TITLE 6
BANKS AND BANKING

CHAPTER 6-01
DEPARTMENT OF FINANCIAL INSTITUTIONS

6-01-01. Management and control - State department of financial institutions - Local ordinances pre-empted.

The state department of financial institutions is under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of financial institutions. The state department of financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota. A local governing body may not adopt or enforce a resolution or an ordinance regulating a financial institution, financial corporation, or credit union.

6-01-01.1. Regulatory fund established - Uses - Appropriation.

1. There is created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 13-04.1, 13-05, 13-08, 13-09, 13-10, and 13-11.
2. All moneys deposited in the financial institutions regulatory fund are reserved for use by the department of financial institutions to defray the expenses of the department in the discharge of its administrative and regulatory powers and duties as prescribed by law, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The department of financial institutions is responsible for the proper expenditures of these moneys as provided by law.
3. Any cash balance in the financial institutions regulatory fund after all current biennium expenditures are met must be carried forward in the financial institutions regulatory fund for the next succeeding biennium. The balance in this fund at the end of the current biennium, excluding fees collected for use in the next succeeding biennium, may not exceed twenty percent of the department's next succeeding biennial budget.
4. All moneys derived from the investment of any portion of the financial institutions regulatory fund must be credited to the fund.

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.
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.
14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
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.
16. "Financial corporation" means all entities regulated by the department of financial institutions, excluding financial institutions and credit unions.
17. "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.
18. "Market value" means the highest price for which property can be sold in the open market by a willing seller to a willing purchaser, neither acting upon compulsion and both exercising reasonable judgment.
19. "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.
20. "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.
21. "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].
22. "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.
23. "Technology service provider" includes any person that provides services to a financial institution, financial corporation, or credit union, including: core processing; information and transaction processing and settlement activities that support banking functions such as lending, deposit-taking, funds transfer, fiduciary, or trading activities; internet-related services; security monitoring; and system development and maintenance.
24. "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, 2011.
25. "Trust company" means any corporation formed for the purpose of transacting business as an annuity, safe deposit, surety, or trust company.

6-01-03. State banking board and state credit union board.

1. The state banking board consists of the commissioner and six members to be appointed by the governor, four of whom must each have had at least five years'

experience in an executive capacity in the management of a state bank in the state of North Dakota, one of whom must have at least five years' experience in an executive capacity in the management of any state or national bank in North Dakota, and one of whom must be a laymember from the public at large. The term of office of the members of the board, other than the commissioner, is for a period of five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the vacancy must be filled by appointment by the governor for the unexpired term. The commissioner is the chairperson of the board and the attorney general is, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary. The board shall hold regular meetings in January, March, May, July, September, and November of each year and special meetings at the call of the commissioner in such place as the commissioner may designate within the state of North Dakota. The members of the board, other than the commissioner, shall receive one hundred dollars per day while attending meetings, or in the performance of such special duties as the board may direct. Expense reimbursements for meals, lodging, and transportation must be at the same rate as those allowed state employees.

2. The state credit union board consists of the commissioner and four members to be appointed by the governor. Two of the members of the state credit union board must have at least five years' experience as an officer, director, or committee member of a North Dakota state-chartered credit union, one member of the board must have had at least five years' experience as an officer, director, or committee member of a state-chartered or a federally chartered credit union, and one member of the board must be a laymember from the public at large. The term of office of appointed board members is five years. In case of a vacancy in the board, by death, resignation, or removal of an appointed member, the governor shall appoint an individual to fill the vacancy for the unexpired term. The commissioner chairs the board and the attorney general is, ex officio, the attorney for the board. The assistant commissioner shall serve as its secretary. The members of the state credit union board are entitled to receive the same remuneration as is provided for the members of the state banking board. The state credit union board shall hold meetings in March, June, September, and December of each year and special meetings at the call of the commissioner in such places as the commissioner may designate within the state.
3. The word "board" when used in this title includes the state banking board and the state credit union board.

6-01-04. Powers and duties of the state banking board and state credit union board.

