUNT**

AN ACT to amend and reenact section 6-08-16.1 of the North Dakota Century Code, relating to issuing a check or draft without an account; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 6-08-16.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-08-16.1. Issuing check or draft without account - Penalty.** Any person who issues any check, draft, or order upon any bank or depository, for the payment of money, and, at the time of ~~such~~ the issuance does not have an account with the bank or depository upon which the check, draft, or order was written, is guilty of a class A misdemeanor.

Approved March 1, 1995

Filed March 2, 1995

**CHAPTER 92**

**SENATE BILL NO. 2479**

(Senators Krebsbach, Langley, Lips, B. Stenehjem)  
(Representatives Carlisle, Keiser)

**DISHONORED CHECK OFFENSE CONSOLIDATION**

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to the consolidation of offenses for dishonored checks.

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

**SECTION 1.** A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

**Consolidation of offenses - Dishonored checks.** When the same person commits two or more offenses under sections 6-08-16, 6-08-16.1, and 6-08-16.2 in more than one county of this state, the offenses may be combined and prosecution may be brought in any county in which one of the dishonored checks was issued.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 93****SENATE BILL NO. 2314**  
(Senators Robinson, Redlin, Streibel)  
(Representatives Nichols, Svedjan)**POLITICAL SUBDIVISION INVESTMENT OF SURPLUS FUNDS**

AN ACT to amend and reenact sections 6-08.1-03, 21-04-09, and 21-06-07 of the North Dakota Century Code, relating to confidentiality of financial institution customer information and the pledge of securities and the investment of surplus funds by political subdivisions.

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

**SECTION 1. AMENDMENT.** Section 6-08.1-03 of the 1993 Supplement to 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 commissioner of agriculture 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.

<sup>33</sup> **SECTION 2. AMENDMENT.** Section 21-04-09 of the North Dakota Century Code is amended and reenacted as follows:

**21-04-09. Pledge of security in place of depository bond.** The board of any public corporation may accept from any financial institution, as security for

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<sup>33</sup> Section 21-04-09 was also amended by section 1 of House Bill No. 1079, chapter 241.

repayment of deposits, a pledge of securities in lieu of a personal or surety bond. When securities are so pledged to the board of any public corporation, such board shall require security in the amount of one hundred ten dollars for every one hundred dollars of public deposits. Securities which are eligible for such pledge are bills, notes, or bonds issued by the United States government, its agencies or instrumentalities, all bonds and notes guaranteed by the United States government, federal land bank bonds, bonds, notes, warrants, certificates of indebtedness, insured certificates of deposit, shares of investment companies registered under the Investment Companies Act of 1940, and all other forms of securities issued by the state of North Dakota, its boards, agencies, or instrumentalities, or by any county, city, township, school district, park district, or other political subdivision of the state of North Dakota, whether payable from special revenues or supported by the full faith and credit of the issuing body, and bonds issued by any other state of the United States or such other securities approved by the banking board. Such securities may and securities sold under agreements to repurchase as described in section 21-06-07 must be delivered to and held for safekeeping by any financial institution, other than the depository, which the depository and the public corporation may agree upon, which financial institution prior thereto has been approved as a custodian for such purpose by the state auditor. Whenever any such securities are so deposited for safekeeping with any custodian, such custodian shall issue a receipt therefor jointly to the depository and the public corporation.

Any financial institution pledging such securities, at any time it deems it advisable or desirable, and without the consent of the board of the public corporation, may substitute other eligible securities for all or any part of the securities so pledged. The securities so substituted must, at the time of such substitution, have a market value at least equal to the market value of the securities released and delivered to the depository.

In the event of such substitution the holder or custodian of the pledged securities shall, on the same day, forward by registered or certified mail to the public corporation and the depository financial institution a receipt specifically describing and identifying both the securities so substituted and those released and returned to the depository financial institution.

Any depository financial institution may fulfill the pledge of securities requirements of this section by maintaining a security pledge schedule that establishes the following:

1. The names of all public bodies maintaining deposits with the financial institution.
2. The amount of each deposit maintained by each public body.
3. The amount of federal deposit insurance corporation insurance applied to each account.
4. The net deposits exceeding federal deposit insurance corporation coverage for each account.
5. The amount of net deposit exceeding federal deposit insurance corporation deposit insurance multiplied by one hundred ten percent for each account.
6. The amount of securities needed to be pledged to fulfill the requirements of this section.

