

BANKS AND BANKING

CHAPTER 72

HOUSE BILL NO. 1100

(Industry, Business and Labor Committee)

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

UNDERCAPITALIZED STATE BANK CORRECTIVE ACTION

AN ACT to create and enact a new section to chapter 6-01 of the North Dakota Century Code, relating to the authority of the state banking board to take corrective action concerning undercapitalized state banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Prompt correction action. The board may enter an order if the board finds that a state bank is undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purpose of this section, undercapitalized, significantly undercapitalized, and critically undercapitalized have the same definition as found in title 12, Code of Federal Regulations, part 325, section 103. The order may require an undercapitalized state bank to take prompt corrective action as the board determines reasonable to bring the bank to an adequately capitalized condition, including the submission and implementation of an acceptable capital restoration plan. For a significantly or critically undercapitalized state bank, the board may issue a temporary cease and desist order appointing a receiver, or with the consent of the federal deposit insurance corporation appoint a conservator or take such other action as may be better to resolve the problems of the state bank consistent with section 38 of the Federal Deposit Insurance Act of 1991 [Pub. L. 102-242; 105 Stat. 2253; 12 U.S.C. 1831(o) et seq.]. A bank that has been served with a complaint requesting the state banking board to issue a prompt corrective action under this section may request a hearing before the board within five days after service of the complaint upon the bank. A request for a hearing must be granted and the hearing must be held not later than ten days after the request is filed with the board. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board may issue an order. The bank may appeal the board's order under this section to the district court of Burleigh County, North Dakota, within ten days after the board's order is served on the bank. The appeal is governed by chapter 28-32.

Approved March 8, 1999

Filed March 8, 1999

CHAPTER 73**SENATE BILL NO. 2135**

(Industry, Business and Labor Committee)

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

BANKING ASSOCIATION INVESTMENTS

AN ACT to amend and reenact section 6-03-07 of the North Dakota Century Code, relating to banking association investments.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-07 of the 1997 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~~ A state banking association may not invest more than ~~one hundred sixty-five~~ percent of the amount of its unimpaired capital stock ~~and~~, surplus, and undivided profits in a banking facility, furniture, fixtures, and equipment without the approval of the commissioner or the state banking board.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 74**HOUSE BILL NO. 1270**

(Representatives Berg, Brekke)

TRUST COMPANY POWERS

AN ACT to create and enact a new subsection to section 6-05-08 of the North Dakota Century Code, relating to the corporate powers of a state-chartered trust company.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-05-08 of the North Dakota Century Code is created and enacted as follows:

Notwithstanding any other provision of law and subject to approval by the state banking board, engage in any fiduciary activity in which a federally chartered financial institution that is granted fiduciary powers may engage.

Approved March 11, 1999

Filed March 11, 1999

CHAPTER 75

HOUSE BILL NO. 1103

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

TRUST COMPANY OFFICER AND EMPLOYEE BONDS

AN ACT to create and enact a new section to chapter 6-05 of the North Dakota Century Code, relating to trust company officer and employee fidelity bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Bonds of officers and employees. An officer or employee of any trust company, before entering upon the person's duties, shall furnish a bond to the trust company in the sum and upon the conditions as required by the board of directors in keeping with rules adopted by the state banking board. All bonds must be approved by the board of directors of the trust company and are subject to the approval of the commissioner. A record of the approval of the bonds by the board of directors of the trust company must be made on the records of the trust company and the bonds must be filed with the commissioner. Stockholders of the trust company are not eligible as bondsmen for the officers or employees.

Approved March 8, 1999
Filed March 8, 1999

CHAPTER 76**HOUSE BILL NO. 1099**

(Industry, Business and Labor Committee)

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

UNDERCAPITALIZED CREDIT UNION CORRECTIVE ACTION

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to corrective actions concerning undercapitalized credit unions.

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:

Prompt corrective action. Whenever the state credit union board determines that any credit union under its supervision does not have adequate capital, the state credit union board, without a hearing, may declare that the credit union is either undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purposes of this section, a credit union is undercapitalized if it either has a net worth ratio of less than six percent or fails to meet any applicable risk-based net worth requirement established by the board by rule. A credit union is significantly undercapitalized if it has a net worth ratio of less than four percent or has a net worth ratio of less than five percent and fails to submit an acceptable net worth restoration plan or materially fails to implement a plan accepted by the board. A credit union is critically undercapitalized if it has a net worth ratio of less than two percent or such higher net ratio, not exceeding three percent, as the board may specify. The board, by order, may require a credit union that is undercapitalized to annually set aside as net worth an amount equal to up to four-tenths percent of its total assets. Additionally, the board may require an undercapitalized credit union to submit an acceptable net worth restoration plan to the board within the time allowed by the board. For a significantly undercapitalized credit union that has no reasonable prospect of becoming adequately capitalized or a critically undercapitalized credit union, the board may take possession of the credit union, appoint a conservator or liquidating agent for the credit union, or take such other action as the board determines would be appropriate to resolve the problems of the credit union.

A credit union that is the subject of such a board declaration may ask for a hearing before the board within five days after service upon it of the board's declaration. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board shall enter a final order. The institution may appeal the order to the district court of Burleigh County, within ten days after the order is served upon it. The appeal is governed by chapter 28-32.

