

# BANKS AND BANKING

## CHAPTER 102

SENATE BILL NO. 2134  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

### CEASE AND DESIST ORDER APPEALS

AN ACT to amend and reenact subsection 4 of section 6-01-04.2 of the North Dakota Century Code, relating to the appeal of cease and desist orders served upon financial corporations or institutions.

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

SECTION 1. AMENDMENT. Subsection 4 of section 6-01-04.2 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. The commissioner or the board may enter an emergency, temporary cease and desist order if the commissioner or the board finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation or institution, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation or institution. An emergency, temporary cease and desist order shall be effective immediately upon service on the financial corporation or institution and shall remain in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. Within ten days of the emergency, temporary cease and desist order a financial corporation or institution may appeal the entry of an emergency, temporary cease and desist order to the district court for the county in which the financial corporation or institution has located its main office. The financial corporation upon which such an order is served may apply to the district court of the county in which the financial corporation or institution is located for an order enjoining the operation of the emergency, temporary order. The application for injunction and procedure upon application must comply with the requirements of section 6-07-14.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 103

HOUSE BILL NO. 1042  
(Legislative Council)  
(Interim Industry and Business Committee)

**BANK CAPITAL STOCK REQUIREMENTS**

AN ACT to amend and reenact section 6-02-03 of the North Dakota Century Code, relating to the capital stock requirements of banking associations.

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

SECTION 1. AMENDMENT. Section 6-02-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-02-03. Capital stock, surplus, and federal deposit insurance requirements. The capital stock of any banking association organized after June 30, 1987, shall be not less than fifty one hundred thousand dollars. In addition to such capital requirements there shall be subscribed and paid in at the time of organization a surplus of not less than twenty-five fifty thousand dollars. The state banking board may require such additional capital, surplus, and undivided profits as it may determine necessary to properly serve the area and to protect the public interest. All of the capital stock and surplus of every association shall be paid in before it shall be authorized to commence business, and evidence of such payment either in actual money or a deposit in a previously approved correspondent bank must be furnished to the commissioner before the certificate of authority may be delivered to it. A banking association shall, ~~after July 1, 1978~~, secure federal deposit insurance corporation insurance of deposits before it is authorized to commence business. Evidence of securing such insurance must be furnished to the commissioner before the certificate of authority may be delivered to the banking association.

Approved April 1, 1987  
Filed April 2, 1987

## CHAPTER 104

SENATE BILL NO. 2427  
(Redlin)

### BANK SECURITIES DEALINGS

AN ACT to create and enact a new subsection to section 6-03-02 of the North Dakota Century Code, relating to the power of banks.

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

SECTION 1. A new subsection to section 6-03-02 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To enter into the business of dealing in securities and stock for the purpose of purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of individual and institutional customers and to provide portfolio investment advisory, management, information, forecasting, and research services to such customers in combination with or separate from such purchases and sales.

Approved April 7, 1987

Filed April 9, 1987

## CHAPTER 105

HOUSE BILL NO. 1652  
(Representatives Koland, Skjerven)  
(Senator Reiten)

### MERGED BANKS

AN ACT to create and enact a new section to chapter 6-03, a new section to chapter 57-35, and a new section to chapter 57-35.2 of the North Dakota Century Code, relating to maintaining houses, offices, and services of merged banks and to taxation of merged banks.

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

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Maintenance of facilities of merged banks.** Notwithstanding the provisions of sections 6-03-13.1 through 6-03-13.4 and section 6-03-14, two or more banking institutions, or national banks that are subsidiaries as defined in the Bank Holding Company Act of 1956, as amended, [ch. 240; 70 Stat. 133; 12 U.S.C. 1841] of the same bank holding company, which consolidate or merge in accordance with section 6-03-11 or in accordance with procedures applicable to national banks may, upon completion of the consolidation or merger retain, operate, establish, and maintain the banking houses or offices of the merged or consolidated entities, including off-premises banking facilities, and provide other services or functions as would be permitted had the consolidation or merger not occurred.

SECTION 2. A new section to chapter 57-35 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Imposition of tax after merger or consolidation.** Any banking institution or national bank that enters a consolidation or merger with one or more other such institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred.

SECTION 3. A new section to chapter 57-35.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Payment of taxes after merger or consolidation.** Any banking institution or national bank that enters a consolidation or merger with one or more other such institutions or banks after June 30, 1987, shall continue to pay taxes due under this chapter after the consolidation or merger in the manner and on the basis taxes would have been paid had the consolidation or merger not occurred.

Approved April 6, 1987  
Filed April 6, 1987

# CHAPTER 106

SENATE BILL NO. 2227  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

## BANK DIVIDENDS

AN ACT to amend and reenact sections 6-03-34 and 6-03-36 of the North Dakota Century Code, relating to the payment of dividends by a banking institution.

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

SECTION 1. AMENDMENT. Section 6-03-34 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-34. Surplus fund required - Dividends only out of earnings not required for surplus. The board of directors of any association organized under this title may declare and pay annual ~~or~~, semiannual, or quarterly dividends out of the net profits of the association subject to the limitations of this ~~section~~ chapter. Every such association, quarterly, semiannually, or annually, as its board of directors shall deem advisable, shall ascertain, set apart, and convert into a surplus fund at least fifty percent of its net earnings until such surplus fund shall equal one hundred percent of its common stock, and no dividend shall be declared upon its stock except from the remaining fifty percent of its net earnings.

SECTION 2. AMENDMENT. Section 6-03-36 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-36. Capital must be maintained - Dividends prohibited under certain conditions.

1. No director or officer of an association may permit the impairment of an association's capital by the payment of dividends or otherwise.
2. No dividend may be paid in an amount which exceeds the total of the association's net profits for the year combined with its retained net profits for the preceding two years less any required transfers to surplus or a fund for the retirement of any preferred stock, capital notes,

or debentures, without the approval of the state banking board. Except as provided in subsection 4, no dividend may be paid which exceeds the following amount:

- a. An association's retained net profits for the period beginning January one of the year for which the proposed dividends are declared and ending as of the date used to determine shareholders of record; plus
  - b. The association's retained net profits for the preceding two calendar years; less
  - c. Any required transfers to:
    - (1) Surplus;
    - (2) Funds for the retirement of preferred stock, capital notes, and debentures.
3. For the purpose of this section, "net profits" means the remainder of all earnings from the association's current annual operations plus actual recoveries of past losses on loans, investments, and other assets, after deducting from the total, all current operating expenses, actual losses, accrued dividends on preferred stock, if any, accrued interest on capital notes and debentures, and all federal and state taxes.
4. Payment of a dividend which exceeds the calculated amount in subsection 2 may be made only with prior approval of the state banking board.

Approved March 20, 1987  
Filed March 23, 1987

# CHAPTER 107

HOUSE BILL NO. 1137  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

## BANK INVESTMENTS — CREDIT UNION INVESTMENTS

AN ACT to create and enact section 6-03-47.3 and subdivision g of subsection 5 of section 6-06-06 of the North Dakota Century Code, relating to bank investments in investment company shares and powers of credit unions; and to declare an emergency.

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

SECTION 1. Section 6-03-47.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-03-47.3. Bank investment in investment company shares. Financial institutions under the jurisdiction of the state banking board may invest in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permitted under this chapter. The state banking board may issue rules and regulations governing investments by North Dakota financial institutions in shares of registered investment companies.

SECTION 2. Subdivision g to subsection 5 of section 6-06-06 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

- g. Subject to rules of the state credit union board, in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permissible under this section.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure and is in effect upon its filing with the secretary of state or on a date specified in this Act.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 108

HOUSE BILL NO. 1041  
(Legislative Council)  
(Interim Industry and Business Committee)

## INSOLVENT BANK CLAIM PRIORITY

AN ACT to create and enact a new section to chapter 6-07 of the North Dakota Century Code, relating to the priority of paying expenses of and claims against an insolvent bank; and to amend and reenact sections 6-03-67 and 41-04-27 of the North Dakota Century Code, relating to liability of a banking association for appropriation of deposits and the right of payor banks to setoff.

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

SECTION 1. AMENDMENT. Section 6-03-67 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-67. Appropriation of deposits unlawful - Exception - Liability therefor. Except as provided in ~~section~~ sections 2 of this Act and 30.1-31-13, it ~~shall be~~ is unlawful for any banking association to charge any claim which it might have, or the claim of any other person, against a deposit made with the association, or to appropriate a deposit or any part thereof of the deposit to the payment of any debt to ~~such the~~ association, without legal process or the consent of the depositor. Any banking association which violates this section ~~shall be~~ is liable to the party aggrieved for any damages caused by ~~such the~~ violation.

