

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact section 6-06-14.1 of the North Dakota Century Code,
2 relating to credit union loans; to amend and reenact subsection 3 of section 6-01-01.1, sections
3 6-01-04.3, 6-01-09, and 6-01-17, subsection 1 of section 6-03-05, sections 6-03-11, 6-03-13.3,
4 and 6-03-15.1, subsection 1 of section 6-03-47.2, sections 6-03-49.1, 6-05-15.4, and 6-06-06,
5 subsection 4 of section 6-06-08, and sections 6-06-11 and 6-08-08.1 of the North Dakota
6 Century Code, relating to the regulatory fund, assessment of civil money penalties, appointment
7 of receivers, supervision and examinations, assessments, real estate loans, bank mergers,
8 bank branches, bank investments, trust branches, credit union powers, credit union board
9 notice, and sale or purchase of banking institutions or holding companies; to repeal section
10 6-06-14 of the North Dakota Century Code, relating to credit union loans; and to provide a
11 penalty.

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

13 **SECTION 1. AMENDMENT.** Subsection 3 of section 6-01-01.1 of the North Dakota Century
14 Code is amended and reenacted as follows:

15 3. Any cash balance in the financial institutions regulatory fund after all current biennium
16 expenditures are met must be carried forward in the financial institutions regulatory
17 fund for the next succeeding biennium. ~~The balance in this fund at the end of the~~
18 ~~current biennium, excluding fees collected for use in the next succeeding biennium,~~
19 ~~may not exceed twenty percent of the department's next succeeding biennial budget.~~

20 **SECTION 2. AMENDMENT.** Section 6-01-04.3 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **6-01-04.3. Assessment of civil money penalties.**

23 1. The commissioner or the board may assess a civil money penalty against a financial
24 institution, financial corporation, or credit union, or an officer, director, employee,

1 agent, or person participating in the conduct of the affairs of the financial corporation,
2 financial institution, or credit union upon finding one or more of the following:

- 3 a. Failure to comply with a permanent or temporary cease and desist order that has
4 been voluntarily consented to or issued pursuant to section 6-01-04.2;
- 5 b. Failure to comply with a final order that has been voluntarily consented to or
6 issued following formal proceedings under chapter 28-32;
- 7 c. Payment of dividends in violation of section 6-03-36;
- 8 d. Loans and leases to one borrower or concern which exceed the limitations set
9 forth in sections 6-03-59 and 6-03-59.1;
- 10 e. Loans to directors, officers, and employees in violation of section 6-03-60;
- 11 f. The intentional filing of inaccurate or misleading call reports required by section
12 6-03-70 or 6-06-08;
- 13 g. Violations of loan limitations under subsection 1 of section 6-06-12 or ~~North-~~
14 ~~Dakota Administrative Code section 13-03-16-03, 13-03-16-05, or~~
15 ~~13-03-16-08~~title 12, chapter 7, Code of Federal Regulations, subchapter A,
16 part 723, as amended February 5, 2019;
- 17 h. Loans in violation of section ~~6-06-14 or subsection 2 of section 13-03-16-02 of~~
18 ~~the North Dakota Administrative Code or subsection 2 of section 13-03-16-05 of~~
19 ~~the North Dakota Administrative Code~~6-06-14.1; or
- 20 i. Failure to file notice of change of control under section 6-08-08.1.

- 21 2. The commissioner or the board commences administrative proceedings to assess civil
22 money penalties by serving a complaint on the respondent stating the factual basis for
23 the commissioner's or board's belief that a violation has occurred and the amount of
24 civil penalties that the complaint seeks to impose. The complaint must contain a notice
25 of an opportunity for an administrative hearing conducted under chapter 28-32. The
26 date for the hearing must be set not less than thirty days after the date the complaint is
27 served upon the respondent. If assessment of civil money penalties are proposed
28 based on conditions described in subdivisions c through i of subsection 1, a complaint
29 may not be filed unless the respondent has been provided with prior orders,
30 examination reports, or other written communications, and has willfully refused to take
31 corrective action that the respondent was capable of taking at the time.