Approved March 19, 1999

Filed March 22, 1999

CHAPTER 77

HOUSE BILL NO. 1374

(Representatives Nottestad, Thorpe)
(Senators Krebsbach, Lindaas)

CREDIT UNION LOAN LIMITS

AN ACT to amend and reenact section 6-06-14 of the North Dakota Century Code, relating to credit union unsecured loan limits.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans. The credit committee has general supervision over all loans to members, and shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to the North Dakota central credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee and must set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed ~~twenty five~~ fifty thousand dollars. Security under this section includes an assignment of shares or deposits, an endorsement made on the note by a responsible person, and such other security as the committee in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the credit committee, or in excess of such limit if such excess is fully secured by unpledged shares. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by the loan officer within seven days of the date of the filing of the application therefor. All loans not approved by a loan officer must be acted upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Every loan by a credit union to its directors, officers, managers, and committee members must be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and must be in strict conformity with the credit union's rules and regulations.

Approved March 18, 1999
Filed March 19, 1999

CHAPTER 78

HOUSE BILL NO. 1161

(Industry, Business and Labor Committee)

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

TRUST COMPANY DISSOLUTION AND LIQUIDATION

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the voluntary and involuntary dissolution and liquidation of state trust companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Action to close state trust company. The commissioner or board may close and liquidate a state trust company on finding that the interests of its clients and creditors are jeopardized by the state trust company's insolvency or imminent insolvency or that the best interests of clients and creditors would be served by requiring that the state trust company be closed and its assets liquidated. A majority of the state trust company's directors, managers, or managing participants may voluntarily close the state trust company and place it with the commissioner for liquidation.

Involuntary closing. After closing a state trust company, the commissioner shall place a sign at its main entrance stating that the state trust company has been closed. A correspondent bank of the closed state trust company may not pay an item drawn on the account of the closed state trust company which is presented for payment after the correspondent has received actual notice of closing unless it previously certified the item for payment. As soon as practicable after posting the sign at the state trust company's main entrance, the commissioner shall file a copy of the notice of the action to close a state trust company in district court in the county where the state trust company's home office is located. The court in which the notice is filed shall docket it as a case styled, "In re liquidation of ____", inserting the name of the state trust company. As soon as this notice is filed, the court has constructive custody of all the state trust company's assets, and any action initiated which seeks to directly or indirectly affect state trust company assets is considered to be an intervention in the receivership proceeding. Venue for an action instituted to effect, contest, or otherwise intervene in the liquidation of a state trust company is Burleigh County, North Dakota, except on a motion filed and served concurrently with or before the filing of the answer, the court, on a finding of good cause, may transfer the action to the county of the state trust company's home office.

Nature and duration of receivership. The court may not require a bond from the commissioner as receiver. Any reference in this chapter to the receiver is a reference to the commissioner as receiver and any successors in office or an independent receiver appointed at the request of the commissioner. The acts of the receiver are the acts of the state trust company in liquidation and this state and its political subdivisions are not liable and may not be held accountable for any debt or obligation of a state trust company in receivership. The receiver has all the powers of the directors, managers, managing participants, officers, and shareholders or participants of the state trust company as necessary to support an action taken on

behalf of the state trust company. A state trust company receivership must be administered continuously for the length of time necessary to complete its purposes, and the period prescribed by other law limiting the time for the administration of receiverships or of corporate affairs generally does not apply.

Contest of liquidation. A state trust company, acting through a majority of its directors, managers, or managing participants, may intervene in the action filed by the commissioner to challenge the commissioner's closing of the state trust company and to enjoin the commissioner or other receiver from liquidating its assets. The intervenors must file the intervention not later than the second business day after the closing of the state trust company, excluding legal holidays. The court may issue an ex parte order restraining the receiver from liquidating state trust company assets pending a hearing on the injunction. The receiver shall comply with the restraining order but may petition the court for permission to liquidate an asset as necessary to prevent its loss or diminution pending the outcome of the injunction. The court shall hear this action as quickly as possible and shall give it priority over other business. The state trust company or receiver may appeal the court's judgment as in other civil cases, except that the receiver shall retain all state trust company assets pending a final appellate court order even if the commissioner does not prevail in the district court. If the commissioner prevails in the district court, liquidation of the state trust company may proceed unless the district court or appellate court orders otherwise. If liquidation is enjoined or stayed pending appeal, the district court retains jurisdiction to permit liquidation of an asset as necessary to prevent its loss or diminution pending the outcome of the appeal.

Notice of state trust company closing. As soon as reasonably practicable after initiation of the receivership proceeding, the receiver shall publish notice, in a newspaper of general circulation in each community where the state trust company's home office and a branch are located. The notice must state that the state trust company has been closed for liquidation, that creditors and clients must present their claims for payment on or before a specific date, and that all safe deposit boxholders and bailors of property left with the state trust company should remove their property not later than a specified date. The receiver shall select the dates to allow the affairs of the state trust company to be wound up as quickly as feasible while allowing creditors, clients, and owners of property adequate time for presentation of claims, withdrawal of accounts, and redemption of property, but may not select a date before one hundred twenty days after the date of the notice. The receiver may adjust the dates with the approval of the court with or without republication if additional time appears needed for these activities. As soon as reasonably practicable given the state trust company records and the adequacy of staffing, the receiver shall mail to each of the state trust company's known clients, creditors, safe deposit boxholders, and bailors of property left for the state trust company, at the mailing address shown on the state trust company records, an individual notice containing the information required in this section. The receiver may determine the form and content notices under this section.

