

SENATE BILL NO. 2102

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 chapter 6-07.2 of the North Dakota Century Code, relating
2 to dissolution, insolvency, suspension, emergency receivership, and liquidation of institutions
3 under the department of financial institutions' supervision; to amend and reenact subsection 4 of
4 section 6-01-04.2 and sections 6-01-04.4, 6-02-05, 6-03-12, 6-03-57, 6-03-67, 6-05-34, and
5 6-06-08.4 of the North Dakota Century Code, relating to financial institutions cross references,
6 cease and desist orders, and prompt corrective action; and to repeal chapter 6-07 of the North
7 Dakota Century Code, relating to dissolution, insolvency, suspension, emergency receivership,
8 and liquidation of institutions under the department of financial institutions' supervision.

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

10 **SECTION 1. AMENDMENT.** Subsection 4 of section 6-01-04.2 of the North Dakota Century
11 Code is amended and reenacted as follows:

12 4. The commissioner or the board may enter an emergency, temporary cease and desist
13 order if the commissioner or the board finds the conduct described in the complaint is
14 likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the
15 financial corporation, financial institution, or credit union, or substantial prejudice to the
16 depositors, shareholders, members, or creditors of the financial corporation, financial
17 institution, or credit union. An emergency, temporary cease and desist order is
18 effective immediately upon service on the financial corporation, financial institution, or
19 credit union and remains in effect for no longer than sixty days or until the conclusion
20 of permanent cease and desist proceedings pursuant to this section, whichever is
21 sooner. An emergency, temporary cease and desist order may be issued without an
22 opportunity for hearing. ~~The financial corporation, financial institution, or credit union~~
23 ~~upon which such an order is served may apply to the district court of the county in~~
24 ~~which the financial corporation, financial institution, or credit union is located for an~~

1 ~~order enjoining the operation of the emergency, temporary order. The application for~~
2 ~~injunction and procedure upon application must comply with the requirements of~~
3 ~~section 6-07-14A bank or credit union may request a hearing before the state banking~~
4 ~~board or state credit union board within ten days of the order to review the factual~~
5 ~~basis used to issue the emergency, temporary cease and desist order. The decision~~
6 ~~made by the board during this hearing will be final. If a hearing is not requested, the~~
7 ~~initial decision of the commissioner or board will be final.~~

8 **SECTION 2. AMENDMENT.** Section 6-01-04.4 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **6-01-04.4. Prompt corrective action.**

11 The commissioner or board may enter an order if the commissioner or board finds that a
12 state bank is undercapitalized, significantly undercapitalized, or critically undercapitalized. For
13 the purpose of this section, undercapitalized, significantly undercapitalized, and critically
14 undercapitalized have the same definition as found in title 12, Code of Federal Regulations,
15 part 324, section 403, as amended April 15, 2016. The order may require an undercapitalized
16 state bank to take prompt corrective action as the commissioner or board determines
17 reasonable to bring the bank to an adequately capitalized condition, including the submission
18 and implementation of an acceptable capital restoration plan. A bank may request a hearing
19 before the state banking board within ten days of the order to review the factual basis used to
20 issue the request for prompt corrective action. The decision made by the board during this
21 hearing is final. If a hearing is not requested, the initial decision of the commissioner or board is
22 final. For a significantly or critically undercapitalized state bank, the commissioner or board may
23 issue a temporary cease and desist order appointing a receiver, ~~or with the consent of the~~
24 ~~federal deposit insurance corporation appoint a conservator or take such other action as may~~
25 ~~be better to resolve the problems of the state bank consistent with section 38 of the Federal~~
26 ~~Deposit Insurance Act of 1991 [Pub. L. 102-242; 105 Stat. 2253; 12 U.S.C. 1831o et seq.], in~~
27 ~~effect on July 22, 2010. A bank that has been served with a complaint requesting the state~~
28 ~~banking board to issue a prompt corrective action under this section may request a hearing~~
29 ~~before the board within five days after service of the complaint upon the bank. A request for a~~
30 ~~hearing must be granted and the hearing must be held not later than ten days after the request~~
31 ~~is filed with the board. A complete record of the hearing must be established and maintained.~~

1 On the basis of the hearing, the board may issue an order. The bank may appeal the board's
2 order under this section to the district court of Burleigh County, North Dakota, within ten days
3 after the board's order is served on the bank. The appeal is governed by chapter 28-32 in
4 accordance with chapter 6-07.2.