1 3. If the respondent fails to answer the complaint within twenty days of its service, the
2 commissioner or board may enter an order imposing civil money penalties upon the
3 respondent. If a hearing is held and the board concludes that the record so warrants,
4 the board may enter an order imposing civil money penalties upon the respondent.
5 The assessment order is effective and enforceable immediately upon service or upon
6 a date specified in the order, and remains effective and enforceable until it is stayed,
7 modified, terminated, or set aside by action of the board or a reviewing court.

8 4. In determining the amount of civil penalty imposed, the commissioner or board shall
9 consider whether good faith was exercised, and the gravity of the violation and any
10 previous violations. The commissioner or board may not impose a civil money penalty
11 in excess of ~~five~~one hundred thousand dollars for each occurrence and one
12 ~~hundred~~thousand dollars per day for each day that the violation continues after service
13 of an order. Any civil money penalties collected under this section must be paid to the
14 department of financial institutions and deposited in the financial institutions regulatory
15 fund.

16 **SECTION 3. AMENDMENT.** Section 6-01-09 of the North Dakota Century Code is amended
17 and reenacted as follows:

18 **6-01-09. Supervision and examination by commissioner of financial institutions.**

19 The commissioner shall exercise a constant supervision over the business affairs of all
20 financial corporations, financial institutions, and credit unions, including all out-of-state branches
21 of financial corporations, financial institutions, and credit unions. Either the commissioner or one
22 or more examiners shall ~~visit~~examine each financial institution ~~at least once each thirty-six~~
23 ~~months to examine its~~assess the affairs of the institution and ascertain ~~its~~the institution's
24 financial condition. The commissioner shall inspect and verify the assets and liabilities of the
25 institution and branches to ascertain with reasonable certainty that the value of the assets and
26 the amounts of the liabilities are correctly carried on its books. The commissioner shall examine
27 the validity of mortgages held by savings institutions and shall see that all of the mortgages are
28 properly recorded. The commissioner shall investigate the method of operation and conduct of
29 the corporations and institutions and their systems of accounting to ascertain whether the
30 methods conform to the law and sound banking usage and principles. The commissioner shall
31 inquire into and report any infringement of the laws governing those corporations and

1 institutions, and for that purpose the commissioner may examine the officers, agents, and
2 employees of the corporations and institutions and all persons doing business therewith. The
3 commissioner may examine, or cause to be examined, or review the books and records of any
4 subsidiary corporation of a bank or credit union service organization of a credit union under the
5 commissioner's supervision and may require the bank to provide information on the holding
6 company that owns the bank. The commissioner may also examine, or cause to be examined,
7 or review the books and records of any technology service provider that provides services to
8 financial corporations, credit unions, and financial institutions under the commissioner's
9 supervision, to evaluate that entity's risk management systems and controls and compliance
10 with applicable laws that affect such services provided to financial corporations, credit unions,
11 and financial institutions. The commissioner shall report the condition of the corporations and
12 institutions, together with the commissioner's recommendations or suggestions in connection
13 therewith, to the state banking board, state credit union board, or both, and the ~~board~~boards
14 may take such action as the exigencies may demand.

15 **SECTION 4. AMENDMENT.** Section 6-01-17 of the North Dakota Century Code is amended
16 and reenacted as follows:

17 **6-01-17. ~~Yearly assessment~~Semiannual assessments of banks and interstate**
18 **branches.**

19 Every state banking association and banking institution under the jurisdiction and control of
20 the commissioner and the commissioner's deputy examiners by this title, including the Bank of
21 North Dakota and every branch of an out-of-state state bank, shall pay a ~~yearly-~~
22 ~~assessment~~semiannual assessment. This assessment is to be determined by the state banking
23 board as necessary to fund that portion of the department's budget relating to the regulation of
24 state-chartered banks and branches of out-of-state state banks, including the authority to enter
25 ~~into~~ cooperative fee sharing agreements and assessment of associated travel costs with other
26 state bank supervisors. ~~Assessment fees may not be computed on the combined assets of the~~
27 ~~bank and its trust department for those banks and branches exercising trust powers.~~ Fees for
28 the examination of ~~the~~a trust department must be computed in accordance with section
29 6-05-28. The assessment must be paid to the department of financial institutions within thirty
30 days of each June thirtieth and December thirty-first. ~~Institutions and branches that have not~~
31 ~~been examined by the commissioner or the state banking board for three years prior to any~~

1 ~~assessment date shall not be required to pay the assessment.~~ If any such corporation or
2 institution or branch is delinquent more than twenty days in making such payment, the board
3 ~~may make an order suspending the functions~~may seek other administrative remedies of such
4 delinquent corporation, institution, or branch until payment of the amount due. The
5 commissioner may assess a penalty of ~~five dollars~~one percent of the outstanding assessment
6 fee for each day that the assessment fee is delinquent. All fees and penalties under this section
7 must be deposited with the state treasurer and deposited in the financial institutions regulatory
8 fund.

