

# BANKS AND BANKING

## CHAPTER 73

### SENATE BILL NO. 2212

(Senators Casper, Campbell, Kreun)  
(Representatives Kasper, Sanford, P. Anderson)

AN ACT to amend and reenact subsection 4 of section 6-03-02 and section 6-05-06 of the North Dakota Century Code, relating to residency requirements of bank directors.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

4. Elect or appoint directors, such board to consist of any number of members, not less than three nor more than twenty-five, ~~a majority at least two-thirds of whom must be residents~~citizens of the state of North Dakota United States, and, by such board of directors, to appoint a president, who must be a member of said board, and such other employees as may be required, to define their duties, to require bonds of them and fix the penalty thereof, and to dismiss such officers and employees, or any of them, and appoint others to fill their places.

**SECTION 2. AMENDMENT.** Section 6-05-06 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-05-06. Directors - Qualifications - Terms - Vacancies.**

All the corporate powers of such a corporation must be exercised by a board of directors of not less than three nor more than twenty-five in number, and such officers and agents as it elects or appoints. ~~A majority~~At least two-thirds of the directors must be citizens of ~~this state~~the United States. Any director who becomes in any manner disqualified shall vacate that director's office thereupon. Every director, when elected or appointed, shall take the oath specified in section 6-03-04. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, must be transmitted at once to the commissioner to be filed in the commissioner's office. The articles of incorporation must state the names and residences of the first board of directors, of whom the first named one-third shall serve for a period of three years, the second one-third named for a period of two years, and the balance thereof shall serve for a period of one year from the date fixed for the commencement of such corporation. In case any of the persons so named shall fail or refuse to qualify from any cause, the directors who qualify must elect qualified persons to fill such vacancies, and thereafter, at each annual meeting of the stockholders, directors must be elected to serve three years in place of those whose terms then expire.

Approved March 29, 2017

Filed March 30, 2017

## CHAPTER 74

### SENATE BILL NO. 2335

(Senators Heckaman, D. Larson, J. Lee, Unruh)  
(Representative Weisz)

AN ACT to amend and reenact subsection 7 of section 6-08.1-03, sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and subdivision f of subsection 1 of section 19-03.1-22.2 of the North Dakota Century Code, relating to the definition and endangerment or exploitation of an eligible adult; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 7 of section 6-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

7. For purposes of reporting suspected exploitation of ~~a disabled adult or vulnerable elderly~~ an eligible adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of ~~a disabled adult or vulnerable elderly~~ an eligible adult or to make ~~any~~ any report to a governmental agency or law enforcement agency.

**SECTION 2. AMENDMENT.** Section 12.1-31-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **12.1-31-07. Endangering ~~a vulnerable~~ an eligible adult - Penalty.**

1. In this chapter, unless the context otherwise requires:
  - a. "Caregiver" means a person who is responsible for the care of ~~a disabled adult or vulnerable elderly~~ an eligible adult as a result of a familial or legal relationship, or a person who has assumed responsibility for the care of ~~a disabled adult or vulnerable elderly~~ an eligible adult. The term does not include a licensed health care provider who is acting within the provider's legal scope of practice in providing appropriate care or assistance to ~~a disabled adult or vulnerable elderly~~ an eligible adult who is the patient or client of the licensed health care provider.
  - b. "~~Disabled adult~~" means ~~a person eighteen years of age or older who suffers from a condition of physical or mental incapacitation due to a developmental disability or organic brain damage or mental illness or who has one or more physical or mental limitations that restrict the person's ability to perform the normal activities of daily living.~~
  - c. "~~Vulnerable elderly adult~~" means ~~a person sixty years of age or older who is suffering from a disease or infirmity associated with advanced age and manifested by physical, mental, or emotional dysfunctioning to the extent that the person is incapable of adequately providing for the person's own health or personal care.~~

"Eligible adult" means an individual who is at least sixty-five years old or a vulnerable adult as defined in section 50-25.2-01.