The state banking board may adopt rules for the government of financial institutions and trust companies mentioned in section 6-01-01 to the extent the rules do not conflict with any law of this state or of the United States. The state banking board shall make and enforce such orders as are necessary or proper to protect the public and the depositors or creditors of those financial institutions and trust companies.

The same powers are given to the state credit union board with reference to credit unions as are granted to the state banking board with reference to financial institutions and trust companies named in this chapter.

6-01-04.1. Removal of officers, directors, and employees of financial corporations or institutions.

1. The department of financial institutions or the board may issue and serve, upon any current or former officer, director, or employee of a financial corporation, financial institution, or credit union subject to its jurisdiction and upon a financial corporation, financial institution, or credit union involved, an order stating:
   a. That the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:
      (1) Violating any law, regulation, board order, or written agreement with the board.
      (2) Engaging or participating in any unsafe or unsound practice.

(3) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

b. The term of the suspension or removal from employment and participation within the conduct of the affairs of a financial corporation, financial institution, or credit union.

2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the current or former officer, director, or employee of a financial corporation, financial institution, or credit union. The current or former officer, director, or employee may waive the thirty-day notice requirement.
3. If no hearing is requested within twenty days of the date the order is served upon the current or former officer, director, or employee, or if a hearing is held and the board finds that the record so warrants, and if the board finds that a financial corporation, financial institution, or credit union has suffered or will probably suffer significant loss or other significant damage or that the interest of its depositors, shareholders, members, or creditors could be seriously prejudiced, it may enter a final order suspending or removing the current or former officer, director, or employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon service on the current or former officer, director, or employee and upon a financial corporation, financial institution, or credit union. A consent order is effective as agreed.
5. Any current or former officer, director, or employee suspended or removed from any position pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, or credit union or any other entity licensed by the department of financial institutions until the suspension or removal is terminated by the department of financial institutions or board.
6. When any current or former officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation, financial institution, or credit union is charged with a felony in state or federal court, involving dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in a financial corporation's, financial institution's, or credit union's affairs. The order is effective immediately upon service of the order on a financial corporation, financial institution, or credit union and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction, a federal pretrial diversion, or similar state order or judgment is entered, the board may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner or the board from pursuing administrative or civil remedies.

6-01-04.2. Cease and desist orders.

1. The department of financial institutions or the board may issue and serve upon a financial corporation, financial institution, or credit union subject to its jurisdiction a complaint stating the factual basis for the department's or board's belief that the financial corporation, financial institution, or credit union is engaging in any of the following conduct:
   a. An unsafe or unsound practice.
   b. A violation in the past or on a continuing basis of any law, regulation, board order, or written agreement entered into with the board.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the financial corporation, financial institution, or credit union. The financial corporation, financial institution, or credit union may waive the thirty-day notice requirement.

3. If the financial corporation, financial institution, or credit union fails to respond to the complaint within twenty days of its service, or if a hearing is held and the board concludes that the record so warrants, the board may enter an order directing the financial corporation, financial institution, or credit union to cease and desist from engaging in the conduct which was the subject of the complaint and hearing and to take corrective action.
4. The commissioner or the board may enter an emergency, temporary cease and desist order if the commissioner or the board finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation, financial institution, or credit union, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation, financial institution, or credit union. An emergency, temporary cease and desist order is effective immediately upon service on the financial corporation, financial institution, or credit union and remains in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. The financial corporation, financial institution, or credit union upon which such an order is served may apply to the district court of the county in which the financial corporation, financial institution, or credit union is located for an order enjoining the operation of the emergency, temporary order. The application for injunction and procedure upon application must comply with the requirements of section 6-07-14.

