

BANKS AND BANKING

CHAPTER 77

HOUSE BILL NO. 1085

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

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

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

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

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

SECTION 3. 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 state banking board may adopt rules for the government of financial ~~corporations~~institutions and trust companies mentioned in section 6-01-01 to the extent the rules do not conflict with any law of this state or of the United States. The state banking board shall make and enforce such orders as are necessary or proper to protect the public and the depositors or creditors of those financial ~~corporations~~ and institutions and trust companies.

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

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

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

1. The commissioner or the 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 credit union, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial corporation, financial institution, or credit union 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 or 6-06-08;
 - g. Violations of loan limitations under subsection 1 of section 6-06-12 or North Dakota Administrative Code section 13-03-16-03, 13-03-16-05, or 13-03-16-08;
 - h. Loans in violation of section 6-06-14 or subsection 2 of section 13-03-16-02 of the North Dakota Administrative Code or subsection 2 of section 13-03-16-05 of the North Dakota Administrative Code; or
 - i. Failure to file notice of change of control under section 6-08-08.1.
2. The commissioner or the board 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 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, 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, 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 whether~~ whether good faith of the financial institution or the person being assessed ~~was exercised~~, and 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~~ department of financial institutions and deposited in the financial institutions regulatory fund.

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

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

The state banking board, the state credit union board, the commissioner, and the deputy examiners each have the power to subpoena witnesses, administer oaths, and generally to do and perform any and all acts and things necessary to the complete performance of the powers and duties imposed upon them in this title, and to enforce the provisions of law relating to financial corporations, financial institutions, and credit unions. For the purpose of enabling them to perform all the duties imposed upon them, the provisions of section 27-10-23 are applicable to their proceedings. Any and all orders made by the issuing board or commissioner are operative immediately and remain in full force until modified, amended, or annulled by the issuing board, commissioner, or by a court of competent jurisdiction in an action commenced by the party against whom such order has been issued.

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

6-01-06. Appointment of receivers.

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

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

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

The commissioner shall exercise a constant supervision over the business affairs of all financial corporations and financial institutions, and credit unions, including all out-of-state branches of financial corporations and financial institutions, and branches of out-of-state state-chartered banks, savings and loan associations, or savings banks within the jurisdiction of the board credit unions. Either the commissioner or one or more examiners shall visit each of the ~~state banking associations and other corporations, associations, and branches under the commissioner's jurisdiction~~ financial institution at least once each thirty-six months to examine ~~their~~its affairs and ascertain ~~their~~its financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing those corporations and institutions, and for that purpose the commissioner may examine the officers, agents, and employees of the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary

corporation of a bank under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner shall report the condition of the corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as the exigencies may demand.

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

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

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

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

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

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

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

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

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

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

1. No officer or employee of this department may have any interest, directly or indirectly, in any financial corporation or financial institution within the jurisdiction of the department of financial institutions, nor in any corporation or institution engaged wholly or in part in the writing or issuing of bonds of or for

any such corporation or institution or any officer or employee thereof. Provided, however, this prohibition does not apply to membership in a state-chartered credit union or savings and loan association.

2. For purposes of this section, "interest" means ownership of or investment in such corporations or institutions.

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

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

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

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

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

1. Before any real estate loan of ~~equal to or~~ equal to or more than two hundred fifty thousand dollars is made, an appraisal must be conducted by a licensed or certified appraiser if required by the federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.]. A
2. ~~Before any real estate loan that does not meet the requirements of subsection 1 is made, a~~ bank must obtain an appropriate evaluation of real property collateral for transactions ~~that do not require~~ that do not require if an appraisal by a licensed or certified appraiser ~~is not obtained~~.
3. ~~Regardless of the value of a real estate loan, the~~ commissioner may ~~require~~ issue an order requiring an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns. 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.

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

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

Any two or more banking institutions ~~as defined in section 6-01-02~~ upon making application to the state banking board may consolidate or merge if authorized by the board into one banking institution under the charter of either existing banking institution on such terms and conditions as lawfully may be agreed upon by a majority of the board of directors of each banking institution proposing to consolidate or merge subject to rules adopted by the state banking board. Before becoming final, such consolidation or merger must be ratified and confirmed by the vote of the shareholders of each such banking institution owning at least two-thirds of its capital stock outstanding at a meeting to be held on the call of the directors. Notice of such

meeting and of the purpose thereof must be given to each shareholder of record by registered or certified mail at least ten days prior to the meeting. The shareholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. The capital stock and surplus of such consolidated banking institution must not be less than that required under this title for the organization of a banking institution of the class of the largest consolidating banking institution. Immediately after the consolidation or merger a full report thereof, including a statement of the assets and liabilities of the consolidated banking institution, must be made to the commissioner by the surviving banking institution. Any banking institution may without approval by any state authority convert into or merge or consolidate with a national banking association as provided by federal law. A national bank proposing to merge into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner, ~~transferred to the state treasurer, and deposited in the financial institutions regulatory fund.~~

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

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

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

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

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

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

~~transferred must be forwarded to the commissioner within ten days of such change. For purposes of this subsection, "control" means owning or controlling directly or indirectly or by acting through one or more persons, of the power to vote twenty-five percent or more of any class of voting securities of the association or banking institution, controlling in any manner the election of a majority of the directors of the association or banking institution, or directing the management or policies of the association or banking institution.~~

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

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

6-03-37. Reserve funds.

