

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact section 6-01-04.5 and subsection 5 to section 6-06-08 of
2 the North Dakota Century Code, relating to the investigation of bank holding companies and
3 fees for credit union examinations; to amend and reenact sections 6-01-02, 6-01-04.4, and
4 6-01-09, subsection 1 of section 6-03-47.2, and section 6-08-08.1 of the North Dakota Century
5 Code, relating to definitions, prompt corrective action for state banks, the examination of
6 technology service providers, and investments of state banks; and to repeal section 6-05-25 of
7 the North Dakota Century Code, relating to when subscribed capital stock must be paid in by
8 annuity, safe deposit, surety, and trust companies.

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

10 **SECTION 1. AMENDMENT. Section 6-01-02 of the North Dakota Century Code is**
11 **amended and reenacted as follows:**

12 **6-01-02. Definitions.**

13 As used in this title, unless the context or subject matter otherwise requires:

- 14 1. "Association", "banking association", or "state banking association" means any
15 corporation organized under the laws of this state covering state banking associations,
16 and all corporations, limited liability companies, partnerships, firms, or associations
17 whose business in whole or in part consists of the taking of money on deposit, except
18 national banks, trust companies, and the Bank of North Dakota.
- 19 2. "Bank" means any national bank, national banking association, corporation, state
20 bank, state banking association, or savings bank, whether organized under the laws of
21 this state or of the United States, engaged in the business of banking.
- 22 3. "Bank holding company" means bank holding company as defined in 12 U.S.C.
23 1841(a)(1).

- 1 4. "Banking" means the business of receiving deposits, making loans, discounting
2 commercial paper, issuing drafts, traveler's checks, and similar instruments, handling
3 and making collections, cashing checks and drafts, and buying and selling exchange.
- 4 5. "Banking department" means the state department of financial institutions.
- 5 6. "Banking institution" means any bank, trust company, or bank and trust company
6 organized under the laws of this state.
- 7 7. "Branch" means a place of business where deposits are received, checks paid, or
8 money lent as a result of a bank that was merged into another bank pursuant to an
9 interstate merger.
- 10 8. "Commissioner" means the commissioner of financial institutions.
- 11 9. "Corporate central credit union" means a credit union operated for the primary purpose
12 of serving corporate accounts. A credit union is deemed to be a corporate central
13 credit union when its total dollar amount of outstanding corporate loans plus corporate
14 share and deposit holdings is equal to or greater than seventy-five percent of its
15 outstanding loans plus share and deposit holdings.
- 16 10. "Credit union" means a cooperative, nonprofit association organized for the purposes
17 of encouraging thrift among its members, creating a source of credit at a fair and
18 reasonable rate of interest, and providing an opportunity for its members to improve
19 their economic and social condition.
- 20 11. "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).
- 21 12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
22 optical, electromagnetic, or similar capabilities.
- 23 13. "Electronic communication" means any form of communication, not directly involving
24 the physical transmission of paper that creates a record that may be retained,
25 retrieved, and reviewed by a recipient of the communication and may be directly
26 reproduced in paper form by the recipient through an automated process.
- 27 14. "Electronic record" means a record created, generated, sent, communicated, received,
28 or stored by electronic means.
- 29 15. "Electronic signature" means an electronic sound, symbol, or process attached to or
30 logically associated with a record and signed or adopted by a person with the intent to
31 sign the record.

- 1 16. "Financial corporation" means all entities regulated by the department of financial
2 institutions, excluding financial institutions and credit unions.
- 3 17. "Financial institution" means any bank, industrial loan company, or savings and loan
4 association organized under the laws of this state or of the United States.
- 5 18. "Market value" means the highest price for which property can be sold in the open
6 market by a willing seller to a willing purchaser, neither acting upon compulsion and
7 both exercising reasonable judgment.
- 8 19. "Merger" or "merge" means the merging or consolidation of two or more banks
9 including the purchase of all or substantially all of the assets and assumption of
10 liabilities of a bank, facility, or branch.
- 11 20. "Mutual investment corporation" or "mutual savings corporation" means a corporation
12 organized to engage in the investment or savings business, but having no capital
13 stock or a nominal capital stock.
- 14 21. "National bank" or "national banking association" means an institution chartered by the
15 comptroller of the currency under the National Bank Act [12 U.S.C. 24].
- 16 22. "Record" means information that is inscribed on a tangible medium or that is stored in
17 an electronic or other medium and is retrievable in perceivable form.
- 18 23. "Technology service provider" includes any person that provides services to a financial
19 institution, financial corporation, or credit union, including: core processing; information
20 and transaction processing and settlement activities that support banking functions
21 such as lending, deposit-taking, funds transfer, fiduciary, or trading activities;
22 internet-related services; security monitoring; and system development and
23 maintenance.
- 24 24. "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of
25 Federal Regulations, part 325, in effect on August 1, 2011.
- 26 ~~24-25.~~ "Trust company" means any corporation formed for the purpose of transacting
27 business as an annuity, safe deposit, surety, or trust company.