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

1. The commissioner or the board may assess a civil money penalty against a financial institution, financial corporation, or credit union, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial corporation, financial institution, or credit union upon finding one or more of the following:
   a. Failure to comply with a permanent or temporary cease and desist order that has been voluntarily consented to or issued pursuant to section 6-01-04.2;
   b. Failure to comply with a final order that has been voluntarily consented to or issued following formal proceedings under chapter 28-32;
   c. Payment of dividends in violation of section 6-03-36;
   d. Loans and leases to one borrower or concern which exceed the limitations set forth in sections 6-03-59 and 6-03-59.1;
   e. Loans to directors, officers, and employees in violation of section 6-03-60;
   f. The intentional filing of inaccurate or misleading call reports required by section 6-03-70 or 6-06-08;
   g. Violations of loan limitations under subsection 1 of section 6-06-12 or North Dakota Administrative Code section 13-03-16-03, 13-03-16-05, or 13-03-16-08;
   h. Loans in violation of section 6-06-14 or subsection 2 of section 13-03-16-02 of the North Dakota Administrative Code or subsection 2 of section 13-03-16-05 of the North Dakota Administrative Code; or
   i. Failure to file notice of change of control under section 6-08-08.1.
2. The commissioner or the board commences administrative proceedings to assess civil money penalties by serving a complaint on the respondent stating the factual basis for the commissioner's or board's belief that a violation has occurred and the amount of civil penalties that the complaint seeks to impose. The complaint must contain a notice of an opportunity for an administrative hearing conducted under chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the respondent. If assessment of civil money penalties are proposed based on conditions described in subdivisions c through i of subsection 1, a complaint may not be filed unless the respondent has been provided with prior orders, examination reports, or other written communications, and has willfully refused to take corrective action that the respondent was capable of taking at the time.

3. If the respondent fails to answer the complaint within twenty days of its service, the commissioner or board may enter an order imposing civil money penalties upon the respondent. If a hearing is held and the board concludes that the record so warrants, the board may enter an order imposing civil money penalties upon the respondent. The assessment order is effective and enforceable immediately upon service or upon a date specified in the order, and remains effective and enforceable until it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.
4. In determining the amount of civil penalty imposed, the commissioner or board shall consider whether good faith was exercised, and the gravity of the violation and any previous violations. The commissioner or board may not impose a civil money penalty in excess of five thousand dollars for each occurrence and one hundred dollars per day for each day that the violation continues after service of an order. Any civil money penalties collected under this section must be paid to the department of financial institutions and deposited in the financial institutions regulatory fund.

6-01-04.4. Prompt corrective action.

The board may enter an order if the board finds that a state bank is undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purpose of this section, undercapitalized, significantly undercapitalized, and critically undercapitalized have the same definition as found in title 12, Code of Federal Regulations, part 324, section 403. The order may require an undercapitalized state bank to take prompt corrective action as the board determines reasonable to bring the bank to an adequately capitalized condition, including the submission and implementation of an acceptable capital restoration plan. For a significantly or critically undercapitalized state bank, the board may issue a temporary cease and desist order appointing a receiver, or with the consent of the federal deposit insurance corporation appoint a conservator or take such other action as may be better to resolve the problems of the state bank consistent with section 38 of the Federal Deposit Insurance Act of 1991 [Pub. L. 102-242; 105 Stat. 2253; 12 U.S.C. 1831o et seq.], in effect on July 22, 2010. A bank that has been served with a complaint requesting the state banking board to issue a prompt corrective action under this section may request a hearing before the board within five days after service of the complaint upon the bank. A request for a hearing must be granted and the hearing must be held not later than ten days after the request is filed with the board. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board may issue an order. The bank may appeal the board's order under this section to the district court of Burleigh County, North Dakota, within ten days after the board's order is served on the bank. The appeal is governed by chapter 28-32.

6-01-04.5. Investigation of bank holding companies.

The department may investigate a bank holding company that owns or controls a North Dakota state chartered financial institution upon the commissioner's receipt of information material to the safety and soundness of the bank holding company, and may pursue and impose penalties under sections 6-01-04.1, 6-01-04.2, and 6-01-04.3 against such a bank holding company.

6-01-05. Taking of testimony and enforcement of orders.