~~Every banking association shall have on hand at all times in available funds an amount which equals a percentage of its demand deposits and amounts due to other banks, plus a percentage of its time deposits. Such percentage must be set by the state banking board. Such reserve funds may consist of cash on hand and balances due to the association from the Bank of North Dakota, a federal reserve bank, or good solvent state or national banks, approved by the commissioner for such purposes and located in such cities as will facilitate banking exchange. The commissioner, whenever the commissioner deems it necessary, may require such banking association, on fifteen days' notice in writing, to increase such reserve requirements to not more than twenty percent of its demand deposits nor more than ten percent of its time deposits. Cash items must not be included in computing reserve, and no association may carry as cash, or as cash items, any paper or other matter except legitimate bank exchange which will be cleared on the same or the next succeeding day. Whenever its reserve funds are below the required amount, no dividend may be paid.~~

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

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

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

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

A state-chartered bank may purchase or construct a municipal building, school building, or other similar public facility and, as holder of legal title, lease the facility to a municipality or other public authority having resources sufficient to make all rental payments as they become due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease. All

leases provided in accordance with this section must be subject to the bank's legal lending limit.

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

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

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

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

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

Any trust company may invest all moneys received by it in authorized securities, and shall be responsible to the owner or ~~estui que~~beneficiary of a trust for the validity, regularity, quality, value, and genuineness of these investments and securities so made, and for the safekeeping of the securities and evidences thereof. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment must be made, it shall follow such directions, and in such case it is not further responsible by reason of the performance of such trust. In all other cases it may invest funds held in any trust capacity in authorized securities using its best judgment in the selection thereof, and shall be responsible for the validity, regularity, quality, and value thereof at the time made, and for their safekeeping. Whether it be the sole trustee or one of two or more cotrustees, it may invest in fractional parts of, as well as in whole, securities, or may commingle funds for investment. If it invests in fractional parts of securities or commingles funds for investment, all of the fractional parts of such securities, or the whole of the funds so commingled must be owned and held by the trust company in its several trust capacities, and it is liable for the administration thereof in all respects as though separately invested. Funds so commingled for investment must be designated collectively as a common trust fund. It may, in its discretion, retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. The foregoing applies as well whether a corporation trustee is acting alone or with an individual cotrustee.

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

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

The capital stock of such a corporation may be increased from time to time by a majority vote of its stockholders. Such action may be taken at any regularly called general or special meeting held upon sixty days' notice, when in the notice of such meeting the object thereof has been set out fully. No such increase of capital stock is

valid unless paid in, in cash, and reported to the state ~~treasurer~~banking board in writing, verified by the oath of the president, secretary, or managing officer of the corporation.

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

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

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

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

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

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

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

6-08-27. Resident place of business, branch office, or agency not authorized - Acts prohibitedApplication.

~~The provisions of sections 6-08-25 through 6-08-28 may not be construed to permit a~~ bank or trust company, organized and doing business under the laws of any

other state, territory, or district than the state of North Dakota, including a national bank doing business in any other state, ~~to~~may establish in this state a place of business, branch office, or agency for the conduct of business as a fiduciary to the extent that the state, territory, or district in which such bank or trust company is organized or has its principal place of business grants authority for a North Dakota state-chartered bank or trust company to establish a place of business, branch office, or agency for the conduct of business as a fiduciary within that state's, territory's, or district's jurisdiction.

~~No~~Prior to the establishment of any place of business, branch office, or agency, under this section, a bank or trust company organized and doing business under the laws of any state or territory of the United States of America, or of the District of Columbia, other than the state of North Dakota, or a national bank doing business in any other state, territory, or district, ~~may act in a fiduciary capacity in this state, except pursuant to the provisions of sections 6-08-25 through 6-08-28~~must submit a copy of its application to the North Dakota department of financial institutions for review and comment.

Approved April 15, 2013
Filed April 16, 2013

CHAPTER 78

HOUSE BILL NO. 1164

(Representative N. Johnson)
(Senator Campbell)

AN ACT to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to a standard of conduct for directors of financial institutions.

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:

Standard of conduct for directors of financial institutions.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the financial institution, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the financial institution.
2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more officers or employees of the financial institution whom the director reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board upon which the director does not serve, duly established by the board as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a director who has specialized knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.
4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose;

- b. Votes against the action at the meeting; or
- c. Is prohibited from voting on the action:
 - (1) By the articles;
 - (2) By the bylaws;
 - (3) As the result of a decision to approve, ratify, or authorize a transaction that meets the standards and follows the process stated in section 10-19.1-51 for a business corporation; or
 - (4) By a conflict of interest policy adopted by the board.
- 5. A director's personal liability to the financial institution or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles may not eliminate or limit the liability of a director:
 - a. For any breach of the director's duty of loyalty to the financial institution or its shareholders;
 - b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
 - c. For illegal distributions which a director who is present and not disqualified from acting has voted for or failed to vote against;
 - d. For any transaction from which the director derived an improper personal benefit; or
 - e. For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.
- 6. In discharging the duties of the position of director, a director may, in considering the best interests of the financial institution, consider the interests of the financial institution's employees, customers, suppliers, and creditors; the economy of the state and nation; community and societal considerations; and the long-term and short-term interests of the financial institution and its shareholders, including the possibility these interests may be best served by the continued independence of the financial institution.

