CHAPTER 6-03
POWERS, MANAGEMENT, AND OPERATION OF BANKS

6-03-01. Powers before receipt of certificate of authority.

No association may transact any business, except such as is incidental and necessarily preliminary to its organization, until it has been authorized by the secretary of state to commence the business of banking and has received a certificate of authorization, and such certificate has been returned by the commissioner with the commissioner's certificate that the capital stock and required surplus have been paid in full, that federal deposit insurance corporation insurance of deposits has been secured, and that all conditions of the law have been strictly complied with.

6-03-02. Powers.

After an association has made and filed articles of association and an organization certificate, it becomes a body corporate, and as such, and in the name designated in the certificate, it, subject to section 6-03-01, has the power to:

1. Have a perpetual existence, unless it is sooner dissolved according to the provisions of this title, or unless its franchise becomes forfeited by a violation of law.
2. Make contracts.
3. Sue and be sued.
4. Elect or appoint directors, such board to consist of any number of members, not less than three nor more than twenty-five, at least two-thirds of whom must be citizens of the United States, and, by such board of directors, to appoint a president, who must be a member of said board, and such other employees as may be required, to define their duties, to require bonds of them and fix the penalty thereof, and to dismiss such officers and employees, or any of them, and appoint others to fill their places.
5. Provide, by its board of directors, bylaws not inconsistent with the laws of this state to regulate the manner in which its directors and officers must be elected or appointed. Vacancies in the board of directors, not exceeding one-third of the whole membership thereof in any calendar year, must be filled by a majority vote of the remaining members. The bylaws must provide a method for filling vacancies exceeding that number.
6. Provide, by its board of directors, bylaws not inconsistent with the laws of this state to regulate the manner in which its stock and property must be transferred, its business conducted, and the privileges granted to it by law exercised and enjoyed.
7. Exercise, as determined by the board by order or rule, all the incidental powers as are necessary to carry on the business of banking, including discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; loaning money upon real or personal security, or both; soliciting and receiving deposits in the nature of custodial accounts for the purpose of health savings or similar health care cost funding accounts, retirement fund contracts, or pension programs, and such custodial accounts are exempt from chapter 6-05; and providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide those services within this state. A bank that provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make the equipment and service available for use by customers of any other bank upon the request of the other bank to share its use and the agreement of the other bank to share pro rata all costs incurred in connection with its installation and operation, and the electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. The electronic operations at premises separate from its banking house or duly authorized facility must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board adopts.

8. Enter into contracts, incur obligations, and generally to perform all acts necessary or appropriate to take advantage of any and all memberships, loans, subscriptions, contracts, grants, rights, or privileges which may be or become available or may inure to banking institutions or to their depositors, creditors, stockholders, conservators, receivers, or liquidators under the provisions of the federal Act creating the federal deposit insurance corporation or under any other Act or regulation of Congress to aid, regulate, or safeguard banking institutions and their depositors, including any amendments thereto or substitution therefor, when authorized so to do by its board of directors.
9. Subscribe for and acquire any stock, debentures, bonds, or other types of securities of the federal deposit insurance corporation and to comply with the lawful regulations and requirements from time to time issued or made by such corporation.
10. Take, receive, and hold United States postal savings deposits and to take any action necessary to procure the deposit of the same.
11. Enter into the business of dealing in securities and stock for the purpose of purchasing and selling such securities and stock without recourse, solely upon the order, and for the account of individual and institutional customers and to provide portfolio investment advisory, management, information, forecasting, and research services to such customers in combination with or separate from such purchases and sales.
12. Exercise fiduciary powers upon application as provided under section 6-05-01 as the board may prescribe by rule.
13. Invest all moneys received by it in a trust, in authorized securities, and be responsible to the owner or a third-party beneficiary for the validity, regularity, quality, value, and genuineness of these investments and securities at the time made and for the safekeeping of these securities and the evidences of the securities. When special directions are given in any order, judgment, decree, will, or other written instrument as to the particular manner or the particular class or kind of securities or property in which any investment may be made, a bank shall follow this direction and, in such case, it is not further responsible by reason of the performance of the trust. A bank may retain and continue any investment and security or securities coming into its possession in any fiduciary capacity. For the faithful discharge of its duties and the discharge of its trust, it is entitled to reasonable compensation or an amount as has been or may be agreed upon by the parties and all necessary expenses, with legal interest on those amounts. The trustee may acquire and retain securities of any open-end or closed-end management type investment company or investment trust registered under the Federal Investment Company Act of 1940 [Pub. L. 76-686; 54 Stat. 789; 15 U.S.C. 80a-1 - 80a-52]. The fact that the banking institution, or an affiliate of the banking institution, is providing services to the investment company or trust as investment advisor, sponsor, broker, distributor, custodian, transfer agent, registrar, or otherwise and receiving compensation for the services does not preclude the trustee from investing in the securities of that investment company or trust. The banking institution and trust shall disclose to all current income beneficiaries of the trust the rate, formula, and method of the compensation, and the relationship of ownership. No compensation or commission paid or agreed to be paid to it for the negotiation of a loan or the execution of a trust may be deemed interest within the meaning of the law, nor may any excess thereof over the legal rate be deemed usury.

6-03-02.1. Indemnification by banking association.

Each banking association has the same power to indemnify as provided for business corporations in section 10-19.1-91.

6-03-02.2. Issuance of certificates of deposit - Penalty.

Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by financial institutions authorized to issue certificates of deposit and chartered to do business in this state under this chapter or as authorized under section 6-06-06.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

6-03-02.3. Parity for state and national banks.

Subject to authorization by the state banking board, acting by order or rule, a state bank has the same powers as a national bank and may engage directly or indirectly in any activity in which a bank could engage if the state bank were nationally chartered.

6-03-03. Directors - Qualifying shares - Issue and transfer.

Repealed by S.L. 1985, ch. 116, § 2.

6-03-04. Director's oath of office - Filing.

Every director, when elected or appointed, shall take an oath that the director shall, so far as the duty devolves upon a director, diligently and honestly administer the affairs of the association and will not knowingly violate or willingly permit to be violated any of the provisions of this title. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, at once must be transmitted to the commissioner to be filed in the commissioner's office.

