

BANKS AND BANKING

CHAPTER 78

HOUSE BILL NO. 1060

(Legislative Council)

(Government Organization Committee)

CREDIT UNION AND BANKING BOARD MEMBERSHIP AND DUTIES

AN ACT to amend and reenact subsection 2 of section 6-01-03, sections 6-01-04, 6-01-04.3, subsection 7 of section 6-03-02, sections 6-03-07, 6-03-21, subsection 1 of section 6-03-47.2, sections 6-03-69, 6-03-71, subsections 5 and 6 of section 6-06-02, subsection 12 of section 6-06-06, subsection 1 of section 6-06-08, sections 6-06-19, 6-06-21.1, and 6-06-26 of the North Dakota Century Code, relating to the membership of the state credit union board and the powers and duties of the state banking board and state credit union board; and to repeal section 6-06-18 of the North Dakota Century Code, relating to state credit union board approval of interest rates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 6-01-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The state credit union board consists of the commissioner and four members to be appointed by the governor ~~from a panel of five names of persons, residents of North Dakota, to be furnished to the governor by the North Dakota credit union league.~~ Two of the members of the state credit union board must have at least three years' experience as an officer, director, or committee member of a North Dakota state-chartered credit union, one member of the board must have had at least three years of experience as an officer, director, or committee member of a federally chartered credit union, and one member of the board must be a lay member from the public at large. ~~The panel of names submitted to the governor by the North Dakota credit union league must consist of persons whose qualifications satisfy the requirements created by the specific vacancy being filled. Appointments~~ The term of office of appointed board members is for a term of five years. The members of the board serving in office on July 1, 1979, shall continue to serve until the end of their respective terms. The appointments of the two additional members are effective July 1, 1979, except that these two additional members shall choose by lot which shall serve for two and three years respectively. In case of a vacancy in ~~such~~ the board, by death, resignation, or removal of an appointed member, ~~the governor shall appoint an individual to fill the vacancy must be filled by appointment by the governor for the unexpired term.~~ The commissioner is ~~chairperson of such chairs~~ the board and the attorney general is, ex officio, the attorney for ~~such~~ the board. The assistant commissioner shall serve as its secretary. The members of the state

credit union board ~~shall~~ are entitled to receive the same remuneration as is provided for the members of the state banking board. The state credit union board shall hold meetings in March, June, September, and December of each year and special meetings at the call of the commissioner in such places as the commissioner may designate within the state of ~~North Dakota~~.

SECTION 2. AMENDMENT. Section 6-01-04 of the North Dakota Century Code is amended and reenacted as follows:

6-01-04. Powers and duties of the state banking board and state credit union board. The board ~~has power to make such~~ may adopt rules and regulations for the government of financial corporations mentioned in section 6-01-01 ~~as in its judgment may seem wise and expedient, but such to the extent the~~ rules and regulations may do not conflict with any law of this state or of the United States. ~~The board shall review all reports made by the financial corporations and institutions under its jurisdiction and all reports of regular and special examinations thereof made by the commissioner, and shall approve or disapprove such reports.~~ The board shall make and enforce such orders as, ~~in its judgment,~~ may be ~~are~~ necessary or proper to protect the public and the depositors or creditors of ~~said~~ those financial corporations and institutions.

The same powers are given to the state credit union board with reference to credit unions as are ~~herein~~ granted to the state banking board with reference to financial corporations named in this chapter.

SECTION 3. AMENDMENT. Section 6-01-04.3 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. The ~~state banking commissioner or the board and the state credit union board~~ may assess a civil money penalty against a financial institution or financial corporation, including state-chartered banks, credit unions, trust companies, and savings and loan associations, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial institution or corporation, upon finding one or more of the following:
 - a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
 - b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;
 - c. Payment of dividends in violation of section 6-03-36;
 - d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
 - e. Loans to directors, officers, and employees in violation of section 6-03-60;

- f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70;
 - g. Violations of loan limitations under subsection 7 of section 6-06-12;
 - h. Loans in violation of section 6-06-14; or
 - i. Failure to file notice of change of control under section 6-08-08.1.
2. The commissioner or the board shall commence commences administrative proceedings to assess civil money penalties by serving a complaint on the respondent stating the factual basis for the commissioner's or board's belief that a violation has occurred and the amount of civil penalties that the ~~board~~ complaint seeks to impose. The complaint must contain a notice of an opportunity for an administrative hearing conducted under chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the respondent. If assessment of civil money penalties are proposed based on conditions described in subdivisions c through i of subsection 1 of this section, a complaint may not be filed unless the respondent has been provided with prior orders, examination reports, or other written communications, and has willfully refused to take corrective action that the respondent was capable of taking at the time.
 3. If the respondent fails to answer the complaint within twenty days of its service, ~~or if the commissioner or board may enter an order imposing civil money penalties upon the respondent.~~ If a hearing is held and the board concludes that the record so warrants, the board may enter an order imposing civil money penalties upon the respondent. The assessment order is effective and enforceable immediately upon service or upon a date specified in the order, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.
 4. In determining the amount of civil penalty imposed, the commissioner or board shall consider the good faith of the financial institution or the person being assessed, the gravity of the violation and any previous violations. The commissioner or board may not impose a civil money penalty in excess of five thousand dollars for each occurrence and one hundred dollars per day for each day that the violation continues after service of an order. Any civil money penalties collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund; ~~if the fund is established by the legislative assembly.~~

¹ **SECTION 4. AMENDMENT.** Subsection 7 of section 6-03-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ Section 6-03-02 was also amended by section 4 of Senate Bill No. 2118, chapter 79.

7. To exercise, ~~by its board of directors or duly authorized officers or agents subject to law as determined by the board by order or rule,~~ all ~~such the~~ 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 those~~ services within this state. A bank ~~which that~~ provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make ~~such the~~ equipment and service available for use by customers of any other bank upon the request of ~~such the~~ other bank to share its use and the agreement of ~~such the~~ other bank to share pro rata all costs incurred in connection with its installation and operation, and ~~such the~~ electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. ~~Such The~~ electronic operations at premises separate from its banking house or duly authorized facility, must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board ~~shall adopt~~ adopts. 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 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.

SECTION 5. AMENDMENT. Section 6-03-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-07. Investment in banking facility, furniture, and fixtures - Limitation.

No state banking association may invest more than one hundred percent of the amount of its unimpaired capital stock and surplus in a banking facility, furniture, fixtures, and equipment without the approval of the commissioner or the state banking board.