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

7 **6-02-05. Acknowledgment of organization certificate - Application for certificate of**
8 **authority - Notice of hearing.**

9 The organization certificate must be acknowledged before a notary public, and, together
10 with the acknowledgment thereof, the acknowledged certificate must be authenticated by the
11 seal of the notary. The same thereupon authenticated certificate must be transmitted to the state
12 banking board with a request for permission to present the same to the secretary of state, with
13 application for the issuance of a certificate of authority. Upon receiving such organization
14 certificate, the board shall cause notice of the application therefor to be published in the official
15 newspaper of the county within which such association is proposed to be established. ~~Such~~The
16 notice must contain a statement of a time when and place where the board will hear ~~such~~the
17 application and must specify that any person objecting ~~thereto~~the application may appear and
18 show cause why such application should not be approved. Upon the consolidation of banks,
19 acquisition pursuant to ~~section 6-07-04.2~~chapter 6-07.2, or the conversion of a national bank to
20 a state bank, notice of such hearing need not be given.

21 **SECTION 4. AMENDMENT.** Section 6-03-12 of the North Dakota Century Code is amended
22 and reenacted as follows:

23 **6-03-12. Transfer of assets on consolidation or merger.**

24 All of the rights, property, franchises, and interests of the consolidating or merging bank or
25 trust company are deemed to be transferred to and vested in the bank or trust company into
26 which it is consolidated or merged without other instrument of transfer. The consolidated bank
27 or trust company shall hold and enjoy the same and all rights, property, franchises, and interests
28 in the same manner and to the same extent as were held and enjoyed by the bank or trust
29 company so consolidated or merged therewith, including the holding and performing by any
30 bank or trust company of any and all trust and fiduciary relations whatsoever as to and for which
31 either or any of the banks or trust companies so consolidating or merging may have been

1 appointed, nominated, or designated by any will, agreement, conveyance, or otherwise,
2 whether or not such trust or fiduciary relationship has come into being or has taken effect at the
3 time of the consolidation or transfer. The merging bank or trust company, however, shall transfer
4 all of its real property to the consolidated bank or trust company by good and sufficient deed of
5 conveyance, and for that and other purposes, it remains a body corporate until dissolved in the
6 manner provided in chapter ~~6-076-07.2~~, or if no assets or liabilities remain, until the certificate is
7 canceled by the secretary of state.

8 **SECTION 5. AMENDMENT.** Section 6-03-57 of the North Dakota Century Code is amended
9 and reenacted as follows:

10 **6-03-57. Foreclosure of pledge contracts.**

11 Except as otherwise provided in chapter ~~6-076-07.2~~, no pledge made by an association
12 may be foreclosed except by an action in equity brought in the district court of the county in
13 which the pledgor association is located, except where assets are pledged by a state banking
14 association in order to secure borrowed money or the obligation of the association on
15 rediscounted paper, the rights of the pledgee must be determined by the terms of the
16 agreement of pledge, and if the pledged assets are outside of this state, the foreclosure of the
17 pledge is governed by the laws of the state where the pledge is located.

18 **SECTION 6. AMENDMENT.** Section 6-03-67 of the North Dakota Century Code is amended
19 and reenacted as follows:

20 **6-03-67. Appropriation of deposits unlawful - Exception - Liability therefor.**

21 Except as provided in sections ~~6-07-526-07.2-09~~ and 30.1-31-20, it is unlawful for any
22 banking association to charge any claim which it might have, or the claim of any other person,
23 against a deposit made with the association, or to appropriate a deposit or any part of the
24 deposit to the payment of any debt to the association, without legal process or the consent of
25 the depositor. Any banking association that violates this section is liable to the party aggrieved
26 for any damages caused by the violation.