Approved April 2, 2013
Filed April 2, 2013

CHAPTER 79

HOUSE BILL NO. 1243

(Representatives Dockter, Becker)
(Senator Poolman)

AN ACT to amend and reenact sections 6-08-16 and 6-08-16.2 of the North Dakota Century Code, relating to issuance of checks without sufficient funds or without an account.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁶ **SECTION 1. AMENDMENT.** Section 6-08-16 of 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~~ an organization, 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 funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:
 - 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 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 funds check, draft, or order.

²⁶ Section 6-08-16 was also amended by section 1 of Senate Bill No. 2251, chapter 104.

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders.
 - a. ~~The~~ In addition to the criminal penalty, the person is also liable for collection fees or costs, not in excess of thirty-five forty dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order or by the holder's agent or representative. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. If the state's attorney or holder determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or ~~its~~ the holder's agent or representative written notice of the fraud and upon receipt of the notice that holder or ~~its~~ the holder's agent or representative may not collect fees or costs under this subdivision.
 - b. 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 if recovered by the collection agency.
 - c. If the person does not pay the instrument in full and any collection fees or costs not in excess of ~~thirty-five forty~~ dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, ~~a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative is entitled to bring a civil action to recover a civil penalty.~~ The civil penalty ~~consists of~~ is payment to the holder, ~~or its agent or representative,~~ of the instrument ~~or for the holder's agent or representative~~ the lesser of two hundred dollars or three times the amount of ~~the~~ each instrument.
 - d. 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, 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 the holder's agent or representative,~~ of the check upon dishonor or by the holder's agent or representative 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 _____,
 _____, 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 thirty-fiveforty 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. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or order without sufficient funds under this section must be executed within not more than one hundred twenty 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.

²⁷ **SECTION 2. AMENDMENT.** Section 6-08-16.2 of the North Dakota Century Code is amended and reenacted as follows:

6-08-16.2. Issuing check without account - Financial liability - Penalty - Exceptions.

1. As used in this section unless the context otherwise requires:
 - 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.
2. A person ~~who~~that, 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

²⁷ Section 6-08-16.2 was also amended by section 2 of Senate Bill No. 2251, chapter 104.

instrument without an account pursuant to section 6-08-16.1, and 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.

3. A person ~~who~~that, 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 five hundred dollars or that person, agent, or representative of another, issues more than one instrument ~~wherein~~for which the aggregate total of all instruments issued exceeds five hundred dollars, and 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.
4. A person ~~who~~that issues an instrument under subsection 2 or 3 ~~also~~ is liable for collection fees or costs; not in excess of ~~thirty-five~~forty dollars per instrument; which are recoverable by the holder of the instrument, or the holder's agent or representative. If the state's attorney or holder determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or ~~its~~the holder's agent or representative written notice of the fraud and upon receipt of the notice that holder or ~~its~~that holder's agent or representative may not collect fees or costs under this subsection. ~~A civil penalty is also recoverable by civil action by the~~The holder, or its agent or representative, of the instrument or the holder's agent or representative is entitled to bring a civil action to recover a civil penalty. The civil penalty ~~consists of~~is payment to the holder of the instrument of the lesser of two hundred dollars or three times the amount of ~~the~~each 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 if the holder, or the holder's agent or representative, mailed a notice under subsection 6. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. A criminal complaint for violating this section must be executed within one hundred twenty days after the drawer receives notice from the holder, ~~or its agent or representative,~~ of a no-account or closed-account instrument or the holder's agent or representative.
6. A notice of dishonor may be mailed by the holder, ~~or the holder's agent or representative,~~ of the instrument upon dishonor or by the holder's agent or representative 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 _____,
 _____, 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 ~~thirty-five~~forty 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 March 27, 2013
Filed March 27, 2013

CHAPTER 80

HOUSE BILL NO. 1078

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

AN ACT to amend and reenact subsection 4 of section 6-09-15 of the North Dakota Century Code, relating to the investment of funds by the Bank of North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 6-09-15 of the North Dakota Century Code is amended and reenacted as follows:

4. Invest its funds:
 - a. In conformity with policies of the industrial commission.
 - b. In a public venture capital corporation organized and doing business in this state through the purchase of shares of stock.
 - c. In North Dakota alternative and venture capital investments and early-stage capital funds, including the North Dakota development fund, incorporated, not to exceed ~~ten~~fifteen million dollars, for the purpose of providing funds for investment in North Dakota alternative and venture capital investments, early-stage capital funds, and entrepreneurship awards. The Bank may invest a maximum of two hundred thousand dollars per biennium in North Dakota-based venture capital entities that make investments in companies located outside North Dakota. The Bank may allow for third-party management of the funds invested under this subdivision if the management is provided by the North Dakota development fund, incorporated, or a third party that is located in the state and that has demonstrated fund management experience.

Approved March 26, 2013
Filed March 27, 2013

CHAPTER 81

SENATE BILL NO. 2064

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

AN ACT to amend and reenact section 6-09-44 of the North Dakota Century Code, relating to the Bank of North Dakota residential mortgage loan program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09-44 of the North Dakota Century Code is amended and reenacted as follows:

6-09-44. (Effective through July 31, 2013) Residential mortgages.