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

6-03-21. Impairment of capital - Dividends stopped - Action by board - Restoration. Whenever the capital of any state banking association becomes impaired or the capital stock reduced below the amount required by this title or by the articles of incorporation, no dividend may be declared nor distribution of profits made thereafter while any debts of the association remain unsatisfied, nor until ~~such the~~ the impairment or deficiency is made good. Whenever it appears that the capital of any state banking association has become impaired or its capital stock reduced, the commissioner shall report the same to the state banking board immediately. ~~Such board~~ The commissioner thereupon shall issue and enforce the necessary order restraining the declaring of dividends and requiring that ~~such the~~ the impairment or

deficiency be made good. ~~Such~~ The impairment or deficiency must be made good within sixty days thereafter, or the commissioner, upon the order or direction of the state banking board, may take charge of ~~such~~ the state banking association and proceed to liquidate the ~~same~~ association as in case of insolvency.

SECTION 7. AMENDMENT. Subsection 1 of section 6-03-47.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a nationally recognized rating service approved by the ~~state banking board commissioner~~, provided that ~~such~~ the investments may not be ~~made to~~ exceed for any one corporation twenty-five percent of the unimpaired capital and surplus of the banking association; and

SECTION 8. AMENDMENT. Section 6-03-69 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-69. Report of examining committee. The board of directors shall ~~be responsible for submitting~~ submit to the ~~state banking board commissioner~~ a report of examining committee on forms provided by the commissioner. The report ~~shall~~ must reflect the results of a careful and thorough examination of the assets of the bank including loans and discounts of every nature and the securities and collaterals belonging ~~thereto~~ to the bank. The valuation of the assets of the bank ~~shall~~ must be compared with the records of the bank. The report ~~shall~~ must be made a part of the minutes of a regular meeting of the board of directors. The commissioner may refuse to accept ~~such~~ the report if found to be not in accordance with acceptable accounting principles.

Any of the following methods may be used to conduct the examination required by this section:

1. Examination by the board of directors or its examining committee. When this method is employed, the examination must be conducted and the report submitted in July of each year.
2. Examination on an annual basis by an independent certified public accountant or firms composed of such accountants, or auditors of the bank's holding company, if any.
3. Examination by an autonomous internal audit control system. The individual directing the internal audit control system shall submit to the board of directors each quarter an interim report as to the degree of compliance with the internal audit control system and shall express an opinion as to the adequacy of the internal controls. A complete report ~~shall~~ must be submitted annually to the board of directors.

SECTION 9. AMENDMENT. Section 6-03-71 of the North Dakota Century Code is amended and reenacted as follows:

6-03-71. Bonds of officers and employees. All officers and employees of any state banking association, before entering upon their duties, shall furnish a ~~good and sufficient~~ bond to the association in ~~such~~ the sum and upon ~~such~~ the conditions as ~~may be~~ required by the board of directors in keeping with rules ~~and regulations~~ relative thereto established by the state banking board. All ~~such~~ bonds must be approved by the board of directors of ~~such~~ the association and are subject to the

approval of the ~~state banking board~~ commissioner. A record of the approval of ~~such the~~ bonds by the board of directors of the association must be made on the records of the bank, and ~~such the~~ bonds must be filed with the ~~state banking board commissioner~~. Stockholders of ~~such the~~ banks are not eligible as bondsmen for ~~such the~~ officers.

SECTION 10. AMENDMENT. Subsections 5 and 6 of section 6-06-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. The ~~commissioner board~~, within thirty days after the receipt of certificate and bylaws, shall determine whether they comply and are consistent with ~~the provisions and purposes~~ of this chapter.
6. The ~~commissioner shall notify the applicants and the state credit union board of his decision, and if it is favorable, the~~ board shall instruct the secretary of state to issue a charter, which must be attached to the certificate of organization and returned, together with the bylaws, to the applicants upon payment of a filing fee of thirty dollars to the secretary of state.

SECTION 11. AMENDMENT. Subsection 12 of section 6-06-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated, or as determined by the board by order or rule.

² **SECTION 12. AMENDMENT.** Subsection 1 of section 6-06-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Credit unions and the permanent loan funds ~~thereof~~ of credit unions, if any, are under the supervision of the ~~state credit union board commissioner~~. Credit unions shall report to the commissioner when called by the commissioner, and at least twice each year. The commissioner shall prescribe the forms for ~~such the~~ reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the national credit union administration, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the national credit union administration. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment ~~the same~~ it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union ~~which that~~ fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the

² Section 6-06-08 was also amended by section 1 of Senate Bill No. 2129, chapter 86.

penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

³ **SECTION 13. AMENDMENT.** Section 6-06-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-19. Authority to borrow - Limitation - Exception. A credit union may borrow money from any source, but the total borrowings may not exceed twenty-five percent of its assets unless the commissioner authorizes a larger amount. The ~~state credit union board; in the exercise of its discretion; or commissioner~~ may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which is limited to borrowing up to five times its capital, surplus, and reserve fund. For the purposes of this section, capital, surplus, and reserve fund for a corporate central credit union includes statutory or regulatory reserves, reserves established for contingencies or any other purposes, undivided earnings, all sums on deposit by other credit unions which are permanent capital base funds as defined by the bylaws of the corporate central credit union, or any other funds being held by the corporate central credit union for the purpose of maintaining a capital base.

SECTION 14. AMENDMENT. Section 6-06-21.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21.1. Amount and manner of establishing special reserves for delinquent loans and investments. Whenever the reserve, required by section 6-06-21 is inadequate for bad loans or investments, a special reserve for delinquent loans and investments must be established. The amount of ~~such~~ the reserve must be determined by the ~~state credit union board or commissioner.~~ The ~~state credit union board is hereby granted the authority to~~ may adopt ~~such~~ rules and regulations as it ~~deems advisable~~ for the establishment of special reserves for delinquent loans and investments.

SECTION 15. AMENDMENT. Section 6-06-26 of the North Dakota Century Code is amended and reenacted as follows:

6-06-26. Dividends. A credit union, upon action by its board of directors, may declare a dividend to be paid from the remaining net earnings or, in the absence of sufficient net earnings, as authorized by the ~~state credit union board or commissioner.~~ The board of directors shall establish the dividend and the dividend period. The members may fix the maximum rate of dividends ~~which shall to~~ be paid. ~~Such~~ The dividends must be paid from the net earnings of the credit union, after establishing a special reserve for delinquent loans as required by the ~~state credit union board or commissioner.~~ A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. Interest refunds may be made to borrowers only after provision has been made for a special reserve for delinquent loans if required by the ~~state credit union board or commissioner.~~

³ Section 6-06-19 was also amended by section 3 of Senate Bill No. 2129, chapter 86.

SECTION 16. REPEAL. Section 6-06-18 of the North Dakota Century Code is repealed.