28 **SECTION 2. AMENDMENT.** Section 6-01-04.4 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **6-01-04.4. Prompt corrective action.**

2 The board may enter an order if the board finds that a state bank is undercapitalized,
3 significantly undercapitalized, or critically undercapitalized. For the purpose of this section,
4 undercapitalized, significantly undercapitalized, and critically undercapitalized have the same
5 definition as found in title 12, Code of Federal Regulations, part ~~325~~324, section ~~403~~403. The
6 order may require an undercapitalized state bank to take prompt corrective action as the board
7 determines reasonable to bring the bank to an adequately capitalized condition, including the
8 submission and implementation of an acceptable capital restoration plan. For a significantly or
9 critically undercapitalized state bank, the board may issue a temporary cease and desist order
10 appointing a receiver, or with the consent of the federal deposit insurance corporation appoint a
11 conservator or take such other action as may be better to resolve the problems of the state
12 bank consistent with section 38 of the Federal Deposit Insurance Act of 1991 [Pub. L. 102-242;
13 105 Stat. 2253; 12 U.S.C. 1831(o) et seq.], in effect on July 22, 2010. A bank that has been
14 served with a complaint requesting the state banking board to issue a prompt corrective action
15 under this section may request a hearing before the board within five days after service of the
16 complaint upon the bank. A request for a hearing must be granted and the hearing must be held
17 not later than ten days after the request is filed with the board. A complete record of the hearing
18 must be established and maintained. On the basis of the hearing, the board may issue an order.
19 The bank may appeal the board's order under this section to the district court of Burleigh
20 County, North Dakota, within ten days after the board's order is served on the bank. The appeal
21 is governed by chapter 28-32.

22 **SECTION 3.** Section 6-01-04.5 of the North Dakota Century Code is created and enacted
23 as follows:

24 **Investigation of bank holding companies.**

25 The department may investigate a bank holding company that owns or controls a North
26 Dakota state chartered financial institution upon the commissioner's receipt of information
27 material to the safety and soundness of the bank holding company, and may pursue and
28 impose penalties under sections 6-01-04.1, 6-01-04.2, and 6-01-04.3 against such a bank
29 holding company.

30 **SECTION 4. AMENDMENT.** Section 6-01-09 of the North Dakota Century Code is amended
31 and reenacted as follows:

1 **6-01-09. Supervision and examination by commissioner of financial institutions.**

2 The commissioner shall exercise a constant supervision over the business affairs of all
3 financial corporations, financial institutions, and credit unions, including all out-of-state branches
4 of financial corporations, financial institutions, and credit unions. Either the commissioner or one
5 or more examiners shall visit each financial institution at least once each thirty-six months to
6 examine its affairs and ascertain its financial condition. The commissioner shall inspect and
7 verify the assets and liabilities of the institution and branches to ascertain with reasonable
8 certainty that the value of the assets and the amounts of the liabilities are correctly carried on its
9 books. The commissioner shall examine the validity of mortgages held by savings institutions
10 and shall see that all of the mortgages are properly recorded. The commissioner shall
11 investigate the method of operation and conduct of the corporations and institutions and their
12 systems of accounting to ascertain whether the methods conform to the law and sound banking
13 usage and principles. The commissioner shall inquire into and report any infringement of the
14 laws governing those corporations and institutions, and for that purpose the commissioner may
15 examine the officers, agents, and employees of the corporations and institutions and all persons
16 doing business therewith. The commissioner may examine, or cause to be examined, or review
17 the books and records of any subsidiary corporation of a bank under the commissioner's
18 supervision and may require the bank to provide information on the holding company that owns
19 the bank. The commissioner may also examine, or caused to be examined, or review the books
20 and records of any technology service provider that provides services to financial corporations
21 and financial institutions under the commissioner's supervision, to evaluate that entity's risk
22 management systems and controls and compliance with applicable laws that affect such
23 services provided to financial corporations and financial institutions. The commissioner shall
24 report the condition of the corporations and institutions, together with the commissioner's
25 recommendations or suggestions in connection therewith, to the state banking board, and the
26 board may take such action as the exigencies may demand.

27 **SECTION 5. AMENDMENT.** Subsection 1 of section 6-03-47.2 of the North Dakota Century
28 Code is amended and reenacted as follows:

- 29 1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a nationally
30 recognized rating service approved by the commissioner, provided that the lesser of
31 the book value or face value of the investments at the time of purchase may not

1 exceed for any one corporation twenty-five percent of the unimpaired capital and
2 surplus of the banking association.

