Sixty-second
Legislative Assembly
of North Dakota

SENATE BILL NO. 2096

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

A BILL for an Act to amend and reenact section 6-01-02, subsection 4 of section 6-03-02, and sections 6-03-08, 6-03-13, and 6-03-59 of the North Dakota Century Code, relating to capital definitions, bank powers to elect employees, bank powers as to real estate, removal of banks to new locations, and loan limitations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

6-01-02. Definitions.

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

1. "Association", "banking association", or "state banking association" means any corporation organized under the laws of this state covering state banking associations, and all corporations, limited liability companies, partnerships, firms, or associations whose business in whole or in part consists of the taking of money on deposit, except national banks, trust companies, and the Bank of North Dakota.
2. "Bank" means any national bank, national banking association, corporation, state bank, state banking association, or savings bank, whether organized under the laws of this state or of the United States, engaged in the business of banking.
3. "Bank holding company" means bank holding company as defined in 12 U.S.C. 1841(a)(1).
4. "Banking" means the business of receiving deposits, making loans, discounting commercial paper, issuing drafts, traveler's checks, and similar instruments, handling and making collections, cashing checks and drafts, and buying and selling exchange.
5. "Banking department" means the state department of financial institutions.

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

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

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

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

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

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

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

~~12.~~13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that creates a record that may be retained, retrieved, and reviewed by a recipient of the communication and may be directly reproduced in paper form by the recipient through an automated process.

~~13.~~14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~14.~~15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.

~~15.~~16. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.

~~16.~~17. "Merger" or "merge" means the merging or consolidation of two or more banks including the purchase of all or substantially all of the assets and assumption of liabilities of a bank, facility, or branch.

~~17.~~18. "Mutual investment corporation" or "mutual savings corporation" means a corporation organized to engage in the investment or savings business, but having no capital stock or a nominal capital stock.

~~18.~~19. "National bank" or "national banking association" means an institution chartered by the comptroller of the currency under the National Bank Act [12 U.S.C. 24].

~~19.~~20. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~20.~~21. "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of Federal Regulations, part 325, in effect on August 1, ~~2009~~2011.

~~21.~~22. "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

SECTION 2. AMENDMENT. Subsection 4 of section 6-03-02 of the North Dakota Century Code is amended and reenacted as follows:

4. Elect or appoint directors, such board to consist of any number of members, not less than three nor more than twenty-five, a majority of whom must be residents of the state of North Dakota, and, by such board of directors, to appoint a president, who must be a member of said board, ~~a cashier,~~ and such other employees as may be required, to define their duties, to require bonds of them and fix the penalty thereof, and to dismiss such officers and employees, or any of them, and appoint others to fill their places.

SECTION 3. AMENDMENT. Section 6-03-08 of the North Dakota Century Code is amended and reenacted as follows:

6-03-08. Powers as to other real estate.

Every state banking association has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:

1. Such as is mortgaged to it in good faith by way of security for loans or for debts previously contracted.

2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
3. Such as it purchases at sales under judgments, decrees, or mortgages held by the association or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal must be conducted by an individual who is independent of the transaction. Notwithstanding other sections of this chapter, the commissioner may authorize a bank to exchange its interest in real property acquired in satisfaction of a debt previously contracted for an interest in an entity that would dispose of the real property, subject to rules the state banking board may adopt.

SECTION 4. AMENDMENT. Section 6-03-13 of the North Dakota Century Code is amended and reenacted as follows:

6-03-13. Conversion to national bank - Sale of bank - Removal to new location.

An association organized to do business in any city in this state, and which has sold or converted its business to a national bank or to any other banking association which is continued at the same place, may not use its charter to recommence business at another place without first obtaining the consent of the state banking board. When a banking association which has not so converted or sold its business is located at a place where there is not, or can reasonably project that there will not be, sufficient business for the profitable conduct of a bank, such association may apply to the state banking board for authority to remove its business to some other place within the state and to change its name if desired, and upon the approval of such application, by the board and the proper amendment of the articles of incorporation, the board may issue authority for such removal and change. No such association, however, is permitted to remove its business to any city unless it has the full amount of capital stock and surplus required by this title for a new organization in such city. A banking association may apply to the state banking board for authority to move its main office to any location currently being operated by the banking association as a facility.

SECTION 5. 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 association's ~~common stock,~~

1 ~~surplus, and undivided profits~~tier 1 capital as of the most recent report of condition and income.
2 For the purpose of this section, the total liability of a borrower includes the liabilities of any
3 separate borrowers for which the repayment of separate loans or extensions of credit is
4 substantially from the same source and any credit exposure to a borrower arising from a
5 derivative transaction, repurchase agreement, reverse repurchase agreement, securities
6 lending transaction, or securities borrowing transaction between the state banking association
7 and the borrower.