Approved February 11, 1997
Filed February 11, 1997

CHAPTER 79

SENATE BILL NO. 2118

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

FINANCIAL INSTITUTION EMPLOYEES AND SHAREHOLDERS

AN ACT to create and enact a new subsection to section 6-03-27 of the North Dakota Century Code, relating to filing a list of bank holding company stockholders; and to amend and reenact subsection 6 of section 6-01-04.1, section 6-01-07, if Senate Bill No. 2287 of the fifty-fifth legislative assembly does not become effective, section 6-01-20, and subsection 1 of section 6-03-02 and section 6-03-15.1 of the North Dakota Century Code, relating to removal of a financial corporation's or institution's employees, confidentiality of bank and credit union reports of examination, Bank of North Dakota access to examination and other information, a banking association's period of existence, and temporary relocating of a bank office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 6-01-04.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 2. AMENDMENT. Section 6-01-07 of the North Dakota Century Code is amended and reenacted as follows:

6-01-07. Records of state banking board, state credit union board, and commissioner. The state banking board and state credit union board shall keep a full and complete record of all their proceedings and of all orders made by them. The records and the proceedings of the boards and commissioner ~~shall be~~ are open in accordance with sections 44-04-18 and 44-04-19. All reports, except supervisory reports of examination, made by or filed with the board or the commissioner relating to any financial institution, must be open to inspection and examination by stockholders, shareholders, depositors, creditors, and sureties on any bonds of any

such institution or on the bonds of any officer or employee thereof, subject, however, to the following restrictions:

1. ~~Any~~ A stockholder, shareholder, depositor, creditor or surety of any institution desiring to inspect the information specified above of any ~~such~~ institution shall make a written request for ~~such~~ the inspection.
2. ~~Any such~~ A written request must:
 - a. Specify the information to which access is requested; and
 - b. Give the reasons for the request.
3. Upon ~~such~~ written request, the commissioner, or any person designated in writing by the commissioner, may disclose information specified in subsection 1 of section 6-01-07.1 only upon determining and to the extent that good cause exists for the disclosure.
4. Either prior to or at the time of any disclosure, the commissioner or designee shall impose such terms and conditions as the commissioner deems necessary to protect the confidential nature of the information, the financial integrity of the financial institution to which the information relates, and the legitimate privacy interests of any individual named in ~~such~~ the information.

⁴ **SECTION 3. AMENDMENT.** If Senate Bill No. 2287 of the fifty-fifth legislative assembly does not become effective, section 6-01-20 of the North Dakota Century Code is amended and reenacted as follows:

6-01-20. Bank of North Dakota entitled to records. The commissioner is authorized and directed to permit the president of the Bank of North Dakota, or any other officer of the Bank of North Dakota authorized by ~~said~~ the president, to examine all reports, statements, records, books, files, and documents of any state bank, savings and loan association, or credit union in the possession of ~~said~~ the commissioner, except as noted in this section. The commissioner also is authorized and directed to give to ~~said~~ the president of the Bank of North Dakota, or to any ~~person~~ Bank of North Dakota officer designated by ~~said~~ the president, upon request, any and all information that ~~he~~ the commissioner may have concerning the solvency and financial standing of any state bank, savings and loan association, or credit union. Any record obtained from a federal or other state regulatory authority may not be disclosed to the Bank of North Dakota unless specific authorization is received from the applicable federal or state regulatory authority.

⁵ **SECTION 4. AMENDMENT.** Subsection 1 of section 6-03-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. To have ~~succession for a period of twenty-five years from its organization~~ a perpetual existence, unless it is sooner dissolved

⁴ Section 6-01-20 was repealed by section 2 of Senate Bill No. 2287, chapter 80.

⁵ Section 6-03-02 was also amended by section 4 of House Bill No. 1060, chapter 78.

according to the provisions of this title, or unless its franchise becomes forfeited by ~~some~~ a violation of law.

SECTION 5. AMENDMENT. Section 6-03-15.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-03-15.1. 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 6. A new subsection to section 6-03-27 of the North Dakota Century Code is created and enacted as follows:

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

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 80**SENATE BILL NO. 2287**

(Senator Klein)
(Representative Murphy)

**DEPARTMENT OF BANKING AND FINANCIAL
INSTITUTIONS RECORDS ACCESS**

AN ACT to amend and reenact subsection 6 of section 6-01-07.1 of the North Dakota Century Code, relating to access to records held by the department of banking and financial institutions; and to repeal section 6-01-20 of the North Dakota Century Code, relating to access by the Bank of North Dakota to bank, savings and loan, and credit union records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 6 of section 6-01-07.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. ~~Nothing in this~~ This section shall be construed to does not limit the right of access of the ~~Bank of North Dakota to the department's records of all state banks, savings and loan associations, and credit unions, as provided by section 6-01-20, nor to limit the right of access of~~ stockholders, shareholders, depositors, creditors, and sureties on bonds to specified department records as, and to the extent, provided by section 6-01-07.

⁶ **SECTION 2. REPEAL.** Section 6-01-20 of the North Dakota Century Code is repealed.

Approved March 21, 1997
Filed March 21, 1997

⁶ Section 6-01-20 was amended by section 3 of Senate Bill No. 2118, chapter 79.

CHAPTER 81**HOUSE BILL NO. 1390**

(Representative Grande)
(Senator Krebsbach)

BANK REAL ESTATE APPRAISALS

AN ACT to amend and reenact section 6-03-05 of the North Dakota Century Code, relating to appraisals of real estate that is collateral for a loan by state-chartered banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-05 of the 1995 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 if required by the Federal~~ 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, except no appraisal or formal valuation is required for a real estate loan of one hundred thousand dollars or less. 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. Any real estate loan made must conform to loan-to-value limits as established by rule by the state banking board under chapter 28-32.

Approved March 13, 1997
Filed March 13, 1997

CHAPTER 82**SENATE BILL NO. 2288**

(Senators Tomac, Freborg)
(Representatives Carlson, Froseth, Grumbo)

BANK SERVICE CORPORATION SHAREHOLDERS

AN ACT to amend and reenact section 6-03-49.1 of the North Dakota Century Code, relating to associations of state and national banks becoming shareholders in bank service corporations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-49.1 of the North Dakota Century Code is amended and reenacted as follows:

6-03-49.1. Bank investment in service corporation - Service corporation services and activities. Subject to the approval of the state banking board, any bank may invest not more than ten percent of paid in and unimpaired capital and unimpaired surplus in stocks, bonds, debentures, or other obligations of any North Dakota corporation organized as a bank service corporation having its principal place of business in the state and operated exclusively for the purpose of providing for such bank and one or more other banks, bank services which the banks would otherwise be required or permitted to provide for on an individual bank basis. The term bank services in this section includes services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed by a bank. Payment for rent earned, goods sold and delivered, or services rendered prior to the making of the payment is not an investment.