SECTION 2. A new section to chapter 6-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

Priority of expenses and claims. The order of paying the expenses of and claims against an insolvent bank is:

1. Administrative expenses, including salaries and expenses of receivers pursuant to section 6-07-20, and expenses incurred by the commissioner during possession or in the course of proceedings under this chapter including the compensation of deputy examiners, agents, and clerks employed by the commissioner and reasonable fees for

- counsel, accountants, or consultants employed by the commissioner or on the commissioner's behalf;
2. Unsecured claims for wages, salaries, or commissions earned by an individual within ninety days before the date of the commissioner's possession in an amount not exceeding five thousand dollars for each individual;
  3. Claims of depositors, except that notwithstanding sections 6-03-67 and 41-04-27, if a depositor is indebted to an insolvent bank, the insolvent bank has a right to setoff against the depositor's account;
  4. All other unsecured claims and claims of secured creditors to the extent the amount of their claims exceeds the present fair market value of their collateral;
  5. Claims for debts that are subordinated under the provisions of a subordination agreement or other instrument; and
  6. Equity capital of shareholders.

SECTION 3. AMENDMENT. Section 41-04-27 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

41-04-27. (4-303) When items subject to notice, stop order, legal process, or setoff - Order in which items may be charged or certified - Exception.

1. Any knowledge, notice, or stop order received by, legal process served upon, or setoff exercised by a payor bank, whether or not effective under other rules of law to terminate, suspend, or modify the bank's right or duty to pay an item or to charge its customer's account for the item, comes too late to so terminate, suspend, or modify such right or duty if the knowledge, notice, stop order, or legal process is received or served and a reasonable time for the bank to act thereon expires or the setoff is exercised after the bank has done any of the following:
  - a. Accepted or certified the item.
  - b. Paid the item in cash.
  - c. Settled for the item without reserving a right to revoke the settlement and without having such right under statute, clearinghouse rule, or agreement.
  - d. Completed the process of posting the item to the indicated account of the drawer, maker, or other person to be charged therewith or otherwise has evidenced by examination of such indicated account and by action its decision to pay the item.

- e. Become accountable for the amount of the item under subdivision d of subsection 1 of section 41-04-23 and section 41-04-26 dealing with the payor bank's responsibility for late return of items.
2. Subject to the provisions of subsection 1, items may be accepted, paid, certified, or charged to the indicated account of its customer in any order convenient to the bank.
3. This section does not apply to the setoff provided in section 2 of this Act.

Approved April 1, 1987

Filed April 2, 1987

## CHAPTER 109

SENATE BILL NO. 2133  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

### FINANCIAL INSTITUTION CALL REPORTS

AN ACT to amend and reenact section 6-03-70 of the North Dakota Century Code, relating to financial institutions call reports.

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

SECTION 1. AMENDMENT. Section 6-03-70 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-70. Reports - Regular and special - Publication - Penalty. Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which shall be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports shall exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which shall be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the commissioner within thirty days after receipt of the request for the same. Each report, in a form prescribed by the commissioner, shall be published, at the expense of the association, in some newspaper in the city where such bank is located, and in case there is no such newspaper, then in a legal newspaper of the county in which such association is located. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank, or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the association. Every association which fails to make and transmit any report required by this section shall forfeit and pay to the state a penalty of two hundred dollars for each delinquency.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 110

SENATE BILL NO. 2383  
(Nething, Langley)

## TRUST COMPANY DIRECTORS

AN ACT to amend and reenact section 6-05-06 of the North Dakota Century Code, relating to the number of directors and qualifications of trust companies.

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

\* SECTION 1. AMENDMENT. Section 6-05-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-06. Directors - Qualifications - Terms - Vacancies. All the corporate powers of such a corporation shall be exercised by a board of directors of not less than ~~nine~~ three nor more than ~~fifteen~~ twenty-five in number, and such officers and agents as it shall elect or appoint. A majority of the directors must be citizens of this state, and every director must own in his own right, free from hypothecation or pledge for any debt, at least ten shares of capital stock of the corporation of which he is a director, which said shares shall be known as "director's qualifying shares" and which shall be so marked across the face and retained in the trust company, as provided in section 6-03-03. Any director who ceases to be the owner of ten shares of stock, free and nonhypothecated, or who becomes in any manner disqualified, shall vacate his 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, shall be transmitted at once to the commissioner to be filed in his 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 ~~not become stockholders to the amount required to qualify, or if they fail or refuse to qualify from any cause,~~ the directors who shall qualify must elect qualified ~~stockholders~~ persons to fill such vacancies, and thereafter, at each annual meeting of the stockholders, directors shall be elected to serve three years in place of those whose terms then shall expire.

Approved April 7, 1987  
Filed April 9, 1987

\* NOTE: Section 6-05-06 was also amended by section 1 of House Bill No. 1050, chapter 73.

## CHAPTER 111

HOUSE BILL NO. 1138  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

## TRUST COMPANY EXAMINATIONS

AN ACT to amend and reenact section 6-05-28, subsection 2 of section 6-08-08.1, and section 6-10-06 of the North Dakota Century Code, relating to examination fees and examinations of annuity, deposit, surety, and trust companies, notification on applications to the commissioner of banking and financial institutions, and examinations of agents for deposits.

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

SECTION 1. AMENDMENT. Section 6-05-28 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-05-28. Examination by commissioner - Fees - Power over business, officers, and employees. The commissioner shall make a full, true, complete, and accurate examination and investigation of the affairs of each corporation doing business under this chapter ~~once in each eighteen months, or more often if required to do so by a verified information in writing filed with the commissioner by any person interested in any trust with which any such corporation may be charged as often as the commissioner deems necessary.~~ Such examination shall be made without previous notice to the corporation to be examined. Fees for such examinations shall be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of one hundred ~~thirty-five~~ dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examination herein provided for. The commissioner, in the commissioner's discretion, may accept, in lieu of any examination authorized or required by this title to be conducted by the department of banking and financial institutions, the examination that may have been made of such institution within a reasonable period by the federal reserve bank, if a copy of such examination is furnished to the commissioner. The commissioner

shall assume and exercise over each such corporation and its business, officers, directors, and employees all the power and authority conferred upon the commissioner over banking and other financial or moneyed corporations or associations.

**SECTION 2. AMENDMENT.** Subsection 2 of section 6-08-08.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. Within thirty ten business days after the date of mailing the notification the commissioner shall determine if the application as filed 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 thirty days after the mailing of a notice of completeness by the commissioner, the transaction shall be deemed approved, unless the board issues an order calling a hearing. If a hearing is called by the board, the parties to the transaction shall be given at least a ten-day written notice of the time, date, and place of the hearing, to be held before the board, to examine into the following matters:
  - a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers.
  - b. Whether the qualifications of management include adequate experience with financial institutions or other approved related experience.
  - c. Whether 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.

The determination to call a hearing may be made by the commissioner after consulting the board members and an order calling a hearing may be issued by the board without a formal meeting.

**SECTION 3. AMENDMENT.** Section 6-10-06 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**6-10-06. Duty of commissioner.** The commissioner shall ~~may~~ make an examination of the business of such licensee ~~at least once in each year~~, and such applicant shall pay an examination fee to the state treasurer. Fees for such examinations shall be charged by the department of banking and financial institutions for the examinations provided for by this section at the rate of ~~sixty-five~~ one hundred thirty-five dollars per day for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with such examination and report of examination and for time used by each deputy examiner, or other person or persons in making and otherwise preparing and typing the reports of examination herein provided for.

Approved March 12, 1987  
Filed March 16, 1987

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## CHAPTER 112

HOUSE BILL NO. 1423  
(Representatives Oban, Gates)  
(Senator Hilken)

### CREDIT UNION POWERS

AN ACT to create and enact a new subsection to section 6-06-06 of the North Dakota Century Code, relating to the powers of credit unions.

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

SECTION 1. A new subsection to section 6-06-06 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated.

Approved March 12, 1987  
Filed March 16, 1987

# CHAPTER 113

HOUSE BILL NO. 1218  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

## CREDIT UNION ASSESSMENTS

AN ACT to amend and reenact subsection 4 of section 6-06-08 of the North Dakota Century Code, relating to assessments of state credit unions.