Inventory. As soon as reasonably practicable given the condition of the state trust company records and the adequacy of staffing, the receiver shall prepare a comprehensive inventory of the state trust company's assets for filing with the court. The inventory must be open to inspection.

Title and receiver. The receiver has title to all the state trust company's property, contracts, and rights of action, wherever located, beginning on the date the state trust company is closed for liquidation. The rights of the receiver have priority over all liens that arise after the date of the closing of the state trust company for liquidation.

Rights fixed. The rights and liabilities of state trust company liquidation and of a client, creditor, officer, director, manager, managing participant, employee, shareholder, participant, agent, or other person interested in the state trust company's estate are fixed on the date of closing of the state trust company for liquidation, except as otherwise directed by the court or as expressly provided by this chapter.

Depositories. The receiver may deposit funds collected on behalf of the state trust company estate in the Bank of North Dakota or one or more depository institutions in this state. If receivership funds deposited in an account at a depository institution exceed the maximum insured amount, the receiver shall require the excess deposit to be adequately secured through pledge of securities or otherwise, without approval of the court.

Pending lawsuits. A judgment or order of a court of this state or of any other jurisdiction in an action pending by or against the state trust company, rendered after the date the state trust company was closed for liquidation, is not binding on the receiver unless the receiver was made a party to the suit. Before the first anniversary of the date the state trust company was closed for liquidation, the receiver may not be required to plead to any suit pending against the state trust company in a court in this state on the date the state trust company was closed for liquidation and in which the receiver is a proper plaintiff or defendant.

New lawsuits. Except as otherwise provided in this section, the court in which the receivership proceeding is pending under this chapter has exclusive jurisdiction to hear and determine all actions or proceedings instituted by or against the state trust company or receiver after the receivership proceeding starts. The receiver may file in any jurisdiction an ancillary suit that may be helpful to obtain jurisdiction or venue over a person or property. Exclusive venue of an action or proceeding instituted against the receiver or the receiver's designated agent, including an employee of the department, which asserts personal liability on the part of the receiver or designated agent lies in Burleigh County, North Dakota.

Records with third parties. Each state trust company affiliate, officer, director, manager, managing participant, employee, shareholder, participant, trustee, agent, employee, attorney, attorney-in-fact, or correspondent shall immediately upon request deliver to the receiver any property, book, record, account, document, or other writing of the state trust company which relates to the business of the state trust company, without cost to the receiver.

Injunction in aid of liquidation. On application by the receiver, the court may with or without notice issue an injunction restraining each state trust company, officer, director, manager, managing participant, employee, shareholder, participant, trustee, agent, employee, attorney, attorney-in-fact, accountant or accounting firm, correspondent, or another person from transacting the state trust company's business or wasting or disposing of its property or requiring the delivery of its property or assets to the receiver subject to the further order of the court. The court, at any time during a proceeding under this chapter, may issue another injunction or order considered necessary or desirable to prevent interference with the receiver of the proceeding, waste of the assets of the state trust company, the beginning of prosecution of an action, the obtaining of a preference, judgment, attachment, garnishment, or other lien, or the making of a levy against the state trust company or its assets.

Subpoena. In addition to the authority granted by law to the receiver relating to the taking of a deposition of a witness in a civil action, the receiver may request

the court ex parte to issue a subpoena to compel the attendance and testimony of a witness before the receiver and the production of a book, account, record, paper, or correspondence, or other record relating to the receivership estate. For this purpose, the receiver or the receiver's designated representative may administer an oath or affirmation, examine a witness, or receive evidence. The court has statewide subpoena power and may compel attendance and production of a record before the receiver at the state trust company, the office of the receiver, or another location. In case of disobedience of a subpoena, or of the contumacy of a witness appearing before the receiver or the receiver's designated representative, the receiver may request and the court may issue an order requiring the person subpoenaed to obey the subpoena, give evidence, or produce any record relating to the matter in question.

Preferences. Any transfer of or lien on the property or assets of a state trust company is voidable by the receiver if the transfer or lien is made or created after four months before the date the state trust company is closed for liquidation or one year before the date the state trust company is closed for liquidation if the receiving creditor was at the time an affiliate, officer, director, manager, principal shareholder, or participant of the state trust company or an affiliate of the state trust company, or was made or created with the intent of giving to a creditor, enabling the creditor to obtain a greater percentage of the claimant's debt that is given or obtained by another claimant of the same class.

Administrative expenses. The receiver may employ agents, legal counsel, accountants, appraisers, consultants, and other personnel the receiver considers necessary to assist in the performance of the receiver's duties. The receiver may use personnel of the department if the receiver considers the use to be advantageous or desirable. The expense of employing these persons is an administrative expense of liquidation.

Disposal of property and settling claims. In the course of liquidating a state trust company, the receiver on order of the court entered with or without hearing may sell all or part of the real and personal property of the state trust company; borrow money and pledge all or part of the assets of the state trust company to secure the debt created, except that the receiver may not be held personally liable to repay borrowed funds; compromise or compound a doubtful or uncollectible debt or claim owed by or owing to the state trust company; and enter another agreement on behalf of the state trust company that the receiver considers necessary or proper to the management, conservation, or liquidation of its assets.