A bank service corporation may be chartered under the laws of this state with shareholders limited to state and national banks located within the state and corporations that are organized as associations of state and national banks located within the state to provide all the services, except deposit taking, that all the banks that are its shareholders can offer directly to their own customers at any place in the state where they can offer their services including owning and administering a credit card program for customers of banks and engaging in activities incidental to banking services and other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long as such services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 83**SENATE BILL NO. 2146**

(Senators LaFountain, Nalewaja, C. Nelson)
(Representative Christenson)

BANK SECURITY FOR TRIBAL DEPOSITS

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to the power of a state-chartered bank to pledge securities for the repayment of deposits by federally recognized Indian tribes.

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:

Pledges of bank securities to secure repayment of deposits by a federally recognized Indian tribe. A bank, upon the deposit with it of funds by a federally recognized Indian tribe, or an officer, employee, or agent thereof in that person's official capacity, may give security for the safekeeping and repayment of the funds deposited by a pledge of securities of the same kind and to the same extent as is authorized by section 21-04-09 in the case of deposits of public funds by public corporations.

Approved March 20, 1997
Filed March 20, 1997

CHAPTER 84

SENATE BILL NO. 2134

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

TRUST COMPANY BONDS AND OATHS

AN ACT to amend and reenact sections 6-05-04 and 6-08-02 of the North Dakota Century Code, relating to approval of trust company surety bond securities and trust company executive officers' oaths of office.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-05-04 of the 1995 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, ~~a~~ a corporation is not required to deposit or pledge more than five hundred thousand dollars. The deposit certificate or pledge agreement must authorize the commissioner to cause ~~such~~ the deposit, in part or in whole, to be transferred to the commissioner upon the commissioner's demand. An original of the deposit certificate or pledge must be furnished to the commissioner. The 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;
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 2. AMENDMENT. Section 6-08-02 of the North Dakota Century Code is amended and reenacted as follows:

6-08-02. Oath of officers - Form and filing. Every active officer of any state banking association or trust company organized under this title, before entering upon the duties of ~~his~~ the office, shall take and subscribe an oath that ~~he~~ the officer will administer the affairs of ~~such~~ the association or trust company diligently and honestly, so far as the duty devolves upon ~~him~~ the officer, and that ~~he~~ the officer will not violate knowingly, nor willingly permit to be violated, any of the provisions of this title. All ~~such~~ oaths must be presented to the board of directors and a synopsis thereof recorded in the board's record and then filed with the ~~state banking~~ board.

Approved March 21, 1997

Filed March 21, 1997

CHAPTER 85**HOUSE BILL NO. 1098**
(Representative Keiser)**CREDIT UNION MEMBERSHIP**

AN ACT to amend and reenact section 6-06-07 of the North Dakota Century Code, relating to fields of membership for credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-07 of the North Dakota Century Code is amended and reenacted as follows:

6-06-07. Membership in credit union. The membership of a credit union consists of the incorporators and such other persons as may be elected to membership. Each member shall subscribe to and pay the initial installment on at least one share in the credit union, and pay the entrance fee as provided by the bylaws of the credit union. Organizations, incorporated or otherwise, composed principally of the same general group as the credit union membership may be members therein. Credit union membership is limited to groups having a common bond of occupation or association or to groups within a well-defined rural or urban district. The board shall adopt a procedure whereby all interested persons are afforded reasonable opportunity to submit data, views, or arguments, orally or in writing, concerning a proposed application for a credit union to expand its field of membership.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 86

SENATE BILL NO. 2129

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

CREDIT UNION EXAMINATIONS, AUDITS, AND BORROWING

AN ACT to amend and reenact subsection 2 of section 6-06-08, sections 6-06-15, and 6-06-19 of the North Dakota Century Code, relating to credit union examinations, credit union supervisory committee audits, and borrowing of money by credit unions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷ **SECTION 1. AMENDMENT.** Subsection 2 of section 6-06-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Credit unions must be examined at least once each twenty-four months by the commissioner; ~~or with the commissioner's approval and the approval of the state credit union board, credit unions may be examined annually by a certified public accountant or the North Dakota credit union league.~~ In lieu of the examinations herein required, the commissioner may accept any examination made or obtained by the national credit union administration, and may in ~~his or her~~ the commissioner's discretion conduct a joint examination with ~~said federal agency the national credit union administration.~~ If the examination is not made by the commissioner, the expense of such examination must be borne by the credit union examined and such examination must be in such form and contain such information as the commissioner may require. Two copies of such examination must be filed with the commissioner within thirty days after completion of the examination and must be approved by the commissioner.

SECTION 2. AMENDMENT. Section 6-06-15 of the North Dakota Century Code is amended and reenacted as follows:

6-06-15. Duties and powers of supervisory committee. The supervisory committee, by a majority vote, may call a special meeting of the members of the credit union to consider any matter which it wishes to submit to the membership. ~~‡~~ The supervisory committee shall:

1. Fill vacancies in ~~its~~ the committee's own membership.
2. Make an examination of the affairs of the credit union, including an audit of ~~its~~ the credit union's books, at least annually, and ~~it~~ the

⁷ Section 6-06-08 was also amended by section 12 of House Bill No. 1060, chapter 78.

committee may submit such report to the members of the credit union at a meeting called for that purpose by the committee whenever ~~it~~ the committee deems such action necessary.

3. Make an annual audit and report and submit ~~it~~ the audit and report at the annual meeting of the credit union.
4. Suspend any officer, director, or member of any committee when by unanimous, not including the person who is being considered for suspension, vote of the committee, such action is determined to be necessary to the proper conduct of the credit union, but upon taking such action, the committee shall call the members of the credit union together immediately to act on ~~such~~ the suspension, and the members at ~~such~~ the meeting may sustain the suspension and remove ~~such~~ the officer permanently or may reinstate ~~him~~ the officer, director, or committee member.
5. The commissioner may reject a supervisory committee examination or audit if the examination or audit is determined to be unsatisfactory.

If the bylaws do not provide for the election or appointment of a supervisory committee, the duties and powers described above are the responsibility of and delegated to the board of directors.

⁸ **SECTION 3. AMENDMENT.** Section 6-06-19 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-06-19. Authority to borrow - Limitation - Exception. A credit union may borrow money from any source, but the total borrowings may not exceed twenty-five percent of ~~its~~ the credit union's assets unless the commissioner authorizes a larger amount. The state credit union board, in the exercise of its discretion, may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which is limited to borrowing up to five times ~~its~~ the corporate central credit union's capital, surplus, and reserve fund. For ~~the~~ purposes of this section, capital, surplus, and reserve fund for a corporate central credit union includes statutory or regulatory reserves, reserves established for contingencies or any other purposes, undivided earnings, all sums on deposit by other credit unions which are permanent capital base funds as defined by the bylaws of the corporate central credit union, or any other funds being held by the corporate central credit union for the purpose of maintaining a capital base. A credit union must provide within one week written notification to the commissioner of the amount, terms, and source of all borrowings under this section. Written notification is not required if the borrowings are provided by the corporate central credit union and that information is available to the commissioner through electronic inquiry.