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

SECTION 1. AMENDMENT. Subsection 4 of section 6-06-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 4. The credit union shall, within thirty days from date of billing, pay to the state treasury for examination a fee as provided in the following schedule-

Total Assets on Day of Examination	Fee
\$0 to \$ 300,000	\$ 300
over \$ 300,000	\$ 300 plus .00075 x excess over \$ 300,000
over \$ 500,000	\$ 450 plus .00030 x excess over \$ 500,000
over \$ 1,000,000	\$ 600 plus .00020 x excess over \$ 1,000,000
over \$ 5,000,000	\$1,400 plus .00016 x excess over \$ 5,000,000
over \$ 10,000,000	\$2,200 plus .00012 x excess over \$ 10,000,000
over \$ 20,000,000	\$3,400 plus .00009 x excess over \$ 20,000,000
over \$ 30,000,000	\$4,300 plus .00007 x excess over \$ 30,000,000
over \$ 40,000,000	\$5,000 plus .00006 x excess over \$ 40,000,000
over \$ 50,000,000	\$5,600 plus .00005 x excess over \$ 50,000,000

The minimum fee for the examination of a credit union shall be three hundred dollars and the maximum fee shall be ten thousand dollars. Every state credit union placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay into the state treasury the following yearly assessment: one and one-half hundredths of one percent of gross amount of the assets of the corporation or association on June thirtieth of each year, exclusive of expenses, interest, and taxes paid, and inclusive of

any valuation allowance or allowances deducted by the credit union from any asset account. The fee may not be less than three hundred dollars and not more than seven thousand five hundred dollars. The assessment must be paid to the state treasurer within thirty days of each June thirtieth, except that those credit unions whose examination has begun within the six months immediately prior to July 1, 1987, do not have to pay the first yearly assessment. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the state credit union board, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union until payment of the amount due, plus a penalty of five dollars a day additional for the delay. The examination fee for North Dakota central credit union shall be one hundred thirty-five dollars per examiner day for the time used by the commissioner or other person or persons designated by the commissioner in making and otherwise preparing and typing the reports of examination. If any such credit union shall be delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent credit union until payment of the amount due, plus a penalty of two hundred dollars for the delay.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 114

HOUSE BILL NO. 1139  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

**FAILING CREDIT UNION ACTION**

AN ACT to create and enact section 6-06-08.2 of the North Dakota Century Code, relating to emergency action concerning a failing institution.

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

SECTION 1. Section 6-06-08.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

**6-06-08.2. Failing institution - Emergency powers - Hearing - Order - Appeal.** Whenever the state credit union board determines that a merger or acquisition of any of the credit unions under its supervision is necessary because the institution's equity is impaired, it is conducting its business in an unsafe, unsound, or unauthorized manner, or it is endangering the interests of shareholders, creditors or the public, whether or not the institution is insolvent, the state credit union board may, without a hearing, declare an emergency and declare that the institution is a failing institution. Upon such declaration the state credit union board may authorize the commissioner of banking and financial institutions to immediately take possession of the institution. The board is authorized to do all things necessary to continue service to the affected community including any merger or acquisition under this chapter or otherwise.

An institution which is the subject of such a board declaration may ask for a hearing before the state credit union board within five days after service of the state credit union board's declaration upon it. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board shall enter a final order. The institution may appeal the order to the district court of the county in which the credit union is located within ten days after the order is served upon it. The appeal is governed by chapter 28-32 except that the board has ten days after service of the notice of appeal to certify the record, and the district court shall hear the appeal as expeditiously as possible.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 115

HOUSE BILL NO. 1232  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

## CREDIT UNION LOANS

AN ACT to amend and reenact section 6-06-12 of the North Dakota Century Code, relating to credit union directors, duties, powers, and loan limitations.

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

SECTION 1. AMENDMENT. Section 6-06-12 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-12. Directors - Duties and powers - Loan limitations. The directors shall have general management of the credit union, and it shall be their duty particularly:

1. To act on applications for membership, unless a membership officer is appointed.
2. To determine interest rates on loans and deposits.
3. To fix, subject to the approval of the state examiner commissioner, the amount of surety bond which shall be required of all officers and employees handling money.
4. To declare dividends.
5. To transmit to the members recommendations for changes in the bylaws.
6. To fill vacancies on the board of directors and on the credit committee who shall serve until their successors are chosen and qualified.
7. To determine the maximum individual shareholdings and the maximum individual loans which can be made, aggregate liability to the credit union of any one borrower but the such maximum loan aggregate liability allowed by the board

shall not exceed the amounts listed in the following schedule:

Total assets	Loan limit
0 to 70,000	10% with a limit of 5,000
70,001 to 100,000	6,000 limit
100,001 to 200,000	8,000 limit
200,001 to 300,000	10,000 limit
300,001 to 400,000	12,000 limit
400,001 to 500,000	14,000 limit
over 500,000	3% of assets

For purposes of this subsection, the aggregate liability of one borrower to a credit union includes the total direct, indirect, and contingent liabilities of the borrower, and the liabilities of separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The aggregate liability of any one borrower to the credit union does not include any loan or portion of a loan guaranteed by the government, to the extent of the guarantee, nor any loan secured by shares in the credit union, to the extent of the security.

In all cases a credit union shall be allowed to loan up to and including two hundred dollars to any individual regardless of the amount of total assets in said credit union. Provided, that the foregoing provisions shall not apply to the North Dakota central credit union.

8. To supervise and control investments other than loans to members.
9. To establish a schedule of fines for delinquency in the payment of principal or interest, which the board shall impose at its discretion.
10. The board may appoint membership officers authorized to approve applications for membership under such conditions as the board may prescribe; except that such membership officers so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.

Approved March 12, 1987  
 Filed March 16, 1987

## CHAPTER 116

HOUSE BILL NO. 1422  
(Representatives Oban, Larson)  
(Senator Heinrich)

## CREDIT UNION LOANS

AN ACT to amend and reenact section 6-06-14 of the North Dakota Century Code, relating to loans by credit unions.

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

SECTION 1. AMENDMENT. Section 6-06-14 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans. The credit committee shall have general supervision over all loans to members, and shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings shall not apply to the North Dakota central credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan shall be made on a form approved by the committee and shall set forth the purpose for which the loan is desired, the security, if any, which is offered, and such other data as the committee may require. The maximum ~~loan~~ aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security shall be two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed ~~ten~~ twenty-five thousand dollars. Security under this section shall include an assignment of shares or deposits, an endorsement made on the note by a responsible person, and such other security as the committee in its discretion may deem adequate. No loan shall be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers, ~~and delegate to him or them~~ the power to approve loans up to the limit established by the credit committee, or in excess of such limit if such excess is fully secured by unpledged shares. Each loan officer shall furnish to the credit committee a record of each loan approved or not approved by ~~him~~ the loan officer within seven days of the date of the filing of the application therefor. All loans not approved by a loan officer shall be acted

upon by the credit committee. No individual shall have authority to disburse funds of the credit union for any loan which has been approved by ~~him~~ that individual in ~~his~~ that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer. Every loan by a credit union to its directors, officers, managers, and committee members shall be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and shall be in strict conformity with the credit union's rules and regulations.

Approved March 12, 1987

Filed March 16, 1987

## CHAPTER 117

HOUSE BILL NO. 1409  
(Opedah, Gates)

**BORROWING FROM CREDIT UNIONS**

AN ACT to amend and reenact section 6-06-20 of the North Dakota Century Code, relating to borrowings by officers, directors, and committee members of credit unions.

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

SECTION 1. AMENDMENT. Section 6-06-20 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-06-20. Borrowings of ~~officers~~ directors and committee members limited - Repayment of loans. No director, ~~officer~~, or member of any committee may borrow from the credit union in which ~~he~~ the director or member holds office more than two thousand five hundred dollars plus pledged shares and deposits less any loan balance therein, unless ~~his~~ the application is approved by three-fourths of the other members of the board of directors. ~~He~~ The director or member may ~~not~~ guarantee or endorse paper for other borrowers. A borrower may repay ~~his~~ the borrower's loan in whole or in part on any day that the office of the credit union is open for business.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 118

HOUSE BILL NO. 1404  
(Gates, Opedah)l)

**CREDIT UNION ENDORSEMENTS**

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to the authority of credit unions to provide missing endorsements.

