

Introduced by

Industry and Business Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact a new section to chapter 6-07.2 of the North Dakota
2 Century Code, relating to voluntary liquidation of credit unions; to amend and reenact section
3 6-01-04.1 of the North Dakota Century Code, relating to the removal of officers, directors, and
4 employees of financial corporations or institutions; and to repeal chapter 6-06.1 of the North
5 Dakota Century Code, relating to voluntary liquidation of credit unions.

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

7 **SECTION 1. AMENDMENT.** Section 6-01-04.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **6-01-04.1. Removal of officers, directors, and employees of financial corporations or**
10 **institutions.**

- 11 1. The department of financial institutions or the board may issue ~~and serve~~, upon any
12 current or former officer, director, or employee of a financial corporation, financial
13 institution, or credit union subject to its jurisdiction and upon a financial corporation,
14 financial institution, or credit union involved, an order stating:
- 15 a. That the current or former officer, director, or employee is engaging, or has
16 engaged, in any of the following conduct:
 - 17 (1) Violating any law, regulation, board order, or written agreement with the
18 board.
 - 19 (2) Engaging or participating in any unsafe or unsound practice.
 - 20 (3) Performing any act of commission or omission or practice which is a breach
21 of trust or a breach of fiduciary duty.
 - 22 b. The term of the suspension or removal from employment and participation within
23 the conduct of the affairs of a financial corporation, financial institution, ~~or~~ credit
24 union, or any other entity licensed by the department of financial institutions.

- 1 2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
2 The date for the hearing must be set not less than thirty days after the date the
3 complaint is served upon the current or former officer, director, or employee of a
4 financial corporation, financial institution, ~~or credit union, or any other entity licensed~~
5 by the department of financial institutions. The current or former officer, director, or
6 employee may waive the thirty-day notice requirement.
- 7 3. If no hearing is requested within twenty days of the date the order is served upon the
8 current or former officer, director, or employee, ~~or if the order is final. If~~ a hearing is
9 held and the board finds that the record so warrants, ~~and if the board finds that a~~
10 ~~financial corporation, financial institution, or credit union has suffered or will probably~~
11 ~~suffer significant loss or other significant damage or that the interest of its depositors,~~
12 ~~shareholders, members, or creditors could be seriously prejudiced,~~ it may enter a final
13 order. The final order suspending or removing the current or former officer, director, or
14 employee is final. The current or former officer or employee may request a termination
15 of the final order after a period of no less than three years.
- 16 4. A contested or default suspension or removal order is effective immediately upon
17 ~~service~~issuance on the current or former officer, director, or employee and upon a
18 financial corporation, financial institution, or credit union. A consent order is effective
19 as agreed.
- 20 5. Any current or former officer, director, or employee suspended or removed from any
21 position pursuant to this section is not eligible, while under suspension or removal, to
22 be employed or otherwise participate in the affairs of any financial corporation,
23 financial institution, or credit union or any other entity licensed by the department of
24 financial institutions until the suspension or removal is terminated by the department of
25 financial institutions or board.
- 26 6. When any current or former officer, director, employee, or other person participating in
27 the conduct of the affairs of a financial corporation, financial institution, or credit union
28 is charged with a felony in state or federal court, involving dishonesty or breach of
29 trust, the commissioner may immediately suspend the person from office or prohibit
30 the person from any further participation in a financial corporation's, financial
31 institution's, or credit union's affairs. The order is effective immediately upon

1 serviceissuance of the order on a financial corporation, financial institution, or credit
2 union and the person charged, and remains in effect until the criminal charge is finally
3 disposed of or until modified by the board. If a judgment of conviction, a federal pretrial
4 diversion, conviction or agreement to plea to lesser charges, or similar state order or
5 judgment is entered, the board or commissioner may order that the suspension or
6 prohibition be made permanent. A finding of not guilty or other disposition of the
7 charge does not preclude the commissioner or the board from pursuing administrative
8 or civil remedies.