Filing reports and expenses. The receiver shall file quarterly reports with the court showing the operation, receipts, expenditures, and general condition of the state trust company in liquidation. The receiver shall also file a final report regarding the liquidated state trust company showing all receipts and expenditures and giving a full explanation and a statement of the disposition of all assets of the state trust company. The receiver shall pay all administrative expenses out of funds or assets of the state trust company. Each quarter the receiver shall submit an itemized report of those expenses.

Fiduciary activities. As soon after beginning the receivership proceeding as is practicable, the receiver shall terminate all fiduciary positions it holds, surrender all property held by it as a fiduciary, and settle the state trust company's fiduciary accounts. The receiver shall release all segregated and identifiable fiduciary property held by the state trust company to successor fiduciaries. With the approval of the court, the receiver may sell the administration of all or substantially all remaining fiduciary accounts to one or more successor fiduciaries on terms that appear to be in

the best interests of the state trust company's estate and the persons interested in the fiduciary accounts. If commingled fiduciary funds held by the state trust company as trustee are insufficient to satisfy all fiduciary claims to the commingled funds, the receiver shall distribute commingled funds pro rata to all fiduciary claimants of commingled funds based on their proportionate interests after payment of administrative expenses related solely to the fiduciary claims. The fictional tracing rule does not apply. The receiver may require certain fiduciary claimants to file proofs of claim if the records of the state trust company are insufficient to identify their respective interests.

Disposition and maintenance of records. On approval by the court, the receiver may dispose of records of the state trust company in liquidation which are obsolete and unnecessary to continue administration of the receivership proceeding. Records of a liquidated state trust company are not public records for any purpose and are exempt from public disclosure. To maintain the records of a liquidated state trust company after the closing of the receivership proceeding, the receiver may reserve assets of an estate, deposit them in an account, and use them for maintenance, storage, and disposal of records in closed receivership estates.

Filing claims. A person who has a claim against the estate of a state trust company in liquidation must file proof of claim pursuant to rules adopted by the state banking board. The priority of disposition of assets from the estate of a state trust company must be in accordance with the order of each class as provided by this section. Every claim in each class must be paid in full, or adequate funds must be retained for that payment, before the members of the next class receive any payment. A subclass may not be established within a class, except for a preference or subordination within a class expressly created by contract or other instrument in the articles of association. Assets must be distributed in the following order of priority: administrative expenses; approved claims of secured trust deposits; approved claims of secured creditors; approved claims by beneficiaries insufficient to satisfy all fiduciary claims to commingled fiduciary funds or missing fiduciary property and approved claims of clients of the state trust company; other approved claims of general creditors not falling within a higher priority under this section; approved claims of a type described above that were not filed within the period prescribed; and claims of capital note or debenture holders or holders of similar obligations and proprietary claims of shareholders, participants, or other owners accorded the terms established by issue, class, or series. After completion of the liquidation, any unclaimed property remaining in the hands of the receiver must be considered abandoned property.

Approved March 26, 1999

Filed March 26, 1999

CHAPTER 79**SENATE BILL NO. 2326**

(Senators Krebsbach, Klein, D. Mathern, Wardner)
(Representatives Keiser, Mahoney, Poolman)

ELECTRONIC TRANSFER WITHOUT SUFFICIENT FUNDS

AN ACT to amend and reenact sections 6-08-16, 6-08-16.1, and subsection 1 of section 6-08-16.2 of the North Dakota Century Code, relating to authorizing an electronic funds transfer without sufficient funds; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁵ **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1997 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 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, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, 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, electronic fund transfer, or order in full upon its authorized 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.
2. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer

⁵⁵ Section 6-08-16 was also amended by section 2 of House Bill No. 1044, chapter 51, and section 1 of House Bill No. 1243, chapter 80.

authorization, 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, electronic funds transfer authorization, or order. The making of a postdated check knowingly 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 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
 or costs not in excess of twenty dollars.

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

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, 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.

SECTION 2. AMENDMENT. Section 6-08-16.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

⁵⁶ **SECTION 3. AMENDMENT.** Subsection 1 of section 6-08-16.2 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, electronic funds transfer authorization, or order for the payment of money.
 - d. "Issues" means draws, utters, electronically authorizes, or delivers.

Approved March 19, 1999
Filed March 19, 1999

⁵⁶ Section 6-08-16.2 was also amended by section 3 of House Bill No. 1044, chapter 51, and section 2 of House Bill No. 1243, chapter 80.

CHAPTER 80

HOUSE BILL NO. 1243

(Representatives L. Thoreson, Mahoney)
(Senators Krebsbach, Traynor)

NONSUFFICIENT FUNDS AND NO ACCOUNT CHECKS PENALTY

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁵⁷ **SECTION 1. AMENDMENT.** Section 6-08-16 of the 1997 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 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 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 ~~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:~~
 - a. An infraction if the amount of insufficient funds or credit is not more than fifty dollars;
 - b. A class B misdemeanor if the amount of insufficient funds or credit is more than fifty dollars but not more than two hundred fifty dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
 - c. A class A misdemeanor if the amount of insufficient funds or credit is more than two hundred fifty dollars but not more than five

⁵⁷ Section 6-08-16 was also amended by section 2 of House Bill No. 1044, chapter 51, and section 1 of Senate Bill No. 2326, chapter 79.

hundred dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or

- d. A class C felony if the amount of insufficient funds or credit is more than five hundred dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient fund check, draft, or order.
2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient fund checks, drafts, or orders. The person is also liable for collection fees or costs, not in excess of 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. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
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 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~~ the holder's agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date _____

Name of Issuer _____

Street Address _____

City and State _____

You are according to law notified that a check dated _____,
~~49~~ _____, 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 twenty dollars.