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

SECTION 1. A new section to chapter 6-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Depository credit union - Endorsements.** A depository credit union that has taken a check or draft for collection may supply any endorsement of the member which is necessary to title unless the item contains the words "payee's endorsement required" or words to that effect. In the absence of such a requirement, a statement placed on the item by the depository credit union to the effect that the item was deposited by a member or credited to that member's account is effective as the member's endorsement. An intermediary credit union, or payor credit union, which is not a depository credit union, is neither given notice nor otherwise affected by a restrictive endorsement of any person except the credit union's immediate transferor.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 119

HOUSE BILL NO. 1185  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

### INSOLVENT BANKS

AN ACT to create and enact section 6-07-04.1 of the North Dakota Century Code, relating to orders to show cause on insolvency, exceptions for emergencies, and recourse for aggrieved banks; and to amend and reenact sections 6-07-15 and 6-07-33 of the North Dakota Century Code, relating to district courts' supervision over administrative receiverships and confidentiality of proceedings.

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

SECTION 1. Section 6-07-04.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-07-04.1. Insolvent bank - Order to show cause hearing - Exception. Upon a determination by the commissioner that any bank is insolvent, the commissioner may order the bank to inject capital in an amount determined by the commissioner to be sufficient to permit the bank to operate in a safe and sound condition or show cause why it should not be declared insolvent by the state banking board. The commissioner's order shall include the basis for his determination, with reasonable specificity, and identify and attach the pages or portions of the examination report or other documents supporting his determination. The order to show cause hearing shall be heard by the state banking board. The minimum notice for the hearing shall be three business days. In the commissioner's order to inject capital or show cause why it should not be declared insolvent by the state banking board, the commissioner shall indicate whether a purchase and assumption transaction is contemplated if the banking board declares the bank insolvent. If the state banking board determines that the bank is insolvent, the board shall appoint a receiver. The receiver shall exercise its powers as set forth in this chapter.

The hearing provided for in this section is not required when the bank is in violation of an existing final capital order and the state banking board has determined that an emergency exists which may result in serious losses to the depositors. In such a case, the

state banking board may declare the bank insolvent without a hearing and appoint a receiver. The receiver shall exercise all powers as set forth in this chapter.

Recourse may be taken from actions taken under this section only in accordance with the provisions of section 6-07-14.

**SECTION 2. AMENDMENT.** Section 6-07-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**6-07-15. Powers of receiver.** Upon taking charge of the assets and business of any bank, the receiver appointed by the state banking board, after having qualified in the manner hereinbefore provided, is authorized to collect all moneys due to such bank, and to do such other acts as are necessary to conserve its business and assets, and he shall proceed to liquidate the affairs thereof. He shall have general and inclusive power and authority, except as otherwise limited by the provisions of this chapter, to do any and all acts and to take any and all steps necessary, or in his discretion desirable, for the protection of the property and assets of such bank and the speedy and economical liquidation of the assets and affairs thereof, and the payment of its creditors, or for the reopening and resumption of business by said bank, where that is practicable or desirable. He may institute in his own name, as receiver, or in the name of the insolvent bank, such suits, actions, and other legal proceedings as he deems expedient for such purposes and for the enforcement of stockholders' liability. He may sell, compromise, or compound any bad or doubtful debt or claim and sell and dispose of any or all of the assets of the bank upon receiving an order so to do from the district court having jurisdiction of such matters as hereinafter provided. Such sale may be made to stockholders, officers, directors, or others interested in the insolvent bank on consent of the court. ~~The bank shall be notified of any application or petition under this section, by the receiver, by the service of a notice upon an officer or director thereof, which shall be served in like manner as a summons in a civil action, and the hearing on the application or petition may be had at any time after said bank has had five days' notice of the petition or application.~~

**SECTION 3. AMENDMENT.** Section 6-07-33 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**6-07-33. Designation of district judge for administrative bank receiverships --**~~Court in which papers filed. The supreme court, in the exercise of its supervisory jurisdiction, shall designate some district judge to court of the district in which the bank is located shall~~ have jurisdiction in connection with administrative receiverships of insolvent banks, and the judge so designated shall give precedence to such matters. Wherever in this chapter reference is made to the district court having jurisdiction over the matters and proceedings set forth in this chapter, ~~the such district judge so designated by the supreme court shall be the court referred to, and the district court of the county in which such designated~~

district judge has his chambers shall be the proper court in which to file any and all papers required to be filed by the provisions of this chapter. Prior to the filing of an application for relief or for supervisory proceedings under chapter 6-07, a party to the proceedings before the banking board may request that the district judge order the confidentiality of the proceedings in the district court. The request must be by affidavit and is confidential. Upon showing that undue injury may otherwise result to any party, or as determined necessary to preserve the status quo, the judge may order the confidentiality of the court's proceedings until after a purchase and assumption has been completed or until liquidation is commenced.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 120

SENATE BILL NO. 2135  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

## FAILING BANK ACQUISITION

AN ACT to create and enact section 6-07-04.2 of the North Dakota Century Code, relating to emergency action of the acquisition of a failing institution; and to amend and reenact sections 6-01-17 and 6-02-05 of the North Dakota Century Code, relating to the yearly assessment of banks and application for an organization certificate.

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

SECTION 1. Section 6-07-04.2 of the North Dakota Century Code is hereby created and enacted to read as follows:

6-07-04.2. Acquisition of an institution. The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may permit the acquisition of the financial institution. In considering potential acquisition, the receiver of an insolvent institution or the board, when acting under the provisions of this section, shall entertain bids from potential purchasers in the following manner:

1. First consideration must be given to bids to purchase any or all of the total assets and liabilities made by any of the following, which intend to operate the acquired institution as a bank:
  - a. An individual or individuals desiring to acquire control of the institution.
  - b. A new bank organized under chapter 6-02.
  - c. A bank holding company the home state of which is North Dakota.
2. Second consideration must be given to banks acquiring any or all of the total assets and liabilities of the institution to operate it as a paying and receiving

station, in which case the bids must be considered in the following order:

- a. Banks qualifying to acquire the institution under section 6-03-14.
- b. North Dakota banks within a seventy-five mile radius of the insolvent or failing institution.
- c. Banks within the state of North Dakota.

The receiver of an insolvent institution or board when acting under the provisions of this section, may accept a bid of a lower order bidder under subsection 1 or 2, provided the bid is otherwise acceptable and is for an amount at least ten percent greater than a bid of a higher order. The receiver of an insolvent institution or board when acting under the provisions of this section, may reject any and all bids.

The procedure for acquisition to operate as a bank or a paying and receiving station may be modified by the state banking board to the extent the board deems necessary under the circumstances. No notice of application need be given and no public hearing need be held. Notwithstanding section 6-03-18, a paying and receiving station established by acquisition under this section shall not be required to discontinue operation by commencement of business by a banking institution at the same place.

\* SECTION 2. AMENDMENT. Section 6-01-17 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-01-17. Yearly assessment of banks. Every state banking association and banking institution placed under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by the provisions of this title shall pay into the state treasury the following yearly assessment: one and one-quarter hundredths of one percent of gross amount of the assets of said corporation or association on June thirtieth of each year, exclusive of expenses, interest, and taxes paid, and inclusive of any valuation allowance or allowances deducted by a state banking association from any asset account. Such fee shall not be less than seven hundred fifty dollars and not more than seven thousand five hundred dollars. Assessment fees shall not be computed on the combined assets of the bank and its trust department for those banks exercising trust powers. The minimum and maximum shall apply to the assets of the bank separate from the assets of the trust department, and fees for examination of the trust department shall be computed in accordance with section 6-05-28. The assessment shall be paid to the state treasurer within thirty days of each June thirtieth, ~~except that institutions whose examination has begun within the six months immediately prior to July 1, 1983, shall not have to pay the first yearly assessment.~~ Institutions that have not been examined by the commissioner or the state banking board for three years prior

\* NOTE: Section 6-01-17 was also amended by section 4 of House Bill No. 1010, chapter 10.

to any assessment date shall not be required to pay the assessment. The state treasurer shall report such payments of fees to the state banking board, and if any such corporation or institution shall be delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation or institution until payment of the amount due, plus a penalty of five dollars a day additional for the delay.

**SECTION 3. AMENDMENT.** Section 6-02-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**6-02-05. Acknowledgment of organization certificate - Application for certificate of authority - Notice of hearing.** The organization certificate shall be acknowledged before the clerk of some court of record or a notary public, and, together with the acknowledgment thereof, shall be authenticated by the seal of such court or notary. The same thereupon shall be transmitted to the state banking board with a request for permission to present the same to the secretary of state, with application to him for the issuance of a certificate of authority. Upon receiving such organization certificate, the board shall cause notice of the application therefor to be published in the official newspaper of the county within which such association is proposed to be established. Such notice shall contain a statement of a time when and place where the board will hear such application and shall specify that any person objecting thereto may appear and show cause why such application should not be approved. Upon the consolidation of banks, acquisition pursuant to section 6-07-04.2, or the conversion of a national bank to a state bank, notice of such hearing need not be given.