The state banking board, the state credit union board, the commissioner, and the deputy examiners each have the power to subpoena witnesses, administer oaths, and generally to do and perform any and all acts and things necessary to the complete performance of the powers and duties imposed upon them in this title, and to enforce the provisions of law relating to financial corporations, financial institutions, and credit unions. For the purpose of enabling them to perform all the duties imposed upon them, the provisions of section 27-10-23 are applicable to their proceedings. Any and all orders made by the issuing board or commissioner are operative immediately and remain in full force until modified, amended, or annulled by the issuing board, commissioner, or by a court of competent jurisdiction in an action commenced by the party against whom such order has been issued.

6-01-06. Appointment of receivers.

The state banking board and state credit union board, except as otherwise provided in this title, have authority and power to appoint, by their own order, receivers for insolvent financial institutions and credit unions under their regulatory supervision. Such receivers have the same power and authority, and their acts have the same validity, as if they had been appointed under and by the direction of a district court. Nothing herein contained may be construed so as to take away from the courts the power to appoint receivers of such financial institutions and credit unions at any stage of the proceedings and thus to terminate the receivership ordered by the board.

6-01-07. Records of state banking board, state credit union board, and commissioner.

The state banking board and state credit union board shall keep a full and complete record of all their proceedings and of all orders made by them. The records and the proceedings of the boards and commissioner are open in accordance with sections 44-04-18 and 44-04-19. All reports, except supervisory reports of examination, made by or filed with the board or the commissioner relating to any financial institution, must be open to inspection and examination by stockholders, shareholders, depositors, creditors, and sureties on any bonds of any such institution or on the bonds of any officer or employee thereof, subject, however, to the following restrictions:

1. A stockholder, shareholder, depositor, creditor, or surety of any institution desiring to inspect the information specified above of any institution shall make a written request for the inspection.
2. A written request must:
   a. Specify the information to which access is requested; and
   b. Give the reasons for the request.
3. Upon written request, the commissioner, or any person designated in writing by the commissioner, may disclose information specified in subsection 1 of section 6-01-07.1 only upon determining and to the extent that good cause exists for the disclosure.
4. Either prior to or at the time of any disclosure, the commissioner or designee shall impose such terms and conditions as the commissioner deems necessary to protect the confidential nature of the information, the financial integrity of the financial institution to which the information relates, and the legitimate privacy interests of any individual named in the information.

6-01-07.1. Records - Confidential.

1. All facts and information obtained by the commissioner or the department in the following ways are confidential, except as provided in subsections 2 through 7:
   a. In the course of examining financial institutions, credit unions, and other licensed entities under the supervision of the commissioner, or in the course of receiving audit reports, reports of examining committee and reports of annual meetings of stockholders and directors of such institutions and licensees. The reports of examination may be made available to the financial institution's or licensee's board of directors, or the board's specifically authorized agents or representatives, but the reports remain the property of the department.
   b. From the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, or any state bank or credit union supervisors or supervisors of other licensed entities of other states.
   c. In the course of investigating an institution under the supervision of, or licensed by, the commissioner, until such investigation is complete.
   d. In the course of a special investigation being carried out at the request of the governor or any court.
   e. In the form or nature of an application for a charter, license, or permission which meets any of the following criteria:
      (1) Trade secrets and commercial or financial information.
      (2) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(3) Information contained in the application form which is in the nature of examination report information.

Determination of what required application information falls within each category must be made by the body before which the application is brought.

2. When the commissioner is required or permitted by law to report upon or take special action regarding the affairs of any institution or licensed entity under the commissioner's supervision, the commissioner shall divulge only such information specified in subsection 1 as is necessary and sufficient for the action taken or to be taken.
3. The commissioner may furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession.
4. The commissioner may furnish information and enter sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, any other federal government agency, insurance commissioner, office of the securities commissioner, regulatory trade associations, any state bank or credit union supervisors or supervisors of other licensed entities of other states, or a nationwide multistate licensing system.
5. The commissioner shall not be required to disclose the name of any debtor of any financial institution, credit union, or licensed entity reporting to or under the supervision of the commissioner or anything relative to the private accounts, ownership, or transactions of any such institution, or any fact obtained in the course of any examination thereof, except as herein provided.
6. This section does not limit the right of access of stockholders, shareholders, depositors, creditors, and sureties on bonds to specified department records as, and to the extent, provided by section 6-01-07.
7. The standards for confidentiality and disclosure by the commissioner set forth in this section, except the standard of the exercise of discretion, which shall only be exercised by the commissioner, apply equally to the state banking board, the state credit union board, and all department employees.