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

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 4. 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.

⁵⁸ **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the 1997 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".
 - 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~~ 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 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.~~

⁵⁸ Section 6-08-16.2 was also amended by section 3 of House Bill No. 1044, chapter 51, and section 3 of Senate Bill No. 2326, chapter 79.

The person also is liable for collection fees or costs, not in excess of 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 five hundred dollars or that person, agent, or representative of another, issues more than one instrument wherein the aggregate total of all instruments issued exceeds five hundred dollars, and:
 - a. ~~At~~ 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 also is liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, 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 G 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.~~

4. ~~The~~ A person who issues an instrument under subsection 2 or 3 also is 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, 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.

- ~~6.~~ 5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder, or the holder's agent or representative, mailed a notice under subsection 6. ~~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, subdivision b of subsection 3, or subdivision b of subsection 4. A criminal complaint for violating this section must be executed within ninety days after the drawer receives notice from the holder, or its agent or representative, of a no-account or closed account instrument.

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

Notice of Dishonored Instrument

Date _____
 Name of Issuer _____
 Street Address _____
 City and State _____
 You are according to law notified that an instrument dated _____,
 49 _____, 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 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. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1999
 Filed April 8, 1999

CHAPTER 81

HOUSE BILL NO. 1101

(Industry, Business and Labor Committee)

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

ELECTRONIC FUND TRANSFER FEES AND DISCLOSURES

AN ACT to create and enact a new section to chapter 6-08 of the North Dakota Century Code, relating to electronic fund transfer fees and disclosures; and to amend and reenact subsection 7 of section 6-03-02 of the North Dakota Century Code, relating to bank electronic fund transfer fees and disclosures.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 6-03-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. To exercise, as determined by the board by order or rule, all 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 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 those services within this state. A bank 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 the equipment and service available for use by customers of any other bank upon the request of the other bank to share its use and the agreement of the other bank to share pro rata all costs incurred in connection with its installation and operation, and the electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. 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 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 2. A new section to chapter 6-08 of the North Dakota Century Code is created and enacted as follows:

Electronic funds transfer fees. The operator of any electronic funds transfer facility providing for electronic funds transfer 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 the 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. The name of the owner of an automated teller machine must be shown on each automated teller machine located separate from a financial institution.

Approved March 19, 1999
Filed March 22, 1999

CHAPTER 82**SENATE BILL NO. 2137**

(Government and Veterans Affairs Committee)
(At the request of the Bank of North Dakota)

**BANK OF NORTH DAKOTA LOAN PARTICIPATION
REPEAL**

AN ACT to repeal section 6-09-15.4 of the North Dakota Century Code, relating to participation by the Bank of North Dakota in loans to nonfarming small business concerns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Section 6-09-15.4 of the North Dakota Century Code is repealed.

Approved March 3, 1999

Filed March 4, 1999

CHAPTER 83**SENATE BILL NO. 2136**

(Government and Veterans Affairs Committee)
(At the request of the Bank of North Dakota)

BANK OF NORTH DAKOTA LAND SALES

AN ACT to amend and reenact section 6-09-37 of the North Dakota Century Code, relating to sale of land acquired by the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-37 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09-37. Sale and leasing of acquired agricultural real estate. The sale and leasing of ~~all~~ agricultural real estate with an appraised value of ten thousand dollars or more acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure must be done in accordance with chapter 15-07 or 15-09 and rules of the board of university and school lands. The sale and leasing of agricultural real estate with an appraised value of less than ten thousand dollars, acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure, may be done in a manner as the Bank determines is appropriate given the circumstances. In the case of a lease by the party holding the right of redemption, that party has the right to purchase at any time.

Approved March 19, 1999
Filed March 19, 1999

CHAPTER 84**SENATE BILL NO. 2414**

(Senators Krauter, Grindberg, Kelsh, O'Connell)
(Representatives Drovdal, R. Kelsch)

HIGHER EDUCATION SAVINGS PLAN

AN ACT to create a North Dakota higher education savings plan; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. North Dakota higher education savings plan - Administration - Rules. The Bank of North Dakota shall adopt rules to administer, manage, promote, and market a North Dakota higher education savings plan. The Bank shall ensure that the North Dakota higher education savings plan is maintained in compliance with internal revenue service standards for qualified state tuition programs.

SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the general fund in the state treasury, not otherwise appropriated, the sum of \$57,000, or so much of the sum as may be necessary, to the Bank of North Dakota for the purpose of administering, managing, promoting, and marketing the North Dakota higher education savings plan, for the biennium beginning July 1, 1999, and ending June 30, 2001.

