

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1164
(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact sections 6-03-13.3, 6-03-38, and 6-03-59 of the North Dakota Century Code, relating to approval of banking facilities, investment by banks, and loan limitation to one borrower or concern.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-03-13.3 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13.3. Facts considered for approval. Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to section 6-03-13.1, or to move a facility previously established to another location, it shall apply to the ~~state banking board commissioner~~ or the comptroller of the currency, as the case may be, for such authority and provide the ~~board commissioner~~ with such relevant information as the ~~board commissioner~~ may reasonably request. In determining whether or not to approve the application for such facility, the ~~banking board commissioner~~ shall take into consideration the following facts:

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

When considering an application for relocating an existing facility to another location within the same corporate city limits, the ~~state banking board commissioner~~ may consider only subsection 2 as a factor for approval.

Upon approval by the state banking board of a merger application under section 6-03-11, the former main office and facilities of the banking institutions being merged will become facilities of the surviving banking institution and the banking institution is not required to file an application under this section.

If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty days after the commissioner has notified the applicant bank of the decision.

If an interested party files a protest with respect to an application, the matter will be referred to and decided by the state banking board.

SECTION 2. AMENDMENT. Section 6-03-38 of the North Dakota Century Code is amended and reenacted as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty. No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, purchase shares of stocks, or any other type of securities offered by small business investment

companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount ~~aggregating more than two~~ determined by the state banking board, but in no event more than ten percent of the bank's capital and surplus, ~~nor~~. Further, no bank may invest its assets or funds in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to. A bank may invest in subsidiary organizations, when the activities of such organizations are incidental or complementary to the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary organizations, and to examine its records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition, the state banking board has power to authorize state banks to engage directly or indirectly in any activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to this title is guilty of a class A misdemeanor.

SECTION 3. AMENDMENT. Section 6-03-59 of the North Dakota Century Code is amended and reenacted as follows:

6-03-59. Loan limitation to one borrower or concern. The total direct, indirect, or contingent liability of any borrower to any state banking association shall not exceed at any time twenty-five percent of the ~~unimpaired capital and surplus of such association~~ association's common stock, surplus, and undivided profits as of the most recent report of condition and income. For the purpose of this section the total liability of a borrower includes the liabilities of any separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. ~~The discount of bills of exchange drawn in good faith against actual existing values, loans secured by bills of lading drawn against produce in transit, and loans secured by bonded warehouse receipts or elevator storage tickets covering produce actually in storage shall not be considered as money borrowed if all paper relating to such transactions is made payable to, and such paper and the security therefor remains in the possession and control of the association until the advance or debt is paid. An association may discount commercial or business paper actually owned by the person negotiating it without such discounting being deemed an addition to any loan made to the negotiator.~~

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1164.

House Vote: Yeas 94 Nays 0 Absent 0

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State