6-03-04.1. Standard of conduct for directors of financial institutions.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the financial institution, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the financial institution.
2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
   a. One or more officers or employees of the financial institution whom the director reasonably believes to be reliable and competent in the matters presented;
   b. Counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
   c. A committee of the board upon which the director does not serve, duly established by the board as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a director who has specialized knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.
4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:
   a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose;
   b. Votes against the action at the meeting; or
   c. Is prohibited from voting on the action:
      (1) By the articles;
      (2) By the bylaws;
      (3) As the result of a decision to approve, ratify, or authorize a transaction that meets the standards and follows the process stated in section 10-19.1-51 for a business corporation; or
      (4) By a conflict of interest policy adopted by the board.
5. A director's personal liability to the financial institution or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles may not eliminate or limit the liability of a director:
   a. For any breach of the director's duty of loyalty to the financial institution or its shareholders;

b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
c. For illegal distributions which a director who is present and not disqualified from acting has voted for or failed to vote against;
d. For any transaction from which the director derived an improper personal benefit; or
e. For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

6. In discharging the duties of the position of director, a director may, in considering the best interests of the financial institution, consider the interests of the financial institution's employees, customers, suppliers, and creditors; the economy of the state and nation; community and societal considerations; and the long-term and short-term interests of the financial institution and its shareholders, including the possibility these interests may be best served by the continued independence of the financial institution.

6-03-05. Loans on real estate - Regulation - Limitation.

1. Before any real estate loan equal to or more than two hundred fifty thousand dollars is made, an appraisal must be conducted by a licensed or certified appraiser if required by the federal Financial Reform, Recovery, and Enforcement Act of 1989 [Pub. L. 101-73; 103 Stat. 512; 12 U.S.C. 3332 et seq.].
2. Before any real estate loan that does not meet the requirements of subsection 1 is made, a bank must obtain an appropriate evaluation of real property collateral for transactions if an appraisal by a licensed or certified appraiser is not obtained.
3. Regardless of the value of a real estate loan, the commissioner may issue an order requiring an appraisal by a licensed or certified appraiser when necessary to address safety and soundness concerns. Any real estate loan made must conform to loan-to-value limits as established by rule by the state banking board under chapter 28-32.

6-03-05.1. Additional optional loans and advances.

Repealed by S.L. 1991, ch. 84, § 1.

6-03-05.2. Agricultural loan amortization and deferral.

Expired under S.L. 1989, ch. 99, § 3.

6-03-06. Sale of real estate loans.

In selling or disposing of loans made upon real estate security, no association has power to guaranty the payment or collection thereof except as necessary to sell residential mortgage loans on the secondary market, and any such guaranty made in violation of this provision is not binding on the association but is upon the officer or other person making the same.

6-03-07. Investment in banking facility, furniture, and fixtures - Limitation.

A state banking association may not invest more than sixty-five percent of the amount of its unimpaired capital stock, surplus, and undivided profits in a banking facility, furniture, fixtures, and equipment without the approval of the commissioner or the state banking board.

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

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

1. Such as is mortgaged to it in good faith by way of security for loans or for debts previously contracted.
2. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.

3. Such as it purchases at sales under judgments, decrees, or mortgages held by the association or purchases to secure debts due to it.

Upon transfer to other real estate owned, a current appraisal must be conducted by an individual who is independent of the transaction. Notwithstanding other sections of this chapter, a bank may apply to the commissioner for authority to exchange its interest in real property acquired in satisfaction of a debt previously contracted for an interest in an entity that would dispose of the real property. If the commissioner's decision with respect to an application is unfavorable, the applicant bank may appeal the decision to the state banking board by filing a notice of appeal with the commissioner within twenty business days after the commissioner has notified the applicant bank of the decision.

6-03-09. Holding of real estate - Limitation.

No banking association may hold the possession of any real estate under mortgage, nor title and possession of any real estate purchased to satisfy indebtedness, for a longer period than five years from the date of acquiring title thereto unless such time has been extended by certificate of the commissioner.

6-03-10. Violation of powers - Penalty.

Any banking association violating the provisions of the preceding sections of this chapter relating to powers, at the discretion of the state banking board, shall forfeit its charter. Any officer, director, or employee who knowingly violates or permits the violation of any of such provisions is guilty of a class B misdemeanor.

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

Any two or more banking institutions upon making application to the state banking board may consolidate or merge if authorized by the board into one banking institution under the charter of either existing banking institution on such terms and conditions as lawfully may be agreed upon by a majority of the board of directors of each banking institution proposing to consolidate or merge subject to rules adopted by the state banking board. Before becoming final, such consolidation or merger must be ratified and confirmed by the vote of the shareholders of each such banking institution owning at least two-thirds of its capital stock outstanding at a meeting to be held on the call of the directors. Notice of such meeting and of the purpose thereof must be given to each shareholder of record by registered or certified mail at least ten days prior to the meeting. The shareholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. The capital stock and surplus of such consolidated banking institution must not be less than that required under this title for the organization of a banking institution of the class of the largest consolidating banking institution. Immediately after the consolidation or merger a full report thereof, including a statement of the assets and liabilities of the consolidated banking institution, must be made to the commissioner by the surviving banking institution. Any banking institution may without approval by any state authority convert into or merge or consolidate with a national banking association as provided by federal law. A national bank proposing to merge into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner and deposited in the financial institutions regulatory fund.

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

All of the rights, property, franchises, and interests of the consolidating or merging bank or trust company are deemed to be transferred to and vested in the bank or trust company into which it is consolidated or merged without other instrument of transfer. The consolidated bank or trust company shall hold and enjoy the same and all rights, property, franchises, and interests in the same manner and to the same extent as were held and enjoyed by the bank or trust company so consolidated or merged therewith, including the holding and performing by any

bank or trust company of any and all trust and fiduciary relations whatsoever as to and for which either or any of the banks or trust companies so consolidating or merging may have been appointed, nominated, or designated by any will, agreement, conveyance, or otherwise, whether or not such trust or fiduciary relationship has come into being or has taken effect at the time of the consolidation or transfer. The merging bank or trust company, however, shall transfer all of its real property to the consolidated bank or trust company by good and sufficient deed of conveyance, and for that and other purposes, it remains a body corporate until dissolved in the manner provided in chapter 6-07, or if no assets or liabilities remain, until the certificate is canceled by the secretary of state.