6-01-08. Appointment of commissioner - Qualifications.

The commissioner must be appointed by the governor and confirmed by the senate, and shall hold office for a term of four years and until a successor has been appointed, confirmed by the senate, and has qualified, unless the commissioner is removed sooner as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner's term of office commences on the first day of July in each year next following a national presidential election. The commissioner must be a skilled accountant, and may not be an incumbent of any other public office in the state, or in any county, municipality, or public institution thereof, and may not own, hold, or control any stocks, capital, or bonds, or hold the office of trustee, assignee, officer, agent, or employee of any financial institution under the commissioner's jurisdiction, or of any corporation engaged in the business of guarantying or ensuring the fidelity or faithful performance of the duties or the solvency of public officers or of public depositaries. The governor may remove from office any commissioner who violates or fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

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

The commissioner shall exercise a constant supervision over the business affairs of all financial corporations, financial institutions, and credit unions, including all out-of-state branches of financial corporations, financial institutions, and credit unions. Either the commissioner or one or more examiners shall visit each financial institution at least once each thirty-six months to examine its affairs and ascertain its financial condition. The commissioner shall inspect and verify the assets and liabilities of the institution and branches to ascertain with reasonable certainty that the value of the assets and the amounts of the liabilities are correctly carried on its books. The commissioner shall examine the validity of mortgages held by savings institutions and shall see that all of the mortgages are properly recorded. The commissioner shall investigate the method of operation and conduct of the corporations and institutions and their systems of accounting to ascertain whether the methods conform to the law and sound banking usage and principles. The commissioner shall inquire into and report any infringement of the laws governing those corporations and institutions, and for that purpose the commissioner may examine the officers, agents, and employees of the corporations and institutions and all persons doing business therewith. The commissioner may examine, or cause to be examined, or review the books and records of any subsidiary corporation of a bank under the commissioner's supervision and may require the bank to provide information on the holding company that owns the bank. The commissioner may also examine, or cause to be examined, or review the books and records of any technology service provider that provides services to financial corporations and financial institutions under the commissioner's supervision, to evaluate that entity's risk management systems and controls and compliance with applicable laws that affect such services provided to financial corporations and financial institutions. The commissioner shall report the condition of the corporations and institutions, together with the commissioner's recommendations or suggestions in connection therewith, to the state banking board, and the board may take such action as the exigencies may demand.

6-01-10. Commissioner to keep records and make reports - Biennial report.

1. The assistant commissioner shall act as secretary and keep all proper records and files pertaining to the duties and work of the department of financial institutions and the proceedings of the board. The commissioner shall report to the board annually, touching on all the commissioner's official acts and those of the deputy examiners, giving abstracts of statistics and of the conditions of the various institutions to which the commissioner's duties relate, and making such recommendations and suggestions as the commissioner may determine proper.
2. The state banking board shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the banking board's report must include a summary or abstract of the reports of the commissioner.
3. The commissioner shall report to the state credit union board annually in the same manner as this section provides for the commissioner's report to the state banking board. The state credit union board shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04, and in addition, the credit union board's report must include a summary or abstract of the reports of the commissioner.
4. The biennial reports of the state banking board and the state credit union board shall be published in the form of a combined biennial report of the department of financial institutions. The biennial report of the department shall be submitted to the governor and the secretary of state in accordance with section 54-06-04. The biennial report of the department must include all other biennial reports which the commissioner or the boards are required by law to submit to the governor and the office of management and budget.

6-01-11. Salary of commissioner.

The salary of the commissioner must be within the amount appropriated for salaries by the legislative assembly. The commissioner is allowed, in addition to the commissioner's salary, the

commissioner's necessary and actual expenses incurred in the discharge of the commissioner's official duties. The commissioner's salary and expenses must be audited and paid in the manner in which the salary and expenses of other state officers are paid.