27 **SECTION 7. AMENDMENT.** Section 6-05-34 of the North Dakota Century Code is amended
28 and reenacted as follows:

1 **6-05-34. Other code provisions applicable to corporations doing business under this**
2 **chapter.**

3 The provisions of title 10, as it may be amended from time to time, governing profit
4 corporations, and sections 6-01-06, 6-01-09, 6-03-11, 6-03-12, 6-03-27, 6-03-33, 6-03-34,
5 6-03-35, 6-03-41, 6-03-42, 6-03-51, 6-03-52, 6-03-53, 6-03-54, 6-03-55, 6-03-56, 6-03-57,
6 6-03-58, 6-03-61, 6-03-62, 6-03-63, 6-03-64, 6-03-65, 6-03-70, 6-03-72, ~~6-07-01, 6-07-02,~~
7 ~~6-07-04, 6-07-05, 6-07-06~~chapter 6-07.2, sections 6-08-03, 6-08-06, 6-08-09, 6-08-14, and
8 6-08-20 are applicable to and must be observed by all corporations organized under this
9 chapter, except as to provisions thereof inconsistent with the provisions of this chapter.

10 **SECTION 8. AMENDMENT.** Section 6-06-08.4 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **6-06-08.4. Prompt corrective action.**

- 13 1. For purposes of this section, the net worth categories are defined as:
- 14 1. a. Well capitalized. A credit union with a net worth ratio of seven percent or greater
15 which meets any applicable risk-based net worth requirement.
- 16 2. b. Adequately capitalized. A credit union with a net worth ratio six percent or more
17 but less than seven percent which meets any applicable risk-based net worth
18 requirement as defined by the state credit union board by rule.
- 19 3. c. Undercapitalized. A credit union with a net worth ratio of four percent or more but
20 less than six percent or fails to meet any risk-based net worth requirement.
- 21 4. d. Significantly undercapitalized. A credit union with a net worth ratio of two percent
22 or more but less than four percent, fails to increase its net worth, or fails to submit
23 or materially implement a net worth restoration plan.
- 24 5. e. Critically undercapitalized. A credit union with a net worth ratio less than two
25 percent.
- 26 2. A credit union may be reclassified into the next subordinate net worth category by the
27 commissioner or the state credit union board if it is determined that the credit union is
28 in an unsafe or unsound condition or has not corrected unsafe or unsound practices of
29 which it was, or should have been, aware. The board or commissioner may
30 ~~require~~order a credit union that is adequately capitalized, undercapitalized,
31 significantly undercapitalized, or critically undercapitalized to take prompt corrective

1 ~~action to increase its~~the credit union's net worth. Additionally, the ~~board or~~
2 ~~commissioner order~~ may require a credit union that is undercapitalized, significantly
3 undercapitalized, or critically undercapitalized to submit an acceptable net worth
4 restoration plan to the commissioner. A credit union may request a hearing before the
5 state credit union board within ten days of the order to review the factual basis used to
6 issue the request for prompt corrective action. The decision made by the board during
7 this hearing is final. If a hearing is not requested, the initial decision of the
8 commissioner or board is final. For a significantly undercapitalized credit union that
9 has no reasonable prospect of becoming adequately capitalized or a critically
10 undercapitalized credit union, the commissioner or board may take possession of the
11 credit union; or appoint a conservator or liquidating agent for the credit union; ~~or take~~
12 ~~such other action as the board determines would be appropriate to resolve the~~
13 ~~problems of the credit union.~~

14 ~~A credit union that is the subject of such a board declaration may ask for a hearing before~~
15 ~~the board within five days after service upon it of the board's declaration. The application for a~~
16 ~~hearing must be granted and the hearing must be held not later than ten days after the~~
17 ~~application is filed. A complete record of the hearing must be established and maintained. On~~
18 ~~the basis of the hearing, the board shall enter a final order. The institution may appeal the order~~
19 ~~to the district court of Burleigh County, within ten days after the order is served upon it. The~~
20 ~~appeal is governed by chapter 28-32 in accordance with chapter 6-07.2.~~

21 **SECTION 9.** Chapter 6-07.2 of the North Dakota Century Code is created and enacted as
22 follows:

23 **6-07.2-01. Department taking possession - Procedure.**

- 24 1. The commissioner may take possession of the business and property of an institution
25 the commissioner supervises if it appears to the commissioner that any of the
26 following conditions exist:
- 27 a. The directors or officers of the institution, or the liquidators of the institution
28 subject to a voluntary plan of liquidation, have neglected, failed, or refused to
29 take action the commissioner deems necessary for the protection of the
30 institution.