Approved March 19, 1997
Filed March 19, 1997

⁸ Section 6-06-19 was also amended by section 13 of House Bill No. 1060, chapter 78.

CHAPTER 87**SENATE BILL NO. 2169**

(Senator Lips)

CREDIT UNION VOLUNTEER IMMUNITY

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

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:

Credit union volunteers - Immunity. A person who serves as a volunteer, including a director, credit committee member, or supervisory committee member, of a federal or state chartered credit union is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The volunteer was acting in good faith and in the scope of that person's official duties as a volunteer of the credit union.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the volunteer.
3. The volunteer did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a volunteer of the credit union and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a volunteer of the credit union.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 88**HOUSE BILL NO. 1336**

(Representatives Price, Schmidt)
(Senators Krebsbach, Lindaas, Tomac)

CREDIT UNION DIRECTOR BORROWING LIMIT

AN ACT to amend and reenact section 6-06-20 of the North Dakota Century Code, relating to the amount that may be borrowed by a director or member of a credit union.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-20 of the 1995 Supplement to 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~~ A director or member of any committee may not borrow from the credit union in which the director or member holds office more than ~~ten~~ twenty 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 13, 1997
Filed March 13, 1997

CHAPTER 89

HOUSE BILL NO. 1223

(Representatives Keiser, Axtman, Skarphol)
(Senators Klein, Mutch)

NSF INSTRUMENT RETURNS AND COLLECTIONS

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to the return of instruments issued without sufficient funds; and to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to collection on instruments issued without sufficient funds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁹ **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.

1. A person may not, for ~~himself~~ oneself, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of ~~such~~ the making, drawing, uttering, or delivery, or at the time of presentation for payment if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is a class B misdemeanor.
2. The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. A collection agency shall reimburse the original holder of the check, draft, or order any additional charges assessed by the depository bank of the check, draft, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, or order. The making of a postdated check knowingly

⁹ Section 6-08-16 was also amended by section 1 of House Bill No. 1238, chapter 90.

received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.

4. A notice of dishonor may be mailed by the holder, or its agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law ~~hereby~~ notified that a check dated _____, 19____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because of nonsufficient funds. Within ten days from the receipt of this notice, you must pay or tender to

(Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~fifteen~~ twenty dollars.

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

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution. The criminal complaint for the offense of issuing a check, draft, or money order without sufficient funds under this section must be executed within not more than ninety days after the dishonor by the drawee of said instrument for nonsufficient funds. The failure to execute a complaint within said time bars the criminal charge under this section.

¹⁰ **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

¹⁰ Section 6-08-16.2 was also amended by section 2 of House Bill No. 1238, chapter 90.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".
 - c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person ~~is~~ also is liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
 - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person ~~is~~ also is liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the instrument.

4. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.

5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, or its agent or representative, of nonpayment. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2 or subdivision b of subsection 3.
6. A notice of dishonor may be mailed by the holder, or its agent or representative, of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law ~~hereby~~ notified that an instrument dated _____, 19____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because (of nonsufficient funds) (the drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to _____
(Holder or Agent or Representative)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~fifteen~~ twenty dollars.

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

SECTION 3. A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Return of paid checks to the issuer. When the holder, or its agent or representative, of a check receives full payment for the amount of a check issued without sufficient funds or credit, or without account, the check must be returned to the issuer upon the payment of any civil penalty assessed if the issuer appears and requests the return of the check or the issuer furnishes a self-addressed stamped envelope.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 90

HOUSE BILL NO. 1238

(Representatives Olson, Mahoney)
(Senator Sand)

NO ACCOUNT AND NSF CHECKS

AN ACT to amend and reenact subsection 1 of section 6-08-16 and section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check without an account or without sufficient funds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 6-08-16 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A person may not, for ~~himself~~ that person, as the agent or representative of another, or as an officer or member of a firm, company, copartnership, or corporation make, draw, utter, or deliver any check, draft, or order for the payment of money upon a bank, banker, or depository, if at the time of such making, drawing, uttering, or delivery, or at the time of presentation for payment if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, or order in full upon its presentation. Violation of this subsection is an infraction if the amount of insufficient funds or credit is not more than one hundred dollars, a class B misdemeanor if the amount of insufficient funds or credit is more than one hundred dollars and not more than five hundred dollars, and a class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars.

¹² **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account or with insufficient funds - Financial liability - Penalty - Exceptions.

1. As used in this section:
 - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
 - b. "Dishonor" is synonymous with "nonpayment".

¹¹ Section 6-08-16 was also amended by section 1 of House Bill No. 1223, chapter 89.

¹² Section 6-08-16.2 was also amended by section 2 of House Bill No. 1223, chapter 89.

- c. "Instrument" means any check, draft, or order for the payment of money.
 - d. "Issues" means draws, utters, or delivers.
2. A person who, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1 or without sufficient funds in a bank or depository pursuant to section 6-08-16, and:
 - a. At the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument or at the time of presentation for payment if made within ~~five~~ ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder of the instrument.

3. A person who, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least ten thousand dollars, and:
 - a. At the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn; or
 - b. At the time of issuing the instrument, or at the time of presentation for payment if made within five business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of ~~fifteen~~ twenty dollars, which are recoverable by civil action by the holder of the instrument.

4. A person who, for that person or as an agent or representative of another, willfully issues at least two instruments within a ninety-day period is guilty of a class C felony if the total amount of the instruments was for at least five hundred dollars, and the drawer has violated subdivision a or b, or both, with respect to the instruments:
 - a. At the time of issuing the instruments, the drawer does not have an account with the bank or depository on which the instruments are drawn; or

b. At the time of issuing the instruments, or at the time of presentation for payment if made within ten business days after the original delivery of the instrument, the drawer does not have sufficient funds in the bank or depository, or credit with the bank, banker, or depository, to pay the instrument in full upon its presentation.

The person is also liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative.

5. A civil penalty is also recoverable by civil action by the holder of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
5. 6. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution. A criminal complaint for violation of subdivision b of subsection 2 or subdivision b of subsection 3 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of nonpayment. A complaint for a violation of subsection 4 must be executed within ninety days after the drawer of the instrument receives notice, from the holder, of the holder's agent or representative, of nonpayment for the last instrument, if any, included under subdivision b of subsection 4 for a violation of subsection 4. Failure to execute a complaint within the time set forth in this subsection bars any criminal charges under subdivision b of subsection 2 ~~or~~, subdivision b of subsection 3, or subdivision b of subsection 4.
6. 7. A notice of dishonor may be mailed by the holder of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____

You are according to law hereby notified that an instrument dated _____, 19____, drawn on the _____ Bank of _____ in the amount of _____ has been returned unpaid with the notation the payment has been refused because (of nonsufficient funds) (the drawer does not have an account). Within ten days from the receipt of this notice, you must pay or tender to _____

(Holder)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~fifteen~~ twenty dollars.