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

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

6-03-13.1. Separate facilities authorized.

Upon compliance with section 6-03-13.3, any bank organized under chapter 6-02 and under the supervision of the state banking board, and any national bank doing business in this state, may maintain and operate separate and apart from its banking house facilities, in addition to such service at its main banking house. Any activity incidental to the business of banking may be transacted at a separate facility, including receiving deposits of every kind and nature, cashing checks or orders to pay, issuing exchange, making loans, renting safe deposit boxes, exercising fiduciary powers if authorized by the board, and receiving payments payable at the bank. Whenever any banking institution that has been granted approval to establish and maintain a facility deems it advisable to discontinue the maintenance of the facility, the banking institution may apply to the commissioner or state banking board for cancellation and the commissioner or board may order the cancellation approval within the time the board specifies. The banking institution shall provide notice of the application as required by the board by rule.

6-03-13.2. Further limitations upon facility.

Repealed by S.L. 1991, ch. 86, § 4.

6-03-13.3. Facts considered for approval.

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

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

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

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

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

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

6-03-13.4. Effect of authority.

Every paying and receiving station, banking house or office, or drive-in and walkup facility existing on August 1, 1996, must be considered a separate facility approved by the state banking board or the comptroller of the currency, as the case may be, under this chapter. A facility approved under this section may continue to provide from the facility those services or functions as were permitted to be provided before August 1, 1996. National banking associations located in this state have the same, but no greater, right by virtue of sections 6-03-13.1 and 6-03-13.3 as banks organized under the laws of this state.

6-03-13.5. National bank, federal savings association, or state savings and loan association conversion to state bank.

A national bank, federal savings association, or state savings and loan association located in this state which follows the procedure prescribed by federal law to convert into a state bank must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, federal savings association, or state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A national bank, federal savings association, or state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund.

6-03-13.6. Branch conversions.

Notwithstanding section 6-03-13.1, any bank organized under chapter 6-02, any national bank doing business in this state, or any bank established in this state by any bank holding company doing business in this state as of January 1, 1995, may convert a branch of a federal savings and loan association located in this state which was in existence as of March 1, 1995, purchased by the bank between January 1, 1995, and August 1, 1996, into a facility of the bank to be maintained at the same branch location if the acquisition and conversion does not violate the deposit limitations provisions contained in sections 6-08-30 and 6-08.3-03.1 and the acquisition and conversion of the branch is approved by the appropriate regulatory agencies.

6-03-14. Paying and receiving stations authorized.

Repealed by S.L. 1995, ch. 79, § 24.

6-03-14.1. Maintenance of facilities of merged banks.
Repealed by S.L. 1995, ch. 79, § 24.

6-03-14.2. Subsidiary depository institutions as agents.
Any bank subsidiary of a bank holding company may receive deposits, renew time deposits, close loans, service loans, and receive payments on loans and any other obligations as an agent for a depository institution affiliate, subject to any requirements established by the board by rule. Notwithstanding any other law, a bank acting as an agent under this section may not be considered to be a branch of the affiliate. However, a depository institution may not conduct any activity as an agent that it is prohibited from conducting as a principal under any federal or state law.

6-03-15. Application to state banking board to establish stations.
Repealed by S.L. 1995, ch. 79, § 24.

6-03-15.1. Temporary relocation of bank operations.
In the event of an emergency, a bank may apply to the commissioner to relocate its main banking house or facility until the former location is repaired to allow bank operations to resume. No notice or public hearing need be held to act upon the temporary relocation request.

6-03-15.2. Operations during epidemic or emergency - Notice to commissioner.
A bank that operates physical facilities in any area that is experiencing an epidemic or other emergency may adjust the bank's operations in any manner that is reasonable to protect the bank's customers, employees, assets, or business. Under this section a bank may temporarily close or relocate offices, employees, or operations; restrict access to offices or services; and change the manner in which the bank provides banking services. A bank shall notify the commissioner of any actions the bank takes under the authority of this section. The bank shall give the commissioner notice promptly and in any case within three business days of the bank's decision to adjust the bank's operations. The notice must describe the bank's actions and the expected duration of the bank's adjusted operations. Unless extended by the commissioner, a bank's authority to change the bank's operations under this section may not exceed sixty days.

6-03-16. Investigation and procedure on application to establish station.
Repealed by S.L. 1995, ch. 79, § 24.

6-03-17. Transaction of business at and regulation of station.
Repealed by S.L. 1995, ch. 79, § 24.

6-03-18. When station must be discontinued - Revocation of permit.
Repealed by S.L. 1995, ch. 79, § 24.

6-03-19. Cancellation of station permit on application to board.
Repealed by S.L. 1995, ch. 79, § 24.

6-03-20. Impairment of capital - Notice to commissioner - Penalty.
The president, cashier, or other officer in active charge of any state banking association shall notify the commissioner immediately by certified mail of any impairment of capital or reduction of capital stock thereof, and any such officer failing so to do is guilty of a class B misdemeanor.

6-03-21. Impairment of capital - Dividends stopped - Action by board - Restoration.
Whenever the capital of any state banking association becomes impaired or the capital stock reduced below the amount required by this title or by the articles of incorporation, no dividend may be declared nor distribution of profits made thereafter while any debts of the association remain unsatisfied, nor until the impairment or deficiency is made good. Whenever it

appears that the capital of any state banking association has become impaired or its capital stock reduced, the commissioner shall report the same to the state banking board immediately. The commissioner thereupon shall issue and enforce the necessary order restraining the declaring of dividends and requiring that the impairment or deficiency be made good. The impairment or deficiency must be made good within sixty days thereafter, or the commissioner, upon the order or direction of the state banking board, may take charge of the state banking association and proceed to liquidate the association as in case of insolvency.

6-03-22. Impairment of capital - Stock assessments - Notice and limitation.