9 **SECTION 2.** A new section to chapter 6-07.2 of the North Dakota Century Code is created
10 and enacted as follows:

11 **Voluntary liquidation of a credit union.**

12 1. A credit union may go into voluntary liquidation following a vote of the majority of the
13 board of directors and approval by the majority of its members in writing or by a vote in
14 favor of the liquidation by a majority of the members of the credit union at a regular
15 meeting of the members or at a special meeting called for that purpose.

16 a. When authorization for liquidation is to be obtained at a meeting of members:

17 (1) Notice in writing must be given to each member at least ten days before the
18 meeting and the notice must inform members they have the right to vote on
19 the proposed liquidation.

20 (2) The minutes of the meeting must show the number of members present and
21 the number that voted for and against liquidation.

22 b. If approval by a majority of all members is not obtained at the meeting of
23 members, authorization for voluntary liquidation may be obtained by having a
24 majority of members sign a statement in substantially the following form:

25 We the undersigned members of the _____ Credit Union, Charter No.
26 _____, hereby request the dissolution of our credit union.

27 2. The board of directors of a credit union in voluntary liquidation:

28 a. Is responsible for conserving the assets, for expediting the liquidation, and for
29 equitably distributing the assets to members.

30 b. Shall determine all persons handling or having access to funds of the credit union
31 are adequately covered by surety bond.

- 1 c. Shall appoint a custodian for the credit union's records that are to be retained for
2 five years after the charter is canceled.
- 3 d. May appoint a liquidating agent and delegate part or all of these responsibilities
4 to the agent and may authorize reasonable compensation for the agent's
5 services. A liquidating agent must be adequately bonded for faithful performance
6 of the agent's duties, and the coverage must remain in effect or the discovery
7 period extended for at least four months after the final distribution of assets.
- 8 3. The supervisory committee, a certified public accountant hired by the supervisory
9 committee, or if the bylaws do not establish a supervisory committee, a certified public
10 accountant hired by the board of directors, is responsible for making periodic audits of
11 the credit union's records, at least quarterly, during the period of liquidation.
- 12 4. Within three days after the decision of the board of directors to submit the question of
13 liquidation to the members, the president shall notify the commissioner and the
14 regional director of the national credit union administration in writing, setting forth in
15 detail:
- 16 a. The reasons for the proposed action;
17 b. The previous month-end balance sheet and income statement; and
18 c. A written plan for the liquidation of assets, payment of creditors, and payment of
19 shares to be completed within one year of the date of membership approval to
20 liquidate.
- 21 5. Within three days after the action of the members on the question of liquidation, the
22 president shall notify the commissioner and the regional director of the national credit
23 union administration in writing as to whether a majority of the members approved the
24 proposed liquidation.
- 25 6. Within ten days of the decision to liquidate by the board of directors, a notice of the
26 decision must be handed to each member, electronically distributed, or mailed to the
27 member's last-known address to confirm in writing the shares and deposits held by the
28 member in the credit union and the loans owed by the member to the credit union.
- 29 7. Within ten days of the approval of a majority of the members of a credit union of a
30 proposal to liquidate, the board of directors of the credit union shall have prepared and
31 mailed to all creditors a notice of liquidation containing instructions to present claims to

1 the credit union within ninety days for payment. New creditor claims subsequent to this
2 notice which are necessary for the continued operation of the credit union during
3 liquidation must continue to be paid upon authorization of the board of directors or
4 liquidating agent.

5 8. Immediately upon the decision of the membership to liquidate, the credit union may
6 continue to do all things under the original corporate name of the institution, to sue and
7 be sued, to execute conveyances and other instruments, to take, hold, and own
8 property, and to do all other things as may be necessary to realize upon the
9 institution's remaining assets for the benefit of the institution's members, but not to
10 engage or continue in any new or other business under the institution's charter or
11 otherwise. At the discretion of the board of directors or the liquidating agent,
12 transactions upon membership transactional accounts may continue to be honored up
13 to the federal insurance limit until the accounts are sold or otherwise liquidated.