9 **SECTION 5. AMENDMENT.** Subsection 1 of section 6-03-05 of the North Dakota Century
10 Code is amended and reenacted as follows:

11 1. Before any real estate loan equal to or more than ~~two~~four hundred ~~thirty~~ thousand
12 dollars is made, an appraisal must be conducted by a licensed or certified appraiser if
13 required by the federal Financial Reform, Recovery, and Enforcement Act of 1989
14 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.].

15 **SECTION 6. AMENDMENT.** Section 6-03-11 of the North Dakota Century Code is amended
16 and reenacted as follows:

17 **6-03-11. Conversion, consolidation, or merger.**

18 Any two or more banking institutions upon making application to the commissioner or the
19 state banking board may consolidate or merge if authorized by the commissioner or board into
20 one banking institution under the charter of either existing banking institution on such terms and
21 conditions as lawfully may be agreed upon by a majority of the board of directors of each
22 banking institution proposing to consolidate or merge subject to rules adopted by the state
23 banking board. Before becoming final, such consolidation or merger must be ratified and
24 confirmed by the vote of the shareholders of each such banking institution owning at least
25 two-thirds of its capital stock outstanding at a meeting to be held on the call of the directors.
26 Notice of such meeting and of the purpose thereof must be given to each shareholder of record
27 by registered or certified mail at least ten days prior to the meeting. The shareholders may
28 unanimously waive such notice and may consent to such meeting and consolidation or merger
29 in writing. The capital stock and surplus of such consolidated banking institution must not be
30 less than that required under this title for the organization of a banking institution of the class of
31 the largest consolidating banking institution. Immediately after the consolidation or merger a full

1 report thereof, including a statement of the assets and liabilities of the consolidated banking
2 institution, must be made to the commissioner by the surviving banking institution. Any banking
3 institution may without approval by any state authority convert into or merge or consolidate with
4 a national banking association as provided by federal law. A national bank proposing to merge
5 into a state-chartered bank shall grant the commissioner discretionary authority to conduct an
6 examination. The commissioner shall set fees for such examination at an hourly rate sufficient
7 to cover all reasonable expenses of the department of financial institutions associated with the
8 examination. Fees must be collected by the commissioner and deposited in the financial
9 institutions regulatory fund.

10 **SECTION 7. AMENDMENT.** Section 6-03-13.3 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **6-03-13.3. Facts considered for approval.**

13 1. Whenever any bank desires to maintain and operate a facility separate and apart from
14 its banking house, pursuant to section 6-03-13.1, or to move a facility previously
15 established to another location, it shall apply to the commissioner or the comptroller of
16 the currency, as the case may be, for such authority and provide the commissioner
17 with such relevant information as the commissioner may reasonably request. In
18 determining whether to approve the application for such facility, the commissioner
19 shall take into consideration ~~the following facts:~~

20 ~~1. a.~~ a. The convenience, needs, and welfare of the people of the community and area
21 served; and

22 ~~2. b.~~ b. The financial strength of the bank in relation to the cost of establishing and
23 maintaining such separate facility.

24 ~~3. Whether other banks will be seriously injured by the approval of the application.~~

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

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

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

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

7 **SECTION 8. AMENDMENT.** Section 6-03-15.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **6-03-15.1. Temporary relocation of bank operations.**

10 In the event of an emergency or other temporary relocation, a bank ~~may apply to~~shall notify
11 the commissioner to relocate its main banking house or facility until the former location is
12 repaired to allow bank operations to resume. No notice or public hearing need be held to act
13 upon the temporary relocation request. The bank shall give the commissioner notice of the
14 bank's decision to relocate promptly and in any case within three days in the event of an
15 emergency, and at least thirty days prior for other temporary relocations. The notice must
16 describe the bank's actions and the expected duration of the bank's relocation. Unless extended
17 by the commissioner, a bank's authority to change the bank's location under this section may
18 not exceed sixty days. Notice of the bank's intention to temporary relocate must be provided to
19 customers at least ten days before the relocation.

