

BANKS AND BANKING

CHAPTER 93

H. B. No. 854
(Aamoth, Tough, Gackle)

BANK AND TRUST COMPANY ORGANIZATION

AN ACT

To amend and reenact sections 6-01-02, 6-02-01, 6-05-01, and 6-05-02 of the North Dakota Century Code, relating to definitions and compliance with laws for organization of banks and trust companies and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 6-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-02. Definitions.) Terms used in this title, unless the context otherwise plainly requires, are defined as follows:

1. "Banking department", the state department of banking;
2. "State banking association", any corporation organized under the laws of this state covering state banking associations or savings banks, and all corporations, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, excepting national banks, trust companies, and the Bank of North Dakota;
3. "Banking institution", any bank, trust company, bank and trust company, stock savings bank, or mutual savings bank organized under the laws of this state;
4. "Trust company", any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company;
5. "Mutual investment corporation", and "mutual savings corporation", corporations organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock;
6. "Credit union", a corporate cooperative association organized for the purpose of making loans to its members for provident or productive purposes;
7. "Receiving and paying stations", a place of business maintained by a banking institution separate from its

main banking house within the county of its domicile or in an adjoining county for the purpose of receiving and paying out deposits, issuing drafts, travelers' checks, and similar instruments, handling and making collections, and cashing checks and drafts;

8. "Banking", the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, travelers' checks, and similar instruments, handling and making collections, and cashing checks and drafts, or buying and selling exchange;
9. "Bank", any association, firm, or corporation engaged in the business of banking.

§ 2. **Amendment.)** Section 6-02-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-02-01. Compliance with Chapters Required—Penalty for Noncompliance.) No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter, or chapters 6-04 or 6-05, excepting only national banking corporations and the Bank of North Dakota, shall make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "bank", "banker", "banking", "savings bank", or any other word or words of like import, nor shall any person or concern do or perform anything in the nature of the business of a bank or savings bank until and unless such business is regularly organized or authorized under this chapter or chapters 6-04 or 6-05. If any firm or corporation organized prior to July 1, 1931, shall have been granted a charter permitting it to use any word, words or title contrary to the intent of this section, and by reason of its rights under such charter the provisions of this section may not be enforced against it during the life of such charter, no renewal charter shall be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions hereof, during the period of noncompliance, prominently and continuously, shall display in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE STATE BANK EXAMINER", and such language shall be displayed as prominently thereon as is other

matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the state examiner or any aggrieved person, the court may issue an injunction restraining any such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such way or manner as to lead the public to believe that its business is in whole or in part of the nature of a bank or savings bank, or that it is under the supervision of the state banking board or the state examiner. Any trust company duly granted a charter to engage in banking business upon compliance with this chapter, shall be subject to the state banking board in its banking operations as is the case for other chartered banks, and all the laws relating to banks in this title are thereafter applicable. Any trust company, hereafter organized which has not secured a hearing and determination by the state bank board under the provisions of sections 6-02-05 and 6-02-06, shall not engage in banking business except for the power provided under chapter 6-05.

§ 3. **Amendment.)** Section 6-05-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-01. Who May Form—Corporation Has Perpetual Existence.) Any number of persons, not less than nine, at least three of whom must be residents of this state, may associate themselves and form a corporation for the purpose of transacting business as an annuity, safe deposit, surety, and trust company, upon complying with the provisions of this chapter, and any company so formed shall be entitled to the rights and privileges, and shall be subject to the duties and obligations provided in this chapter, and its existence shall be perpetual. A bank organized under chapter 6-02 shall be entitled to the powers and duties of this chapter upon approval of the state banking board, compliance with the deposit requirements of this chapter, and amendment of its articles of incorporation to comply with the provisions of this chapter.

§ 4. **Amendment.)** Section 6-05-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-02. Compliance with Chapter Required — Penalty for Noncompliance.) No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chap-

ter, and the Bank of North Dakota, shall make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "trust", "trust company", or any other word or words of like import, nor shall any person or concern do or perform anything in the nature of the business of a trust company until and unless such business is regularly organized and authorized under this chapter. If any firm or corporation organized prior to July 1, 1931, shall have been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter, the provisions of this section may not be enforced against it during the life of such charter. However, no renewal charter shall be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions of this section, during the period of noncompliance, shall display, prominently and continuously in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE STATE EXAMINER", and such language shall be displayed thereon as prominently as any other matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section, shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the state examiner or any aggrieved person, the court may issue an injunction restraining such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is in whole or in part of the nature of a trust company, or that it is under the supervision of the state banking board or the state examiner.

§ 5. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 21, 1963.