Approved April 1, 1999
Filed April 2, 1999

CHAPTER 85**SENATE BILL NO. 2106**

(Natural Resources Committee)

(At the request of the State Water Commission)

**DRINKING WATER REVOLVING FUND
PARTICIPATION**

AN ACT to create and enact a new subdivision to subsection 6 of section 6-09.4-03 of the North Dakota Century Code, relating to the state water commission's participation in the municipal bond bank's drinking water state revolving fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 6 of section 6-09.4-03 of the 1997 Supplement to the North Dakota Century Code is created and enacted as follows:

The state water commission, for purposes of the revolving loan fund program established by chapter 61-28.1.

Approved March 5, 1999
Filed March 5, 1999

CHAPTER 86**SENATE BILL NO. 2042**
(Legislative Council)
(Education Finance Committee)**SCHOOL DISTRICT AID PAYMENT WITHHOLDING**

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to evidences of indebtedness and the withholding of state aid to school districts; and to amend and reenact sections 6-09.4-18 and 21-03-44 of the North Dakota Century Code, relating to insurance or guaranties for bonds and sinking funds.

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:

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

1. If the municipal bond bank or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the bond bank or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15-40.1 until the payment of the principal or interest has been made to the bond bank or the paying agent, or until the bond bank or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the bond bank or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15-40.1 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
2. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the municipal bond bank or the paying agent. The bond bank or the paying agent shall apply the funds to payments that the school district is required to make to the bond bank or the paying agent.
3. If funds are withheld from a school district and made available to the bond bank or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the bond bank or the paying agent, may withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction

and made available to the bond bank or a paying agent under this section.

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

SECTION 2. AMENDMENT. Section 6-09.4-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.4-18. Insurance or guaranty. The bond bank is authorized and empowered to obtain from any entity of the state, any department or agency of the United States of America, or any nongovernmental insurer any insurance ~~or~~₁ guaranty, or liquidity facility, or from a financial institution a letter of credit to the extent such insurance, guaranty, liquidity facility, or letter of credit now or hereafter available, as to, or for, the payment or repayment of, interest or principal, or both, or any part thereof, on any bonds issued by the bond bank, or on any municipal securities purchased or held by the bond bank, pursuant to this chapter; and to enter into any agreement or contract with respect to any such insurance ~~or~~₁ guaranty, ~~or~~ letter of credit, or liquidity facility, and pay any required fee, unless the same would impair or interfere with the ability of the bond bank to fulfill the terms of any agreement made with the holders of its bonds.

SECTION 3. AMENDMENT. Section 21-03-44 of the North Dakota Century Code is amended and reenacted as follows:

21-03-44. Sinking fund - Use for unauthorized purpose. Money may not be withdrawn from a sinking fund and appropriated to any purpose other than the purpose for which the fund was instituted until that purpose has been accomplished, except as authorized by section 1 of this Act and sections 21-03-42 through 21-03-45.

Approved March 11, 1999
Filed March 11, 1999

CHAPTER 87**SENATE BILL NO. 2289**

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

AGRICULTURAL MEDIATION SERVICE EXTENSION

AN ACT to amend and reenact section 6-09.10-03 of the North Dakota Century Code, relating to an expiration date for the agricultural mediation service; 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 1997 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 commissioner 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 the fees~~ are used to continue the service until June 30, ~~1999~~ 2001. 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. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 7, 1999
Filed April 8, 1999

CHAPTER 88

HOUSE BILL NO. 1163

(Agriculture Committee)

(At the request of the Bank of North Dakota)

FAMILY FARM LOAN RESTRICTIONS

AN ACT to amend and reenact sections 6-09.11-03, 6-09.11-05, and 6-09.11-06 of the North Dakota Century Code, relating to family farm loan amount restrictions, residency requirements, and net worth restrictions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.11-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.11-03. Loans - Participation by the Bank of North Dakota.

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 6-09.11-04. Interest charged on a participation interest purchased by the Bank under this section may not be greater than one percent less than the Bank's base rate as in effect from time to time, and may float. However, the interest rate may not exceed eleven percent during the course of the loan. The Bank may charge for necessary and reasonable fees as determined by the industrial commission.
2. The amount of a participation interest purchased by the Bank under this section may not be greater than the lesser of ~~seventy-five~~ one hundred fifty thousand dollars or ninety percent of the loan amount.

SECTION 2. AMENDMENT. Section 6-09.11-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.11-05. Loan applications. An applicant for a loan must meet all of the following qualifications:

1. The applicant is at least eighteen years of age.
2. ~~The applicant has resided in North Dakota continuously during the three years immediately preceding the date of the application.~~
- ~~3.~~ 3. The applicant is a farmer.
- ~~4.~~ 3. The applicant has had the farming experience and training necessary to enable the applicant to operate a family farm and to make proper use of the proceeds of the loan.
- ~~5.~~ 4. The net worth of the applicant does not exceed ~~one~~ two hundred ~~fifty~~ thousand dollars.

SECTION 3. AMENDMENT. Section 6-09.11-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6-09.11-06. Loan restrictions.

1. A loan under this chapter may not ~~exceed~~ be greater than the lesser of one hundred fifty thousand dollars or ninety percent of the appraised value of the security given for the loan, with the actual percentage to be determined by the Bank of North Dakota. The Bank may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to purchase a participation interest in a loan under this chapter.
2. Except as otherwise provided:
 - a. A loan under this chapter must be repayable in installments and may have a term up to twenty years.
 - b. All or part of a loan under this chapter may be repaid at any time, subject to conditions set forth in the mortgage.

