

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1131
(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact a new subsection to section 6-01-02 of the North Dakota Century Code, relating to the definition of market value; to amend and reenact subsection 2 of section 6-01-03, and sections 6-01-04.1 and 6-01-04.2, subsection 1 of section 6-01-04.3, and sections 6-06-06, 6-06-08.4, 6-06-10, 6-06-11, 6-06-14, and 6-06-36 of the North Dakota Century Code, relating to state credit union board member experience, clarification of regulated entities, civil money penalties, credit union board powers, prompt corrective actions relating to credit unions, use of electronic communications for credit union meetings, election or appointment of credit union committees, credit union supervision of loans, and credit union mergers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 6-01-02 of the North Dakota Century Code is created and enacted as follows:

"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.

SECTION 2. AMENDMENT. Subsection 2 of section 6-01-03 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~three~~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 ~~three~~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.

SECTION 3. AMENDMENT. Section 6-01-04.1 of the North Dakota Century Code is amended and reenacted as follows:

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 ~~or, financial institution, or credit union~~ subject to its jurisdiction and upon a financial corporation ~~or, financial institution, or credit union~~ involved, ~~a complaint~~an order stating the basis for the board's or the department's belief that:

- a. That the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:
 - a- (1) Violating any law, regulation, board order, or written agreement with the board;
 - b- (2) Engaging or participating in any unsafe or unsound practice;
 - e- (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 ~~complaint 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 ~~or 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 ~~complaint 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 ~~or 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 ~~an~~ 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 ~~or 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 ~~occupy any position within~~ be employed or otherwise participate in the affairs of any financial corporation ~~or financial institution in North Dakota, 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 ~~or 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 ~~or financial institution's, or credit union's~~ affairs. The order is effective immediately upon service of the order on a financial corporation ~~or 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.

SECTION 4. AMENDMENT. Section 6-01-04.2 of the North Dakota Century Code is amended and reenacted as follows:

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 or, 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 or, 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 or, financial institution, or credit union. The financial corporation or, financial institution, or credit union may waive the thirty-day notice requirement.
3. If the financial corporation or, 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 or, 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 or, financial institution, or credit union, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation or, financial institution, or credit union. An emergency, temporary cease and desist order is effective immediately upon service on the financial corporation or, 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 or, 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.

SECTION 5. AMENDMENT. Subsection 1 of section 6-01-04.3 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner or the board may assess a civil money penalty against a financial institution or financial corporation, including state-chartered banks, credit unions, trust companies, and savings and loan associations, or an officer, director, employee, agent, or person participating in the conduct of the affairs of the financial ~~institution~~ or 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;
- 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.

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

6-06-06. Powers of credit unions.

A credit union has the following powers:

- 1. To receive the savings of its members either as payment on shares or as deposits, including the right to conduct Christmas clubs, vacation clubs, and other such thrift organizations within its membership.
- 2. To make loans to members.
- 3. To make loans to a cooperative society or other organization having membership in the credit union.
- 4. To deposit its moneys in ~~state and national banks and financial institutions,~~ trust companies ~~and central,~~ credit unions, corporate central credit unions, and the Bank of North Dakota authorized to receive deposits.
- 5. To invest in the following:
 - a. In bonds of the United States without limitation in securities issued as direct obligations by the United States government or any agency thereof and in any trust established for investing directly or collectively in such securities.
 - b. In bonds or evidences of debt of this state or in bonds of states of the United States.
 - c. In bonds or certificates of indebtedness of any county, city, or school district in this state, issued pursuant to authority of law, but not to exceed thirty percent of the assets of any credit union may be invested in such bonds or certificates of indebtedness.
 - d. In notes or bonds secured by mortgage or deed of trust upon unencumbered, improved real estate in this state, if such investment does not exceed sixty-five percent of the actual-cashmarket value of the property mortgaged, and fire and tornado insurance policies are maintained and deposited as collateral to such mortgage, subject to such restriction and regulations as may be imposed by the state credit union board.
 - e. In notes or bonds secured by a security interest or lien upon unencumbered personal property, if the investment does not exceed ninety percent of the actual-cashmarket value of the property secured.
 - f. In first lien, public utility, industrial, corporation, or association bonds, notes, or other evidences of debt issued by corporations located in the United States of America to the extent authorized by the state credit union board.