- 1 b. The directors, officers, or liquidators of the institution have impeded or obstructed
2 an examination. This may include concealment or refusal to submit books,
3 papers, records, or affairs of the institution for inspection to any examiner or to
4 any lawful agent of the appropriate federal financial institution regulatory agency
5 or of the department.
- 6 c. The business is being conducted in a fraudulent, illegal, or unsafe manner.
- 7 d. The institution is conducting business in a way causing losses to depositors.
- 8 e. The institution is operating in an unsafe or unsound condition.
- 9 f. The capital of the institution is impaired such that the likely realizable value of the
10 institution's assets is insufficient to pay and satisfy the claims of all depositors
11 and all creditors.
- 12 g. The institution is insolvent or in imminent danger of insolvency or has suspended
13 ordinary business transactions of the institution due to insufficient funds.
- 14 h. The institution has refused or been unable to pay deposits or obligations in
15 accordance with the terms under which those deposits or obligations of the
16 institution were incurred.
- 17 i. Substantial dissipation of assets or earnings due to:
- 18 (1) Any violation of any law or rule; or
- 19 (2) An unsafe or unsound practice.
- 20 j. The institution is unable to continue operations.
- 21 k. The institution is in violation of any applicable state or federal regulation.
- 22 l. Neglect or refusal to comply with the terms of a final order of the department,
23 state banking board, **state credit union board**, or federal financial institution's
24 regulatory agency essential to preserve the solvency of the institution.
- 25 m. The institution has failed to pay the fees charged by the department under
26 section 6-01-17 after due notice of the amount of the fee has been given.
- 27 n. The institution's board of directors requests that the department take possession
28 for the benefit of depositors, other creditors, shareholders, or other persons.
- 29 o. The institution has been advised by the federal deposit insurance corporation of
30 the federal deposit insurance corporation's intention to withdraw deposit
31 insurance coverage.

- 1 p. The institution has been advised by the national credit union association of the
2 national credit union association's intention to withdraw share insurance
3 coverage.
- 4 q. The directors or officers of the bank, or the liquidators of a bank subject to a
5 voluntary plan of liquidation, have assumed duties or performed acts in excess of
6 those authorized by applicable statutes or regulations, by the bank's
7 organizational documents or plan of liquidation, or without supplying the required
8 bond.
- 9 2. If it appears to the commissioner one or more of the conditions in this section exists as
10 to any institution, the commissioner shall cause a notice to be served on the president
11 or other executive officer in charge of the institution and, pursuant to such notice, take
12 possession of the business, property, and records of the institution from the officer
13 citing the reasons for such a demand from this section. The decision of the
14 commissioner is final upon the president or other executive officer's receipt of the
15 notice and the institution immediately shall surrender possession to the commissioner.

16 **6-07.2-02. When possession terminates.**

17 If the commissioner has taken possession of the business and property of an institution
18 under the provisions of section 6-07.2-01, the commissioner shall hold possession of the
19 business and property until the affairs of the institution have been finally liquidated as provided
20 in this chapter, unless the institution has undertaken the voluntary liquidation of the affairs of the
21 institution under this chapter, or either the federal deposit insurance corporation, or any
22 successor federal deposit insurance agency, or the national credit union association, or any
23 successor federal deposit insurance agency, has been appointed receiver.

24 **6-07.2-03. Notice of possession.**

- 25 1. Immediately upon taking possession of the business and property of an institution
26 under section 6-07.2-01, the commissioner shall give notice by:
- 27 a. Causing the notice to be served upon the president or other executive officer in
28 charge of the business of the institution;
- 29 b. Causing the notice to be provided to all correspondent banks of the institution.
30 However, if the commissioner fails to provide the notice, the commissioner shall
31 incur no liability for such failure to act; and

- 1 c. Causing the notice to be made public.
- 2 2. The rights and liabilities of an institution and of the institution's creditors, depositors,
3 shareholders, and all other persons interested in the institution's estate, unless
4 otherwise directed, must be fixed as of the date of the delivery of the notice of
5 possession to the president or other executive officer actively in charge of the
6 business of the institution. In the case of mutual debts or mutual credits of equal
7 priority between the institution and another person, the credits and debts must be
8 setoff and the balance only must be allowed or paid. The right to setoff must be
9 determined as of the date of delivery of the notice of possession of the institution to
10 the president or other executive officer actively in charge of the business of the
11 institution.