20 **SECTION 9. AMENDMENT.** Subsection 1 of section 6-03-47.2 of the North Dakota Century
21 Code is amended and reenacted as follows:

22 1. Bonds, notes, or debentures of any corporation ~~rated at "A" or higher by a nationally~~
23 ~~recognized rating service approved by the commissioner, provided that the lesser of~~
24 ~~the book value or face value of the investments at the time of purchase may not~~
25 ~~exceed for any one corporation twenty-five percent of the unimpaired capital and~~
26 ~~surplus of the banking association~~that have been rated in one of the four highest rating
27 categories by a nationally recognized statistical rating organization registered with the
28 securities and exchange commission. In the case of different ratings from different
29 rating organizations, the lower rating applies. If a nationally recognized statistical
30 rating organization has not rated the security, the bank shall determine that the
31 security is the credit equivalent of a security rated in the four highest rating categories

1 by a nationally recognized statistical rating organization. This includes documentation
2 demonstrating that the issuer of the security has an adequate capacity to meet
3 financial commitments under the security for the projected life of the asset or exposure
4 and the issuer has adequate capacity to meet financial commitments if the risk of
5 default by the obligor is low and the full and timely repayment of principal and interest
6 is expected. The aggregate par value of investments issued by any one corporation
7 may not exceed twenty-five percent of unimpaired capital and surplus at the time of
8 purchase.

9 **SECTION 10. AMENDMENT.** Section 6-03-49.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **6-03-49.1. Bank investment in service corporation - Service corporation services and**
12 **activities.**

13 1. Subject to the approval of the state banking board, any bank may invest not more-
14 than in a service corporation and provide services and activities through the service
15 corporation, if:

16 a. The service corporation is a United States corporation and is organized as a
17 bank service corporation having its principal place of business in the United
18 States.

19 b. The investment in stocks, bonds, debentures, or other obligations does not
20 exceed ten percent of paid-in and unimpaired capital and unimpaired surplus in
21 stocks, bonds, debentures, or other obligations of any North Dakota corporation
22 organized as a bank service corporation having its principal place of business in
23 the state and in each corporation.

24 c. The service corporation is operated exclusively for the purpose of providing for
25 such bank and one or more other banks, bank services which the banks would
26 otherwise be required or permitted to provide for on an individual bank basis. The
27 term bank services in this section includes services such as check:

28 (1) Check and deposit sorting and posting, computation,

29 (2) Computation and posting of interest and other credits and charges,
30 preparation.

- 1 (3) Preparation and mailing of checks, statements, notices, and similar items, or
2 any.
- 3 (4) Any other clerical, bookkeeping, accounting, statistical, or similar functions
4 performed by a bank.
- 5 (5) Owning and administering a credit card program for customers of banks.
- 6 (6) Engaging in activities incidental to banking services.
- 7 (7) Other activities that further or facilitate the corporate purposes of a bank or
8 subsidiaries of a bank, if the services may be lawfully performed by both its
9 national bank shareholders under the laws of the United States and its state
10 bank shareholders under the laws of this state.

- 11 2. Payment for rent earned, goods sold and delivered, or services rendered prior to the
12 making of the payment is not an investment under this subsection. A bank service
13 corporation may be chartered under the laws of this state with shareholders limited to
14 state and national banks located within the state and corporations that are organized
15 as associations of state and national banks located within the state to provide all the
16 services, except deposit taking, that all the banks that are its shareholders can offer
17 directly to their own customers at any place in the state where they can offer their
18 services, including owning and administering a credit card program for customers of
19 banks and engaging in activities incidental to banking services and other activities that
20 further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long
21 as such services may be lawfully performed by both its national bank shareholders
22 under the laws of the United States and its state bank shareholders under the laws of
23 this state not accept deposits.