When the capital of any association becomes impaired or when its capital stock is reduced below the amount required by this title or its articles of incorporation, the board of directors of the association has the power, and it is its duty, immediately to make a pro rata assessment upon all the outstanding stock of the association to make good such impairment or deficiency, and to serve notice thereof by registered or certified mail upon each stockholder of record, directed to such stockholder at the stockholder's address last known to the board. Any such assessment or assessments may not exceed in the aggregate one hundred percent of the face value of the stock in the first year and may not exceed twenty-five percent in any succeeding year. The notice must specify the date on which the assessment is due and payable, and such date may not be less than ten days nor more than thirty days after the date of mailing the notice of assessment.

6-03-23. Capital stock may be increased.

Any association may provide, either by its articles of incorporation, by subsequent resolution, or by written agreement of the holders of a majority of its stock, for an increase in its capital stock from time to time subject to the limitations of this title. No increase in capital stock is valid until the whole amount has been paid in, in cash, and such payment certified under oath by the president or cashier of the association to the secretary of state, nor until the secretary of state executes a certificate specifying that this chapter has been complied with, the amount of the increase in capital stock, and that the increase has been paid in as part of the capital of the association, nor until a copy of such certificate has been filed with the state banking board.

6-03-24. Capital stock may be reduced.

Any association may reduce its capital stock to any sum not less than the amount required to authorize the formation of any association by vote of its shareholders owning two-thirds of its stock. No such reduction may be made, however, until the amount thereof proposed is reported to the state banking board and its approval in writing obtained. No such reduction may affect the liability of shareholders for any debts of the association incurred prior to the reduction, and every such reduction must be certified to and a copy of the certificate filed in the same manner as for an increase of capital stock before it becomes valid.

6-03-25. Approval of increase or reduction by stockholders - Notice of stockholders' meeting.

An increase or reduction of the capital stock of any association is not valid unless approved by the stockholders of the association at a meeting called for that purpose. Notice of the time and place of the meeting stating its object and the amount to which it is proposed to increase or reduce the capital stock of the association must be served personally or by registered or by certified mail on each stockholder of the association at least thirty days prior to the time set for such meeting. The notice must be given to stockholders whose places of residence are unknown or who are not residents of this state by publication of the notice at least once prior to the meeting in a legal newspaper of the county in which the principal office of the association is situated. A vote in favor of an increase in capital stock is not effective until the proceedings of the meeting showing the names of all of the stockholders voting for the increase and the amount of stock owned by each have been entered upon the records of the association.

6-03-26. Meeting not required when all stockholders agree in writing to increase or reduction.

If all the stockholders of an association agree in writing to an increase or reduction in its capital stock, no meeting need be called for the purpose of effecting the increase or reduction. The directors shall file such written agreement, together with the certificate required under sections 6-03-23 and 6-03-24, with the secretary of state, who thereupon shall issue the secretary of state's certificate that the provisions of this title have been complied with.

6-03-27. List of shareholders to be kept and filed.

1. The president of every banking institution formed pursuant to the provisions of this title, at all times, shall keep a true and correct list of the names and post-office addresses of all shareholders of such banking institution, with the amount of stock held by each, the date of transfer, and to whom transferred, which list shall be verified on the thirty-first day of December of each year. A copy of the verified list shall be filed in the office of the commissioner on the same date.
2. The commissioner may request at least annually a list of all shareholders of a bank holding company controlling a state-chartered banking institution.

6-03-28. Shares - Value and transfer - Shareholder's obligation.

The capital stock of each association must be divided into shares of not less than ten dollars each and is deemed personal property and transferable on the books of the association in such manner as may be prescribed by its bylaws or articles of incorporation. A transfer of shares is not valid except between the parties to the transfer until the transfer is entered upon the books of the association and is not valid against the association or any creditor of the association while the registered holder of the shares is indebted to the bank as principal debtor, surety, guarantor, or otherwise. No dividend, interest, or profit may be paid on any stock of the bank or bank holding company as long as any past-due liability of the shareholder continues, but such dividend, interest, or profit must be retained by the association and applied to the discharge of the past-due liability. Every person or corporation becoming a shareholder by any transfer shall succeed, in proportion to the shares acquired by that shareholder, to all rights and liabilities of prior holders of the shares existing by reason of ownership of the shares and no change may be made in the articles of incorporation or bylaws of the association by which the rights, remedies, or security of its existing creditors shall be impaired.

6-03-29. Responsibility of shareholders - Double liability.

Repealed by S.L. 1953, ch. 96, § 3.

6-03-29.1. Responsibility of shareholders.

Repealed by omission from this code.

6-03-30. Shareholder's liability - Limitation - Publication of notice.

Repealed by omission from this code.

6-03-31. Delinquent stock - Sale - Notice.

Whenever any shareholder or shareholder's assignee fails to pay any assessment of the stock when the assessment is required to be paid, the board of directors of the association may sell at public or private sale, whichever appears to it best for all concerned, so much of the stock, at the best price obtainable, as is necessary to pay the assessment and costs of the sale. The sale must be made on a day certain to be fixed by the board not less than thirty days after the day set for the payment of the assessment. Notice of the time and place of the sale must be given to the shareholder in the manner following:

1. In the event of a private sale, by forwarding the notice to the person or persons in whose name the stock stands on the books of the association, at least twenty days prior to the date fixed for the sale, by registered or certified mail addressed to the shareholder's address last known to the board of directors.

2. In the event of a public sale, by one publication of a notice thereof, at least twenty days prior to the date fixed for such sale, in a newspaper published in the county wherein the association is located.

A sale of stock as herein provided effects an absolute cancellation of the outstanding certificate or certificates in the hands of the delinquent shareholder, or the delinquent shareholder's assignee or pledgee, and a new certificate must be issued by the association and delivered to the purchaser for the number of shares purchased, and a new certificate for the remaining shares, if any, must be issued to the shareholder and delivered to the shareholder, or the shareholder's assignee or pledgee, upon the surrender of the original certificate or certificates involved. Any proceeds of such sale remaining after the delinquent assessment and the expenses of the sale have been fully paid must be paid over to the shareholder, or the shareholder's assignee or pledgee.

6-03-32. When no bids for purchase of delinquent stock.