12 **6-07.2-04. Appointment of receiver- Restrictions on proceedings, liens, or credits -**
13 **Bonding.**

- 14 1. After taking possession of the business and property of the institution, the
15 commissioner may appoint the appropriate federal deposit insurance agency or other
16 qualified party as the receiver of the closed institution. If the federal deposit insurance
17 corporation or national credit union association accepts appointment as receiver, the
18 federal deposit insurance corporation or national credit union association is not
19 required to post bond.
- 20 2. Upon appointment as receiver, title to all assets of the institution vests in the receiver
21 without the execution of any instruments of conveyance, assignment, transfer, or
22 endorsement. If no other receiver is appointed as provided in this chapter, the
23 commissioner shall act as receiver and has all of the powers and duties of a receiver
24 as provided in this chapter.
- 25 3. Except as otherwise provided, the sole and exclusive right to liquidate and terminate
26 the affairs of an institution is vested in the receiver appointed under this section, and
27 another receiver, assignee, trustee, or liquidating agent may not be appointed by any
28 court or any other person.
- 29 4. After the commissioner has taken possession of the business and property of an
30 institution, a suit, action, or other proceeding at law or in equity may not be

- 1 commenced or prosecuted against the institution upon any debt, obligation, claim, or
2 demand. All such claims may be brought against the receiver.
- 3 5. A person holding any of the property or credits of the institution does not have a lien or
4 charge against the property or credits for any payment, advance, or clearance made
5 after the commissioner has taken possession. A lien may not attach to any of the
6 assets or property of the institution by reason of the entry of any judgment recovered
7 against the institution after the commissioner has taken possession of the institution's
8 business and property.
- 9 6. Every receiver appointed by the commissioner, except a federal deposit insurance
10 agency, before entering upon the discharge of the receiver's duties and before
11 proceeding to liquidate the affairs of any institution, may be required by the
12 commissioner to furnish a bond. Such bond must be approved as to form and amount
13 by the commissioner. The cost of such bond must be paid from the assets of the
14 institution being liquidated.

15 **6-07.2-05. Powers of receiver.**

16 The receiver of a closed institution may do the following:

- 17 1. Take possession of all books, records, and assets of the institution.
- 18 2. Collect all debts, claims, and judgments belonging to the institution and do such other
19 acts as are necessary to preserve and liquidate the assets of the institution.
- 20 3. Execute in the name of the institution any instrument necessary or proper to effectuate
21 the receiver's powers or perform the duties as receiver.
- 22 4. Initiate, pursue, and defend litigation involving any right, claim, interest, or liability of
23 the institution.
- 24 5. Exercise any and all existing fiduciary functions of the institution as of the date of
25 appointment as receiver.
- 26 6. Borrow money as necessary and secure the borrowings by the pledge or mortgage of
27 assets. The repayment of money borrowed under this subsection and interest on the
28 money borrowed under this section must be considered an expense of administration
29 under section 6-07.2-09.
- 30 7. Abandon or convey title to any holder of a mortgage, deed of trust, security interest, or
31 lien against property in which the institution has an interest if the receiver determines

1 that to continue to claim the interest is burdensome and of no advantage to the
2 institution or the institution's depositors, creditors, or shareholders.

3 8. Repudiate any leases or executory contracts to which the institution is a party in
4 accordance with section 6-07.2-09.

5 9. Sell any and all real and personal property to compromise any debt, claim, or
6 judgment due from the institution and discontinue any action or other proceedings
7 pending.

8 10. Pay off all mortgages, deeds of trust, security agreements, and liens upon any real or
9 personal property belonging to the institution and purchase at judicial sale or at sale
10 authorized by court order, any real or personal property in order to protect the
11 institution's equity in that property.

12 11. Sell in bulk the assets and liabilities of the institution.

13 **6-07.2-06. Sale of assets - Assumptions of deposit liabilities by new institution.**

14 The receiver may sell all or any part of the institution's assets to one or more other state or
15 federally chartered depository institution or to a federal deposit insurance agency in the
16 receiver's corporate capacity. The receiver may also borrow from a federal deposit insurance
17 agency an amount necessary to facilitate the assumption of deposit liabilities by a newly
18 chartered or existing state or federally chartered depository institution, assigning any part or all
19 of the assets of the institution as security for the loan.