Approved March 16, 1999
Filed March 16, 1999

CHAPTER 89

SENATE BILL NO. 2242

(Senators Holmberg, Grindberg, St. Aubyn)
(Representatives Mickelson, Poolman)

BEGINNING ENTREPRENEUR LOAN GUARANTEE PROGRAM

AN ACT to provide for a beginning entrepreneur loan guarantee program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Beginning entrepreneur" means a resident of this state who:
 - a. Has graduated from high school or has received a general equivalency certificate.
 - b. Has had some training, by education or experience, in the type of revenue-producing enterprise which that person wishes to begin.
 - c. Has, including the net worth of that person's dependents and spouse, if any, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.
2. "Lender" means any lending institution that is regulated or funded under the laws of this state or the United States and which has provided financing to a beginning entrepreneur for the establishment of a qualified revenue-producing enterprise.
3. "Loan guarantee" means an agreement that in the event of default by a beginning entrepreneur under a note and mortgage or other loan or financing agreement, the Bank of North Dakota shall pay the lender the amount agreed upon up to eighty-five percent of the amount of principal due the lender on a loan at the time the claim is approved from the loan guarantee fund.
4. "Qualified revenue-producing enterprise" means any real property, buildings, improvements on the property or to the buildings, any equipment located on the property or in the buildings, and any personal property used or useful in connection with a revenue-producing enterprise engaged in any industry or business not prohibited by the Constitution of North Dakota or the laws of this state. The term does not include an enterprise for which a person is eligible under section 6-09-15.5 or chapter 6-09.8.

SECTION 2. Loan guarantee fund - Administration. A beginning entrepreneur loan guarantee fund is created to be used by the Bank of North Dakota to administer a beginning entrepreneur loan guarantee program to be used in conjunction with other loan programs. The fund includes moneys appropriated by the legislative assembly for administration of the program and all earnings, less any administrative charges, from the investment of those moneys. The Bank may retain any administrative charges necessary for the administration of the program established by this chapter. The fund is not subject to section 54-44.1-11.

SECTION 3. Application for guarantee - Term - Annual fee. A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of up to seventy-five thousand dollars. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. The Bank may not guarantee more than five hundred thousand dollars in loans under the beginning entrepreneur loan guarantee program.

SECTION 4. Termination. The Bank of North Dakota may terminate a loan guarantee upon the sale, exchange, assignment, or transfer of the beginning entrepreneur's interest in the qualified revenue-producing enterprise. The Bank shall terminate a loan guarantee if the Bank determines that the loan guarantee was obtained by fraud or material misrepresentation of which the lender or seller has actual knowledge.

SECTION 5. Rules. Notwithstanding any provision of this chapter, the Bank of North Dakota shall adopt rules to implement this chapter. The rules may include a formula for determining the ratio of reserves in the loan guarantee fund to the amount of guaranteed loans, the maximum dollar amount of a guarantee, and the maximum allowable annual interest rate on a loan eligible for a guarantee.

Approved April 17, 1999
Filed April 19, 1999

CHAPTER 90

HOUSE BILL NO. 1383

(Representatives Dorso, Clark)
(Senators Grindberg, G. Nelson)

HOUSING DEVELOPMENT FUND

AN ACT to provide for establishment and operation of the housing development fund and to provide a financial institutions tax credit for participation in the fund; to amend and reenact sections 57-35.3-09 and 57-35.3-10 of the North Dakota Century Code, relating to allocation of financial institutions' tax revenues; to provide a penalty; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act:

1. "Financial institution" means a financial institution as defined in section 57-35.3-01.
2. "Fund" means the housing development fund.
3. "Fund administrator" means a certified development corporation with a statewide focus which the small business administration has designated as a certified development corporation.
4. "Governing board" means the board of directors of the corporation or board of governors of the limited liability company established under section 2 of this Act.

SECTION 2. Establishment - Organization. Any financial institution or group of financial institutions may establish a corporation or a limited liability company to own and operate the housing development fund. Except as provided in this Act, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and a representative of the department of economic development and finance. The fund administrator shall maintain the fund as an account at the Bank of North Dakota. The governing board is responsible for adopting policies and procedures governing activities in connection with the fund. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

SECTION 3. Housing development fund use. The housing development fund established under section 2 of this Act may be used only for making participation loans in housing development projects in this state. The participation of the fund in a loan may not exceed the aggregate of loans from other sources and the investment of the project developer. A loan from the fund may not be made to a financial institution. The governing board shall establish the rate of interest and terms of repayment for a loan from the fund. Loans may be made from the fund for any housing project in the state, but the primary focus for loans from the fund must be to provide funding for multifamily housing projects in rural areas that are experiencing or expecting a shortage of housing as a result of economic

development. For purposes of this section, "rural areas" means the area of the state not within the corporate limits of a city with a population of eight thousand or more.

SECTION 4. Loan administration. An application for a loan from the fund must contain the information prescribed by the governing board. Except as provided in this section, information contained in applications for loans from the fund is confidential. The fund administrator shall review each loan application; report to the governing board whether the applicant represents a housing project, whether the housing project is for multifamily housing, and whether the housing project is located in a rural area; and make a recommendation to the governing board on whether to approve the loan application.