24 **SECTION 11. AMENDMENT.** Section 6-05-15.4 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **6-05-15.4. Multiple offices or places of business - Application to state banking board -**
27 **Hearing.**

- 28 1. A trust company may establish and maintain for itself and its operating subsidiary
29 organizations one or more offices or places of business within this state, throughout
30 the United States, in foreign countries, or in dependencies or insular possessions of
31 the United States upon written application to the department of financial institutions for

1 ~~approval from the state banking board. Additional branches in the United States may~~
2 ~~be approved by the commissioner, while all other branches must be approved by the~~
3 ~~state banking board.~~ The application must include the information specified by the
4 board.

5 2. Notice of the application to establish and maintain an office or place of business must
6 be published as required by the state banking board.

7 3. ~~Within ten business days after receipt of the application by the department of financial~~
8 ~~institutions, the~~The commissioner shall determine if the application is complete and
9 shall notify the trust company of the determination. ~~If within the ten business days the~~
10 commissioner determines the application is incomplete, the commissioner shall
11 request the additional information necessary to complete the application. ~~Within ten~~
12 ~~days after receipt of the additional information, the commissioner shall notify the trust~~
13 ~~company by mail of the commissioner's determination of completeness. Within sixty~~
14 ~~days after the date for the mailing of a notice of completeness by the commissioner,~~
15 ~~the~~The commissioner or state banking board either shall approve the application or
16 shall notify the trust company that a hearing on the application will be required.

17 4. Any hearing required by the commissioner or state banking board must be
18 commenced and concluded by issuance of thean order of the board ~~within ninety days~~
19 ~~after the date for the mailing of a notice of completeness by the commissioner. If the~~
20 ~~hearing is not concluded within this ninety-day period, the application is deemed~~
21 ~~approved by the board.~~

22 5. The commissioner or state banking board may disapprove the application if it finds,
23 after a hearingthe commissioner or board find:

24 a. The establishment and maintenance of the office or place of business will
25 jeopardize the solvency of the trust company; or

26 b. The operation of more than one office or place of business by the trust company
27 will place the company in an unsafe and unsound condition.

28 6. If a North Dakota chartered trust company desires to move a branch previously
29 established to another location, the trust company shall apply to the commissioner for
30 such authority and provide the commissioner with such relevant information as the
31 commissioner may reasonably request.

1 **SECTION 12. AMENDMENT.** Section 6-06-06 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **6-06-06. Powers of credit unions.**

4 A credit union has the following powers:

- 5 1. To receive the savings of its members either as payment on shares or as deposits,
6 including the right to conduct Christmas clubs, vacation clubs, and other such thrift
7 organizations within its membership.
- 8 2. To make loans to members.
- 9 3. To make loans to a cooperative society or other organization having membership in
10 the credit union.
- 11 4. To deposit its moneys in financial institutions, trust companies, credit unions, corporate
12 central credit unions, and the Bank of North Dakota authorized to receive deposits.
- 13 5. To invest in the following:
 - 14 a. In bonds of the United States without limitation in securities issued as direct
15 obligations by the United States government or any agency thereof and in any
16 trust established for investing directly or collectively in such securities.
 - 17 b. In bonds or evidences of debt of this state or in bonds of states of the United
18 States.
 - 19 c. In bonds or certificates of indebtedness of any county, city, or school district in
20 this state, issued pursuant to authority of law, but not to exceed thirty percent of
21 the assets of any credit union may be invested in such bonds or certificates of
22 indebtedness.
 - 23 d. In notes or bonds secured by mortgage or deed of trust upon unencumbered,
24 improved real estate in this state, if such investment does not exceed sixty-five
25 percent of the market value of the property mortgaged, and fire and tornado
26 insurance policies are maintained and deposited as collateral to such mortgage,
27 subject to such restriction and regulations as may be imposed by the state credit
28 union board.
 - 29 e. In notes or bonds secured by a security interest or lien upon unencumbered
30 personal property, if the investment does not exceed ninety percent of the market
31 value of the property secured.