7. The total number of qualified securities pledged by the financial institution under the requirements of this section.

A financial institution is in compliance with this section as long as the security pledge schedule discloses the total qualified securities pledged in excess of the total pledges needed for a total amount of deposits maintained with all the public bodies with the financial institution as verified by the custodian of the securities every three months and copies thereof are provided to the custodian of the securities and to each of the public corporations maintaining deposits with the financial institution.

No pledge of security or bond may be required for any funds deposited with a financial institution to the extent that such deposits are insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation or the national credit union association.

<sup>34</sup> SECTION 3. AMENDMENT. Section 21-06-07 of the North Dakota Century Code is amended and reenacted as follows:

21-06-07. Political subdivisions may invest surpluses. From and after the passage and approval of this section, it is lawful for counties, cities, school districts, park districts, and townships in this state to invest surpluses in their general fund, or surpluses in any special or temporary fund, in bonds, treasury bills and notes or other securities which are a direct obligation of the treasury of the United States or of an instrumentality thereof, or in securities sold under agreements to repurchase written by a financial institution in which the underlying securities for the agreement to repurchase are of a type listed above; provided, however, that bonds, treasury bills and notes or other securities so purchased must be taken into consideration in making levies for the ensuing year, and when funds are needed for current expenses, the governing board and authorities of such municipalities shall be authorized to convert said obligations into cash.

Approved March 13, 1995  
Filed March 13, 1995

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<sup>34</sup> Section 21-06-07 was also amended by section 1 of House Bill No. 1246, chapter 242.



**CHAPTER 94****SENATE BILL NO. 2201**

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

**BANK OF NORTH DAKOTA LOAN PURCHASE AND PARTICIPATION**

AN ACT to create and enact a new subdivision to subsection 1 of section 6-09-15 of the North Dakota Century Code, relating to purchase of loans by the Bank of North Dakota; and to amend and reenact subsection 3 of section 6-09-15 of the North Dakota Century Code, relating to participation in loans by the Bank of North Dakota.

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

**SECTION 1.** A new subdivision to subsection 1 of section 6-09-15 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

If the Bank is participating in the loan and the Bank deems it is in the best interests of the Bank to do so, it may purchase the remaining portion of the loan from a participating lender that is closed by regulatory action, or from the receiver of the participating lender's assets.

**SECTION 2. AMENDMENT.** Subsection 3 of section 6-09-15 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Purchase participation interests in loans made or held by banks, bank holding companies, state or federally chartered lending agencies or institutions, ~~or~~ any other financial institutions, or any other entity that provides financial services and that meets underwriting standards that are generally accepted by state or federal financial regulatory agencies.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 95****SENATE BILL NO. 2152**

(Agriculture Committee)

(At the request of the Bank of North Dakota)

**BEGINNING FARMER REVOLVING LOAN FUND  
INTEREST RATE**

AN ACT to amend and reenact subsection 4 of section 6-09-15.5 of the North Dakota Century Code, relating to the beginning farmer revolving loan fund interest rate.

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

**SECTION 1. AMENDMENT.** Subsection 4 of section 6-09-15.5 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A loan made from the fund must have the interest rate fixed at one percent below the Bank's then current base rate for the first five years with a maximum rate of six percent per year ~~and fixed again at one percent below the Bank's then current base rate for the next five years with a maximum rate of eight percent per year.~~ For the remaining period of the loan, interest must be charged and may float and variable at one percent below the Bank's then current base rate for the second five years. During the second five years, the variable rate must be adjusted annually on the anniversary date. The rate during the remaining term of the loan floats at the Bank's base rate as in effect from time to time.

Approved April 5, 1995

Filed April 6, 1995

**CHAPTER 96**

**HOUSE BILL NO. 1473**

(Representatives Kaldor, Nichols, Sitz)  
(Senators Redlin, C. Nelson)

**INDUSTRIAL COMMISSION MEMBER LOAN  
DISCLOSURE**

AN ACT relating to limitations on loans by the Bank of North Dakota and disclosure of interests in loans by members of the industrial commission.

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

**SECTION 1. Limitations on loans by the Bank of North Dakota - Disclosure of interests in certain loans.** Notwithstanding any other provision of law, the Bank of North Dakota may not make any loan or otherwise give its credit to a member of the industrial commission during the member's term on the industrial commission. Before taking office, a member of the industrial commission shall file a statement with the Bank of North Dakota indicating any personal interest that that member has in any loan or loan application in existence or pending at any time during the member's term on the industrial commission.