3 **SECTION 6.** Subsection 5 to section 6-06-08 of the North Dakota Century Code is created
4 and enacted as follows:

5 5. If the commissioner determines more than one visit, inspection, or examination is
6 necessary to promote the safety and soundness of a credit union during a
7 twelve-month period, the credit union shall pay to the department a fee for the time
8 used by the commissioner or other person designated by the commissioner in
9 supervising, filing, and corresponding in connection with each additional visit,
10 inspection, or examination and report of examination and for time used by each
11 examiner or other person in making and otherwise preparing and typing the reports of
12 examination provided for under this section. Fees for the visit, inspection, or
13 examination must be charged by the department of financial institutions at an hourly
14 rate to be set by the commissioner, sufficient to cover all reasonable expenses of the
15 department associated with the visit, inspection, or examination provided for by this
16 section. A credit union shall pay this fee within ten days of receiving a billing from the
17 commissioner. Fees must be deposited in the financial institutions regulatory fund.

18 **SECTION 7. AMENDMENT.** Section 6-08-08.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **6-08-08.1. Sale or purchase of associations, banking institutions, or holding**
21 **companies - Notification to commissioner - Hearing.**

- 22 1. No person, acting directly or indirectly or through or in concert with one or more other
23 persons, may ~~sell or otherwise dispose of an association, or banking institution, or~~
24 purchase or otherwise acquire control of an association or banking institution unless
25 the state banking board has been given prior written notice by application of the
26 proposed disposition or acquisition. The written application must include such
27 information as the state banking board shall specify. The transaction may not be
28 consummated before the board has granted approval.
- 29 2. The applicant shall publish notice of the application as required by the board by rule.
- 30 3. Within ten business days after the date the application is received, the commissioner
31 shall determine if the application is complete and notify the applicant by mail of the

1 determination. If the commissioner determines the application is incomplete, the
2 commissioner will, within the ten business days, request additional information
3 deemed necessary to complete the application. Within ten business days after the
4 receipt of the additional information, the commissioner will notify the applicant by mail
5 of the commissioner's determination of completeness. Within sixty days, or the next
6 regularly scheduled meeting of the board, after the mailing of a notice of completeness
7 by the commissioner, the board must either approve or disapprove the application.

- 8 4. The board may disapprove any application if the board determines that:
- 9 a. The character, reputation, general fitness, financial standing, and responsibility of
10 the persons proposed as new stockholders, directors, or officers is such that the
11 interests of the other stockholders, depositors, and creditors of the institution and
12 the public generally will be jeopardized by the change in control and
13 management.
 - 14 b. The qualifications of management do not include adequate experience with
15 financial institutions or other approved related experience.
- 16 5. Within three business days after the board's decision to disapprove an application, the
17 board shall notify the applicant in writing of the disapproval. The notice must provide a
18 statement of the basis for the disapproval.
- 19 6. Within twenty days after receipt of the notice of disapproval, the applicant may request
20 a hearing on the disapproval. The board must conduct a hearing, if requested, under
21 the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by
22 order approve or disapprove the application on the basis of the record at the hearing.
- 23 7. For purposes of this section, "control" means ownership or control, directly, indirectly,
24 or through the actions of one or more persons of the power to vote twenty-five percent
25 or more of any class of voting securities of an association, banking institution,
26 controlling bank holding company, or the direct or indirect power to control in any
27 manner the election of a majority of the directors of an association or banking
28 institution, or to direct the management or policies of an association or banking
29 institution, whether by individuals, corporations, limited liability companies,
30 partnerships, trusts, or other entities or organizations of any type. " ~~Holding company~~"

1 ~~means any partnership, corporation, business trust, association, or entity or~~
2 ~~organization of any type which controls an association or banking institution.~~
3 8. The following acquisitions of voting securities of a North Dakota state chartered bank,
4 ~~which would otherwise require submission of an application under this section, are not~~
5 ~~subject to the application requirements if the acquiring person notifies the~~
6 ~~commissioner within ninety days after the acquisition and provides any relevant~~
7 ~~information requested by the commissioner: acquisition of voting securities through~~
8 ~~inheritance; acquisition of voting securities as a bona fide gift; and acquisition of voting~~
9 ~~securities in satisfaction of a debt previously contracted in good faith. This subsection~~
10 ~~does not limit the authority of the commissioner to require a party to submit a written~~
11 ~~application to the board under subsection 1.~~

12 **SECTION 8. REPEAL.** Section 6-05-25 of the North Dakota Century Code is repealed.