- g. Subject to rules of the state credit union board, in shares of investment companies registered under the Investment Companies Act of 1940 and which invest only in investments otherwise permissible under this section.
 - h. In investments or insurance products otherwise prohibited by section 6-06-06 if the investments are directly related to a benefit plan for credit union employees.
6. To borrow money as limited in this chapter.
 7. Subject to such regulations as the state credit union board may prescribe, insurance obtained under title 1 of the National Housing Act must be deemed adequate security.
 8. To sue and be sued.
 9. A credit union may invest in a credit union office building, including the lot, piece, or parcel of land on which the same is located, and in furniture and fixtures, to the extent authorized by regulations issued by the state credit union board.
 10. Every state credit union has the power to purchase, hold, and convey other real estate as herein provided, and not otherwise:
 - a. Such as is mortgaged to it in good faith by way of security for loans, or for debts previously contracted.
 - b. Such as is conveyed to it in good faith in satisfaction of debts previously contracted in the course of its dealings.
 - c. Such as it purchases at sales under judgments, decrees, or mortgages held by the credit union, or purchases to secure debts due to it.

~~Upon~~ Within sixty days of the transfer to other real estate owned, a current appraisal performed by an independent qualified appraiser must be obtained for all property recorded at or below the lower of twenty five thousand dollars or ten percent of the credit union's equity must be conducted by a state licensed individual who is independent of the transaction for all real estate recorded at or above one hundred thousand dollars or through a market evaluation performed by a qualified individual who is independent of the transaction for all real estate recorded below one hundred thousand dollars. Except as otherwise provided by chapter 10-06.1, a state credit union may hold possession of any real estate acquired after July 1, 1991, under mortgage, or title and possession of any real estate purchased to satisfy indebtedness, for a period not to exceed five years. Except as otherwise provided by chapter 10-06.1, real estate acquired before July 1, 1991, may be held for a period not exceeding five years from July 1, 1991. The commissioner may extend the real estate holding period up to an additional five years upon formal request by a credit union if the credit union has made a good-faith attempt to dispose of the real estate within the five-year period, or disposal within the five-year period would be detrimental to the credit union. Within thirty days after receipt of an adverse decision, the credit union may appeal that decision to the state credit union board.

11. Subject to authorization by the state credit union board, acting by order or rule, a state credit union has the same powers as a federal credit union and may engage in any activity in which a credit union could engage if the credit union were federally chartered.
12. To exercise any incidental power necessary or requisite to enable the credit union to carry out effectively the business for which it is incorporated or as determined by the board by order or rule.

SECTION 7. AMENDMENT. Section 6-06-08.4 of the North Dakota Century Code is amended and reenacted as follows:

6-06-08.4. Prompt corrective action.

~~Whenever the state credit union board determines that any credit union under its supervision does not have adequate capital, the state credit union board, without a hearing, may declare that the credit union is either undercapitalized, significantly undercapitalized, or critically undercapitalized. For the purposes of this section, a credit union is undercapitalized if it either has a net worth ratio of less than six percent or fails to meet any applicable risk-based net worth requirement established by the board by rule. A credit union is significantly undercapitalized if it has a net worth ratio of less than four percent or has a net worth ratio of less than five percent and fails to submit an acceptable net worth restoration plan or materially fails to implement a plan accepted by the board. A credit union is critically undercapitalized if it has a net worth ratio of less than two percent or such higher net ratio, not exceeding three percent, as the board may specify. The board, by order, may require a credit union that is undercapitalized to annually set aside as net worth an amount equal to up to four tenths percent of its total assets. For purposes of this section, the net worth categories are defined as:~~

- ~~1. Well capitalized. A credit union with a net worth ratio of seven percent or greater which meets any applicable risk-based net worth requirement.~~
- ~~2. Adequately capitalized. A credit union with a net worth ratio six percent or more but less than seven percent which meets any applicable risk-based net worth requirement as defined by the state credit union board by rule.~~
- ~~3. Undercapitalized. A credit union with a net worth ratio of four percent or more but less than six percent or fails to meet any risk-based net worth requirement.~~
- ~~4. Significantly undercapitalized. A credit union with a net worth ratio of two percent or more but less than four percent, fails to increase its net worth, or fails to submit or materially implement a net worth restoration plan.~~
- ~~5. Critically undercapitalized. A credit union with a net worth ratio less than two percent.~~

~~A credit union may be reclassified into the next subordinate net worth category by the commissioner or the state credit union board if it is determined that the credit union is in an unsafe or unsound condition or has not corrected unsafe or unsound practices of which it was, or should have been, aware. The board or commissioner may require a credit union that is adequately capitalized, undercapitalized, significantly undercapitalized, or critically undercapitalized to increase its net worth. Additionally, the board or commissioner may require a credit union that is undercapitalized credit union, significantly undercapitalized, or critically undercapitalized to submit an acceptable net worth restoration plan to the board within the time allowed by the board commissioner. For a significantly undercapitalized credit union that has no reasonable prospect of becoming adequately capitalized or a critically undercapitalized credit union, the board may take possession of the credit union, appoint a conservator or liquidating agent for the credit union, or take such other action as the board determines would be appropriate to resolve the problems of the credit union.~~

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

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

6-06-10. General and special meetings - Notice - Quorum - Voting privileges.