If no bidder who will pay to the association the amount due on the stock and the costs and expenses of sale for the transfer of the stock to that person appears at the time and place set for the sale, no sale may be made, and all the shares of the shareholder must be forfeited to the association together with all amounts previously paid thereon. The association forthwith shall cancel such shares upon its books and records and shall deduct the same from its capital stock and immediately shall notify the commissioner in writing of the action taken. The record of the association's stock book showing the sale or cancellation of stock is prima facie evidence of the regularity of the proceedings of the sale or cancellation.

6-03-33. Loans on shares prohibited - Disposal of stock acquired.

No association or banking institution may make any loan or discount on the security of the shares of its own stock or of the stock of any holding company which controls the association or banking institution, nor be a purchaser or holder of any such shares, unless such security or purchase is necessary to prevent loss upon a debt previously contracted in good faith. Stock so acquired must be sold or disposed of at public or private sale within thirty days after it is acquired, and if not sold within such time, it must be canceled and deducted from the capital stock of the association, banking institution, or holding company, and the association, banking institution, or holding company shall notify the commissioner in writing of such cancellation. For the purpose of this section, "control" means ownership, or control directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of the association or banking institution, of the power to control in any manner the election of a majority of the directors of the association or banking institution, or to direct the management or policies of the association or banking institution.

6-03-34. Surplus fund required - Dividends only out of earnings not required for surplus.

The board of directors of any association organized under this title may declare and pay dividends out of the net profits of the association subject to the limitations of this chapter. Every such association, as its board of directors deems advisable, shall ascertain, set apart, and convert into a surplus fund at least fifty percent of its net earnings until such surplus fund equals one hundred percent of its common stock, and no dividend may be declared upon its stock except from the remaining fifty percent of its net earnings.

6-03-35. Surplus fund exempt from taxation.

The surplus fund of any association organized under this title, in an amount not exceeding one hundred percent of its capital stock, is exempt from taxation and must not be taken into account in determining the taxable value of the shares of stock of the association.

6-03-36. Capital must be maintained - Dividends prohibited under certain conditions.

1. No director or officer of an association may permit the impairment of an association's capital by the payment of dividends or otherwise.

2. Except as provided in subsection 4, no dividend may be paid which exceeds the following amount:
   a. An association's net profits for the period beginning January first of the year for which the proposed dividends are declared and ending as reported in the most recent quarter-end call report; plus
   b. The association's net profits for the preceding two calendar years as reported in the year-end call report; less
   c. Any required transfers to:
      (1) Surplus; and
      (2) Funds for the retirement of preferred stock, capital notes, and debentures.
3. For the purpose of this section, "net profits" means the institution's net profits after taxes prior to extraordinary items less dividends as reported on the call reports.
4. Payment of a dividend which exceeds the calculated amount in subsection 2 may be made only with prior approval of the commissioner or state banking board.

6-03-37. Reserve funds.

Every banking association shall have on hand at all times in available funds an amount which meets the requirements of the board of governors of the federal reserve system.

6-03-37.1. Bank loans of excess reserves.

Obligations representing loans from one business day to the next to any state-chartered bank or national banking association of excess reserve balances from time to time maintained under the provisions of section 6-03-37, as amended, may not be deemed loans or additions to any loans for the purposes of section 6-03-59.

6-03-38. Assets not to be used in other business - Exceptions - Penalty.

Except as otherwise authorized under this title, a bank may not employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may a bank employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, to the extent a bank subject to the laws of the federal government is permitted to do so, a state bank may purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount determined by the state banking board, but in no event more than ten percent of the bank's capital and surplus. A bank may not invest the bank's assets or funds in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market. A bank may invest in subsidiary organizations, when the activities of such organizations are incidental or complementary to the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary organizations, and to examine the organizations' records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, the state banking board may direct the bank to divest itself of such subsidiary investments. Any officer, director, or employee of any bank who invests or uses the bank's funds contrary to this title is guilty of a class A misdemeanor.

6-03-39. Investment in federal reserve bank stock authorized.

A bank shall have authority to invest such part of its funds in stock of the federal reserve bank of this district as may be necessary to permit the bank to become a member of the federal reserve association, and such stock may be carried as a part of the bank's assets.

6-03-40. Investment in capital stock of certain agricultural credit corporations authorized - Limitations.

Repealed by S.L. 1947, ch. 108, § 1.

6-03-40.1. Liquidation of investments in agricultural credit corporations - Penalty.

Repealed by S.L. 1969, ch. 108, § 1.

6-03-41. Issuance of capital notes or debentures - Not subject to double liability.

With the approval of the commissioner, any banking institution, through action by its board of directors taken at any time and without requiring any action by its stockholders, may issue and sell its capital notes or debentures. All capital notes or debentures are subordinate and subject to the claims of depositors, and at the time of issue may be subordinated and subjected to the claims of other creditors, but in no case may be subject to assessment. The holders of capital notes or debentures as such are not responsible individually for any debts, contracts, or engagements of the issuing institution.

6-03-42. Capital notes or debentures included in capital - Retirement.

The term "capital" as used in this title embraces the amount of outstanding capital notes and debentures legally issued by any banking institution. The capital stock of a banking institution is unimpaired when the amount of such capital notes and debentures as represented by sound assets exceeds the impairment as found by the commissioner. The commissioner must approve of any retirement of any capital notes or debentures and may require the bank to issue some other form of capital before retiring the capital notes or debentures.

6-03-43. Preferred stock authorized - Notice to and consent of stockholders.

Any banking institution, with the consent of the commissioner and upon the written consent of all of its stockholders, or by vote of its stockholders owning a majority of the stock of such institution, may issue preferred stock of one or more classes in such amount, upon such conditions and limitations and with such par value as shall be approved by the commissioner. When it is necessary to call a meeting of the stockholders to approve the issuance of preferred stock, the board of directors of the institution shall cause notice of the meeting to be served on each stockholder by registered or certified mail addressed to the stockholder's last-known post-office address at least sixty days prior to the meeting. After an institution has been authorized to issue preferred stock, its board of directors may make necessary amendments to the articles of incorporation of the institution. Notice to and approval by the stockholders of an institution which has not issued common stock is not required before preferred stock may be issued.