CHAPTER 94

H. B. No. 635

(Frank, Schaffer, Mosal, Streibel, Winge, Weber)

AUDITS OF MUNICIPALITIES

AN ACT

To amend and reenact section 6-01-21.2 of the North Dakota Century Code, relating to examinations, fees, alternative audits, of municipal agencies, park boards and school districts.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 6-01-21.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-21.2. Municipal Agencies, Park Boards, School Districts—Examinations—Fees—Alternative Audits.) The state examiner, by his duly appointed deputy examiners or other authorized agents, shall examine the official financial records, accounts, and proceedings of the following governing bodies and officials of the following political subdivisions:

1. City councils and commissions;
2. City auditors and treasurers;
3. Village boards of trustees;
4. Village and park district clerks and treasurers;
5. School boards and boards of education;
6. School district clerks, treasurers, and secretaries; and
7. Trustees and officials of the firemen's relief association.

Such examinations shall be conducted at least once each year in political subdivisions having populations in excess of five hundred according to the latest federal decennial census, and at least once every three years in political subdivisions having populations of five hundred or less. The firemen's relief association shall be examined at least once each year. Examinations may be conducted at more frequent intervals if the state examiner, in his discretion, deems it advisable.

The governing board of any such city, park board, village, or school district may provide for an audit annually by a certified public accountant, and such audit report shall be in such form and contain such information as the state examiner may require in addition to other information, and in such case the state examiner shall not be required to make the examination heretofore provided for in this section. Two copies of such audit reports shall be filed with the state examiner and one copy with the state bonding fund by the certified public

accountant making such audit at the same time that the report of audit is delivered to said city, park board, village, or school district, and the governing board of such subdivision shall not pay the fee for such audit until evidence of such filing is furnished. The state examiner may require the correction of any irregularities, objectionable accounting procedures, or illegal actions on the part of the governing boards and officers of such subdivisions disclosed by such audit reports, and failure to make such corrections shall result in examinations being resumed by the state examiner until such irregularities, procedures or illegal actions are corrected, and fees for such examinations, so resumed, shall be paid in accordance with this section.

Fees for the examinations provided for in this section shall be charged by the state examiner at the rate of twenty-five dollars per day for the time used by himself or other persons designated by him in supervising, filing and corresponding in connection with such reports of examination, and for time used by each deputy examiner or other person or persons in making such examinations and otherwise preparing and typing the reports of examinations herein provided for. Fee for an extra day shall be charged for each person who may be required to travel to participate in the examinations in this section provided, and all fees for the examinations herein provided shall be paid by the subdivision examined to the state treasurer and by him credited to the general fund of the state.

Approved March 4, 1963.

CHAPTER 95

S. B. No. 178

(Ringsak, Sorlie, Bopp, Wadeson, Thompson)

REAL ESTATE LOAN LIMITS

AN ACT

To amend and reenact section 6-03-05 of the North Dakota Century Code, relating to the limitation of bank loans on real estate.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 6-03-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-05. Loans on Real Estate — Regulation — Limitation — Amortized Loans Provided For.) No association shall own or carry among its assets at any one time loans dependent pri-

marily upon real estate security in an aggregate sum in excess of the amount of the capital stock of such association paid in and unimpaired plus the amount of its unimpaired surplus fund, or in excess of sixty-six and two-thirds percent of the amount of its time and savings deposits, whichever is the greater, and then only upon first mortgages constituting first liens upon such real estate not exceeding fifty percent of the actual cash value of the property mortgaged. Before any such loan is made the board of directors shall appoint from among its members a committee which shall make actual inspection of the security offered and shall appraise both the land and the improvements thereon, if any, and shall report to the board of directors, in writing, the results of the appraisal together with any other facts relating to such proposed loan and proposed security as will best enable the board to determine if the loan shall be granted. Such written report shall be made a permanent record in the bank's files and shall be made available to the state examiner. No director shall act as an appraiser of his own property nor of property offered as security for loans the proceeds of which are to be used for his benefit. No such loan shall be made for a longer period than five years. Provided, however, any such loan may be made in an amount not to exceed sixty-six and two-thirds percent of the actual cash value of the real estate mortgaged and for a term not longer than ten years if the loan is secured by an amortized mortgage under the terms of which the installment payments are sufficient to amortize forty percent or more of the principal of the loan within a period of not more than ten years.

Any such loan may be made in an amount not to exceed seventy-five percent of the appraised value of the real estate offered as security and for a term not longer than twenty years if the loan is secured by an amortized mortgage, deed of trust, or other such instrument under the terms of which the installment payments are sufficient to amortize the entire principal of the loan within a period of not more than twenty years.

Approved March 21, 1963.

CHAPTER 96

S. B. No. 254

(George, Solberg, Longmire, Saumur)

DRIVE-IN BANK FACILITIES

AN ACT

To provide for separate drive-in facilities for banks.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Separate Drive-in Facility Authorized.) Every bank organized under chapter 6-02 of the North Dakota Century Code, and under the supervision of the state banking board, and any national bank doing business in this state, may, upon compliance with this Act, maintain and operate separate and apart from its banking house one facility for drive-in and walk-up service, whereat the services rendered shall be limited to receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, and receiving payments payable at the bank.