20 **6-07.2-07. Presentation of claims - Notice of claims procedure - Rejection of claims -**

21 **Statute of limitations.**

22 1. All parties having claims against the closed institution shall present the claims of the
23 parties supported by proof to the receiver within one hundred eighty days after the
24 commissioner has taken possession. This period may be extended by written
25 agreement between the claimant and the receiver. The receiver shall cause notice of
26 the claims procedures prescribed by this section to be made public and mailed to each
27 person whose name appears as a creditor upon books of the institution at the person's
28 last address of record. Within one hundred eighty days following receipt of the claim,
29 the receiver shall notify in writing any claimant whose claim has been rejected. Notice
30 is effective when mailed. A claimant whose claim has been rejected by the receiver
31 may petition a court for a hearing on the claim within sixty days from the date the claim

1 was rejected. The claim of a party against the closed institution must be disallowed,
2 other than any portion of the claim which was allowed by the receiver, as of the end of
3 the sixty-day period if the party having the claim fails to:

4 a. Request an administrative review of any claim by the receiver in accordance with
5 proper procedure; or

6 b. File suit on the claim, or continue an action commenced before the appointment
7 of the receiver, before the end of the sixty-day period.

8 2. The disallowance is final, and the claimant has no further rights or remedies with
9 respect to the claim.

10 **6-07.2-08. Claims filed after one hundred eighty-day claim period.**

11 A claim filed after the one hundred eighty-day claim period prescribed by section 6-07.2-07
12 and subsequently accepted by the receiver is entitled to share in the distribution of assets only
13 to the extent of the undistributed assets in the hands of the receiver on the date the claim is
14 accepted or allowed.

15 **6-07.2-09. Payment of claims.**

16 1. All claims against the institution's estate, proved to the receiver's satisfaction or
17 approved by the circuit court, must be paid in the following order:

18 a. Administration expenses, including compensation of each regular officer or
19 employee of the receiver for the time actually devoted to the liquidation of the
20 institution at an amount not to exceed the compensation paid to the officer or
21 employee for the performance of the officer's or employee's regular duties; actual
22 expenses of each regular officer and employee necessarily incurred in the
23 performance of the officer's or employee's duties; compensation and expenses of
24 any special representative, assistant, accountant, agent, or attorney employed by
25 the receiver; court costs; and if the commissioner is acting as receiver, such
26 reasonable general overhead expenses as may be incurred by the commissioner
27 in the liquidation of the affairs of the institution which shall be ascertained,
28 determined, and fixed by the commissioner.

29 b. Claims given priority under other provisions of state or federal law.

- 1 c. Deposit obligations, except that notwithstanding sections 6-03-67 and 41-04-31,
- 2 if a depositor is indebted to an insolvent bank, the insolvent bank has a right to
- 3 setoff against the depositor's account.
- 4 d. Other general liabilities.
- 5 e. Debt subordinated to the claims of depositors and general creditors.
- 6 f. Equity capital securities.
- 7 2. Interest on a claim may not be paid until all claims within the same class have
- 8 received the full principal amount of claim.

9 **6-07.2-10. Rejection of contracts and leases.**

- 10 1. Within one hundred eighty days after the date the commissioner has taken
- 11 possession, the receiver may, ~~at the election of the commissioner,~~ reject:
- 12 a. An executory contracts to which the closed institution is a party without any
- 13 further liability to the closed institution or the receiver; and
- 14 b. An obligation of the institution as a lessee of real or personal property.
- 15 2. The receiver's election to reject a lease does not create a claim for rent other than rent
- 16 accrued to the date of termination.

17 **6-07.2-11. Subrogation of federal deposit insurance agency to right of depositors.**

18 If a federal deposit insurance agency pays or makes available for payment the insured
19 deposit liabilities of a closed institution, the federal deposit insurance agency, whether or not the
20 federal deposit insurance agency acts as receiver, must be subrogated by operation of law to all
21 rights of depositors against the closed institution relating to claims for deposits so paid by the
22 federal deposit insurance agency to the extent necessary to enable the federal deposit
23 insurance agency, under federal law, to make insurance payments available to depositors of
24 closed institutions.

25 **6-07.2-12. Appointment of successor fiduciary and representative proceedings.**

- 26 1. The receiver may appoint one or more successors to any or all of the rights,
- 27 obligations, assets, deposits, agreements, and trusts held by the closed institution as
- 28 trustee, administrator, executor, guardian, agent, and all other fiduciary or
- 29 representative capacities. The approval may be obtained in connection with the
- 30 proceedings authorized under section 6-07.2-06.