1. The Bank may establish a residential mortgage loan program under which the Bank may originate residential mortgages if private sector mortgage loan services are not reasonably available. Under this program a local financial institution or credit union may assist the Bank in taking a loan application, gathering required documents, ordering required legal documents, and maintaining contact with the borrower.
2. If the Bank establishes a program under this section, at a minimum the program must provide:
 - a. ~~The Bank originate no more than eight million dollars in conventional rural residential mortgages;~~
 - b. An applicant must be referred to the Bank by a local financial institution ~~and the Bank may not have received from any other local financial institution an objection to the Bank's program or credit union;~~
 - e-b. The loan application must be for an owner-occupied primary residence;
 - d-c. The Bank provide all regulatory disclosures, process and underwrite the loan, prepare closing documents, and disburse the loan; and
 - e-d. The terms of the loan originated by the Bank must provide:
 - (1) The amount of the loan may not exceed ~~two hundred thousand dollars~~ an amount to be established by Bank policy;
 - (2) The term of the loan may not exceed thirty years;
 - (3) The rate of the loan must be equal to the Bank's market rate;
 - (4) The maximum loan to value may not exceed eighty percent of appraised value; however, a local financial institution or credit union may take a second mortgage that does not exceed a combined loan to value of ninety-five percent; and

(5) Standard credit underwriting and documentation applies.

3. The Bank may sell eligible first-time home buyer loans to the North Dakota housing finance agency.

Approved April 3, 2013

Filed April 3, 2013

CHAPTER 82

HOUSE BILL NO. 1185

(Representatives Louser, Brabandt, Nathe, Ruby)
(Senators Burckhard, Poolman)

AN ACT to amend and reenact section 6-09-46 of the North Dakota Century Code, relating to extension of the rebuilders loan program; to provide an exemption; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁸ **SECTION 1. AMENDMENT.** Section 6-09-46 of the North Dakota Century Code is amended and reenacted as follows:

6-09-46. Rebuilders loan program - Loan fund - Continuing appropriation - Requirements.

1. The Bank of North Dakota shall maintain a loan fund to make or participate in loans to North Dakota residents affected by a presidentially declared disaster in the state for the purpose of the resident rebuilding the resident's flood-damaged home or purchasing a new home or for rebuilding nonowner-occupied property in the disaster-impacted community. Up~~For a resident rebuilding the resident's flood-damaged home or purchasing a new home.~~ up to twenty percent of the loan proceeds disbursed under this program may be used for debt service, debt retirement, or other credit obligations. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans in accordance with this section.
2. The Bank shall administer and supervise the loan fund and loans made from the fund. The Bank may deduct, from interest payments received on loans, a service fee for administering the fund for the Bank and originating financial institutions. An application for a loan from the fund must be made to the Bank or originating financial institution and, upon approval, a loan must be made from the fund in accordance with this section.
3. A loan may be made from the fund only to a homeowner residing, or owner of nonowner-occupied property, in an area in this state in which federal emergency management agency individual assistance was available to homeowners after a presidentially declared disaster in the state as a result of a flood event occurring during 2011. A loan may be made from the fund only to a homeowner residing in this state whose home, or owner of nonowner-occupied property whose property, was granted a reduction in 2011 in true and full valuation from the individual's property's pre-flood value by an assessment reduction pursuant to the governor's executive order 2011-22 or by an abatement for flood-damaged property granted by the board of county commissioners. In order for an owner of nonowner-occupied property to

²⁸ Section 6-09-46 was also amended by section 1 of Senate Bill No. 2132, chapter 83.

qualify for a loan under this section, the owner of the property must have been the owner at the time of the presidentially declared disaster and the number of households in the property rebuilt under this section must remain the same as before the presidentially declared disaster. The owner of nonowner-occupied property is eligible for only one loan for nonowner-occupied property under this section and that loan must be secured by the property for which the loan is made. An initial loan made to a homeowner or owner of nonowner-occupied property under this section from state funds may not exceed thirty thousand dollars or the actual amount of documented damage not paid by flood insurance, whichever is less. If federal funds are made available for this program, an additional amount as determined by the Bank may be borrowed by eligible homeowners who received an initial loan of thirty thousand dollars. For purposes of this section, "nonowner-occupied property" means property consisting of one or more rental dwelling units, none of which is occupied by the owner, and does not include hotel or motel accommodations or any other commercial property.

4. A loan from the fund must have the interest rate fixed at one percent per year for no more than twenty years.
5. For every loan made from the fund to a homeowner to rebuild or replace that individual's flood-damaged home, principal and interest payments must be deferred for the first twenty-four months of the loan. There is no deferral of principal and interest payments for a loan for nonowner-occupied property.
6. A loan application for a loan for nonowner-occupied property under this section may not be accepted after September 30, ~~2012~~2013.
7. If, subsequent to receiving a loan from the fund, the property for which the loan was made is purchased for flood mitigation purposes or otherwise sold, the balance of the loan and any interest accrued on the loan must be repaid to the fund upon the closing of the sale.
8. The industrial commission shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid by the fund.
9. The Bank shall adopt policies to implement this section.

SECTION 2. EXEMPTION - REBUILDERS LOAN PROGRAM. The amount appropriated for the rebuilders loan program fund, as contained in section 8 of chapter 579 of the 2011 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for continuation of the rebuilders loan program during the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 15, 2013
Filed April 16, 2013

CHAPTER 83

SENATE BILL NO. 2132

(Senator Krebsbach)

(Representatives Frantsvog, Maragos)

AN ACT to amend and reenact section 6-09-46 of the North Dakota Century Code, relating to the rebuilders loan program; to provide an exemption; to provide for transfers; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹ **SECTION 1. AMENDMENT.** Section 6-09-46 of the North Dakota Century Code is amended and reenacted as follows:

6-09-46. Rebuilders loan program - Loan fund - Continuing appropriation - Requirements.