Approved March 20, 1987  
Filed March 23, 1987

# CHAPTER 121

HOUSE BILL NO. 1122  
(Committee on Industry, Business and Labor)  
(At the request of the Department of Banking and  
Financial Institutions)

## STATE BANKING BOARD BANK POSSESSION

AN ACT to amend and reenact sections 6-07-10 and 6-07-11 of the North Dakota Century Code, relating to acquisition of a bank which voluntarily places itself in possession of the state banking board, and appointment of a receiver for a bank that voluntarily places itself in the possession of the state banking board.

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

SECTION 1. Section 6-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-10. Bank may be placed in possession of board - Notice - Appointment of receiver. Any bank, by a majority vote of its board of directors, may place its assets and affairs in the possession of the state banking board by notifying the state examiner that it is ceasing business and the reason therefor, and by placing a notice on the front door of its place of business as follows: "This bank is in the hands of the state banking board". Immediately on receipt of such notice, the state banking board shall take possession and assume control of all of the property and assets of such bank until a receiver is appointed. No business shall be transacted by such bank after the notification and posting of the notice described in this section. If the bank places its assets and affairs in the possession of the state banking board for the purpose of acquisition pursuant to section 6-07-04.2, the bank shall place a majority of its capital stock in the possession of the state banking board. In such case, the bank may not cease doing business nor shall the bank post the public notice.

SECTION 2. AMENDMENT. Section 6-07-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-07-11. Appointment of administrative receiver. Whenever the state banking board shall become satisfied of the insolvency of a corporation, or association organized under the provisions of this title, after due examination of its affairs, ~~it~~ or if the bank has been voluntarily placed in the possession of the state banking board for the purpose of liquidation pursuant to section 6-07-10, the state banking board may appoint a receiver who shall proceed to close up such corporation or association, and who, during the period he is acting as such, shall have all of the powers and be subject to all of the restrictions prescribed in this chapter.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 122

HOUSE BILL NO. 1577  
(Lindgren, Moore)

### LAW ENFORCEMENT ACCESS TO FINANCIAL INFORMATION

AN ACT to amend and reenact sections 6-08.1-02, 6-08.1-05, and 6-08.1-07 of the North Dakota Century Code, relating to law enforcement access to customer information retained by a financial institution.

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

SECTION 1. AMENDMENT. Section 6-08.1-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08.1-02. Exemptions. This chapter does not apply to any of the following:

1. The preparation, examination, handling, or maintenance of any customer information by any officer, employee, or agent of a financial institution having custody of such information or the examination of such information by an accountant engaged by the financial institution to perform an audit.
2. The examination of any customer information by, or the furnishing of customer information to, any officer, employee, or agent of a financial institution regulatory agency solely for use in the exercise of his duties.
3. The publication of data derived from customer information where the data cannot be identified to any particular customer or account.
4. Any acts required of the financial institution by the Internal Revenue Code.
5. Disclosures permitted under the uniform commercial code concerning the dishonor of any negotiable instrument.

6. The exchange in the regular course of business of customer credit information between a financial institution and other financial institutions or commercial entities, directly, or through a customer reporting agency.
7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of either of the following:
  - a. The name of any person who, either directly or indirectly, has obtained financing through the Bank of North Dakota.
  - b. The amount of any financing obtained either directly or indirectly through the Bank of North Dakota.
8. An examination, handling, or maintenance of any customer information by any governmental agency or law enforcement agency for purposes of verifying information necessary in the licensing process, provided prior consent is obtained from the licensee and customer.
9. Disclosure of customer information to a law enforcement agency or governmental agency pursuant to a search warrant or subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure.

**SECTION 2. AMENDMENT.** Section 6-08.1-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**6-08.1-05. Government access.**

1. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to either of the following:
  - a. The consent of the customer, in accordance with this chapter.
  - b. Valid legal process, in accordance with this section.
2. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a judicial or administrative subpoena duces tecum served on the financial institution, if ~~all of the following are met:~~
  - a- ~~There~~ there is reason to believe that the customer information sought is relevant to a proper law enforcement objective or is otherwise authorized by law.

- b- A copy of the subpoena has been personally served on the customer, or his legal representative, or has been mailed to the customer or his legal representative at his last-known address on or before the date of the subpoena, together with a notice that describes the nature of the inquiry, the specific customer information sought, and a description of the customer's right to challenge the subpoena pursuant to this chapter.
- e- Ten days have passed from the date of personal service of the subpoena on the customer or his legal representative, or fourteen days have passed from the date the subpoena was mailed to the customer or his legal representative, and the customer has not exercised his right to challenge the subpoena pursuant to this section.
3. A governmental agency or law enforcement agency may obtain customer information from a financial institution pursuant to a search warrant if it obtains the search warrant pursuant to the rules of criminal procedure of this state. Examination of the customer information may occur as soon as it is reasonably practicable after the warrant is served on the financial institution. The law enforcement agency or governmental agency must mail a copy of the warrant and a notice specifying the nature of the information obtained to the customer or his legal representative within thirty days of the time the financial institution complies with the search warrant. A court of competent jurisdiction may delay the notice requirement as provided for in this section. In no event may notification be delayed for more than one year following the seizure pursuant to the search warrant.
- 4- a- Within ten days of personal service of the judicial or administrative subpoena upon the bank and the customer or his legal representative, or fourteen days from the date of the subpoena if the subpoena is mailed to the customer or his legal representative, the customer may file a motion to quash the subpoena, with copies of the motion to quash served on the governmental agency or law enforcement agency and on the financial institution. If the subpoena issues from a court, the motion should be filed in that court. If the subpoena issues from a governmental agency or law enforcement agency, the motion shall be filed in a court of competent jurisdiction. The financial institution shall not disclose the information until the motion has been heard and decided.
- b- The motion shall be accompanied by an affidavit stating both of the following:

- (1) The applicant is the customer about whom the customer information pertains-
  - (2) The applicant's reasons for believing that the material sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law-
- e- During the period for filing the motion to quash, and continuing until the final ruling on the motion, upon the customer's request, the financial institution shall supply the customer with a copy of the customer information sought-
- d- The judge or magistrate shall grant the motion if either of the following is met-
- (1) The information sought is not relevant to a legitimate law enforcement objective or is not otherwise authorized by law-
  - (2) There has not been substantial compliance with the provisions of this chapter-
- 5- a- Upon petition of the governmental agency or law enforcement agency, the customer notice requirements of this chapter may be delayed by a court of competent jurisdiction if all of the following are met-
- (1) The investigation conducted is within the authority of the governmental agency or law enforcement agency-
  - (2) The disclosure sought is pursuant to a proper law enforcement objective or is otherwise authorized by law-
  - (3) The provision of notice to the customer would seriously impede the investigatory process-
- b- Notice may be delayed under this subsection for no more than thirty days. Upon application of the governmental agency or law enforcement agency, notice may be delayed for two additional thirty-day periods-
- e- When the court grants the petition to delay notice, a copy of the court order shall be attached to the summons or subpoena and served on the financial institution-

\* SECTION 3. AMENDMENT. Section 6-08.1-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

\* NOTE: Section 6-08.1-07 was also amended by section 1 of Senate Bill No. 2106, chapter 123.

**6-08.1-07. Cost reimbursement.** Any governmental agency, law enforcement agency or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution. A financial institution must deliver the customer information sought as soon as reasonably possible notwithstanding any dispute concerning the amount of reimbursement due under this section. A separate action may be maintained by the financial institution against the governmental agency, law enforcement agency, or person requesting access for recovery of reasonable reimbursement.

Approved April 1, 1987

Filed April 2, 1987

## CHAPTER 123

SENATE BILL NO. 2106  
(Committee on Appropriations)  
(At the request of the State Auditor)

## AUDIT INFORMATION FEES

AN ACT to amend and reenact section 6-08.1-07 of the North Dakota Century Code, relating to the fee charged by financial institutions for preparing customer information for the state auditor.