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

Approved April 9, 1997
Filed April 10, 1997

CHAPTER 91**HOUSE BILL NO. 1463**

(Representatives Poolman, Delmore, Glassheim, Jensen)
(Senator Krebsbach)

**FINANCIAL INSTITUTION CUSTOMER INFORMATION
EXCHANGE**

AN ACT to create and enact a new subsection to section 6-08.1-02 of the North Dakota Century Code, relating to the exchange of customer information between affiliated financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-08.1-02 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

The disclosure by a financial institution to any financial institution or other entity that controls, is controlled by, or is under common control with the financial institution if the financial institution or other entity receiving the information complies with section 6-08.1-03.

Approved March 25, 1997
Filed March 26, 1997

CHAPTER 92

SENATE BILL NO. 2261 (Senator Mutch)

BANK ACQUISITIONS

AN ACT to amend and reenact sections 6-08.3-02.1 and 6-08.3-13 of the North Dakota Century Code, relating to the acquisition of a North Dakota state-chartered or national bank by an out-of-state bank holding company and interstate banking authorization; and to repeal section 6-08.3-04 of the North Dakota Century Code, relating to the formation of a state-chartered bank by an out-of-state bank holding company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-08.3-02.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-08.3-02.1. Application to acquire a state-chartered or national bank. An out-of-state bank holding company may acquire a North Dakota state-chartered or national 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 or notice is filed with the applicable federal regulatory agency to acquire a North Dakota bank. Notwithstanding any provision to the contrary in this title, an out-of-state holding company that owned a depository institution as defined in section 6-08.3-01, the main office of which was located in this state on January 1, 1997, may reorganize that depository institution's North Dakota operations as a newly chartered state or national bank in this state.

SECTION 2. AMENDMENT. Section 6-08.3-13 of the 1995 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; 12 U.S.C. 1811 et seq.], interstate banking in this state. However, to the extent a state imposes a restriction on the ability of a North Dakota bank holding company to acquire a bank in that state and the restriction is based on the length of time either bank has existed, that restriction must apply to any acquisition of a North Dakota bank by a bank holding company located in that state.

SECTION 3. REPEAL. Section 6-08.3-04 of the 1995 Supplement to the North Dakota Century Code is repealed.

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 93

SENATE BILL NO. 2069

(Appropriations Committee)

(At the request of the Bank of North Dakota)

INTEREST ON STUDENT LOANS

AN ACT to amend and reenact subdivision e of subsection 1 of section 6-09-15 and section 15-62.1-03 of the North Dakota Century Code, relating to interest provisions in guaranteed student loan agreements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹³ **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 6-09-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. That are eligible to be guaranteed under chapter 15-62.1. Loans made pursuant to this subdivision may provide for interest that remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.

SECTION 2. AMENDMENT. Section 15-62.1-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-62.1-03. Rates of interest permissible for guaranteed loans. All loans guaranteed by the agency and coinsured by the federal government must bear interest at rates which are no greater than those provided under the federally coinsured loan programs. In the event that the agency guarantees student loans without federal coinsurance pursuant to section 15-62.1-02, ~~such loans must bear interest at rates which are no greater than~~ the interest rate on such loans may not be more than two percentage points above the base participation rate as established by the Bank of North Dakota; plus no more than two percentage points, which is in effect on the date the loan is made. Any prohibition on the capitalization of interest does not apply to loans guaranteed under this chapter. A loan guaranteed under this chapter may provide for interest which remains unpaid at the end of any period specified in the loan to be added to the principal amount of the debt and thereafter accumulate interest.

Approved March 10, 1997
Filed March 10, 1997

¹³ Section 6-09-15 was also amended by section 1 of House Bill No. 1155, chapter 94, and section 2 of House Bill No. 1155, chapter 94.

CHAPTER 94

HOUSE BILL NO. 1155

(Government and Veterans Affairs Committee)
(At the request of the Industrial Commission)

FEDERAL LEGISLATION REFERENCE UPDATES

AN ACT to amend and reenact subdivisions h and i of subsection 1 of section 6-09-15, subsection 2 of section 6-09-15, sections 6-09.5-01, 6-09.5-04, 6-09.5-08, 6-09.5-10, subsection 1 of section 15-62.1-02, sections 54-17-22, 54-17-25, and 54-17-33 of the North Dakota Century Code, relating to updates in federal legislation referenced in statutes authorizing industrial commission agency programs administered by the Bank of North Dakota, student loans of North Dakota and the student loan trust, and the industrial commission when acting as the state planning agency for the development of Riverdale and when acting as the agricultural mortgage marketing facility for the secondary market program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹⁴ **SECTION 1. AMENDMENT.** Subdivisions h and i of subsection 1 of section 6-09-15 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- h. Under Public Law No. 99-198 [99 Stat. 1534;⁷; 7 U.S.C. 1932 et seq.], as amended through December 31, 1996, to nonprofit corporations for the purpose of relending loan funds to rural businesses.
- i. Under title 7, Code of Federal Regulations, part 1948, subpart C; part 1951, subparts F and R; and part 1955, subparts A, B, and C, as amended through December 31, 1996, to finance businesses and community development projects in rural areas.

¹⁵ **SECTION 2. AMENDMENT.** Subsection 2 of section 6-09-15 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. Make agricultural real estate loans in order to participate in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233;⁷; 101 Stat. 1686;⁷; 12 U.S.C. ~~2279aa-2279aa~~ 2279aa-14], as amended through December 31, 1996.

SECTION 3. AMENDMENT. Section 6-09.5-01 of the North Dakota Century Code is amended and reenacted as follows:

¹⁴ Section 6-09-15 was also amended by section 1 of Senate Bill No. 2069, chapter 93, and section 2 of House Bill No. 1155, chapter 94.

¹⁵ Section 6-09-15 was also amended by section 1 of Senate Bill No. 2069, chapter 93, and section 1 of House Bill No. 1155, chapter 94.

6-09.5-01. Community Water Facility Loan Act - Intent. Moneys transferred under this chapter shall be used primarily for supplementary financing in conjunction with federal moneys available under the authority of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder for the construction, enlargement, extension, or other improvement of community water facilities. This chapter is intended to improve the health, general welfare, convenience, and prosperity of communities and rural inhabitants presently lacking adequate water supplies.

SECTION 4. AMENDMENT. Section 6-09.5-04 of the North Dakota Century Code is amended and reenacted as follows:

6-09.5-04. Loan applications - Approval. Applications for revolving fund must be submitted to the Bank of North Dakota which shall investigate and consider approval of loan applications under such rules and regulations as it may establish. The Bank shall cooperate with the state office of the farmers home administration or its successor in considering applications to comply with the requirements of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder relating to community water facilities.