1 2. A successor's duties and obligations begin upon appointment to the same extent
2 binding upon the closed institution and as though the successor had originally
3 assumed the duties and obligations. Specifically, a successor must be appointed to
4 administer trusteeships, administrations, executorships, guardianships, agencies, and
5 other fiduciary or representative proceedings to which the closed institution is named
6 or appointed in wills, whenever probated, or to which it is appointed by any other
7 instrument or court order, or by operation of law.

8 3. This section does not impair any right of the grantor or beneficiaries of trust assets to
9 secure the appointment of a substituted trustee or manager.

10 4. Within thirty days after appointment, a successor shall give written notice, insofar as
11 practical, that the successor has been appointed in accordance with applicable law to
12 all interested parties named in:

13 a. The books and records of the closed institution; and

14 b. Trust documents held by the successor.

15 **6-07.2-13. Notice concerning safekeeping and safe deposit boxes.**

16 The receiver shall cause notice to be mailed to the last address of record to the owners of
17 any personal property in the possession of or held by a closed institution for safekeeping, and to
18 all lessees of safe deposit boxes. The notice must require the intended recipients to appear and
19 assert the claims of the recipients to the property within sixty days from the date of the notice.
20 The receiver shall make such agreements or arrangements as may be necessary for the
21 disposition of property held by the closed institution for safekeeping and the contents of safe
22 deposit boxes, and for the termination of any leases or other contracts relating to the property or
23 contents.

24 **6-07.2-14. Actions for enforcement or rights, demands, or claims vested in an**
25 **institution or its shareholders of creditors.**

26 Notwithstanding any other provision of state law, the receiver may, within five years from the
27 date of closing of the institution, institute and maintain, in the name of the receiver, any action or
28 proceeding for the enforcement of any right, demand, or claim that is vested in the institution.

1 **6-07.2-15. Contents of articles of dissolution.**

2 If the proceedings described in this chapter have been completed, the receiver shall
3 execute and file, in the manner provided in this section, articles of dissolution, setting forth the
4 following information:

5 1. The name of the institution;

6 2. The place where the institution's main office was located;

7 3. The names and addresses of the directors and officers of the institution at the time the
8 liquidation proceedings were begun;

9 4. A brief summary of the aggregate amount of general claims finally allowed against the
10 institution, the order in which the claims were paid, and the aggregate amount of all
11 other claims against the institution. A statement of the aggregate payments made on
12 each of the groups of claims must be provided, referencing the orders of the receiver
13 authorizing those payments and the current reports documenting such payments; and

14 5. A brief summary of the aggregate amount of payments made to the shareholders of
15 the institution, whether of money or other property, and a reference to the orders of the
16 receiver authorizing the payments and to the current reports in which documentation
17 of the payments is made.

18 **6-07.2-16. Execution and filing of articles with department - Certificate of dissolution.**

19 1. The articles of dissolution must be executed in duplicate and presented in duplicate to
20 the department of financial institutions.

21 a. Upon presentation of the articles of dissolution, the commissioner shall endorse
22 the commissioner's approval upon each of the duplicate copies of the articles if
23 the commissioner finds the articles conform to law.

24 b. The commissioner shall file one copy of the articles in the department and issue
25 two certificates of dissolution. The commissioner shall file one certificate of
26 dissolution with the department and shall deliver the second to the receiver.

27 2. Upon the issuance of the certificate of dissolution, the institution is dissolved and its
28 existence ceases. Upon the issuance of the certificate of dissolution, the receiver is
29 authorized, as agent for the directors and shareholders of any subsidiary trust
30 company, to file any and all documents with the secretary of state necessary to

1 terminate the subsidiary trust company's corporate existence under applicable
2 corporate law.