6-03-44. Preferred stock included in capital - Reduction of common stock.

The preferred stock lawfully issued by a banking institution must be included in determining whether such banking institution has complied with the minimum capital stock requirements provided in this title. Such preferred stock may be used in the capital structure of such institution in the reduction of the common stock or in addition thereto. This section may not be construed as in any manner decreasing the amount of capital required of an institution under the laws of this state.

6-03-45. Preferred stock - Rights of holders - Nonassessable.

The holders of preferred stock are entitled to all rights and privileges and are subject to all limitations and restrictions with respect to dividends, voting, conversion rights, control of management, retirement and replacement of stock, rights and preferences in case of liquidation, and such other rights or privileges as may be fixed and provided in the articles of incorporation of the issuing institution. Preferred stock is nonassessable, and the holders thereof individually are not responsible as such holders for any debts, contracts, or engagements of the bank.

6-03-46. Exchange of preferred stock for capital notes or debentures.

Any banking institution, after first obtaining the consent and approval of the commissioner, may exchange its preferred stock for its capital notes or debentures.

6-03-47. Investment in loans and obligations secured by federal or state government.

Banks, trust companies, the Bank of North Dakota, building and loan associations, insurance companies, and other organizations in this state whose mortgage lending is regulated by law, or that are duly qualified federal housing administration mortgagees, are authorized to make, buy, or sell any loan, advances of credit, and obligations representing loans and advances of credit that are insured or guaranteed, or where there is a commitment to insure or guarantee, in part or in full, or conditionally, by the United States, its instrumentalities, this state, or its instrumentalities.

6-03-47.1. Investment in loans secured by federal or state government.

Repealed by S.L. 1969, ch. 112, § 1.

6-03-47.2. Investments of state banks.

In addition to the other powers authorized by law under this title, any state banking association may invest its funds in:

1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a nationally recognized rating service approved by the commissioner, provided that the lesser of the book value or face value of the investments at the time of purchase may not exceed for any one corporation twenty-five percent of the unimpaired capital and surplus of the banking association.
2. Equity and debt instruments of corporations or projects designed primarily to promote community welfare such as economic rehabilitation and development of low-income areas, subject to approval and regulation of the state banking board but not to exceed for the total of all investments under this subsection, ten percent of the combined capital and surplus of the banking association.
3. Investments, in either equity or debt instruments or securities, offered by small business investment companies organized and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto.

6-03-47.3. Bank investment in investment company shares.

Financial institutions under the jurisdiction of the state banking board may invest in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permitted under this chapter. The state banking board may issue rules and regulations governing investments by North Dakota financial institutions in shares of registered investment companies.

6-03-47.4. Bank investment in federal agricultural mortgage corporation stock.

Financial institutions under the jurisdiction of the state banking board may invest in stock and equity instruments of the federal agricultural mortgage corporation. The state banking board may adopt rules governing investments by North Dakota financial institutions in the stock and equity instruments of the federal agricultural mortgage corporation.

6-03-48. Investment in notes or bonds secured by insured mortgage - Debentures of federal housing administrator authorized.

Banks, savings banks, trust companies, savings and loan associations, executors, administrators, guardians, trustees, and other fiduciaries, the state of North Dakota and its political subdivisions, institutions, and agencies thereof, and all other persons, associations, and corporations subject to the laws of this state may invest the funds and moneys in their custody

or possession eligible for investment in notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, in debentures issued by the federal housing administrator, and in securities issued by national mortgage associations.

6-03-49. Federal housing administrator - Insured bonds and notes - Debentures - Security for deposits.

Notes and bonds insured and debentures issued by the federal housing administrator are eligible as collateral to secure the deposit of public or other funds, as deposits with any public official or department, and for investment of capital, surplus, reserve, or other funds where such investment is limited to designated securities.

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

Subject to the approval of the state banking board, any bank may invest not more than ten percent of paid-in and unimpaired capital and unimpaired surplus in stocks, bonds, debentures, or other obligations of any North Dakota corporation organized as a bank service corporation having its principal place of business in the state and operated exclusively for the purpose of providing for such bank and one or more other banks, bank services which the banks would otherwise be required or permitted to provide for on an individual bank basis. The term bank services in this section includes services such as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed by a bank. Payment for rent earned, goods sold and delivered, or services rendered prior to the making of the payment is not an investment.

A bank service corporation may be chartered under the laws of this state with shareholders limited to state and national banks located within the state and corporations that are organized as associations of state and national banks located within the state to provide all the services, except deposit taking, that all the banks that are its shareholders can offer directly to their own customers at any place in the state where they can offer their services, including owning and administering a credit card program for customers of banks and engaging in activities incidental to banking services and other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long as such services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state.

6-03-50. Exceptions from restrictive provisions.

No law of this state requiring security upon which loans or investments may be made, or limiting the making of loans to shareholders or members of the lender, or prescribing the nature, amount or forms of such security, or prescribing or limiting interest rates upon loans or investments, or prescribing or limiting the period for which loans or investments may be made, may be deemed to apply to loans or investments made pursuant to sections 6-03-47, 6-03-48, and 6-03-49.

6-03-51. Borrowing, normal and emergency - Limitations.

Any state banking association has power to borrow money subject to the limitations of this chapter. Money borrowed from correspondent banks must be evidenced by the promissory note or notes of the borrowing association, and no such association may issue its certificate of deposit for money so borrowed or otherwise conceal the true nature of the transaction. Nothing herein affects the right of a state banking association to receive bona fide deposits from banks or other persons.

6-03-52. Borrowing and rediscounting - Authorization by directors.

No banking association may borrow money, rediscount paper with recourse on it, or pledge securities for money borrowed or rediscounted paper, except in accordance with express authority conferred by resolution of its board of directors indicating the officer or officers who are

authorized to borrow, rediscount, and pledge and the extent of their authority. Every such resolution must be entered in the minute book of the association, but a copy of such resolution certified as such by an officer of the association, authenticated by the seal of the association and accepted and acted upon by another bank or other lender in good faith is conclusive evidence of the existence and terms of the resolution.

6-03-53. Borrowing and rediscounting - Report required.