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

\* SECTION 1. AMENDMENT. Section 6-08.1-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08.1-07. Cost reimbursement. Any governmental agency, law enforcement agency or person requiring or requesting access to customer information shall pay to the financial institution that assembles or provides the customer information a fee for reimbursement of reasonably necessary costs which have been directly incurred by the financial institution. The financial institution may not charge the state auditor for customer information requested when performing an audit; however, the financial institution may charge the entity being audited by the state auditor for the information requested.

Approved March 12, 1987  
Filed March 16, 1987

\* NOTE: Section 6-08.1-07 was also amended by section 3 of House Bill No. 1577, chapter 122.

## CHAPTER 124

SENATE BILL NO. 2480  
(Senators Adams, Tallackson)  
(Representatives Dalrymple, Shide)

### SALE OF CERTAIN BANKS

AN ACT to provide for the sale of banks and bank holding companies owned by charitable trusts; and to provide an expiration date.

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

**SECTION 1. LEGISLATIVE INTENT.** It is the intent of the legislative assembly to act pursuant to the Bank Holding Company Act of 1956, as amended [ch. 240; 70 Stat. 134; 12 U.S.C. 1842(d)], to limit the authority granted by this Act to charitable trusts that owned one hundred percent of a bank holding company on May 26, 1969, to sell, assign, merge, or transfer the stock or assets of any bank or bank holding company owned directly or indirectly by such charitable trust to any state or national bank or bank holding company without regard to whether the entity acquiring the stock or assets is located outside this state to enable the divestiture of such ownership by a charitable trust as required by the provisions of section 4943 of the Internal Revenue Code.

**SECTION 2. Sale of banking institutions owned by charitable trusts.** Except as prohibited by North Dakota Century Code section 6-02-02.1, a charitable trust that owned one hundred percent of a bank holding company on May 26, 1969, may sell, assign, merge, or transfer the stock or assets of any bank or bank holding company owned directly or indirectly by the charitable trust, pursuant to the procedures set forth in North Dakota Century Code section 6-08-08.1, to a bank holding company, bank, or any other entity located in any state pursuant to applicable banking laws.

**SECTION 3. Presentment of plan of acquiring entity to the state department of banking and financial institutions.** Prior to any acquisition under this Act, the acquiring entity must present a plan to the state department of banking and financial institutions. The plan must provide that the acquiring entity commits itself to the condition that it capitalize each bank to be acquired in this state according to the applicable banking laws of this state and the requirements of the federal deposit insurance corporation or any applicable federal banking laws.

**SECTION 4. Offer to purchase minority stock required.** Any bank holding company owned by a charitable trust that sells, assigns, merges, or transfers the stock of any bank or bank holding company pursuant to this Act shall communicate to and offer to purchase the stock of any minority stockholder of the bank or bank holding company. The offer must be made to minority stockholders at least sixty days before the date of the sale and must extend thirty days after the sale of the bank or bank holding company. The offer must remain open for at least ninety days or for the same period as that which is offered to minority stockholders of the company's banks located in other states, whichever period is greater. The offer to purchase minority stock in banks in this state must be based on at least the same criteria, standards, and formula as may be used by the bank holding company in computing an offer to purchase the minority stock of its banks in other states. The resulting offer to purchase must be on the same or better terms as any previous offer made by the bank holding company except for those previous offers made by reason of repurchase options between the bank holding company and the stockholder. Such repurchase options may not be used as a basis for determining the offer to purchase other minority stock.

**SECTION 5. Grants requirement - Commitment - Reports to attorney general.** Any charitable trust that divests itself of any interest pursuant to this Act shall file a commitment with the attorney general prior to any divestiture that the charitable trust will, subject to the provisions of the trust instrument pursuant to which the trust was created, continue to make grants under the provisions of the trust to recipients within this state. The charitable trust must report annually to the attorney general describing the grants made by the charitable trust to all recipients in the previous year. Upon the basis of such information, or other information that may be brought to the attorney general's attention, the attorney general may initiate further investigation and ensure compliance with the requirements of this section.

**SECTION 6. Designation of agent for service of process.** Any charitable trust that divests itself of any interest pursuant to this Act shall designate the secretary of state as its agent for service of process in this state.

**SECTION 7. Limitations.**

1. The authority granted by this Act does not authorize the acquiring entity to resell, reassign, merge, or transfer stock or assets of any state or national bank or bank holding company acquired under this Act except as permitted under the laws of this state.
2. This Act does not limit or restrict the rights of a charitable trust to sell, assign, merge, or transfer the stock or assets of any state or national bank or bank holding company owned directly or indirectly by the

charitable trust under the provisions of any existing or hereafter adopted state or federal law or regulation.

3. This Act does not permit the sale, assignment, merger, or transfer by a charitable trust that directly or indirectly owns banks in Minnesota as well as in North Dakota of the stock or assets of any state or national bank or bank holding company located in this state if the sale, assignment, merger, or transfer by the charitable trust would be prohibited under the laws of Minnesota.

**SECTION 8. Provisions not severable.** Notwithstanding North Dakota Century Code section 1-02-20, if any provision of this Act is determined by any court of competent or final jurisdiction to be invalid or unconstitutional, this entire Act is void.

**SECTION 9. EXPIRATION DATE.** Section 2 of this Act is effective through June 30, 2004, and after that date is ineffective.

Approved April 21, 1987  
Filed April 22, 1987

## CHAPTER 125

SENATE BILL NO. 2516  
(Senators Waldera, Wogsland, Ingstad)  
(Representatives Haugen, Moore)

## BUSINESS LOANS

AN ACT to amend and reenact section 6-09-15.4 of the North Dakota Century Code, relating to loans to small business concerns and to nonprofit corporations for lending to rural businesses.

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

SECTION 1. AMENDMENT. Section 6-09-15.4 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-15.4. Bank loans to beginning businessmen - Requirements. The Bank of North Dakota may participate in the making of loans to beginning businessmen with other financial institutions who are authorized to make such loans. As used in this section, "beginning businessman" means any person who is a resident of this state; receives more than one-half his annual income from a revenue-producing enterprise; intends to use any revenue-producing enterprise that he wishes to purchase or rent for business purposes; and has had adequate training, by experience or education, in the type of revenue-producing enterprise which he wishes to begin. Participations in loans to small business concerns - Direct loans to nonprofit corporations.

1. The North Dakota industrial commission shall establish a program through the Bank of North Dakota for the purpose of participating in loans made by North Dakota financial institutions to nonfarming small business concerns. The total amount of a loan may not exceed two hundred fifty thousand dollars and the Bank's participation interest may not exceed ninety percent of the total amount of the loan. The interest rate on the amount of the Bank's participation interest in a loan must not be greater than the Bank's base rate as in effect from time to time, and may float.
2. The Bank, under Public Law No. 99-198 [99 Stat. 1534, 7 U.S.C. 1932 et seq.], may make direct loans to nonprofit corporations for the purpose of relending loan funds to rural businesses to improve business, industry, and employment opportunities in rural areas.

Approved March 27, 1987  
Filed March 30, 1987

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## CHAPTER 126

SENATE BILL NO. 2129  
(Committee on Industry, Business and Labor)  
(At the request of the Economic Development Commission)

### **BANK OF NORTH DAKOTA INVESTMENT**

AN ACT to create and enact a new section to chapter 6-09 of the North Dakota Century Code, relating to the Bank of North Dakota investment in a public venture capital corporation.

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

SECTION 1. A new section to chapter 6-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

Bank may invest in a public venture capital corporation. The Bank of North Dakota may invest in a public venture capital corporation.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 127

HOUSE BILL NO. 1302  
(Representative Ulmer)  
(Senator Mushik)

### PARKS AND RECREATION FACILITIES LOANS

AN ACT to allow the Bank of North Dakota to make loans to nonprofit corporations for construction, reconstruction, repair, or renovation of facilities under the control of the parks and recreation department.

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

SECTION 1. Bank of North Dakota may make loans for improvement of facilities under the control of the parks and recreation department. The Bank of North Dakota may make loans to nonprofit organizations which are exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)]. Proceeds of loans under this section must be used for construction, reconstruction, repair, renovation, maintenance, and associated costs on property under the control of the state parks and recreation department. A loan under this section may be made in an amount not exceeding two hundred thousand dollars to any eligible organization.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 128

SENATE BILL NO. 2119  
(Committee on State and Federal Government)  
(At the request of the Bank of North Dakota)

## BANK OF NORTH DAKOTA INSTRUMENTS

AN ACT to amend and reenact section 6-09-26.1 of the North Dakota Century Code, relating to the execution of instruments on behalf of the Bank of North Dakota.