- c. "Undue influence" means the use of a position of trust and confidence with an eligible adult to exploit or take advantage of that eligible adult through actions or tactics, including emotional, psychological, or legal manipulation.
2. Except as provided for by chapters 23-06.5 and 30.1-30, a caregiver who knowingly performs an act that causes a ~~disabled adult's or vulnerable elderly~~ eligible adult's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, or a caregiver who fails to perform acts that the caregiver knows are necessary to maintain or preserve the life or health of the ~~disabled adult or vulnerable elderly~~ eligible adult and the failure causes the ~~disabled adult's or vulnerable elderly~~ eligible adult's life to be endangered, health to be injured, or pre-existing physical or mental condition to deteriorate, is guilty of a class B felony.

**SECTION 3. AMENDMENT.** Section 12.1-31-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-31-07.1. Exploitation of a ~~vulnerable~~ eligible adult - Penalty.**

1. A person is guilty of exploitation of a ~~disabled adult or vulnerable elderly~~ eligible adult if:
- The person stands in a position of trust and confidence or has a business relationship with the ~~disabled adult or vulnerable elderly~~ eligible adult and knowingly, by deception or, intimidation, or undue influence, obtains or uses, or attempts to obtain or use, the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~disabled adult or vulnerable elderly~~ eligible adult of the use, benefit, or possession of the property, for the benefit of someone other than the ~~disabled adult or vulnerable elderly~~ eligible adult; or
  - The person knows that the ~~disabled adult or vulnerable elderly~~ eligible adult lacks the capacity to consent, and obtains or uses, or attempts to obtain or use, or assists another in obtaining or using or attempting to obtain or use, the ~~disabled adult's or vulnerable elderly~~ eligible adult's funds, assets, or property with the intent to temporarily or permanently deprive the ~~disabled adult or vulnerable elderly~~ eligible adult of the use, benefit, or possession of the property for the benefit of someone other than the ~~disabled adult or vulnerable elderly~~ eligible adult.
2. Exploitation of a ~~disabled adult or vulnerable elderly~~ eligible adult is:
- A class A felony if the value of the exploited funds, assets, or property exceeds fifty thousand dollars.
  - A class B felony if the value of the exploited funds, assets, or property exceeds ten thousand dollars but does not exceed fifty thousand dollars.
  - A class C felony if the value of the exploited funds, assets, or property is in excess of one thousand dollars but does not exceed ten thousand dollars.

- d. A class A misdemeanor if the value of the exploited funds, assets, or property does not exceed one thousand dollars.
3. It is not a defense to a prosecution of a violation of this section that the accused did not know the age of the victim.
4. This section does not impose criminal liability on a person who has:
  - a. Managed the ~~disabled adult's or vulnerable elderly~~eligible adult's funds, assets, or property in a manner that clearly gives primacy to the needs and welfare of that person or is consistent with any explicit written authorization; or
  - b. Made a good-faith effort to assist in the management of the ~~disabled adult's or vulnerable elderly~~eligible adult's funds, assets, or property.

**SECTION 4. AMENDMENT.** Section 12.1-31-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**12.1-31-07.2. Criminal proceeding involving a ~~vulnerable~~eligible adult - Speedy trial.**

In a criminal proceeding in which a ~~disabled adult or vulnerable elderly~~an eligible adult is a victim, the court and state's attorney shall take appropriate action to ensure a speedy trial to minimize the length of time the ~~disabled adult or vulnerable elderly~~eligible adult must endure the stress of involvement in the proceedings. In ruling on ~~any~~a motion or other request for a delay or a continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance may have on the well-being of the ~~disabled adult or vulnerable elderly~~eligible adult.

**SECTION 5. AMENDMENT.** Subdivision f of subsection 1 of section 19-03.1-22.2 of the North Dakota Century Code is amended and reenacted as follows:

- f. "Vulnerable adult" means either a ~~disabled adult or vulnerable elderly~~ adult as ~~these terms are~~ the term is defined in section ~~12.1-31-0750-25.2-01~~.

Approved April 10, 2017

Filed April 10, 2017

## CHAPTER 75

### SENATE BILL NO. 2311

(Senators Bekkedahl, Laffen, Sorvaag)  
(Representative Streyle)

AN ACT to provide for a Bank of North Dakota letter of credit.