3 **6-07.2-17. Emergency temporary suspension or conservatorship.**

4 1. If upon the examination or investigation of an institution regulated by the
5 commissioner, the commissioner determines the laws are not being fully observed,
6 that any irregularities are being practiced, or that the institution's capital has been or is
7 in danger of being impaired, the commissioner shall give immediate notice of such
8 determination to the officers and directors of the institutions. In addition, if it is deemed
9 necessary in order to conserve the assets of the institution or to protect the interests of
10 depositors and creditors of the institution, the commissioner may do any one or more
11 of the following:

12 a. Temporarily suspend the right of the institution to receive any further deposits;

13 b. Temporarily close the bank, for a period not exceeding sixty days, which period
14 may be further extended for one or more sixty-day periods as the commissioner
15 may deem necessary;

16 c. Require the officers and directors of the bank to liquidate its outstanding loans
17 insofar as required;

18 d. Recapitalize the institution;

19 e. Require that any irregularities be corrected promptly;

20 f. Require the institution to make reports, daily or at such other times as may be
21 required to the commissioner; and

22 g. Without examination, close or appoint a receiver to operate, for such period as
23 the commissioner may deem necessary, an institution facing an emergency due
24 to withdrawal of deposits, a liquidity event in which the institution is unable to
25 continue operations, a cyber or technology related incident, or otherwise, or,
26 without closing the institution, grant the institution the right to suspend or limit the
27 withdrawal of deposits, for such period as the commissioner may determine.

28 2. If a ~~bank~~an institution fails or refuses to comply with any such order of the
29 commissioner, or if the commissioner determines a receiver for the ~~bank~~institution
30 should be appointed, the ~~commission~~commissioner may apply for the appointment of

1 a receiver to take charge of the business affairs and assets of the bankinstitution and
2 to wind up the bank'sinstitution's affairs as provided in this chapter.

3 3. A bank or credit union may request a hearing before the state banking board or state
4 credit union board within ten days of the emergency temporary suspension or
5 conservatorship to review the factual basis used to issue the emergency temporary
6 suspension or conservatorship. The decision made by the state banking board or state
7 credit union board during the hearing is final. If a hearing is not requested, the initial
8 decision of the commissioner is final.

9 **6-07.2-18. Voluntary liquidation of a bank.**

- 10 1. An application for approval to voluntarily liquidate the affairs of a bank must be
11 submitted to the commissioner in the manner and form that the commissioner may
12 prescribe, must include the information set forth in this section, and must contain such
13 additional information the commissioner may require. The application must include
14 duplicate copies of a resolution authorizing the dissolution and duplicate copies of a
15 certificate, verified by the applicant's president or chief executive officer or a vice
16 president, stating the facts pertaining to the resolution and that the applicant's
17 liabilities have been paid in full. Each duplicate certificate must have annexed to the
18 duplicate, over the official signatures, evidence showing:
- 19 a. The date on which the resolution was authorized by the affirmative vote of the
20 holders of at least a simple majority of the outstanding shares entitled to vote on
21 the resolution;
- 22 b. The number of shares of each class entitled to vote on the resolution which were
23 outstanding on the date of the stockholders' meeting;
- 24 c. The number of shares of each class entitled to vote on the resolution whose
25 owners were present in person or by proxy;
- 26 d. The number of shares of each class voted for and against the resolution; and
27 e. The manner in which the meeting was called and the time and manner of giving
28 notice, with a certification that the meeting was lawfully called and held.
- 29 2. Upon receipt of the application, the commissioner shall investigate the merits of the
30 application. If the commissioner is satisfied the application is complete and all
31 applicable provisions of law have been complied with, the commissioner shall cause

1 an examination to be made of the applicant institution for the purpose of verifying the
2 payment of all the applicant's liabilities. If the examination satisfies the commissioner
3 that all of the applicant's liabilities have been paid, the commissioner shall endorse
4 one copy of the certificate with the commissioner's statement that the institution is
5 voluntarily liquidating. The return of the endorsed copy of the certificate operates to
6 free the institution from further examination and to authorize the institution, under the
7 original corporate name of the institution, to sue and be sued, to execute conveyances
8 and other instruments, to take, hold, and own property, and to do all such other things
9 as may be necessary to realize upon the institution's remaining assets for the pro rata
10 benefit of the institution's stockholders, but not to engage or continue in any new or
11 other business under the institution's charter or otherwise. The liquidation must
12 proceed as expeditiously as possible, and upon conclusion, the institution shall
13 surrender its charter. In lieu of continuing the liquidation under the original corporate
14 name, the institution may transfer the remaining assets to a trustee agreed upon by
15 the stockholders by a majority vote and upon so doing shall surrender the institution's
16 charter.

17 **SECTION 10. REPEAL.** Chapter 6-07 of the North Dakota Century Code is repealed.