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

SECTION 1. AMENDMENT. Section 6-09-26.1 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09-26.1. Execution of instruments. In the absence of any provision regulating the execution and acknowledgment of conveyances, transfers, assignments, releases, satisfactions, or other instruments affecting liens on, title to, or interests in real estate, the president, ~~cashier~~, ~~vice presidents~~, and attorney may execute and acknowledge such instruments on behalf of the Bank of North Dakota. Other officers of the Bank of North Dakota when authorized so to do by resolution of the industrial commission may execute and acknowledge such instruments on behalf of the Bank of North Dakota.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 129

SENATE BILL NO. 2154  
(Committee on Political Subdivisions)  
(At the request of the Bank of North Dakota)

### MUNICIPAL BOND BANK

AN ACT to amend and reenact section 6-09.4-04 of the North Dakota Century Code, relating to the North Dakota municipal bond bank.

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

SECTION 1. AMENDMENT. Section 6-09.4-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.4-04. Creation of bond bank. A bond bank is hereby established within the Bank of North Dakota, under the operation, management, and control of the industrial commission to be known as the "North Dakota municipal bond bank". The bond bank is constituted as an instrumentality of the state exercising public and governmental functions, and the exercise by the bond bank of the powers conferred by this chapter shall be deemed and held to be an essential governmental function of the state.

Approved March 20, 1987

Filed March 23, 1987

## CHAPTER 130

SENATE BILL NO. 2161  
(Committee on Agriculture)  
(At the request of the Governor)

## OPERATING LOAN PROGRAM

AN ACT to amend and reenact sections 6-09.9-02 and 6-09.9-04 of the North Dakota Century Code, relating to an operating loan program for farmers and agribusinesses.

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

SECTION 1. AMENDMENT. Section 6-09.9-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.9-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Agribusiness" means a locally owned business operation, located within this state, which is primarily engaged in providing services, materials, or equipment for the production, processing, or transportation of agriculture products.
2. "Farmer" means a resident of this state who owns or operates an existing farm or ranch operation, and has a debt-to-asset ratio of fifty percent or greater ~~or has suffered some form of unavoidable natural or financial hardship in at least one of the past four years.~~ The industrial commission may adopt additional eligibility criteria in determining who is a farmer eligible for loans under this chapter.
3. "Operating loan" means a loan or extension of credit with a term of one year or less made by a nongovernmental financial institution to a farmer or agribusiness for the operation of an existing farm or ranch operation or agribusiness. An operating loan includes a farmer's home administration or small business administration subordinated operating loan and guaranteed operating loan, and may be further defined by rule of the industrial commission.

SECTION 2. AMENDMENT. Section 6-09.9-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.9-04. Participation loans by private financial institutions.

1. The portion of the operating loan retained by a nongovernmental financial institution may not bear interest at an effective rate more than one and one-half percentage points per annum less than the interest rate computed and published monthly by the state commissioner of banking and financial institutions pursuant to section 47-14-09. The initial interest rate must be set on the date of the loan commitment and must be adjusted quarterly, based upon the last published interest rate computed by the commissioner. The industrial commission may adopt rules relating to the maximum rate of interest charged on the portion of the operating loan retained by a participating financial institution.
2. All participation interests purchased are subject to the review and approval of the Bank.
3. The full amount of a loan qualifying for participation must be evidenced by one master note drawn by the financial institution to reflect both interest rates and to provide a schedule of payments to the financial institution and the Bank of North Dakota based upon pro rata shares of the loan participation.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 131

SENATE BILL NO. 2159  
(Committee on Agriculture)  
(At the request of the Governor and the  
Commissioner of Agriculture)

## CREDIT REVIEW BOARD

AN ACT to create and enact a new section to chapter 6-09.10 of the North Dakota Century Code, relating to liability of the credit review board; to amend and reenact sections 6-09.10-02, 6-09.10-03, and 6-09.10-04 of the North Dakota Century Code, relating to the credit review board; and to repeal sections 4-01-19.2 and 4-01-19.3 of the North Dakota Century Code, relating to the farm credit counseling program.

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

SECTION 1. AMENDMENT. Section 6-09.10-02 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-02. Credit review board. The governor shall appoint ~~three members~~ one member of the credit review board, ~~the commissioner of agriculture shall appoint one member of the credit review board, and the attorney general shall appoint one member of the credit review board.~~ One member of the board must have experience serving as a director or officer of a financial institution. Two members of the board must have experience in the operation of a farm. No member of the board may hold state office or serve in state office or serve in state government in any capacity at any time of appointment or during service on the board. ~~The governor credit review board members shall appoint members to serve terms of four two years. The governor shall appoint one member to serve as chairman of the board.~~

SECTION 2. AMENDMENT. Section 6-09.10-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-03. Powers - Compensation and expenses - Fees. The board shall meet at the call of the chairman, as is necessary to fulfill its duties under this chapter. ~~The board shall serve as a negotiator between a farmer who is in danger of immediate foreclosure or who has received a notice of foreclosure on a farm and has petitioned the board, and any lender who holds a valid~~

mortgage upon the property. The board may hire staff, subject to appropriations, to serve as negotiators for the board. The department of agriculture shall administer the farm credit counseling program. The commissioner of agriculture shall establish a farm credit counseling program to disseminate information to farmers concerning farm credit problems, and provide advice and counseling regarding farm credit problems. The commissioner shall appoint an administrator of the farm credit counseling program to administer the program. The commissioner shall hire staff and negotiators and may mediate between a farmer who has requested assistance and the farmer's creditors. The board may charge a reasonable fee for any assistance provided to a farmer, such funds to be used to continue the program until June 30, 1989. The board shall adopt policies governing the negotiators and staff hired under this section. Board members are entitled to receive fifty dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

SECTION 3. AMENDMENT. Section 6-09.10-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.10-04. Petition Request for assistance - Negotiation.

1. Any farmer may petition the board for aid after receipt of a notice of foreclosure, or if the farmer is in danger of immediate foreclosure request the assistance of a negotiator. Upon receipt of the petition request, the board or its authorized agent shall negotiator may enter into negotiations with the lender, on behalf of the farmer.
2. The board or its authorized agent negotiator shall negotiate with the lender in an attempt to extend the term of the loan, reduce the dollar amount of payments under the loan, or otherwise negotiate a settlement that will allow the farmer to reside in the farm residence and allow the farmer to continue to produce agricultural commodities. Any change in the terms of the mortgage must be approved by the lender and the farmer.

SECTION 4. A new section to chapter 6-09.10 of the North Dakota Century Code is hereby created and enacted to read as follows:

Liability. The board, staff, and negotiators are not subject to any liability arising from actions undertaken on behalf of a farmer in attempting to reach a settlement with a lender.

SECTION 5. REPEAL. Sections 4-01-19.2 and 4-01-19.3 of the 1985 Supplement to the North Dakota Century Code are hereby repealed.

Approved March 27, 1987  
Filed March 30, 1987

## CHAPTER 132

SENATE BILL NO. 2477  
(Senators Kelsh, Keller, Richard)  
(Representatives O'Connell, Brokaw, Shockman)

**DISTRESSED FARMER AND BUSINESS ASSISTANCE**

AN ACT to create and enact six new sections to chapter 6-09.10 of the North Dakota Century Code, relating to a legal and tax assistance program for financially distressed farmers and small business persons; and to provide an appropriation.

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

SECTION 1. Six new sections to chapter 6-09.10 of the 1985 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

**Contract for legal and tax assistance - Administration.** The credit review board and the commissioner of agriculture shall hire or contract with one or more lawyers, law firms, accounting firms, or nonprofit organizations to provide eligible farmers and small business persons with legal and tax assistance. The board and the commissioner may contract with the university of North Dakota school of law to provide research services to eligible farmers and small business persons. A contract may be terminated by the credit review board upon written notice. The credit review board and the commissioner of agriculture are responsible for administering funds under each contract and for selecting appropriate cases among eligible farmers and small business persons.

**Legal and tax service contract requirements.** Any contract entered into pursuant to this Act to provide legal or tax services to selected eligible farmers or small business persons may be awarded for the following purposes:

1. To offer direct representation to selected eligible farmers and small business persons in litigation and administrative cases, if applicable.
2. To offer legal or tax advice, or both, to selected eligible farmers or small business persons.

3. To provide research services, consulting assistance, and copies of briefs and case law to attorneys representing selected eligible farmers and small business persons, if applicable.