1. The Bank of North Dakota shall maintain a loan fund to make or participate in loans to North Dakota residents affected by a presidentially declared disaster in the state for the purpose of the resident rebuilding the resident's flood-damaged home or purchasing a new home or federal emergency management agency temporary housing unit located in a community-approved group housing site in the disaster-impacted community. ~~Up~~For a resident rebuilding the resident's flood-damaged home or purchasing a new home, up to twenty percent of the loan proceeds disbursed under this program may be used for debt service, debt retirement, or other credit obligations. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are appropriated for the purpose of providing loans in accordance with this section.
2. The Bank shall administer and supervise the loan fund and loans made from the fund. The Bank may deduct, from interest payments received on loans, a service fee for administering the fund for the Bank and originating financial institutions. An application for a loan from the fund must be made to the Bank or originating financial institution and, upon approval, a loan must be made from the fund in accordance with this section.
3. A loan may be made from the fund only to a resident of a federal emergency management agency temporary housing unit located in a community-approved group housing site or a homeowner residing in an area in this state in which federal emergency management agency individual assistance was available to homeowners after a presidentially declared disaster in the state as a result of a flood event occurring during 2011. A loan may be made from the fund only to a resident of a federal emergency management agency temporary housing unit located in a community-approved group housing site or a homeowner residing in this state whose home was granted a reduction in 2011 in true and full valuation from

²⁹ Section 6-09-46 was also amended by section 1 of House Bill No. 1185, chapter 82.

the individual's property's preflood value by an assessment reduction pursuant to the governor's executive order 2011-22 or by an abatement for flood-damaged property granted by the board of county commissioners. An initial loan made to a homeowner under this section from state funds may not exceed thirty thousand dollars or the actual amount of documented damage not paid by flood insurance, whichever is less. If federal funds are made available for this program, an additional amount as determined by the Bank may be borrowed by eligible homeowners who received an initial loan of thirty thousand dollars. A supplemental loan of up to twenty thousand dollars may be made to a homeowner who has received an initial loan under this section if the full amount of the initial loan and supplemental loan is secured by the property and does not exceed the actual amount of documented damage not paid by flood insurance. A loan made to a resident of a federal emergency management agency temporary housing unit located in a community-approved group housing site may not exceed thirty thousand dollars or the purchase price as established by the federal emergency management agency, whichever is less.

4. A loan from the fund must have the interest rate fixed at one percent per year for no more than twenty years.
5. For every loan made from the fund, principal and interest payments must be deferred for the first twenty-four months of the loan.
6. A loan application for an initial loan to a homeowner or for a federal emergency management agency temporary housing unit under this section may not be accepted after September 30, 2012. A loan application for a supplemental loan to a homeowner may not be accepted before October 1, 2013, nor after December 31, 2013.
7. If, subsequent to receiving a loan from the fund, the property for which the loan was made is purchased for flood mitigation purposes or otherwise sold, the balance of the loan and any interest accrued on the loan must be repaid to the fund upon the closing of the sale. If the rebuilders loan borrower provides financial evidence satisfactory to the Bank of North Dakota to show that the borrower does not have the financial ability to repay the rebuilders loan in full upon sale of the property, after the sale of the property the Bank of North Dakota may allow the borrower to continue to make payments based on the loan terms.
8. The industrial commission shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid by the fund.
9. The Bank shall adopt policies to implement this section.

SECTION 2. EXEMPTION - REBUILDERS LOAN PROGRAM. The amount appropriated for the rebuilders loan program fund, as contained in section 8 of chapter 579 of the 2011 Session Laws, is not subject to the provisions of section 54-44.1-11. Any unexpended funds from this appropriation are available for continuation of the rebuilders loan program during the biennium beginning July 1, 2013, and ending June 30, 2015.

SECTION 3. TRANSFERS - BANK OF NORTH DAKOTA - REBUILDERS LOAN PROGRAM FUND. The Bank of North Dakota shall transfer the sum of \$5,000,000, or so much of the sum as may be necessary, from the Bank's current earnings and

undivided profits to the rebuilders loan program fund during the period beginning with the effective date of this Act and ending June 30, 2015. After June 30, 2013, repayments to the rebuilders loan program fund shall be transferred to replenish \$30,000,000 of the Bank of North Dakota's undivided profits which was transferred to the rebuilders loan program fund under section 7 of chapter 579 of the 2011 Session Laws and after that amount has been replenished, repayments to the rebuilders loan program fund must be transferred to replenish \$5,000,000 of the Bank of North Dakota's current earnings and undivided profits which was transferred to the rebuilders loan program fund under this section. On an annual basis, the Bank of North Dakota shall transfer repayments to the rebuilders loan program fund to the state treasurer for deposit in the state general fund in any amount exceeding the \$35,000,000 used to replenish the Bank of North Dakota's undivided profits under this section.

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

Approved April 25, 2013
Filed April 25, 2013

CHAPTER 84

SENATE BILL NO. 2187

(Senators J. Lee, Bowman, Mathern)
(Representatives Kempenich, J. Nelson, Holman)

AN ACT to create and enact section 6-09-47 of the North Dakota Century Code, relating to a Bank of North Dakota medical facility infrastructure loan program; to provide for a report; to provide for a transfer; to provide a contingent appropriation; to provide a continuing appropriation; to provide an effective date; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Section 6-09-47 of the North Dakota Century Code is created and enacted as follows:

6-09-47. (Effective through July 31, 2017) Medical facility infrastructure loan program - Continuing appropriation - Audit and costs of administration.