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

**SECTION 1. BANK OF NORTH DAKOTA - LETTER OF CREDIT - AIRPORT CONSTRUCTION.** The Bank of North Dakota shall provide a letter of credit to a city, in the northwest corner of the state with a population over twenty thousand residents, which is constructing an airport and is subject to the bonding requirements under section 52-04-06.1. The letter of credit shall cover the length of the construction term not to exceed five years. The Bank of North Dakota shall charge a one-time fee of no more than three quarters of one percent of the total amount of the letter of credit. The city obtaining the letter of credit assumes all liability for the letter of credit, the fee to be paid to the Bank of North Dakota, and any other requirements under section 52-04-06.1.

Approved April 12, 2017

Filed April 12, 2017

## CHAPTER 76

### SENATE BILL NO. 2124

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

AN ACT to amend and reenact section 6-09-38.1 of the North Dakota Century Code, relating to the achieving a better life experience plan.

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

**SECTION 1. AMENDMENT.** Section 6-09-38.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09-38.1. North Dakota achieving a better life experience plan - Administration - Rules - Continuing appropriation.**

The Bank of North Dakota shall adopt rules to administer, manage, promote, and market the North Dakota achieving a better life experience plan. The Bank shall ensure that the North Dakota achieving a better life experience plan is maintained in compliance with internal revenue service standards for qualified state disability expense programs. The Bank, as trustee of the North Dakota achieving a better life experience plan, may impose an annual administrative fee to recover expenses incurred in connection with operation of the plan. Administrative fees received by the Bank are appropriated to the Bank on a continuing basis to be used as provided under this section. Money and assets in North Dakota achieving a better life experience plan accounts or in qualified achieving a better life experience plan accounts in any state may not be considered for the purpose of determining eligibility to receive, or the amount of, any assistance or benefits from local or state means-tested programs.

Approved March 22, 2017

Filed March 23, 2017

## CHAPTER 77

### SENATE BILL NO. 2178

(Senators Schaible, Luick, Oehlke)  
(Representatives Carlson, D. Johnson, Schmidt)

AN ACT to amend and reenact section 6-09-49 of the North Dakota Century Code, relating to the infrastructure revolving loan fund; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-09-49 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09-49. Infrastructure revolving loan fund - Continuing appropriation.**

1. The infrastructure revolving loan fund is a special fund in the state treasury from which the Bank of North Dakota shall provide loans to political subdivisions for essential infrastructure projects. The Bank shall administer the infrastructure revolving loan fund. The maximum term of a loan made under this section is thirty years. A loan made from the fund under this section must have an interest rate that does not exceed two percent per year.
2. ~~The Bank shall establish priorities for making loans from the infrastructure revolving loan fund. Loan funds must be used to address the needs of the community by providing critical infrastructure funding. Except as expressly provided under this section, a political subdivision may not use infrastructure revolving loan funds for capital construction. In addition to eligible infrastructure needs established by the Bank, eligible infrastructure needs may include new~~For purposes of this section, "essential infrastructure projects" means capital construction projects for the following:
  - a. New or replacement of existing water treatment plants; new
  - b. New or replacement of existing wastewater treatment plants; new
  - c. New or replacement of existing sewer lines and water lines; and new
  - d. New or replacement of existing storm water and transportation infrastructure, including curb and gutter construction.
3. In processing political subdivision loan applications under this section, the Bank shall calculate the maximum loan amount for which a qualified applicant may qualify, not to exceed fifteen million dollars per loan. The Bank shall consider the applicant's ability to repay the loan when processing the application and shall issue loans only to applicants that provide reasonable assurance of sufficient future income to repay the loan. ~~The Bank may adopt policies establishing priorities for issuance of loans, setting additional qualifications for applicants, and establishing timelines addressing when a participating political subdivision may be required to make loan draws and the consequences of not meeting these timelines, and setting other guidelines relating to the loan program under this section.~~

4. The Bank shall deposit in the infrastructure revolving loan fund all payments of interest and principal paid under loans made from the infrastructure revolving loan fund. The Bank may use a portion of the interest paid on the outstanding loans as a servicing fee to pay for administrative costs which may not exceed one-half of one percent of the amount of the interest payment. All moneys transferred to the fund, interest upon moneys in the fund, and payments to the fund of principal and interest are appropriated to the Bank on a continuing basis for administrative costs and for loan disbursement according to this section.
5. The Bank may adopt policies and establish guidelines to administer this loan program in accordance with the provisions of this section and to supplement and leverage the funds in the infrastructure revolving loan fund. Additionally, the Bank may adopt policies allowing participation by local financial institutions.