§ 2. Further Limitations Upon Facility.) No bank may maintain or operate under this Act:

1. More than one such facility either attached to or separate and apart from its banking house at the same time, except facilities required by the United States government to be maintained by it as financial agent of the government on government reservations solely for military and other government personnel, provided, however, that nothing in this section shall be construed to authorize any bank to establish or maintain such facilities as financial agent of the government on government reservations; or
2. Such a facility located more than fifteen hundred feet from its banking house; or
3. Such facility separate and apart from its banking house without first having obtained the approval of the state banking board.

§ 3. Facts Considered for Approval.) Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to this Act, or to move a facility previously established to another location, it shall apply to the state banking board for such authority and provide the board with such relevant information as the board may reasonably request. In determining whether or not to

approve the application for such facility, the banking board shall take into consideration the following facts:

1. The convenience, needs and welfare of the people of the community and area served;
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility; and
3. Whether other banks will be seriously injured by the approval of the application.

§ 4. **Effect of Authority.**) Nothing in this Act shall be deemed to authorize the maintenance or operation of a branch bank, but a facility authorized hereunder may be supplementary or in addition to paying and receiving stations permitted under section 6-03-14 of the North Dakota Century Code. National banking associations located in this state shall have the same, but no greater right by virtue of this Act as banks organized under the laws of this state.

Approved March 21, 1963.

CHAPTER 97

S. B. No. 248

(George)

PAYING AND RECEIVING STATIONS

AN ACT

To amend and reenact section 6-03-14 of the North Dakota Century Code, relating to paying and receiving stations, and declaring an emergency.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 6-03-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-14. Paying and Receiving Stations Authorized.) Any banking institution may establish and maintain within the county in which the home office of the applicant banking institution is located, or in any adjoining county, subject to the approval and supervision of the state banking board, a receiving and paying station in any city, town, or village organized under the laws of this state not having an established banking institution located therein. Provided, however, this limitation shall not apply to any banking institution which

has already received a permit for the construction of such a receiving and paying station. No additional capital shall be required for the operation of such station. This section shall not be construed as committing this state in any manner to a policy of permitting branch banking.

§ 2. Emergency.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 21, 1963.

CHAPTER 98

H. B. No. 746

(Burk, Leahy, Dick, Vinje)

BANKING SERVICE CORPORATIONS

AN ACT

To authorize banks to invest in corporations providing bank services.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Bank Investment in Service Corporation.) Subject to the approval of the state banking board, any bank may invest in stocks, bonds, debentures, or other obligations of any North Dakota corporation having its principal place of business in the state and operated exclusively for the purpose of providing for such bank and one or more other banks, bank services which the banks would otherwise be required to provide for on an individual bank basis. The term bank services in this Act means services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical bookkeeping, accounting, statistical, or similar functions performed by a bank.

Approved March 16, 1963.

CHAPTER 99

S. B. No. 303
(Brooks)

TRUST FUND INVESTMENTS

AN ACT

To amend and reenact section 6-05-15 of the North Dakota Century Code, relating to investment of trust funds.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 6-05-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-15. Investment of Trust Funds.) Any sum of money, which shall be collected or received by any such corporation in its trust capacity, and which shall not be required for the purposes of such trust, or which is not to be accounted for within one year from the date of such collection, receipt, or deposit, shall be invested by the corporation as soon as practicable. At least fifteen percent of the funds available for investment shall be invested in bonds of the United States.

In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing the property for the benefit of another, the trustee shall exercise the judgment and care under the circumstances then prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Within the limitations of the foregoing standard, the trustee is authorized to acquire and retain every kind of property real, personal or mixed, and every kind of investment, specifically including but not by way of limitation, bonds, debentures, and other corporate obligations and stocks, preferred or common, including investment trusts, which men of prudence, discretion, and intelligence acquire or retain for their own account, and within the limitations of the foregoing standard, the trustee may retain property properly acquired without limitation as to time and without regard to its suitability for original purchase. The net interest and profits of such investments, less the reasonable charges and disbursements of the corporation in connection therewith, shall be accounted for and paid over as a part of such trust. The net accumulations of such interest and profits likewise shall be invested and

reinvested as a part of the principal, and such investments shall be received and allowed in the settlement of the trust.

Approved March 21, 1963.

CHAPTER 100

H. B. No. 577
(Leahy, Aamoth)

CORPORATE TRUSTEE INVESTMENTS

AN ACT

To amend and reenact section 6-05-15.1 of the North Dakota Century Code, relating to the commingling of trust funds.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.)** Section 6-05-15.1 of the North Dakota Century Code is hereby amended and reenacted to read 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 cestui que 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 shall be made, it shall follow such directions, and in such case it shall not be 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 shall be owned and held by the trust company in its several trust capacities, and it shall be liable for the administration thereof in all respects as though separately invested; provided, that not more than fifty thousand dollars,

at the cost price of such investments, shall be so invested for any one trust at any one time in fractional parts or as commingled funds for investment, unless the authority to invest in fractional parts or as commingled funds be given in the order, judgment, decree, will, or other written instrument governing such trust. Funds so commingled for investment shall 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 shall apply as well whether a corporation trustee is acting alone or with an individual co-trustee.

Approved March 5, 1963.