SECTION 5. AMENDMENT. Section 6-09.5-08 of the North Dakota Century Code is amended and reenacted as follows:

6-09.5-08. Loan eligibility. Applicants eligible for loans shall include cities eligible under 7 U.S.C. 1926 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and associations, cooperatives, and corporations operated on a nonprofit basis which have the legal authority necessary for constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the loan in accordance with farmers home administration requirements. Applicant cities, associations, cooperatives, and corporations shall seek to include cities and rural areas, eligible under farmers home administration rules and regulations and located near a proposed service area, as part of a water facility project. Reasons for not including such cities and rural areas must be approved jointly by the Bank of North Dakota and the farmers home administration.

SECTION 6. AMENDMENT. Section 6-09.5-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.5-10. Rules and regulations. The Bank of North Dakota may promulgate and adopt such rules ~~and regulations in accordance with chapter 28-32~~ as are necessary to carry out the provisions of this chapter and meet the requirements of 7 U.S.C. 1926 and 1927 [Pub. L. 87-128; 75 Stat. 308], as amended through December 31, 1996, and the rules and regulations promulgated thereunder relating to community water facilities.

SECTION 7. AMENDMENT. Subsection 1 of section 15-62.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. To guarantee all loans which satisfy the requirements set forth in title IV, part B, of the Higher Education Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353], as amended through December 31, 1996, upon terms, conditions, and application procedures commensurate with the federal Higher Education

Act of 1965 [20 U.S.C. 1001 et seq.; Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353], as amended through December 31, 1996, if federal coinsurance of student loans guaranteed by the agency is available. If at any time the agency determines that student loans made under the terms and conditions of federal coinsurance programs are no longer adequately serving the needs of North Dakota students attending postsecondary institutions, or if federal coinsurance is no longer available, the agency shall notify the industrial commission or its designee. Upon approval of the industrial commission or its designee, the agency shall guarantee student loans without federal coinsurance pursuant to rules made by the agency relating to terms for applicant eligibility in accordance with the provisions of this chapter. If loans are guaranteed without federal coinsurance, the agency may not adopt eligibility requirements or loan limits for student loans to qualify for guarantee by the agency which are more restrictive than those eligibility requirements or loan limits existent as of the date the industrial commission approves the guarantee of loans without federal coinsurance or the date of the termination of programs providing for federal coinsurance of loans guaranteed by the agency. Students whose loans are guaranteed by the agency must be students who have been accepted for enrollment or are attending eligible postsecondary institutions located within or without this state, and whose loans are for the purpose of assisting them in meeting their expenses of postsecondary education. Students who are accepted for enrollment or are attending eligible proprietary or postsecondary institutions of higher education on at least a half-time basis, as determined by the institutions, are eligible to have loans guaranteed by the agency. The agency shall, by rule, establish minimum qualifications for a person to be deemed a part-time student for purposes of this chapter.

SECTION 8. AMENDMENT. Section 54-17-22 of the North Dakota Century Code is amended and reenacted as follows:

54-17-22. Commission authorized to act as planning agency of state and to negotiate and contract with federal housing administration. For the purposes of sections 54-17-21 through 54-17-23, the industrial commission is hereby designated as the state planning agency, and is authorized to negotiate and contract with the federal housing and home finance administrator, under the provisions of the Housing Act of 1954 [Pub. L. 83-560; 68 Stat. 590; 12 U.S.C. 1703, et seq.], and all acts amendatory thereof and supplementary thereto through December 31, 1996, in all matters pertaining to or affecting planning work for the development and construction of public works in the community of Riverdale, when acquired. The plan of the commission for any improvement or development in Riverdale must be considered as the approved plan or plans therefor of the state of North Dakota.

¹⁶ **SECTION 9. AMENDMENT.** Section 54-17-25 of the North Dakota Century Code is amended and reenacted as follows:

54-17-25. Bonds authorized - Establishment of secondary market program. Whenever the industrial commission decides that it is in the public interest to

¹⁶ Section 54-17-25 was also amended by section 2 of Senate Bill No. 2111, chapter 448.

diminish the investment of state funds in United States government guaranteed or reinsured or North Dakota guaranteed student loans, that it will be difficult to divest the state of appreciable amounts of such loans by piecemeal offering to the investing and saving public, that business conditions are favorable to a state-sponsored program to consolidate state-held student loans, and to enlarge private participation in such loans, the commission may by plenary resolution duly adopted in accordance with the provisions hereof authorize preparation, sale, and issuance of revenue bonds of North Dakota in such amounts and at such times and in such form, which may include the issuance of bonds the interest income on which is subject to federal income taxes, as the commission shall determine to be for the public good. The bonds shall be a paramount charge upon a sufficient designated portion of the resources of the student loan trusts, subject only to necessary administrative expenses of the trusts duly appropriated out of the interest earning resources thereof. The bonds may bear such rate or rates of interest as the commission may provide. The bonds must have all of the qualities and incidents of negotiable paper and are not subject to taxation by the state of North Dakota or by any county, municipality, or political subdivision therein. The bonds must be payable solely out of the separate resources generated respectively from collection of payments on and earnings and proceeds of (1) United States government guaranteed or reinsured or (2) North Dakota guaranteed student loans, and must respectively so recite. They are not indebtedness of the state of North Dakota or of any agency, board, department, or officer or agent thereof. Without limiting the foregoing, the commission may request the organization of a nonprofit corporation meeting the requirements of the Internal Revenue Code of 1954, as amended and redesignated as the Internal Revenue Code of 1986 [Pub. L. 99-54], and as it may be amended from time to time, and enter into one or more agreements with such corporation providing for the establishment of a secondary market program in the state of North Dakota for the acquisition by the corporation of such loans made pursuant to title IV, part B of the Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1236; Pub. L. 99-498; 100 Stat. 1353; 20 U.S.C. 1001 et seq.], as amended through December 31, 1996, as the commission shall, in its discretion, deem advisable.

SECTION 10. AMENDMENT. Section 54-17-33 of the North Dakota Century Code is amended and reenacted as follows:

54-17-33. State trust created - Agricultural mortgage secondary market. The industrial commission may establish a trust for the purpose of participating as an agricultural mortgage marketing facility in the agricultural mortgage secondary market program established pursuant to the Agricultural Credit Act [Pub. L. 100-233; 101 Stat. 1686; 12 U.S.C. 2279aa-2279aa-14], as amended through December 31, 1996. The industrial commission may take any action necessary to qualify as a certified facility.