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- 1 f. In first lien, public utility, industrial, corporation, or association bonds, notes, or
2 other evidences of debt issued by corporations located in the United States of
3 America to the extent authorized by the state credit union board.
- 4 g. Subject to rules of the state credit union board, in shares of investment
5 companies registered under the Investment Companies Act of 1940 and which
6 invest only in investments otherwise permissible under this section.
- 7 h. In investments or insurance products or in loans to the credit union employee
8 associated with the investment or insurance product which are otherwise
9 prohibited by this section if the investments are directly related to a benefit plan
10 for credit union employees.
- 11 6. To borrow money as limited in this chapter.
- 12 7. Subject to such regulations as the state credit union board may prescribe, insurance
13 obtained under title 1 of the National Housing Act must be deemed adequate security.
- 14 8. To sue and be sued.
- 15 9. A credit union may invest in a credit union office building, including the lot, piece, or
16 parcel of land on which the same is located, and in furniture and fixtures, to the extent
17 authorized by regulations issued by the state credit union board.
- 18 10. a. Every state credit union has the power to purchase, hold, and convey other real
19 estate as herein provided, and not otherwise:
- 20 a. (1) Such as is mortgaged to it in good faith by way of security for loans, or for
21 debts previously contracted.
- 22 b. (2) Such as is conveyed to it in good faith in satisfaction of debts previously
23 contracted in the course of its dealings.
- 24 e. (3) Such as it purchases at sales under judgments, decrees, or mortgages held
25 by the credit union, or purchases to secure debts due to it.
- 26 ~~Within sixty days of the~~
- 27 b. Upon transfer to other real estate owned, a current appraisal must be conducted
28 by ~~a state-licensed~~an individual who is independent of the transaction ~~for all real-~~
29 ~~estate recorded at or above one hundred thousand dollars or through a market-~~
30 ~~evaluation performed by a qualified individual who is independent of the-~~
31 ~~transaction for all real estate recorded below one hundred thousand dollars.~~

1 Except as otherwise provided by chapter 10-06.1, a state credit union may hold
2 possession of any real estate acquired after July 1, 1991, under mortgage; or title
3 and possession of any real estate purchased to satisfy indebtedness, for a period
4 not to exceed five years. ~~Except as otherwise provided by chapter 10-06.1, real~~
5 ~~estate acquired before July 1, 1991, may be held for a period not exceeding five~~
6 ~~years from July 1, 1991.~~ The commissioner may extend the real estate holding
7 period up to an additional five years upon formal request by a credit union if the
8 credit union has made a good-faith attempt to dispose of the real estate within
9 the five-year period, or disposal within the five-year period would be detrimental
10 to the credit union. Within thirty days after receipt of an adverse decision, the
11 credit union may appeal that decision to the state credit union board.

12 c. Notwithstanding other sections of this chapter, a credit union may apply to the
13 commissioner for authority to exchange its interest in real property acquired in
14 satisfaction of a debt previously contracted for an interest in an entity that would
15 dispose of the real property. If the commissioner's decision with respect to an
16 application is unfavorable, the applicant credit union may appeal the decision to
17 the state credit union board by filing a notice of appeal with the commissioner
18 within twenty business days after the commissioner has notified the applicant
19 credit union of the decision.

20 11. Subject to authorization by the state credit union board, acting by order or rule, a state
21 credit union has the same powers as a federal credit union and may engage in any
22 activity in which a credit union could engage if the credit union were federally
23 chartered.

24 12. To exercise any incidental power necessary or requisite to enable the credit union to
25 carry out effectively the business for which it is incorporated or as determined by the
26 board by order or rule.

27 **SECTION 13. AMENDMENT.** Subsection 4 of section 6-06-08 of the North Dakota Century
28 Code is amended and reenacted as follows:

29 4. Every state credit union, ~~including any "corporate central" or "corporate" credit union,~~
30 placed under the jurisdiction and control of the state credit union board and the
31 commissioner by the provisions of this title shall pay a ~~yearly~~semiannual assessment.

1 This assessment is to be determined by the state credit union board as necessary to
2 fund that portion of the department's budget relating to the regulation of
3 state-chartered credit unions. The assessment must be paid to the state treasurer
4 within thirty days of each June thirtieth and December thirty-first. ~~Credit unions that~~
5 ~~have not been examined by the commissioner or the state credit union board for three~~
6 ~~years prior to any assessment date are not required to pay the assessment.~~ The state
7 treasurer shall report the payments of fees to the commissioner, and if any credit union
8 is delinquent more than twenty days in making payment, the board may ~~make an order~~
9 ~~suspending the functions of the delinquent credit union~~ seek other administrative
10 remedies until payment of the amount due. The commissioner may assess a penalty
11 of ~~five dollars~~ one percent of the outstanding assessment fee for each day that the
12 penalty is delinquent. ~~The examination fee for any "corporate central" or "corporate"~~
13 ~~credit union shall be charged by the department at an hourly rate to be set by the~~
14 ~~commissioner, sufficient to cover all reasonable expenses of the department~~
15 ~~associated with the examination.~~ All fees and penalties under this section must be paid
16 to the state treasurer and deposited in the financial institutions regulatory fund.