1. The Bank of North Dakota shall administer a loan program to provide loans to medical facilities to conduct construction that improves the health care infrastructure in the state or improves access to existing nonprofit health care providers in the state. The construction project may include land purchases and may include purchase, lease, erection, or improvement of any structure or facility to the extent the governing board of the health care facility has the authority to authorize such activity.
2. In order to be eligible under this loan program, the applicant must be the governing board of the health care facility which shall submit an application to the Bank. The application must:
 - a. Detail the proposed construction project, which must be a project of at least one million dollars and which is expected to be utilized for at least thirty years;
 - b. Demonstrate the need and long-term viability of the construction project; and
 - c. Include financial information as the Bank may determine appropriate to determine eligibility, such as whether there are alternative financing methods.
3. The governor shall establish a task force to review loan applications under this section and to make recommendations to the Bank on the loan applications. The task force must include representation of medical providers and medical facilities from the oil-producing counties in the state. The task force shall work with the Bank to establish criteria for eligibility for a loan under the program. The criteria established by the task force and the Bank must give priority to applicants that are located in oil-producing counties.

4. A loan provided under this section:
 - a. May not exceed the lesser of fifteen million dollars or seventy-five percent of the actual cost of the project;
 - b. Must have an interest rate equal to one percent; and
 - c. Must provide a repayment schedule of no longer than twenty-five years.
5. A recipient of a loan under this section shall complete the financed construction project within twenty-four months of approval of the loan. Failure to comply with this subsection may result in forfeiture of the entire loan received under this section.
6. The medical facility infrastructure fund is a special fund in the state treasury. All moneys in the medical facility infrastructure fund are appropriated to the Bank on a continuing basis for the purpose of providing loans under this section.
7. Funds in the medical facility infrastructure fund may be used for loans as provided under this section and to pay the costs of administration of the fund. Annually, the Bank may deduct a service fee for administering the medical facility infrastructure fund maintained under this section.
8. The medical facility infrastructure fund must be audited in accordance with section 6-09-29. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund.
9. The Bank shall deposit loan repayment funds in the medical facility infrastructure fund. After deduction of fees and costs as provided in this section, the Bank shall make an annual transfer of repayment funds deposited in the medical facility infrastructure fund to the state treasurer for deposit in the strategic investment and improvements fund.

(Effective August 1, 2017, through July 31, 2043) Medical facility infrastructure loan program - Continuing appropriation - Audit and costs of administration.

1. The Bank of North Dakota shall service loans made under the medical facility infrastructure loan program. The repayment schedule of these loans may not exceed twenty-five years.
2. Funds in the medical facility infrastructure fund may be used for loans as provided under this section and to pay the costs of administration of the fund. Annually, the Bank may deduct a service fee for administering the medical facility infrastructure fund maintained under this section.
3. The medical facility infrastructure fund must be audited in accordance with section 6-09-29. The cost of the audit and any other actual costs incurred by the Bank on behalf of the fund must be paid from the fund.
4. The Bank shall deposit loan repayment funds in the medical facility infrastructure fund. After deduction of fees and costs as provided in this section, the Bank shall make an annual transfer of repayment funds deposited in the medical facility infrastructure fund to the state treasurer for deposit in the strategic investment and improvements fund.

SECTION 2. APPROPRIATION - TRANSFER. There is appropriated out of any moneys in the strategic investment and improvements fund in the state treasury, not otherwise appropriated, the sum of \$50,000,000, or so much of the sum as may be necessary, to the medical facility infrastructure fund for use by the Bank of North Dakota to provide medical facility infrastructure loans under section 1 of this Act, for the biennium beginning July 1, 2013, and ending June 30, 2015. In addition, any amount authorized by the state board of university and school lands under House Bill No. 1319, as enacted by the sixty-third legislative assembly, after December 31, 2014, as uncommitted school construction loans shall be transferred to the medical facility infrastructure fund and is appropriated for the purpose of loans by the Bank of North Dakota to provide medical facility infrastructure loans under section 1 of this Act.

SECTION 3. BALANCE TRANSFER. The Bank of North Dakota shall transfer any balance remaining in the medical facility infrastructure fund on July 31, 2017, to the state treasurer for deposit in the strategic investment and improvements fund.

SECTION 4. REPORT TO LEGISLATIVE ASSEMBLY. The Bank of North Dakota shall report to the sixty-fourth and sixty-fifth legislative assemblies on the status of the loan program provided for in this Act.

Approved May 3, 2013
Filed May 7, 2013

CHAPTER 85**SENATE BILL NO. 2096**

(Education Committee)
(At the request of the Bank of North Dakota)

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to funds received by the Bank of North Dakota in relation to the federal student loan program; to provide a continuing appropriation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-09 of the North Dakota Century Code is created and enacted as follows:

Funds received in relation to federal student loan program - Administration - Continuing appropriation.

1. The Bank of North Dakota shall administer and manage the funds received in relation to the federal student loan program under section 2212 of the Health Care and Education Reconciliation Act of 2010 [Pub. L. 111-152].
2. The funds shall be used to support the functions of the Bank related to higher education.
3. The funds received by the Bank under subsection 1 are appropriated on a continuing basis to be used as provided in this section.
4. These funds are not subject to section 54-44.1-11.