Whenever a state banking association borrows money or rediscounts with recourse such association shall immediately make a full written report of the transaction to the commissioner upon the commissioner's request, which report must include a full description of all collateral security given or to be given by such association for the credit obtained.

6-03-54. Pledge - Ratio to assets.

It is unlawful for any state banking association to pledge or hypothecate more than one and one-half dollars of the face value of any of its assets for each one dollar of money borrowed, except with written authority from the commissioner.

6-03-54.1. Pledges of bank securities to secure repayment of deposits by a federally recognized Indian tribe.

A bank, upon the deposit with it of funds by a federally recognized Indian tribe, or an officer, employee, or agent thereof in that person's official capacity, may give security for the safekeeping and repayment of the funds deposited by a pledge of securities of the same kind and to the same extent as is authorized by section 21-04-09 in the case of deposits of public funds by public corporations.

6-03-55. Powers of pledgee of bank assets.

Holders of pledged or hypothecated notes or other evidences of indebtedness pledged by state banking associations have the right to collect and enforce payment, and to renew or extend the time of payment thereof for a period not longer than fifteen months, if no endorser, guarantor, or joint maker would be released by such renewal or extension. Such holders also have the right:

1. To accept from the makers of such pledged or hypothecated notes or other evidences of debt, security, or additional security for the payment thereof.
2. To execute and give discharges and releases of instruments and securities to the maker upon payment in full thereof.
3. To sell, assign, and transfer any note with the security pledged therefor.

The pledgee is entitled to be reimbursed from the pledged assets, or from the proceeds of the sale thereof, for the reasonable and necessary expenses incurred and expended in collecting, renewing, securing, and otherwise protecting the assets pledged or hypothecated to the pledgee.

6-03-56. Unlawful borrowing, rediscounting, endorsing, pledging by officers, employees, and accessories - Penalty.

Any officer, director, agent, or employee of any state banking association who borrows money for, or on behalf or in the name of such association or obligates any such association upon rediscounted paper, or pledges any of the assets of such association in violation of the provisions of this chapter is guilty of a class A misdemeanor and is personally liable to the association for any loss it sustains on account of such illegal action, but no such violation may affect the validity of any loan, endorsement, or pledge in the hands of any federal reserve bank or federal lending agency or commercial bank correspondent who loaned money to the association or discounted its paper in good faith and in reliance upon a certified copy of a resolution complying with section 6-03-52.

6-03-57. Foreclosure of pledge contracts.

Except as otherwise provided in chapter 6-07, no pledge made by an association may be foreclosed except by an action in equity brought in the district court of the county in which the pledgor association is located, except where assets are pledged by a state banking association in order to secure borrowed money or the obligation of the association on rediscounted paper, the rights of the pledgee must be determined by the terms of the agreement of pledge, and if the pledged assets are outside of this state, the foreclosure of the pledge is governed by the laws of the state where the pledge is located.

6-03-58. Unlawful rediscounts, borrowings, and pledgings.

It is unlawful for any state banking association, either directly or indirectly, to make any rediscount or contract to borrow money, nor may it borrow money, nor pledge or hypothecate, nor contract to pledge or hypothecate, any of its assets except in accordance with the provisions of this chapter.

6-03-59. Loan limitation to one borrower or concern.

The total direct, indirect, or contingent liability of any borrower to any state banking association shall not exceed at any time twenty-five percent of the association's tier 1 capital as of the most recent report of condition and income. For the purpose of this section, the total liability of a borrower includes the liabilities of any separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source and any credit exposure to a borrower arising from a derivative transaction, repurchase agreement, reverse repurchase agreement, securities lending transaction, or securities borrowing transaction between the state banking association and the borrower.

6-03-59.1. Leasing of personal property - Limitation on term and amount.

A bank may become the owner and lessor of personal property upon the specific request of and for the use of a customer. The term of the lease may not exceed twenty years and all such leases must provide for the payment of at least annual rentals, the total of which must at least equal the cost to the bank of the personal property so leased. The total leasing obligation or rentals to a bank will be a part of the total liability limitations of any borrower as set forth in section 6-03-59.

6-03-59.2. Lease financing of public facilities.

A state-chartered bank may purchase or construct a municipal building, school building, or other similar public facility and, as holder of legal title, lease the facility to a municipality or other public authority having resources sufficient to make all rental payments as they become due. The lease agreement must provide that the lessee will become the owner of the building or facility upon the expiration of the lease. All leases provided in accordance with this section must be subject to the bank's legal lending limit.

6-03-60. Loans to and purchases from directors, executive officers, and principal shareholders - Restrictions - Conditions - Penalty - Civil liability.

At no time may any combination of loans or extensions of credit or both made by a state banking association to an officer of that association exceed the limitation on loans to one person or concern specified in section 6-03-59, federal law, or federal rule.

No director, officer, or employee of a bank shall sell to such bank, directly or indirectly, any mortgage, bond, note, stock, or other property whatsoever without first obtaining the written approval of the board of directors. The action of the board of directors in connection with the loans and discounts required under this section shall be made a matter of permanent record in the minute books of the banking association. Any shareholder, officer, or director of any banking association who knowingly shall violate the provisions of this section shall be held liable in the person's personal and individual capacity for all loss or damage which the association or any person shall sustain in consequence thereof and shall be guilty of a class B misdemeanor. The

commissioner may require, at any time, the payment or repurchase of loans, securities, or obligations herein referred to.

6-03-61. Excessive loan - Validity - Penalty - Personal liability.

Whenever a state banking association allows any person, copartnership, or corporation to become indebted to it, directly or indirectly, in excess of the amount, exclusive of interest, permitted by this title, the officer, director, or employee thereof willfully permitting or approving such loan is guilty of a class B misdemeanor, and in addition thereto, is liable personally to the association for the amount of such loan in excess of the statutory limit. Unauthorized loans, however, are not invalid.

6-03-62. Interest on loans - Rate.

An association may demand and receive for loans on personal security, or for discounting notes, bills, or other evidences of debt, such rate of interest as may be agreed upon, not exceeding the amount authorized by law to be contracted for, and it may receive such interest according to the ordinary usage of banking associations and for not more than one year in advance.