6-01-12. Bonds of commissioner and deputies.

Repealed by S.L. 1999, ch. 113, § 24.

6-01-13. Commissioner - Appointment of assistant commissioner and assignment of titles within the department.

The commissioner may appoint, remove, and assign appropriate titles to such deputy examiners and such other employees as in the commissioner's judgment may be necessary for the proper discharge of the business of the department of financial institutions. The commissioner may select and designate one of said deputy examiners to be the assistant commissioner to act during the absence or disability of the commissioner, and in such cases the assistant commissioner so designated has charge of the office and shall administer its affairs. The assistant commissioner shall perform such duties as may be prescribed by the commissioner.

6-01-14. Deputies controlled by commissioner - Reports.

Each deputy examiner provided for in this title is under the direct orders and instructions of the commissioner, and shall report to the commissioner during or immediately after the completion of each examination of each financial corporation, financial institution, or credit union examined by the deputy examiner, together with such recommendations and suggestions as the deputy examiner may deem advisable. Such report must be in such form as may be prescribed by the commissioner, the state banking board, or state credit union board.

6-01-15. Officers and employees to be disinterested.

1. No officer or employee of this department may have any interest, directly or indirectly, in any financial corporation or financial institution within the jurisdiction of the department of financial institutions, nor in any corporation or institution engaged wholly or in part in the writing or issuing of bonds of or for any such corporation or institution or any officer or employee thereof. Provided, however, this prohibition does not apply to membership in a state-chartered credit union or savings and loan association.
2. For purposes of this section, "interest" means ownership of or investment in such corporations or institutions.

6-01-16. Salaries of commissioner's deputies.

The salary of the assistant commissioner and the salary of each other deputy must be fixed by the commissioner within the limits of the legislative appropriation for such salaries. In addition to the amounts herein specified, each deputy must be allowed the deputy's actual and necessary traveling expenses when engaged in the discharge of the deputy's duties. The salaries of all clerks, stenographers, and other assistants must be fixed by the commissioner within the limits of the legislative appropriation therefor.

6-01-17. Yearly assessment of banks and interstate branches.

Every state banking association and banking institution under the jurisdiction and control of the commissioner and the commissioner's deputy examiners by this title, including the Bank of North Dakota and every branch of an out-of-state state bank, shall pay a yearly assessment. This assessment is to be determined by the state banking board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered banks and branches of out-of-state state banks, including the authority to enter into cooperative fee sharing agreements and assessment of associated travel costs with other state bank supervisors. Assessment fees may not be computed on the combined assets of the bank and its trust department for those banks and branches exercising trust powers. Fees for the examination of the trust department must be computed in accordance with section 6-05-28. The assessment

must be paid to the department of financial institutions within thirty days of each June thirtieth. Institutions and branches that have not been examined by the commissioner or the state banking board for three years prior to any assessment date shall not be required to pay the assessment. If any such corporation or institution or branch is delinquent more than twenty days in making such payment, the board may make an order suspending the functions of such delinquent corporation, institution, or branch until payment of the amount due. The commissioner may assess a penalty of five dollars for each day that the assessment fee is delinquent. All fees and penalties under this section must be deposited with the state treasurer and deposited in the financial institutions regulatory fund.

6-01-17.1. Application fees - Cost of transcript.

The following fees must accompany an application presented to the state banking board, state credit union board, or commissioner and must be paid by the commissioner into the financial institutions regulatory fund:

1. For a certificate of authority to organize a banking association, a fee of five thousand dollars, paid by the applicants.
2. A banking association's application for authority to remove its business to some place within the state other than the town in which it is presently located and to change its name, a fee of two thousand five hundred dollars.
3. National bank conversion to a state bank, a fee of two thousand five hundred dollars.
4. Application by two or more banks to merge or consolidate, a fee of one thousand five hundred dollars.
5. Application by a person to sell, dispose, or purchase an association, banking institution, or holding company, a fee of five hundred dollars unless a hearing is held before the board in which case the fee is two thousand dollars.
6. A banking association's application to establish and operate a separate facility, a fee of one thousand five hundred dollars. A banking institution that discontinues a facility established for the purpose of providing educational opportunities to a high school is entitled to a refund of any application fee paid.
7. A banking association's application to establish customer electronic funds transfer centers, a fee not to exceed five hundred dollars.
8. For a certificate of authority to organize an annuity, safe deposit, surety, or trust company, a fee of five thousand dollars.
9. A banking association's application for authority to exercise trust powers, a fee of one thousand five hundred dollars.
10. Application to organize a credit union, a fee of three hundred dollars, paid by the applicants.
11. Application for a credit union to establish a branch, a fee of three hundred dollars.
12. Application by a credit union to expand its field of membership, a fee of one hundred fifty dollars.
13. Application by a federal credit union to convert to a state credit union, a fee of three hundred dollars.
14. For a certificate of authority to organize a savings and loan association, a fee of five thousand dollars.
15. A savings and loan association's application to establish and operate a branch office, a fee of one thousand five hundred dollars.
16. A trust company's application or notification to establish an operating subsidiary or branch office, a fee of five hundred dollars.
17. Application by two or more credit unions to merge, a fee of three hundred dollars.

The commissioner may cause a certified transcript to be prepared for any hearing conducted on an application. The costs for the original and up to six copies of the transcript must be paid by the applicant.

6-01-17.2. Additional assessment of banks and interstate branches.

If the commissioner determines that more than one visit, inspection, or examination is necessary to promote the safety and soundness of a state banking association or a branch of

an out-of-state state bank during a twelve-month period, the state banking association or branch shall pay to the state treasurer a fee for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with each additional visit, inspection, or examination and report of examination and for time used by each deputy examiner, or other person in making and otherwise preparing and typing the reports of examination herein provided for. Fees for the visit, inspection, or examination must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visit, inspection, or examination provided for by this section. A state banking association or branch of an out-of-state state bank shall pay such assessment or fee within ten days of receiving a billing from the commissioner. Fees must be deposited in the financial institutions regulatory fund. The state treasurer shall report the payments of fees to the commissioner, and if any corporation or institution or branch is delinquent more than twenty days in making the payment, the board may make an order suspending the functions of the delinquent corporation or institution or branch until payment of the amount due. The commissioner may assess a penalty of five dollars a day additional for the delay. The state banking board may waive or postpone the collection of this special assessment if the assessment would place an undue burden on the state banking association or branch.

6-01-18. Reports and examinations of institutions by federal deposit insurance corporation, other state supervisors, or federal reserve system.

The commissioner may accept, in lieu of any examination authorized or required by this title to be conducted by the department of any banking institution, the examination that may have been made of the institution within a reasonable period by the federal deposit insurance corporation, any other state supervisor, or the federal reserve system, if a copy of the examination is furnished to the commissioner. The commissioner also may accept any report relative to the condition of any banking institution which may have been obtained by that corporation or system within a reasonable period in lieu of any similar report that the commissioner is authorized by this title to require of the institution, if a copy of the report is furnished to the commissioner. The commissioner may furnish to the corporation or system, or to any official or examiner, a copy or copies of any or all examinations made of any banking institutions and of any or all reports made by them, and may give access to and disclose to the corporation or system, or any official or examiner, any and all information possessed by the office of the commissioner with reference to the conditions or affairs of any institution insured with the federal deposit insurance corporation. This section does not limit the duty of any banking institution in this state, the deposits of which are to any extent insured under the provisions of the federal Act creating the federal deposit insurance corporation, or of any amendment of or substitution for that Act, to comply with the provisions of that Act, its amendments or substitutions, or the requirements of the corporation relative to examinations and reports, nor limit the powers of the commissioner with reference to examinations and reports under this title.

6-01-19. Commissioner to keep bank record.