General and special meetings may be held in the manner and for the purposes indicated in the bylaws of the credit union. Ten days before any regular or special meeting, written notice thereof must

be mailed or sent by an electronic communication to each member and, in the case of a special meeting, the notice must state clearly the purpose of the meeting and what matters will be considered thereat. The members present at a general or special meeting constitute a quorum for the transaction of the business of the credit union. At all meetings, a member has but a single vote, whatever the member's shareholdings. There is no voting by proxy, but any firm, society, or corporation having a membership in the credit union may cast its vote by one person upon presentation by that person to the credit union of written authority from such firm, society, or corporation. The credit union may allow members to vote by mail ballot or electronic ballot for directors and committee members.

SECTION 9. AMENDMENT. Section 6-06-11 of the North Dakota Century Code is amended and reenacted as follows:

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

The organization meeting of the members of a credit union shall be the first annual meeting. At its annual meeting, its members shall elect a board of directors of not less than five members and a credit committee of not less than three members, unless the bylaws of the credit union provide that the credit union may not have a credit committee. A supervisory committee of not less than three members must be elected at the annual meeting, unless the bylaws of the credit union provide that the supervisory committee members be appointed by the board of directors of the credit union or the bylaws provide that the credit union may not have a supervisory committee. In the event the bylaws do not provide for a supervisory committee, then the duties and powers of a supervisory committee, as described in section 6-06-15, are the responsibility of the board of directors. The directors and committee members if any, shall hold office for such terms, respectively, as provided by the bylaws of the credit union and until their successors qualify. A record of the names and addresses of the officers and members of the board and committees must be filed with the commissioner within ten days after their election or appointment. Notice of any change in membership on the board or committees by appointment to fill an unexpired term or otherwise must be filed with the commissioner within ten days of such change.

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

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

SECTION 10. AMENDMENT. Section 6-06-14 of the North Dakota Century Code is amended and reenacted as follows:

6-06-14. Loans - How made - Security - Meetings and duties of credit committee - Preferential loans.

The credit committee has general supervision over all loans to members, and unless the credit union does not have a credit committee, in which case the general supervision of loans is the responsibility of the credit manager appointed by the board of directors. If the credit union has a credit committee, it shall meet as often as may be necessary to perform its duties and at least once each month, except the foregoing provisions regarding monthly meetings do not apply to any "corporate central" or "corporate" credit union. Notice must be given to each member of the committee before any meeting is held. All applications for a loan must be made on a form approved by the committee or credit manager and must set forth the purpose for which the loan is desired, the security, if any, which is

offered, and such other data as the committee or credit manager may require. The maximum aggregate loans that may be made to a member or a group of members relying on a single income source without adequate security is subject to limits approved in loan policy by the board of directors of the credit union. Security under this section includes an assignment of shares or deposits, ~~an endorsement made on the note by a responsible person,~~ and such other security as the committee or credit manager in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee or by the credit manager, except that the credit committee or credit manager may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the ~~credit committee~~board of directors, or in excess of the limit if the excess is fully secured by unpledged shares. An individual may not disburse funds of the credit union for any loan that has been approved by that individual in that individual's capacity as a loan officer. Not more than one member of the credit committee may be appointed as a loan officer, unless the credit committee is made up of credit union employees appointed by the credit manager. Every loan by a credit union to, or guaranteed by, its directors, officers, managers, and committee members shall be current as outlined on the terms of the loan agreement and must be made on substantially the same terms, including interest rates, fee structure, and collateral, as those prevailing at the time for comparable transactions with other persons and must ~~shall~~ be in strict conformity with the credit union's policies, rules, and regulations.

SECTION 11. AMENDMENT. Section 6-06-36 of the North Dakota Century Code is amended and reenacted as follows:

6-06-36. Merger.

Any credit union chartered under this chapter or under Act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union 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, transferred to the state treasurer, and deposited in the financial institutions regulatory fund. The secretary of state shall charge a fee of fifty dollars for all services in connection with a merger authorized by the state credit union board, including filing of a certificate of organization or bylaws, and issuing or canceling charters.

Upon approval by the state credit union board of a merger application under this section, the former main office and facilities of the credit union merged will become branches of the continuing credit union and the continuing credit union is not required to file an application for any branches acquired in the merger transaction.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1131.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State