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

Approved April 12, 2013
Filed April 12, 2013

CHAPTER 86

SENATE BILL NO. 2057

(Political Subdivisions Committee)
(At the request of the Public Finance Authority)

AN ACT to amend and reenact section 6-09.4-10 of the North Dakota Century Code, relating to the reserve fund for public finance authority bonds.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.4-10 of the North Dakota Century Code is amended and reenacted as follows:

6-09.4-10. Reserve fund.

1. The public finance authority shall establish and maintain a reserve fund in which there must be deposited all moneys appropriated by the state for the purpose of the fund, all proceeds of bonds required to be deposited therein by terms of any contract between the public finance authority and its bondholders or any resolution of the public finance authority with respect to the proceeds of bonds, any other moneys or funds of the public finance authority which it determines to deposit therein, any contractual right to the receipt of moneys by the public finance authority for the purpose of the fund, including a letter of credit or similar instrument, and any other moneys made available to the public finance authority only for the purposes of 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 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 public finance authority 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 public finance authority are not then available in accordance with the terms of the contract. The required debt service reserve must be an aggregate amount equal to at least the largest amount of money required by the terms of all contracts between the public finance authority 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 contracts to sinking funds established for the payment or redemption of the bonds.
2. If the establishment of the reserve fund for an issue or the maintenance of an existing reserve fund at a required level under this section would necessitate the investment of all or any portion of a new reserve fund or all or any portion of an existing reserve fund at a restricted yield, because to not restrict the

yield may cause the bonds to be taxable under the Internal Revenue Code, then at the discretion of the public finance authority no reserve fund need be established prior to the issuance of bonds or the reserve fund need not be funded to the levels required by other subsections of this section or an existing reserve fund may be reduced.

3. No bonds may be issued by the public finance authority unless there is in the reserve fund the required debt service reserve for all bonds then issued and outstanding and the bonds to be issued. Nothing in this chapter prevents or precludes the public finance authority from satisfying the foregoing requirement by depositing so much of the proceeds of the bonds to be issued, upon their issuance, as is needed to achieve the required debt service reserve. The public finance authority may at any time issue its bonds or notes for the purpose of providing any amount necessary to increase the amount in the reserve fund to the required debt service reserve, or to meet such higher or additional reserve as may be fixed by the public finance authority with respect to such fund.
4. In order to assure the maintenance of the required debt service reserve, there shall be appropriated by the legislative assembly and paid to the public finance authority for deposit in the reserve fund, such sum, if any, as shall be certified by the industrial commission as necessary to restore the reserve fund to an amount equal to the required debt service reserve. However, the commission may approve a resolution for the issuance of bonds, as provided by section 6-09.4-06, which states in substance that this subsection is not applicable to the required debt service reserve for bonds issued under that resolution.
5. If the maturity of a series of bonds of the public finance authority is three years or less from the date of issuance of the bonds, the public finance authority may determine that no reserve fund need be established for that respective series of bonds. If such a determination is made, holders of that respective series of bonds may have no interest in or claim on existing reserve funds established for the security of the holders of previously issued public finance authority bonds, and may have no interest in or claim on reserve funds established for the holders of subsequent issues of bonds of the public finance authority.

The industrial commission may determine that this section is inapplicable in whole or in part for bonds issued under section 6-09.4-24 or under the public finance authority's state revolving fund program.

Approved March 14, 2013
Filed March 15, 2013

CHAPTER 87

SENATE BILL NO. 2287

(Senators Wanzek, Schneider, Wardner)
(Representatives Brandenburg, Headland, Pollert)

AN ACT to amend and reenact sections 6-09.7-02, 6-09.7-03, and 6-09.7-05 of the North Dakota Century Code, relating to the fuel production facility loan guarantee program; to repeal section 6-09.7-03 of the North Dakota Century Code, relating to the fuel production facility loan guarantee program; to provide an effective date; to provide an expiration date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-09.7-02 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-02. (Effective through July 31, 2015) Powers and duties of the Bank of North Dakota.

The Bank of North Dakota may:

1. Guarantee the loan of money by eligible banks, credit unions, and savings and loan associations, upon such terms, conditions, and procedures as it may establish in accordance with the provisions of this chapter, to any qualified person to assist that person in constructing an agriculturally derived fuel production facility. The facility must use biomass for agriculturally derived fuel production.
2. Take, hold, and administer, on behalf of the state from any source, any property, or any interest in the property, and the income therefrom, either absolutely or in trust, for any purpose of the guarantee loan program; provided, that no guarantee obligation of the Bank is payable out of any moneys of the Bank except those made available to the Bank under this chapter.
3. Adopt standards governing the qualifications and financial needs of applicants; establish a method of application for the guaranteeing of loans that may be made by banks, credit unions, farm credit associations, and savings and loan associations; and adopt any other standards necessary to administer this chapter.