17 **SECTION 14. AMENDMENT.** Section 6-06-11 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **6-06-11. Annual meetings - Election of directors - Election or appointment of**
20 **committees.**

- 21 1. The organization meeting of the members of a credit union shall be the first annual
22 meeting. At its annual meeting, its members shall elect a board of directors of not less
23 than five members and a credit committee of not less than three members, unless the
24 bylaws of the credit union provide that the credit union may not have a credit
25 committee. A supervisory committee of not less than three members must be elected
26 at the annual meeting, unless the bylaws of the credit union provide that the
27 supervisory committee members be appointed by the board of directors of the credit
28 union or the bylaws provide that the credit union may not have a supervisory
29 committee. In the event the bylaws do not provide for a supervisory committee, then
30 the duties and powers of a supervisory committee, as described in section 6-06-15,
31 are the responsibility of the board of directors. The directors and committee members

1 if any, shall hold office for such terms, respectively, as provided by the bylaws of the
2 credit union and until their successors qualify. A record of the names and addresses of
3 the officers and members of the board and committees must be filed with the
4 commissioner within ten days after their election or appointment. Notice of any change
5 in membership on the board or committees by appointment to fill an unexpired term or
6 otherwise must be filed with the commissioner within ten days of such change. The
7 notice requirement is satisfied if the national credit union association's call report
8 profile is updated within the ten-day reporting requirement.

9 2. If the bylaws of the credit union provide for a credit committee, then pursuant to the
10 provisions of the bylaws, the board of directors may appoint or the members may elect
11 a credit committee which consists of an odd number of members of the credit union,
12 but which may not include more than one loan officer. The method used must be set
13 forth in the bylaws.

14 3. If the credit committee is dispensed with in the bylaws, a credit manager, under the
15 general supervision of the board of directors, may be empowered to approve or
16 disapprove loans subject to the policies and conditions prescribed by the board of
17 directors. The president or other qualified senior management official may serve as
18 the credit manager. If a credit manager is provided in lieu of an elected credit
19 committee, the credit manager may appoint one or more loan officers with the power
20 to approve or disapprove loans, and may establish an internal credit committee
21 comprised of designated credit union staff with the power to approve or disapprove
22 loans, subject to such limitations or conditions as the credit manager and board of
23 directors prescribes.

24 **SECTION 15. AMENDMENT.** Section 6-08-08.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **6-08-08.1. Sale or purchase of associations, banking institutions, or holding**
27 **companies - Notification to commissioner - Hearing.**

28 1. No person, acting directly or indirectly or through or in concert with one or more other
29 persons, may purchase or otherwise acquire control of an association or banking
30 institution unless the state banking board or commissioner has been given prior written
31 notice by application of the proposed disposition or acquisition. The written application

- 1 must include such information as the state banking board shall specify. The
2 transaction may not be consummated before the board or commissioner has granted
3 approval.
- 4 2. The applicant shall publish notice of the application as required by the board by rule.
- 5 3. ~~Within ten business days after the date the application is received, the~~The
6 commissioner shall determine if the application is complete and notify the applicant by
7 ~~mail~~ of the determination. If the commissioner determines the application is
8 incomplete, the commissioner ~~will, within the ten business days,~~shall request
9 additional information deemed necessary to complete the application. ~~Within ten~~
10 ~~business days after the receipt of the additional information, the commissioner will~~
11 ~~notify the applicant by mail of the commissioner's determination of completeness.~~
12 ~~Within sixty days, or the next regularly scheduled meeting of the board, after the~~
13 ~~mailing of a notice of completeness by the commissioner, the board must either~~
14 ~~approve or disapprove the application.~~
- 15 4. ~~The~~If not approved by the commissioner, the commissioner shall submit the
16 application to the board. The board may approve or disapprove anythe application if
17 the board determines that:
- 18 a. The character, reputation, general fitness, financial standing, and responsibility of
19 the persons proposed as new stockholders, directors, or officers is such that the
20 interests of the other stockholders, depositors, and creditors of the institution and
21 the public generally will be jeopardized by the change in control and
22 management.
- 23 b. The qualifications of management do not include adequate experience with
24 financial institutions or other approved related experience.
- 25 5. Within three business days after the board's decision to disapprove an application, the
26 board shall notify the applicant in writing of the disapproval. The notice must provide a
27 statement of the basis for the disapproval.
- 28 6. Within twenty days after receipt of the notice of disapproval, the applicant may request
29 a hearing on the disapproval. The board must conduct a hearing, if requested, under
30 the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by
31 order approve or disapprove the application on the basis of the record at the hearing.