**Eligible farmers and small business persons.**

1. An eligible farmer means a farmer who has a debt to asset ratio of greater than fifty percent and is unable to pay for legal or tax assistance without impairing funds needed for necessary family living and farm operating expenses.
2. An eligible small business person is a person who owns a small business or is a partner or shareholder in a small business, who has an occupation in small business, and who has a debt-to-asset ratio of greater than fifty percent and is unable to pay for legal or tax assistance without impairing funds needed for necessary family living and small business operating expenses. For purposes of this Act, a small business means a small business concern as defined under Public Law No. 85-536, section 2(3), 72 Stat. 384; 15 U.S.C. 632, as amended.

**Payment for assistance.** Any farmer or small business person who receives assistance under this Act is obligated to pay for the value of the services plus interest at the rate of one percent per annum higher than the current cost of money as reflected by the average rate of interest payable on United States treasury bills maturing in six months in effect for North Dakota for the six months immediately prior to the month in which the original transaction occurs, as computed and declared on the last day of each month by the state banking commissioner. The credit review board may defer payment for a period of one to five years after services are rendered. Upon proof of financial hardship at the end of the deferral period, the board may waive payment of all or a part of the amount owed.

**Alternatives to litigation - Cooperation with other service providers.** Any person providing assistance under this Act shall:

1. Attempt to resolve any conflict through the use of negotiation, mediation, and amicable settlements.
2. Cooperate with the North Dakota state university extension service so that its economic and farm management financial analyst services are utilized by selected eligible farmers.
3. Cooperate with the farm credit counseling program and existing informational and referral networks among farmers, farmer advocates, small business persons, and others concerned with the economic crisis in agricultural and small business concern areas.

Legal action to resolve disputes should only be taken where other alternatives are unsuitable or impossible.

**Assumption of powers and duties of credit review board.** The attorney general shall assume the powers and duties of the credit review board under this Act if the credit review board ceases to exist.

**SECTION 2. APPROPRIATION.** There is hereby appropriated out of any moneys in the home-quarter purchase fund in the state treasury, not otherwise appropriated, the sum of \$200,000, or so much thereof as may be necessary, to the credit review board for the purpose of providing assistance to financially distressed farmers and small business persons as provided in this Act for the biennium beginning July 1, 1987, and ending June 30, 1989.

Approved April 21, 1987  
Filed April 22, 1987

## CHAPTER 133

HOUSE BILL NO. 1584  
(Brokaw, Gerntholz, Myrdal, Stofferahn, Shaw)

### FAMILY FARMER ASSISTANCE

AN ACT to provide financial assistance to family farmers.

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

SECTION 1. Declaration of findings and purpose. The legislative assembly finds and declares that:

1. The family farm provides an efficient system of food production, as well as economic and social stability. No other system of agricultural production can provide the opportunities of individual enterprise to as many families in our state. The family farm provides dispersed benefits to our society, and it remains the most viable system of agricultural production for our nation.
2. Our system of family farm agriculture today faces a serious crisis. Depressed commodity prices resulting from surplus production, lack of cashflow, deflated asset values, increasing debt problems, and tight credit have combined to make it impossible for a large segment of family farm agriculture to survive.
3. In order to survive, many of these family farms will need to restructure their operations, restructure their debt, undertake new, more profitable enterprises, and make other necessary changes. Some of these family farm operations will need the opportunity to begin again.
4. Our state is suffering from this financial crisis in agriculture that affects the entire economic health of this state and its communities. Without significant changes in public policies to meet this crisis, our state's economy will continue to suffer.
5. The Bank of North Dakota is a vital resource for all North Dakota citizens, and the Bank of North Dakota must develop innovative ways to help North Dakota family farms

restructure, recapitalize, and adapt to the current economic situation. To do so will strengthen not only the agricultural sector of our economy, but also the state's economy as a whole.

**SECTION 2. Definitions.** In this Act, unless the context or subject matter otherwise requires:

1. "Economic farm unit" means a farm capable of producing income sufficient to support the operator of the farm and the farmer's family, if any, and to repay moneys borrowed under this Act to establish the unit within the term of the loan.
2. "Family farm" means agricultural real estate operated and owned or leased by a farmer, or other organization authorized to own or lease land used for farming or ranching under chapter 10-06, where the majority of the labor necessary to operate the farm is performed by the farmer and the farmer's family, if any.
3. "Farmer" means a resident of North Dakota involved in the production of an agricultural commodity on a family farm or who will be involved in the production of an agricultural commodity on a family farm if granted a loan, and who meets the definition of "farmer" as provided in paragraph 2 of subdivision b of subsection 15 of section 57-02-08.

**SECTION 3. Industrial commission - Powers and duties - Bonds.** Except as provided in this Act, the industrial commission may exercise the powers and perform the duties set forth in chapter 4-36 to the extent necessary to administer this Act. The commission may issue bonds under chapter 4-36 as is necessary to provide sufficient funds to make loans to lenders for the purposes of this Act.

**SECTION 4. Loans - Participation by the Bank of North Dakota.**

1. The Bank of North Dakota may make available an appropriate amount of funds to purchase participation interests in loans made by financial institutions for the purposes as set forth in section 5 of this Act. Interest charged on a participation interest purchased by the Bank under this section may not exceed eight percent per annum, plus necessary and reasonable fees as determined by the industrial commission.
2. The amount of a participation interest purchased by the Bank under this section may not be greater than ninety percent of the loan amount.

**SECTION 5. Loans to farmers - Purposes.**

1. The following purposes are eligible to be funded by bond proceeds or loan participations under this Act:
  - a. Purchasing or leasing agricultural real estate.
  - b. Constructing, repairing, altering, or adding to any farm buildings on agricultural real estate owned or purchased by the farmer.
  - c. Making permanent improvements to agricultural real estate owned or purchased by the farmer for the purpose of increasing the productive value of the land or promoting conservation of the soil.
  - d. Purchasing farm equipment.
  - e. Purchasing livestock.
  - f. Paying off and discharging mortgages, encumbrances, and other charges or liens against or on the agriculture real estate owned or purchased by the farmer.
  - g. Purchasing the farmer's home-quarter pursuant to chapter 6-10.

**SECTION 6. Loan applications.** An applicant for a loan must meet all of the following qualifications:

1. The applicant is at least eighteen years of age.
2. The applicant has resided in North Dakota continuously during the three years immediately preceding the date of the application.
3. The applicant is a farmer.
4. The applicant has had the farming experience and training necessary to enable the applicant to operate a family farm and to make proper use of the proceeds of the loan.
5. The net worth of the applicant does not exceed one hundred fifty thousand dollars.

**SECTION 7. Loan restrictions.**

1. Except for loans made to purchase the farmer's home-quarter, no loan may be made under this Act unless the farm is an economic farm unit or it is reasonably expected that the farm unit will, as a result of the loan, constitute an economic farm unit.

2. A loan to a farmer under this Act may not exceed fifty thousand dollars. A farmer may borrow money under this Act in a lump sum or in installments.
3. A loan under this Act may not exceed ninety percent of the appraised value of the security given for the loan, with the actual percentage to be determined by the industrial commission. The industrial commission may do all things and acts, may require such security, and may establish additional terms and conditions as is determined necessary to make a loan under this Act.
4. Except as otherwise provided:
  - a. A loan under this Act must be repayable in installments and may have a term up to twenty years.
  - b. All or part of a loan under this Act may be repaid on any day on which an installment is due, subject to conditions set forth in the mortgage.

**SECTION 8. Insurance requirements.** Buildings on land given as security for a loan must, while any part of the loan remains unpaid, be insured against fire or casualty for their full insurable value, and the insurance policy must be assigned as collateral security. Livestock, crops on land, and other chattels given as security for a loan must be insured against risk.

**SECTION 9. Records.** Every borrower shall keep records showing the financial condition of the borrower's family farm.

**SECTION 10. Postponement of repayment of principal.** If the income of a borrower is reduced in any year due to causes beyond the borrower's control to the extent that the borrower is unable to make a payment on a loan under this Act, the industrial commission may defer the payment of the principal sum due in that year and the term of the loan may be extended for the period of deferment.

**SECTION 11. Credit review board.** Applicants for home-quarter purchases pursuant to 6-9.10 shall initially apply to the credit review board and the credit review board shall make recommendations regarding eligibility of the applicant and the feasibility of the loan application.

**SECTION 12. Rules.** The industrial commission may adopt such rules and guidelines as are necessary to implement sections 1 through 10 of this Act.

Approved April 1, 1987  
Filed April 2, 1987