(Effective after July 31, 2015) Powers and duties of the Bank of North Dakota. The Bank of North Dakota may:

1. ~~Guarantee the loan of money by eligible banks, credit unions, and savings and loan associations, upon such terms, conditions, and procedures as it may establish in accordance with the provisions of this chapter, to any qualified person to assist that person in constructing agriculturally derived fuel production facilities of a size to serve the community in or near which the facility is located. The facility must use grain-related and biomass farm products for agriculturally derived fuel production.~~

2. Take ~~take~~, hold, and administer, on behalf of the state from any source, any property, or any interest ~~therein in the property~~, and the income therefrom, either absolutely or in trust, for any purpose of the state guarantee loan program; provided, that no guarantee obligation of the Bank is payable out of any moneys of the Bank except those made available to ~~it~~the Bank under this chapter.
3. ~~Adopt standards governing the qualifications and financial needs of applicants, and establish a method of application for the guarantecing of loans which may be made by banks, credit unions, and savings and loan associations, and any other standards as may be necessary to administer properly this chapter.~~

³⁰ **SECTION 2. AMENDMENT.** Section 6-09.7-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-03. (Effective through July 31, 2013) Extent of loan guarantee.

The extent of the loan guarantee under this chapter may not exceed ~~twenty-five~~thirty percent of the total loan. The maximum dollar amount of any guarantee on a single loan may not exceed ~~twelve~~twenty-five million ~~five hundred thousand~~ dollars. The extent of the value of all loan guarantees under this chapter may not, at any one time, exceed twenty-five million dollars.

(Effective after July 31, 2013) Extent of loan guarantee. The extent of the loan guarantee under this chapter may not exceed twenty-five percent of the total loan. The maximum dollar amount of any guarantee on a single loan may not exceed two million five hundred thousand dollars. The extent of the value of all loan guarantees under this chapter may not, at any one time, exceed ten million dollars.

SECTION 3. AMENDMENT. Section 6-09.7-05 of the North Dakota Century Code is amended and reenacted as follows:

6-09.7-05. (Effective through July 31, 2013) Establishment and maintenance of adequate guarantee funds - Use of strategic investment and improvements fund.

The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The Bank may request the director of the office of management and budget to transfer funds from the strategic investment and improvements fund created by section 15-08.1-08 to maintain ~~twenty-five~~one hundred percent of the guarantee reserve fund balance. Transfers from the strategic investment and improvements fund may not exceed a total of ~~six~~twenty-five million ~~two hundred fifty thousand~~ dollars. Moneys in the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program ~~shall~~must be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula ~~which~~that will assure, as determined by the Bank, an adequate amount of reserve.

³⁰ Section 6-09.7-03 was repealed by section 4 of Senate Bill No. 2287, chapter 87.

~~(Effective after July 31, 2013) Establishment and maintenance of adequate guarantee funds – Use of strategic investment and improvements fund. The Bank of North Dakota shall establish and at all times maintain an adequate guarantee reserve fund in a special account in the Bank. The guarantee reserve fund must be maintained from the strategic investment and improvements fund created by section 15-08.1-08 and any moneys transferred from the strategic investment and improvements fund to maintain the guarantee reserve fund are available to reimburse lenders for guaranteed loans in default. The securities in which the moneys in the reserve fund may be invested must meet the same requirements as those authorized for investment under the state investment board. The income from such investments must be made available for the costs of administering the state guarantee loan program and income in excess of that required to pay the cost of administering the program shall be deposited in the reserve fund. The amount of reserves for all guaranteed loans must be determined by a formula which will assure, as determined by the Bank, an adequate amount of reserve.~~

³¹ **SECTION 4. REPEAL.** Section 6-09.7-03 of the North Dakota Century Code is repealed.

SECTION 5. EFFECTIVE DATE. Section 4 of this Act becomes effective August 1, 2015.

SECTION 6. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 26, 2013

Filed March 27, 2013

³¹ Section 6-09.7-03 was amended by section 2 of Senate Bill No. 2287, chapter 87.

CHAPTER 88

HOUSE BILL NO. 1079

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

AN ACT to amend and reenact section 6-09.14-03 and subsection 4 of section 6-09.14-04 of the North Dakota Century Code and section 22 of chapter 579 of the 2011 Session Laws, relating to the partnership in assisting community expansion program at the Bank of North Dakota; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 22 of chapter 579 of the 2011 Session Laws is amended and reenacted as follows:

SECTION 22. FLEX PACE PROGRAM USE. The Bank of North Dakota shall utilize the flex partnership in assisting community expansion program to assist in financing of affordable multifamily housing units for individuals in areas of North Dakota affected by oil and gas development, for the period beginning with the effective date of this Act and ending June 30, 20132015.

SECTION 2. AMENDMENT. Section 6-09.14-03 of the North Dakota Century Code is amended and reenacted as follows:

6-09.14-03. Fund - Purpose - Interest rate buydown.

Moneys in the partnership in assisting community expansion fund must be used for the purpose of buying down the interest rate on loans made by a lead financial institution in participation with the Bank of North Dakota. The Bank of North Dakota's participation may not exceed eighty percent nor be less than fifty percent of the total loans. If the loan is approved by the lenders and there is evidence of the community's commitment and ability to fund its portion of the buydown, the fund's participation in the buydown must automatically be approved. The community's contribution of direct cash, loans, equity investments, land, property, or infrastructure may count toward the community's funding of its portion of the buydown.

SECTION 3. AMENDMENT. Subsection 4 of section 6-09.14-04 of the North Dakota Century Code is amended and reenacted as follows:

4. The maximum amount from the fund in the interest rate buydown may not exceed ~~three~~five hundred thousand dollars per loan. The fund participation must be limited to the amount required to buy down the interest to five hundred basis points below the national prime interest rate.

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

Approved April 10, 2013
Filed April 10, 2013