The commissioner shall keep a bank record wherein must be recorded the name and location of each bank in the state, its capitalization and changes thereof, its officers, its shareholders and addresses thereof, and its reserve agents, and changes of the same, and the commissioner shall keep in docket form such other proceedings as may have been had relative to such bank by the state banking board and by the commissioner.

6-01-20. Bank of North Dakota entitled to records.

Repealed by S.L. 1997, ch. 80, § 2.

6-01-21. State agencies - Examinations - Fees.

Repealed by S.L. 1959, ch. 372, § 117.

6-01-21.1. County agencies - Examinations - Fees.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-21.2. Municipal agencies, park boards, school districts - Examinations - Fees - Alternative audits.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-21.3. Examination of municipal agencies and school districts by order of governor or upon petition.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-21.4. Examination in case of irregularity or embezzlement.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-22. Examination of counties.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-23. Examinations of county treasurers.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-24. Supervision of records and fiscal affairs of counties.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-25. Supervision of books and accounts of public institutions and private institutions with which state has dealings.
The commissioner shall assume and exercise constant supervision over the books and financial accounts of the several public offices and institutions which the commissioner is authorized to examine. The commissioner shall prescribe and enforce a correct and uniform method of keeping financial accounts in such offices and institutions, shall recommend a form for warrants or for order-checks which must conform so far as consistent with statutory and charter requirements to approved banking practice, in order to facilitate handling of such instruments by banks and other depositories, and shall instruct the proper officer of each of said institutions in the due performance of the officer's duties concerning the same. The commissioner has authority to examine the books and accounts of all private institutions with which the state has any dealings so far only as the same relate to such dealings. If any public officer having control of any such office or institutions fails or refuses to comply with the directions of the commissioner, the commissioner shall report the facts to the governor and to the manager of the state bonding fund, and such refusal constitutes grounds for removal from office and cancellation of the bond of such officer.

6-01-26. Special state examiner.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-27. Duty of state examiner on failures by officers.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-28. Public and private officers to aid examiner - Examiner's authority on investigation.
Repealed by S.L. 1967, ch. 376, § 63.

6-01-29. Obstructing or misleading examiner - Penalty.
Every person who, when required to do so, shall refuse or neglect to make any return or exhibit, or to make or give any information required by the examiner, or who willfully shall obstruct or mislead the examiner in the execution of the examiner's duties, or who in any manner shall hinder a thorough examination by the examiner, shall be guilty of a class C felony.

6-01-30. Reports of commissioner - Contents.

The commissioner shall report to the governor the result of the commissioner's examination of any public office or state institution and also shall make a report on any particular matter connected therewith at any time when required to do so by the governor.

6-01-31. Certain accounts open for inspection.

Any person acquiring custody of, or receiving any funds for or on behalf of the state of North Dakota, or any of its political subdivisions, who places such funds in an account with any financial institution, banking association, or banking institution, or who commingles such funds with any private account, has waived all privilege of privacy or confidentiality on such accounts for the purposes of permitting an audit, examination, or inspection by the state auditor, commissioner of financial institutions, or the attorney general, as hereinafter provided.

Upon application and a reasonable showing by either the state auditor, the commissioner of financial institutions, or the attorney general that any account, private or otherwise, in any banking association, financial institution, or banking institution, contains funds belonging to the state of North Dakota or a political subdivision, whether or not commingled with private funds, the district court may issue its order making such accounts available for examination, audit, or inspection by the state auditor, the commissioner of financial institutions, or the attorney general. No financial institution, banking association, or banking institution is subject to damages for giving information on, or making such account available for inspection, audit, or examination pursuant to this section.

In addition to any other presumptions, any check, draft, or other comparable instrument is presumed to represent public funds of the state, or a political subdivision, as the case may be, if it is payable to a person identified as an official of the state or a political subdivision.

6-01-32. Liability of bank officers and directors.

No claim or action seeking to recover money damages may be brought by the federal deposit insurance corporation, resolution trust corporation, or other federal banking regulatory agency against any director or officer, including any former director or officer, of any insured financial depository institution unless the claim or action arises out of the gross negligence, or willful or intentional misconduct of the officer or director during the term of office with the insured financial institution.