SECTION 5. Audited financial statement - Report of fund operations. The governing board shall contract annually with a certified public accountant for performance of an audit and preparation of audited financial statements of the fund, prepared in accordance with generally accepted accounting principles, and a report containing an analysis of the impact of the fund on the state's economy, business and employment activity generated by loans from the fund, and the effects of that activity on state and local tax revenues. The governing board shall provide the financial statements and report to the governor and the legislative council. The governing board shall make copies available to the public upon request. The cost of the audit and preparation of financial statements and report must be paid from the fund.

SECTION 6. Financial institutions tax credit - Penalty. If the requirements of this Act are met, a financial institution is entitled to a credit against taxes due under section 57-35.3-03 as determined under this section.

1. A financial institution making or participating in a loan under this Act is entitled to a credit calculated for each calendar year the loan is in place. The amount of the credit is the difference between:
 - a. The participating financial institution's share of the interest earned on the loan during the calendar year; and
 - b. The participating financial institution's share of an amount of interest that would have been earned during the same period by applying an interest rate, calculated by adding three hundred basis points to a comparable treasury security rate at the date of the issuance of the loan.
2. The maximum credit allowed a financial institution for any calendar year is the amount of interest that would have been earned during the period by applying an interest rate of three hundred basis points. A credit may not be allowed if the interest earned exceeds the interest that would have been earned by applying the calculation in subdivision b of subsection 1.
3. The credit may not exceed the total amount of the financial institution's tax liability under chapter 57-35.3 and unused credit may not be carried forward.
4. Credits under this section for all financial institutions may not exceed an aggregate amount of seven hundred and fifty thousand dollars in a calendar year.

5. A financial institution claiming a credit under this section shall attach to its return a schedule identifying each county within this state within which are located housing development projects funded by loans for which credits are claimed by that financial institution. The schedule must identify the location of, and the dollar amount of credit attributable to, each project within each county.

SECTION 7. Loans limited by assets of financial institutions. The aggregate amount of all loans made by a financial institution under this Act or the aggregate amount of a financial institution's participation in loans made under this Act may not at any time exceed five percent of the financial institution's admitted assets or the amount equal to the company's capital and surplus in excess of the minimum capital and surplus required by law, whichever is less.

SECTION 8. AMENDMENT. Section 57-35.3-09 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-35.3-09. Financial institution tax distribution fund - Continuing appropriation. The balance in the financial institution tax distribution fund on February first of 1999 and each subsequent year must be distributed in the following manner:

1. On or before February 1, 1999, the commissioner shall determine and certify to all county auditors:
 - a. The total amount of tax certified to each county under chapters 57-35 and 57-35.1 in the years 1993 through 1997; and
 - b. The amount determined under subdivision a for each county as a percentage of the amount determined under subdivision a for all counties.
2. On or before February fifteenth of 1999 and each subsequent year, the commissioner shall determine and certify to the state treasurer an amount for payment by the state treasurer to each county treasurer equal to:
 - a. The percentage for that county determined under subdivision b of subsection 1 $\frac{1}{2}$, multiplied by
 - ~~b. The the balance in the financial institution tax distribution fund on February first of that year plus five-sevenths of the total amount of credits claimed and allowed in the state under section 6 of this Act for the taxable year for which the distribution is being made; minus~~
 - b. Five-sevenths of the total amount of credits claimed and allowed in that county under section 6 of this Act for the taxable year for which the distribution is being made. If the amount subtracted under this subdivision exceeds the county's share of fund distributions for the taxable year, any excess amount may be carried forward and deducted from distributions to the county for up to two taxable years.
3. On or before March first of 1999 and each subsequent year, the state treasurer shall pay to the treasurer of each county the amount determined for that county under subsection 2. The amounts necessary

to make these payments are appropriated to the state treasurer as a standing and continuing appropriation for distribution under this subdivision.

4. On or before February 1, 1999, the treasurer of each county shall determine and certify to the state treasurer and to all affected political subdivisions of the county:
 - a. The total amount of tax apportioned and distributed to the state, the county, and each political subdivision of the county under sections 57-35-13 and 57-35.1-06 in the years 1994 through 1998; and
 - b. The amount determined under subdivision a for each distributee as a percentage of the amount determined under subdivision a for all distributees.
5. On or before the tenth working day of March in 1999 and each subsequent year, the treasurer of each county shall determine and distribute to each distributee described in subsection 4 an amount equal to:
 - a. The percentage for that distributee determined under subdivision b of subsection 4; multiplied by
 - b. The amount of the payment by the state to the county in that year under subsection 3.

SECTION 9. AMENDMENT. Section 57-35.3-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-35.3-10. Certification of estimated tax. On or before August 1, 1998, and each subsequent year, the commissioner shall provide a preliminary estimate of the distribution to be made to each county in the following year. The preliminary estimate must show the total amount of credits claimed and allowed in each county under section 6 of this Act for the taxable year and how those credits affect distributions. The preliminary estimate must identify the location of, and the dollar amount of credit attributable to, each project within each county. On or before November fifteenth of 1998 and each subsequent year, the commissioner shall determine the estimated amount of the distribution to be made to each county in the following year under section 57-35.3-09 and shall certify that amount to the county auditor.

SECTION 10. EFFECTIVE DATE - EXPIRATION DATE. This Act is effective for the first four taxable years beginning after December 31, 1998, and is thereafter ineffective.

Approved April 8, 1999
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