14 9. At the commencement of voluntary liquidation of a credit union, the treasurer or agent
15 conducting the liquidation shall file with the commissioner a financial and statistical
16 report and a schedule showing the name, book number or account number, share
17 balance, and loan balance of each member.

18 10. Credit unions in the process of voluntary liquidation shall file with the commissioner a
19 financial and statistical report as of December thirty-first or within thirty days after such
20 date. Additional reports, as determined by the commissioner to be necessary, must be
21 furnished promptly on written request.

22 11. When deemed advisable by the commissioner, an examination of the books and
23 records of a credit union may be made before, during, or following completion of
24 voluntary liquidation. The commissioner shall set fees for the examination at an hourly
25 rate sufficient to cover all reasonable expenses of the department of financial
26 institutions associated with the examination. Fees must be collected by the
27 commissioner and deposited in the financial institutions regulatory fund.

28 12. If at any time during the liquidation of credit union assets, it is found the value of
29 remaining assets will not be sufficient to cover the claims of creditors and
30 shareholders, the board of directors or, if appointed, the liquidating agent shall
31 immediately notify the commissioner and the regional director of the national credit

1 union administration. Further liquidation of credit union assets or distributions to
2 shareholders after notice requires written approval from the commissioner.

3 13. With the written approval of the commissioner, a partial distribution of the credit
4 union's assets may be made to its members from cash funds available on
5 authorization by its board of directors or by a duly authorized liquidating agent whose
6 appointment specifically includes the authority. Partial distributions cannot exceed the
7 national credit union share insurance limit.

8 14. When all assets of the credit union have been converted to cash or found to be
9 worthless and all loans and debts owing to it have been collected, sold, or found to be
10 uncollectible and all obligations of the credit union have been paid, with the exception
11 of amounts due its members:

12 a. The books must be closed and the pro rata distribution to members computed.

13 This computation must be based on the total amount in each member's share
14 accounts as of the date the board of directors voted to voluntarily liquidate.

15 b. The amount of gain or loss must be entered in each member's share account and
16 should be entered in the member's passbook or statement of account.

17 c. Promptly, funds must be distributed to each member. The funds must be mailed
18 to such members at their last-known addresses, electronically transmitted to the
19 members designated account, or handed to them in person.

20 d. The passbooks or written confirmations submitted by members to verify balances
21 must be retained with the credit union records.

22 e. Unclaimed share accounts subject to the escheat or abandoned property laws of
23 the state or the state of the members' residence must be paid to the state as
24 required by such laws.

25 f. The commissioner must be promptly notified of the date final distribution of
26 assets to the members is started.

27 g. In the event of a loss on members share accounts, a claim must be submitted by
28 the board of directors or the liquidating agent if appointed, to the national credit
29 union administration, private share insurance if available, and bonding company.

30 15. Within one hundred twenty days after the final distribution to members is started, the
31 credit union shall furnish to the commissioner's office a schedule of unpaid claims, if

1 any, due members who failed to surrender their passbooks or confirm their balances in
2 writing during liquidation whose accounts are not payable to the state under applicable
3 escheat or abandoned property laws, and of unpaid claims, if any, due members or
4 creditors who failed to cash final distribution checks within one hundred twenty days.
5 This schedule must be accompanied by a certified check or money order payable to
6 the state treasurer in the exact amount of the total of these unpaid claims. The state
7 treasurer shall deposit the funds in a special account where they will be held for the
8 account of the individuals named on the schedule. Each individual or any authorized
9 person on the individual's behalf may submit to the state treasurer a written claim for
10 the amount of funds held for the individual.

11 **SECTION 3. REPEAL.** Chapter 6-06.1 of the North Dakota Century Code is repealed.