6-03-63. Interest on deposits - Rates payable - Penalty.

No state banking association may pay interest on deposits, directly or indirectly, at rates greater than authorized by the state banking board. The board's authorization of interest rates is not subject to the public notice and public hearing requirements of chapter 28-32. Any officer, director, or employee of any association violating the provisions of this section, directly or indirectly, is guilty of a class B misdemeanor.

6-03-64. Payment of deposits made by fiduciaries, officers, minors, and associations.

Deposits made by a person as executor, administrator, guardian, conservator, or in any other representative capacity or official position, with a bank, are payable to that person in such capacity, or if made to an account upon which a minor may order payments as an account owner, may be paid to the minor although the minor has no guardian or conservator or if the minor has a guardian or conservator, it is not necessary to obtain the consent of the guardian or conservator to such payment, but a payment order or receipt or acquittance authorized by the minor is valid and binding. Deposits made by a corporation, association, or society are payable to any person authorized by its board of directors or trustees to receive the same.

6-03-65. Deposit in trust - To whom paid.

Whenever any deposit is made with any banking association by any person in trust for another and no other or further notice of the existence and terms of a legal and valid trust has been given in writing to the bank, in the event of the death of the trustee, the deposit, or any part thereof, together with the dividends or interest thereon, may be paid to the person for whom the deposit was made.

6-03-66. Deposit in two or more names - To whom paid.

Repealed by S.L. 1973, ch. 257, § 82.

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

Except as provided in sections 6-07-52 and 30.1-31-20, it is unlawful for any banking association to charge any claim which it might have, or the claim of any other person, against a deposit made with the association, or to appropriate a deposit or any part of the deposit to the payment of any debt to the association, without legal process or the consent of the depositor. Any banking association that violates this section is liable to the party aggrieved for any damages caused by the violation.

6-03-67.1. Operation without federal deposit insurance prohibited - Liability - Penalty.

No state banking association shall, after July 1, 1978, engage in the business of banking without securing and continuing in force federal deposit insurance corporation insurance of deposits. Any officer or director of any state banking association who violates this section is guilty of a class A misdemeanor and shall be personally liable to any person aggrieved for any damages caused by the violation.

6-03-68. Collection of negotiable instruments by bank - Liability for negligence.

Repealed by S.L. 1965, ch. 296, § 32.

6-03-68.1. Settlement of check presented by or through federal reserve bank or Bank of North Dakota.

Except as to any check sent to it as a special collection item, no bank may settle any check drawn on it otherwise than at par when such check is presented by or through a federal reserve bank or the Bank of North Dakota.

6-03-69. Report of examining committee.

The board of directors shall submit to the commissioner a report of the examining committee on forms provided by the commissioner. The report must reflect the results of a careful and thorough examination of the assets of the bank, including loans and discounts of every nature and the securities and collaterals belonging to the bank. The valuation of the assets of the bank must be compared with the records of the bank. The report must be made a part of the minutes of a regular meeting of the board of directors. The commissioner may refuse to accept the report if found to be not in accordance with acceptable accounting principles.

Any of the following methods may be used to conduct the examination required by this section:

1. Examination by the board of directors or its examining committee. When this method is employed, the examination must be conducted and the report submitted in July of each year.
2. Examination on an annual basis by an independent certified public accountant or firms composed of such accountants, or auditors of the bank's holding company, if any.
3. Examination by an autonomous internal audit control system. The individual directing the internal audit control system shall submit to the board of directors each quarter an interim report as to the degree of compliance with the internal audit control system and shall express an opinion as to the adequacy of the internal controls. A complete report must be submitted annually to the board of directors.

6-03-70. Reports - Regular and special - Publication - Penalty.

Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which must be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which must be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors and must be transmitted to the commissioner within thirty days after receipt of the request for the same. The commissioner may request an amended call for reports filed in error and may require republication of the call report containing material errors. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank or a printout retrieved from computer facilities in the department of financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the association. Every association which fails to make and transmit any report

required by this section shall forfeit and pay to the state treasurer for deposit in the financial institutions regulatory fund a penalty of two hundred dollars for each delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

6-03-71. Bonds of officers and employees.

All officers and employees of any state banking association, before entering upon their duties, shall furnish a bond to the association in the sum and upon the conditions as required by the board of directors in keeping with rules established by the state banking board. All bonds must be approved by the board of directors of the association and are subject to the approval of the commissioner. A record of the approval of the bonds by the board of directors of the association must be made on the records of the bank, and the bonds must be filed with the commissioner. Stockholders of the banks are not eligible as bondsmen for the officers.

6-03-72. Certification of checks, drafts, and orders - Penalty.

It is unlawful for an officer, clerk, or agent of any state banking association to certify any check, draft, or order drawn upon the association unless the person drawing the same has on deposit with the association at the time of such certification an amount of money equal to the amount specified therein, and upon such certification, the amount of such certified check, draft, or order must be immediately charged against the account of such drawer. Any officer or employee of any banking association who willfully violates the provisions of this section is guilty of a class B misdemeanor.

6-03-73. Deferred posting authorized.

Repealed by S.L. 1965, ch. 296, § 32.

6-03-74. Definitions.

Repealed by S.L. 1965, ch. 296, § 32.

6-03-75. Varied by agreement.

Repealed by omission from this code.

6-03-76. Records search reimbursement.

Any financial institution authorized to do business in this state must be reimbursed as follows for all records searches done at the request of any state agency or any branch of the state government except the department of human services. Further, any federal agency or any branch of the federal government must also make such reimbursement if authorized to do so:

1. For search and processing time at the rate of thirty dollars per hour per person, computed on the basis of seven dollars and fifty cents per quarter hour, limited to the total amount of personnel time spent in locating, retrieving, reproducing, packaging, and preparing for shipment documents or information requested.
2. For making copies of duplicates of required or requested documents at the rate of fifteen cents per page.
3. For making copies of photographs, films, and other materials at the actual cost incurred by the financial institution.

The financial institution must be reimbursed for all actual mailing or transportation expenses incurred in conveying the requested or required materials to the requesting agency. The reimbursement provisions of this section shall not apply to standard confirmations.