

CHAPTER 6-02 ORGANIZATION AND QUALIFICATION OF BANKS

6-02-01. Compliance with chapters required - Penalty for noncompliance.

1. No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter or authorized to take on banking powers under this section, except national banking corporations, banks organized under the laws of another state, domestic or foreign bank holding companies, their affiliates, bona fide financial institution trade associations and their affiliates, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "bank", "banker", or "banking", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a bank until and unless such business is regularly organized or authorized under this chapter. Upon written request, the commissioner may grant an exemption to this section if the commissioner finds that use of the words "bank", "banker", or "banking", or words of like import, are not reasonably likely to cause confusion or lead the public to believe that the person requesting the exemption is a bank, holding company, trade association, or affiliate authorized under this section or is conducting a business subject to the jurisdiction of the department. In granting an exemption under this section, the commissioner may restrict or condition the exemption and use of the name or word or the activities of an exempt person as the commissioner considers appropriate to protect the public interest.
2. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter this section may not be enforced against it during the life of such charter, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with this section, during the period of noncompliance, shall prominently and continuously display in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter, the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF FINANCIAL INSTITUTIONS". Such language must be displayed as prominently thereon as is other matter therein.
3. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such way or manner as to lead the public to believe that its business is in whole or in part of the nature of a bank, or that it is under the supervision of the state banking board or the commissioner.

6-02-02. Banking corporations - Who may form.

An association for carrying on the business of banking under this title may be formed by any number of natural persons, not less than three, at least two-thirds of whom must be residents of this state. They shall enter into articles of association which must specify in general terms the object for which the association is formed and which may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles must be signed and acknowledged by the persons

uniting to form the association and must be filed in the office of the secretary of state. This section does not apply to a cooperative financial institution.

6-02-02.1. Nonbank bank not qualified to do business.

It is unlawful for any organization, association, or corporation, which owns or controls an institution insured by the federal deposit insurance corporation, to own or control an institution insured by the federal deposit insurance corporation or eligible to be insured by the federal deposit insurance corporation which accepts deposits that the depositor has a legal right to withdraw on demand or engages in the business of making commercial loans but does not do both.

6-02-03. Capital stock, surplus, and federal deposit insurance requirements.

1. The capital stock of any banking association organized after June 30, 1987, must be not less than one hundred thousand dollars. In addition to such capital requirements, there must be subscribed and paid in at the time of organization a surplus of not less than fifty thousand dollars. This subsection does not apply to cooperative financial institutions.
2. The state banking board may require such additional capital, surplus, and undivided profits as it may determine necessary to properly serve the area and to protect the public interest.
3. All of the capital stock and surplus of every association must be paid in before it is authorized to commence business and evidence of such payment either in actual money or a deposit in a previously approved correspondent bank must be furnished to the commissioner before the certificate of authority may be delivered to it.
4. A banking association shall secure federal deposit insurance corporation insurance of deposits before it is authorized to commence business. Evidence of securing such insurance must be furnished to the commissioner before the certificate of authority may be delivered to the banking association.

6-02-04. Organization certificate - Contents.

The persons uniting to form such an organization shall prepare an organization certificate, bearing their signatures, which must state specifically:

1. The name assumed by such association, and such name may not be the name of any other bank in this state, nor of any bank heretofore incorporated in the state of North Dakota.
2. The place where the business of discount and deposit is to be carried on.
3. The amount of the capital stock and the number of shares into which the same must be divided.
4. The names and places of residence of the shareholders and the number of shares held by each of them.
5. The respective dates at which such bank shall commence and terminate business.

6-02-05. Acknowledgment of organization certificate - Application for certificate of authority - Notice of hearing.

The organization certificate must be acknowledged before a notary public, and, the acknowledged certificate must be authenticated by the seal of the notary. The authenticated certificate must be transmitted to the state banking board with a request for permission to present the same to the secretary of state, with application for the issuance of a certificate of authority. Upon receiving such organization certificate, the board shall cause notice of the application to be published in the official newspaper of the county within which such association is proposed to be established. The notice must contain a statement of a time when and place where the board will hear the application and must specify that any person objecting the application may appear and show cause why such application should not be approved. Upon the consolidation of banks, acquisition pursuant to chapter 6-07.2, or the conversion of a national bank to a state bank, notice of such hearing need not be given.

6-02-06. Hearing by board - Conclusions - Management.

1. At the time and place stated, and through any sources of information at its command, the board diligently shall inquire whether the place where such banking association is proposed to be located is in need of further banking facilities, whether the proposed association 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, and such statement to be held confidential by the board, that their connection with the banking association will be beneficial to the public welfare of the community in which such bank is proposed to be established. The board shall hear any reasons advanced by the applicants why they should be permitted to organize the proposed association and any reasons advanced by any person why such association should not be permitted to be organized. At the termination of such hearing, the board shall make a statement in writing of its conclusions and conditions if any, and if it finds that the proposed association should not be permitted to organize, it shall state the reasons why. If approval is granted, a copy of the board's order must be attached to the organization certificate and both must be presented to the secretary of state. A determination in favor of such organization must be joined in by a majority of all the members of the board.
2. If the proposed association is permitted to organize, the state banking board shall inquire into the qualifications of the management of the proposed bank, including experience with financial institutions and other related experience. The board's inquiry into the qualifications of management are confidential.

6-02-07. Determination of board - Recording of organization certificate.

If the determination of the state banking board is in favor of the applicants, the organization certificate and permission of the board accompanying the same must be recorded in the office of the recorder of the county in which such banking association is to be established, and the same must be transmitted to and received by the secretary of state. The secretary of state shall record and carefully preserve it in the secretary of state's office and shall certify the facts to the state banking board. The secretary of state then shall issue a certificate of authority to the corporation, and such certificate of authority must be transmitted to and held by the commissioner until an examination is made and the certificate of the commissioner or the deputy examiner procured to the effect that the capital stock and required surplus have been paid in full, that federal deposit insurance corporation insurance of deposits has been secured, and that all conditions of the law have been complied with strictly. If the determination of the state banking board is against the said application, such organization certificate must not be recorded in the office of the recorder, and, if presented, it must not be accepted by the secretary of state.

6-02-08. Certificate and authorization published.

Repealed by S.L. 1969, ch. 101, § 1.

6-02-09. Renewal charter.

A renewal charter must not be granted to any association until satisfactory evidence has been furnished to the state banking board that the capital and surplus of the association seeking to renew its charter conforms to the requirements of this title relating to new banking associations, that its articles of incorporation have been amended to comply with this title as necessary, and that its required capital and surplus are paid in.