Approved March 5, 1997
Filed March 6, 1997

CHAPTER 95

HOUSE BILL NO. 1066

(Legislative Council)
 (Legislative Audit and Fiscal Review Committee)
 (Representatives Dorso, Wald, Timm)
 (Senators Mutch, Tallackson)

BANK OF NORTH DAKOTA AUDIT

AN ACT to amend and reenact section 6-09-29 of the North Dakota Century Code, relating to the audit of the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-29 of the North Dakota Century Code is amended and reenacted as follows:

6-09-29. Department of banking and financial institutions and the industrial commission responsible for examinations Examinations and audit reports. The industrial commission is responsible for ~~contracting with a nongovernment certified public accounting firm to annually audit~~ state auditor shall contract with an independent certified public accounting firm for an annual audit of the Bank of North Dakota in accordance with generally accepted government auditing standards; which must include inspection and verification of the assets in its possession and under its control with sufficient thoroughness to ascertain with reasonable certainty whether the valuations are carried correctly on its books. The state auditor shall audit annually or contract for an annual audit of the separate programs and funds administered by the Bank of North Dakota. On request of the state auditor, the industrial commission shall assist the state auditor in the auditing firm selection process, but the selection of the auditing firm is the state auditor's responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American institute of certified public accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the state. The state auditor may conduct performance audits of the Bank of North Dakota, including the separate programs and funds administered by the Bank. The auditor so hired shall audit the Bank's methods of operation and accounting, shall report the results of the audit to the industrial commission as soon as practicable, and shall furnish one copy and to the legislative assembly. The Bank of North Dakota or its separate programs and funds shall pay the costs of such the audit must be paid for by the Bank of North Dakota. The department of banking and financial institutions, through the commissioner, ~~is responsible for performing an examination of~~ shall examine the Bank of North Dakota at least once each twenty-four months and ~~for~~ conduct any investigation of the Bank which may be necessary. The commissioner shall report the examination results, and the results of any necessary investigation, ~~must be reported~~ to the industrial commission as soon as practicable and to the legislative assembly. ~~Fees for such examinations must be charged by the~~ The department of banking and financial institutions shall charge a fee for any

examination or investigation at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations and investigations provided for by this section.

Approved January 31, 1997

Filed January 31, 1997

CHAPTER 96

SENATE BILL NO. 2087

(Political Subdivisions Committee)

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

MUNICIPAL BOND BANK DEBT SERVICE RESERVE

AN ACT to amend and reenact subsection 1 of section 6-09.4-10 of the North Dakota Century Code, relating to the required debt service reserve of the municipal bond bank; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 6-09.4-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The bond bank shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of ~~such~~ the fund, all proceeds of bonds required to be deposited therein by terms of any contract between the bond bank and its bondholders or any resolution of the bond bank with respect to ~~such~~ the proceeds of bonds, any other moneys or funds of the bond bank which it determines to deposit therein, any contractual right to the receipt of moneys by the bond bank for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the bond bank only for the purposes of ~~such~~ the fund from any other source or sources. Moneys in the reserve fund must be held and applied solely to the payment of the interest on and the principal of bonds and sinking fund payments as the same become due and payable and for the retirement of bonds, including payment of any redemption premium required to be paid when any bonds are redeemed or retired prior to maturity. Moneys in the reserve fund may not be withdrawn therefrom if ~~such~~ the withdrawal would reduce the amount in the reserve fund to an amount less than the required debt service reserve, except for payment of interest then due and payable on bonds and the principal of bonds then maturing and payable and sinking fund payments and for the retirement of bonds in accordance with the terms of any contract between the bond bank and its bondholders and for the payments on account of which interest or principal or sinking fund payments or retirement of bonds, other moneys of the bond bank are not then available in accordance with the terms of ~~any~~ such the contract. ~~Required~~ The required debt service reserve ~~shall~~ must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the bond bank and its bondholders to be raised in the then current or any succeeding calendar year for the payment of interest on and maturing principal of outstanding bonds, and sinking fund payments required by the terms of any ~~such~~ contracts to sinking funds established for the payment or redemption of ~~such~~ the bonds.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 97

SENATE BILL NO. 2086

(Political Subdivisions Committee)

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

POLITICAL SUBDIVISION PROTECTION OF SERVICE

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to the protection of service provided or made available by a political subdivision through a loan from the municipal bond bank or any other state agency or enterprise.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

Protection of service during term of loan.

1. The service provided or made available by a political subdivision through the construction or acquisition of an improvement, or the revenues therefrom, financed in whole or in part with a loan to the political subdivision from the bond bank or any other state agency or enterprise, may not be curtailed or limited by inclusion of all or any part of the area served by the political subdivision within the boundaries of any other political subdivision, or by the granting of any private franchise for similar service within the area served by the political subdivision, during the term of the loan. The political subdivision providing the service may not be required to obtain or secure any franchise, license, or permit as a condition of continuing to serve the area if it is included within the boundaries of another political subdivision during the term of the loan.
2. Under the circumstances described in subsection 1, nothing prevents the two political subdivisions, with the bond bank or other state agency or enterprise, from negotiating an agreement for the right or obligation to provide the service in question, provided that any agreement is invalid and unenforceable unless the bond bank or other state agency or enterprise is a party to the agreement and unless the agreement contains adequate safeguards to ensure the security and timely payment of any outstanding bonds of the bond bank issued to fund the loan.

Approved March 19, 1997

Filed March 19, 1997

CHAPTER 98

SENATE BILL NO. 2182

(Senators Wanzek, Tomac)
(Representatives D. Johnson, Renner)

AGRICULTURAL MEDIATION SERVICE EXTENSION

AN ACT to amend and reenact sections 6-09.10-03 and 6-09.10-10 of the North Dakota Century Code, relating to extension of the expiration date of the agricultural mediation service; to repeal sections 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.3, 6-09.10-08.4, 6-09.10-08.5, and 6-09.10-08.6 of the North Dakota Century Code, relating to legal and tax assistance for farmers and small businesses; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.10-03 of the 1995 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 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, ~~4997~~ 1999. 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 2. AMENDMENT. Section 6-09.10-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.10-10. Mediation - Open records and meetings exception. Information created, collected, and maintained by the agricultural mediation service in the course of any formal or informal mediation is confidential and is not subject to the open records requirements of section 44-04-18. Such information may be released only upon written consent of all parties to the mediation or pursuant to an order issued by the court upon a showing of good cause. All mediation meetings and meetings involving the board, staff, negotiators, or mediators wherein the finances of specific farmers, creditors, and others are discussed, are confidential, closed meetings and are not subject to the open meetings requirements of section 44-04-19.

SECTION 3. REPEAL. Sections 6-09.10-08.1, 6-09.10-08.2, 6-09.10-08.3, 6-09.10-08.4, and 6-09.10-08.6 of the North Dakota Century Code and section 6-09.10-08.5 of the 1995 Supplement to the North Dakota Century Code are repealed.

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

Approved March 21, 1997

Filed March 21, 1997