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

Approved March 21, 2017

Filed March 22, 2017

## CHAPTER 78

### HOUSE BILL NO. 1192

(Representative Klemin)

AN ACT to amend and reenact section 6-09.4-23 of the North Dakota Century Code, relating to authority to withhold school district state aid.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-09.4-23 of the North Dakota Century Code is amended and reenacted as follows:

#### **6-09.4-23. Evidences of indebtedness - Authority to withhold school district state aid.**

1. If the public finance authority or a paying agent notifies the superintendent of public instruction, in writing, that a school district has failed to pay when due the principal or interest on any evidences of indebtedness issued after July 31, 1999, or that the public finance authority, school district, or the paying agent has reason to believe a school district will not be able to make a full payment of the principal and interest when the payment is due, the superintendent of public instruction shall withhold any funds that are due or payable or appropriated to the school district under chapter 15.1-27 until the payment of the principal or interest has been made to the public finance authority or the paying agent, or until the public finance authority, school district, or the paying agent notifies the superintendent of public instruction that arrangements satisfactory to the public finance authority or the paying agent have been made for the payment of the principal and interest then due and owing. The notification must include information required by the superintendent of public instruction. State funds available to a school district under chapter 15.1-27 are not subject to withholding under this section unless the withholding is authorized by resolution of the district's school board.
2. Notification by the public finance authority, school district, or the paying agent that satisfactory arrangements have been made for the payment of the principal and interest then due and owing under subsection 1 must be made at least fifteen working days before the principal or interest is due. The notice must be in writing and include the name of the school district, an identification of the debt obligation issue, the date the payment is due, the amount of principal and interest due on the payment date, the amount of principal or interest the school district will be unable to pay, the paying agent for the debt obligation, the wire transfer instructions to transfer funds to the paying agent, and an indication that payment is requested under this section. A paying agent shall notify the superintendent of public instruction if the paying agent becomes aware of a potential default. If the superintendent receives notice of a requested payment under this section, the superintendent of public instruction shall withhold and transfer funds due or payable or appropriated to the school district under chapter 15.1-27 to the paying agent after:

- a. Consulting with the school district and the paying agent; and
  - b. Verifying the accuracy of the provided request information.
3. Notwithstanding any withholding of state funds under section 15-39.1-23 or any other law, the superintendent of public instruction shall make available any funds withheld under subsection 1 to the public finance authority or the paying agent. The public finance authority or the paying agent shall apply the funds to payments that the school district is required to make to the public finance authority or the paying agent.
- ~~3-4.~~ If funds are withheld from a school district and made available to the public finance authority or a paying agent under this section and if tax revenues are received by the school district during the fiscal year in which the funds are withheld and are deposited in the district's sinking fund established in accordance with section 21-03-42, the district, with the consent of the public finance authority or the paying agent, may withdraw from its sinking fund an amount equal to that withheld by the superintendent of public instruction and made available to the public finance authority or a paying agent under this section.
- 4-5. Any excess funds at the Bank of North Dakota escrowed pursuant to an agreement between the public finance authority and the state board of public school education for the benefit of the public finance authority and a school district must be held by the Bank. With the approval of the superintendent of public instruction, those funds may be used to subsidize the debt service payments on construction loans that are made to school districts by the public finance authority and which are subject to the withholding provisions of this section or construction loans made to school districts under the state school construction program established by section 11 of chapter 2 of the 1989 Session Laws. Notwithstanding the existence of an escrow agreement between the public finance authority and the state board of public school education, those funds must be transferred to the public finance authority upon certification by the public finance authority that the funds are in excess of the amount needed to provide for the payment in full of the outstanding principal and interest, when due, on the public finance authority bonds issued to purchase the municipal securities for which the escrow fund was established.
- ~~5-6.~~ The superintendent of public instruction shall develop detailed procedures for school districts to notify the superintendent of public instruction that they have obligated themselves to be bound by the provisions of this section; procedures for school districts, paying agents, and the public finance authority to notify the superintendent of public instruction of potential defaults and to request payment under this section; and procedures for the state to expedite payments to prevent defaults.

Approved March 22, 2017

Filed March 23, 2017