- 1 7. For purposes of this section, "control" means ownership or control, directly, indirectly,
2 or through the actions of one or more persons of the power to vote twenty-five percent
3 or more of any class of voting securities of an association, banking institution,
4 controlling bank holding company, or the direct or indirect power to control in any
5 manner the election of a majority of the directors of an association or banking
6 institution, or to direct the management or policies of an association or banking
7 institution, whether by individuals, corporations, limited liability companies,
8 partnerships, trusts, or other entities or organizations of any type.
- 9 8. The following acquisitions of voting securities of a North Dakota state chartered bank,
10 which would otherwise require submission of an application under this section, are not
11 subject to the application requirements if the acquiring person notifies the
12 commissioner within ninety days after the acquisition and provides any relevant
13 information requested by the commissioner: acquisition of voting securities through
14 inheritance; acquisition of voting securities as a bona fide gift; and acquisition of voting
15 securities in satisfaction of a debt previously contracted in good faith. This subsection
16 does not limit the authority of the commissioner to require a party to submit a written
17 application to the board under subsection 1.

18 **SECTION 16.** Section 6-06-14.1 of the North Dakota Century Code is created and enacted
19 as follows:

20 **6-06-14.1. Loans - How made - Security - Meetings and duties of loan administration -**
21 **Preferential loans.**

- 22 1. The duty of loan administration falls to the credit committee if the bylaws establish a
23 credit committee, or to the credit manager appointed by the board of directors if the
24 bylaws do not provide for a credit committee. At a minimum, loan administration must
25 include:
- 26 a. Oversight over all loans.
- 27 b. Performance of loan-related duties as often as necessary, and in the case of a
28 credit committee, a meeting at least once each month. Each member of the credit
29 committee must receive prior notice of the time and location of a meeting.
- 30 c. Loan applications, notes, security instruments, and all other loan documentation
31 necessary to execute the transaction on forms approved by the committee or

- 1 credit manager which set forth the purpose for which the loan is desired, the
2 security, if any, which is offered, and such other data as the committee or credit
3 manager may require.
- 4 d. Documentation that the loan complies with board of directors-approved loan
5 policies, including policy limits on the maximum unsecured loans to one borrower
6 and the limit on maximum total loans to a borrower.
- 7 e. Documented approval or denial of the loan by the majority of the entire credit
8 committee or by the credit manager, except that the credit committee or credit
9 manager may appoint and delegate to one or more loan officers the power to
10 approve loans up to the limit established by the board of directors.
- 11 f. Sufficient segregation of duties to limit risk or error if possible. At a minimum, an
12 individual may not disburse funds of the credit union for any loan that has been
13 approved by that individual in that individual's capacity as a loan officer.
- 14 2. Not more than one member of the credit committee may be appointed as a loan
15 officer, unless credit union bylaws provide for a board of directors-appointed credit
16 manager and the credit committee is made up of credit union employees appointed by
17 the credit manager.
- 18 3. Every loan by a credit union to, or guaranteed by, its directors, officers, managers, and
19 committee members must:
- 20 a. Be current as outlined on the terms of the loan agreement.
- 21 b. Be made on substantially the same terms, including interest rates, fee structure,
22 and collateral, as those prevailing at the time for comparable transactions with
23 other persons.
- 24 c. Be written in strict conformity with the credit union's policies, rules, and
25 regulations.
- 26 4. An exception may be made for a loan otherwise prohibited by this section if the loan is
27 directly related to a retirement investment benefit plan for credit union employees.

28 **SECTION 17. REPEAL.** Section 6-06-14 of the North Dakota Century Code is repealed.