Approved April 7, 1995  
Filed April 7, 1995

## CHAPTER 97

## HOUSE BILL NO. 1138

(Political Subdivisions Committee)

(At the request of the North Dakota Municipal Bond Bank)

## MUNICIPAL BOND BANK DEFINITIONS, LOANS, AND RESERVES

AN ACT to amend and reenact subsections 5 and 6 of section 6-09.4-03, section 6-09.4-06, and subsection 4 of section 6-09.4-10 of the North Dakota Century Code, relating to the definitions applicable to the municipal bond bank, the lending powers of the municipal bond bank, and required debt service reserve for bonds of the municipal bond bank.

## BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 6-09.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "Municipal security" means an evidence of indebtedness issued by a political subdivision ~~and payable from taxes or from rates, revenues, charges, or assessments, or distributions of revenue pursuant to a state appropriation or statutory or constitutional provision or under currently existing contracts of the bureau of Indian affairs, or payable from a pledge of property~~, but does not include an evidence of indebtedness issued pursuant to chapter 40-57 other than an evidence of indebtedness that qualifies as an "exempt facility bond" as defined under 26 U.S.C. 142(a)(4), (5), or (6) [Pub. L. 99-514; 100 Stat. 2606], as amended, and regulations promulgated and officially proposed to be promulgated thereunder, issued to provide one of the following:
- a. A facility for the furnishing of water.
  - b. A wastewater facility.
  - c. A nonpoint source pollution control facility.

SECTION 2. AMENDMENT. Subsection 6 of section 6-09.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Political subdivision" means a political subdivision of the state or an agency or authority of a political subdivision of the state as authorized by law including, but not limited to, a county, city, school district, township, park district, airport authority, city or county housing authority, municipal parking authority, municipal pipeline authority, irrigation district, board of drainage commissioners, fire protection district, or water resource district and any member-owned association, nonprofit corporation, or similar entity or organization established and organized primarily for operating a rural water distribution system:

- a. A local governmental unit created by statute or by the Constitution of North Dakota for local governmental or other public purposes.
- b. The state department of health and consolidated laboratories, or any other state agency or authority, or any member-owned association or publicly owned and nonprofit corporation:
  - (1) Operating any public water system that is subject to chapter 61-28.1.
  - (2) Operating any facility, system, or other related activity that is eligible for financial assistance under chapter 61-28.2.
- c. The Bank of North Dakota, for purposes of the revolving loan fund program established by chapter 61-28.2.

SECTION 3. AMENDMENT. Section 6-09.4-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

The bond bank may lend money to the Bank of North Dakota under terms and conditions requiring the Bank to use the proceeds to make loans for agricultural improvements that qualify for assistance under the revolving loan fund program established by chapter 61-28.2.

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

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

**SECTION 4. AMENDMENT.** Subsection 4 of section 6-09.4-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the bond bank for deposit in ~~said~~ the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore ~~said~~ the reserve fund to an amount equal to the required debt service reserve. However, the commission may approve a resolution for the issuance of bonds, as provided by section 6-09.4-06, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under that resolution.

Approved April 11, 1995  
Filed April 12, 1995

## CHAPTER 98

## SENATE BILL NO. 2305

(Senators Wanzek, Tomac)

(Representatives Johnson, Kaldor)

FARM MANAGEMENT DELIVERY SYSTEM AND  
AGRICULTURAL MEDIATION SERVICE

AN ACT to amend and reenact sections 6-09.10-02.1, 6-09.10-03, and subsection 1 of section 6-09.10-06 of the North Dakota Century Code, relating to funding of a coordinated farm management delivery system and extension of the expiration date of the agricultural mediation service; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>35</sup> SECTION 1. AMENDMENT. Section 6-09.10-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
3. Recommend policies and procedures regarding the adult farm management program to the state board of vocational education.
4. ~~Develop and administer a grant program to provide farmers with access to the farm diversification analytic system. The program shall coordinate~~ Coordinate a farm management delivery system among the adult farm management program, agricultural mediation service, and the North Dakota state university ~~extension service~~. The system must be available to any farmer and may be funded from moneys available in the fund described in this chapter, fees paid by farmers, or other sources.

SECTION 2. AMENDMENT. Section 6-09.10-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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<sup>35</sup> Section 6-09.10-02.1 was also amended by section 2 of House Bill No. 1289, chapter 108.

farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers and others, either of whom may request assistance. The board may charge the farmer and others a reasonable fee for any assistance provided, such funds to be used to continue the service until June 30, ~~1995~~ 1997. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

**SECTION 3. AMENDMENT.** Subsection 1 of section 6-09.10-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 appropriated for the purpose purposes of providing subsidies in accordance with this chapter. Any moneys generated by the farm management delivery system must be allocated by the board 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. The board may not allocate more than forty percent of these moneys to any one of these entities.

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

Approved April 12, 1995  
Filed April 13, 1995