Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

SENATE BILL NO. 2084
(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

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

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

6-01-02. Definitions.

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

1. "Association", "banking association", or "state banking association" means any corporation organized under the laws of this state covering state banking associations, and all corporations, limited liability companies, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.

2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, or savings bank, whether organized under the laws of this state or of the United States, engaged in the business of banking.

3. "Bank holding company" means bank holding company as defined in 12 U.S.C. 1841(a)(1).

4. "Banking" means the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, traveler's checks, and similar instruments, handling and making collections, cashing checks and drafts, and buying and selling exchange.

5. "Banking department" means the state department of financial institutions.

6. "Banking institution" means any bank, trust company, or bank and trust company organized under the laws of this state.

7. "Branch" means a place of business where deposits are received, checks paid, or money lent as a result of a bank that was merged into another bank pursuant to an interstate merger.

8. "Commissioner" means the commissioner of financial institutions.

9. "Corporate central credit union" means a credit union operated for the primary purpose of serving corporate accounts. A credit union is deemed to be a corporate central credit union when its total dollar amount of outstanding corporate loans plus corporate share and deposit holdings is equal to or greater than seventy-five percent of its outstanding loans plus share and deposit holdings.

10. "Credit union" means a cooperative, nonprofit association organized for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to improve their economic and social condition.

11. "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).

12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and may be directly reproduced in paper form by the recipient through an automated process.

14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.

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

17. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.

18. "Market value" means the highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting upon compulsion and both exercising reasonable judgment.

19. "Merger" or "merge" means the merging or consolidation of two or more banks including the purchase of all or substantially all of the assets and assumption of liabilities of a bank, facility, or branch.

20. "Mutual investment corporation" or "mutual savings corporation" means a corporation organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock.

21. "National bank" or "national banking association" means an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].

22. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

23. "Technology service provider" includes any person that provides services to a financial institution, financial corporation, or credit union, including: core processing; information and transaction processing and settlement activities that support banking functions such as lending, deposit-taking, funds transfer, fiduciary, or trading activities; internet-related services; security monitoring; and system development and maintenance.

24. "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of Federal Regulations, part 325, in effect on August 1, 2011.

~~24.~~25. "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

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

6-01-04.4. Prompt corrective action.

The board may enter an order if the board finds that a state bank is undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purpose of this section, undercapitalized, significantly undercapitalized, and critically undercapitalized have the same definition as found in title 12, Code of Federal Regulations, part ~~325~~324, section ~~103~~403. The order may require an undercapitalized state bank to take prompt corrective action as the board determines reasonable to bring the bank to an adequately capitalized condition, including the submission and implementation of an acceptable capital restoration plan. For a significantly or critically undercapitalized state bank, the board may issue a temporary cease and desist order appointing a receiver, or with the consent of the federal deposit insurance corporation appoint a conservator or take such other action as may be better to resolve the problems of the state bank consistent with section 38 of the Federal Deposit Insurance Act of 1991 [Pub. L. 102-242; 105 Stat. 2253; 12 U.S.C. 1831~~(o)~~ et seq.], in effect on July 22, 2010. A bank that has been served with a complaint requesting the state banking board to issue a prompt corrective action under this section may request a hearing before the board within five days after service of the complaint upon the bank. A request for a hearing must be granted and the hearing must be held not later than ten days after the request is filed with the board. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board may issue an order. The bank may appeal the board's order under this section to the district court of Burleigh County, North Dakota, within ten days after the board's order is served on the bank. The appeal is governed by chapter 28-32.

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

Investigation of bank holding companies.

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

SECTION 4. 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, financial institutions, and credit unions, including all out-of-state branches of financial corporations, financial institutions, and credit unions. Either the commissioner or one or more examiners shall visit each financial institution at least once each thirty-six months to examine its affairs and ascertain 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 may also examine, or caused to be examined, or review the books and records of any technology service provider that provides services to financial corporations and financial institutions under the commissioner's supervision, to evaluate that entity's risk management systems and controls and compliance with applicable laws that affect such services provided to financial

corporations and financial institutions. 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 5. AMENDMENT. Subsection 1 of section 6-03-47.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a nationally recognized rating service approved by the commissioner, provided that the lesser of the book value or face value of the investments at the time of purchase may not exceed for any one corporation twenty-five percent of the unimpaired capital and surplus of the banking association.

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

5. If the commissioner determines more than one visit, inspection, or examination is necessary to promote the safety and soundness of a credit union during a twelve-month period, the credit union shall pay to the department a fee for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with each additional visit, inspection, or examination and report of examination and for time used by each examiner or other person in making and otherwise preparing and typing the reports of examination provided for under this section. Fees for the visit, inspection, or examination 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 visit, inspection, or examination provided for by this section. A credit union shall pay this fee within ten days of receiving a billing from the commissioner. Fees must be deposited in the financial institutions regulatory fund.

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

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

1. No person, acting directly or indirectly or through or in concert with one or more other persons, may ~~sell or otherwise dispose of an association, or banking institution, or~~ purchase or otherwise acquire control of an association or banking institution unless the state banking board has been given prior written notice by application of the proposed disposition or acquisition. The written application must include such information as the state banking board shall specify. The transaction may not be consummated before the board has granted approval.

2. The applicant shall publish notice of the application as required by the board by rule.

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

4. The board may disapprove any application if the board determines that:

a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers is such that the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.

b. The qualifications of management do not include adequate experience with financial institutions or other approved related experience.

5. Within three business days after the board's decision to disapprove an application, the board shall notify the applicant in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.

6. Within twenty days after receipt of the notice of disapproval, the applicant may request a hearing on the disapproval. The board must conduct a hearing, if requested, under the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by order approve or disapprove the application on the basis of the record at the hearing.

7. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of an association, banking institution, controlling bank holding company, or the direct or indirect power to control in any manner the election of a majority of the directors of an association or banking institution, or to direct the management or policies of an association or banking institution, whether by individuals, corporations, limited liability companies, partnerships, trusts, or other entities or organizations of any type. ~~"Holding company" means any partnership, corporation, business trust, association, or entity or organization of any type which controls an association or banking institution.~~

8. The following acquisitions of voting securities of a North Dakota state chartered bank, which would otherwise require submission of an application under this section, are not subject to the application requirements if the acquiring person notifies the commissioner within ninety days after the acquisition and provides any relevant information requested by the commissioner: acquisition of voting securities through inheritance; acquisition of voting securities as a bona fide gift; and acquisition of voting securities in satisfaction of a debt previously contracted in good faith. This subsection does not limit the authority of the commissioner to require a party to submit a written application to the board under subsection 1.

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2084.

Senate Vote:	Yeas 46	Nays 0	Absent 1
House Vote:	Yeas 87	Nays 4	Absent 3

Secretary of the Senate

Received by the Governor at 8:22 A. M. on March 18, 2015.

Approved at 1:46 P. M. on March 19, 2015.

Governor

Filed in this office this 19th day of March, 2015,

at 4:03 o'clock P. M.

Secretary of State