

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1163
(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 6-01-17.1 of the North Dakota Century Code, relating to a fee for an application to merge by two or more credit unions; to amend and reenact subdivision g of subsection 1 of section 6-01-04.3, sections 6-06-05, 6-06-06.1, 6-06-08, 6-06-12, 6-06-13, 6-06-13.1, 6-06-14, 6-06-19, 6-06-20, 6-06-21, 6-06-26, and 6-08-15, and subsection 2 of section 6-08-16 of the North Dakota Century Code, relating to the use of the phrases credit union and corporate central credit union, the issuance of certificates of deposit, reports by credit unions, interest rate determinations, credit union board membership, credit union organization, credit union volunteers, credit union credit committee meetings, credit union loan and borrowing limitations, credit union committee loans, credit union reserve funds, credit union dividends, slander against financial institutions, and compliance with clearinghouse rules; and to repeal sections 6-06-21.1 and 6-06-39 of the North Dakota Century Code, relating to credit union reserve funds and share scaledowns.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

g. Violations of loan limitations under subsection ~~7~~ 1 of section 6-06-12;

SECTION 2. A new subsection to section 6-01-17.1 of the North Dakota Century Code is created and enacted as follows:

Application by two or more credit unions to merge, a fee of three hundred dollars.

SECTION 3. AMENDMENT. Section 6-06-05 of the North Dakota Century Code is amended and reenacted as follows:

6-06-05. Use of credit union and corporate central credit union restricted - Forfeiture. It is unlawful for any person, association, copartnership, or corporation, domestic or foreign, except corporations organized in accordance with the provisions of this chapter, to use the words "credit union", "corporate central credit union", or "central credit union" in their name or title, and any person, association, copartnership, or corporation violating this section shall forfeit to the state one hundred dollars for every day, or part thereof, during which such violation continues. The commissioner may recover such forfeited sums in a civil action, and shall deposit any sums recovered or collected with the state treasurer. Only one "corporate central credit union" or "central credit union" may be organized under this chapter, and no other credit union may use the term "corporate central" or "central" as part of its name. The North Dakota credit union league, any chapter, affiliate, or subsidiary of this league, and any political action committee formed by credit unions organized under this chapter or federal law or a political action committee formed by the North Dakota credit union league are specifically exempt from this restriction.

SECTION 4. AMENDMENT. Section 6-06-06.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-06.1. Issuance of certificates of deposit - Penalty. Certificates of deposit, as defined in section 41-03-04, may only be issued in this state by credit unions authorized to issue certificates of deposit, and which are organized to do business in this state under this chapter or under the Federal Credit Union Act, and whose accounts are insured by the national credit union administration, except

that the requirement for insurance of accounts for ~~the North Dakota~~ any "corporate central credit union" or "central credit union" may be waived under section 6-06-40, or as authorized under sections 6-03-02.2 and 7-02-08.1. Any person violating this section is subject to a civil penalty not to exceed five thousand dollars.

SECTION 5. AMENDMENT. Section 6-06-08 of the North Dakota Century Code is amended and reenacted as follows:

6-06-08. State credit union board to supervise credit unions - Reports - Examinations - Fees.

1. Credit unions and the permanent loan funds of credit unions, if any, are under the supervision of the commissioner. Credit unions shall report to the commissioner when called by the commissioner, and at least ~~twice~~ four times each year. The commissioner shall prescribe the forms for the reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a ~~photocopy~~ copy of the call report ~~submitted to the national credit union administration, or a printout retrieved from computer facilities in e-mailed directly to the department of financial institutions and connected to those of the national credit union administration.~~ The commissioner may call for special reports from any credit union whenever in the commissioner's judgment it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union that fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.
2. Credit unions must be examined at least once each twenty-four months by the commissioner. In lieu of the examinations herein required, the commissioner may accept any examination made or obtained by the national credit union administration, and may in the commissioner's discretion conduct a joint examination with the national credit union administration.
3. If it is determined through an examination or otherwise that the credit union is violating the provisions of this chapter, or is insolvent, the state credit union board may serve notice on the credit union of its intention to revoke the charter. If such violations continue for a period of fifteen days after such notice, the board may revoke the charter and take possession of the business and property of such credit union, and shall maintain possession then until such time as it permits the reinstatement of the charter and the continuation of business by the credit union, or until its affairs finally are liquidated. The board may take similar action if any required report remains in arrears for more than fifteen days.
4. Every state credit union, including ~~North Dakota central~~ any "corporate central" or "corporate" credit union, placed under the jurisdiction and control of the state credit union board and the commissioner by the provisions of this title shall pay a yearly assessment. This assessment is to be determined by the state credit union board as necessary to fund that portion of the department's budget relating to the regulation of state-chartered credit unions. The assessment must be paid to the state treasurer within thirty days of each June thirtieth. Credit unions that have not been examined by the commissioner or the state credit union board for three years prior to any assessment date are not required to pay the assessment. The state treasurer shall report the payments of fees to the commissioner, and if any credit union is delinquent more than twenty days in making payment, the board may make an order suspending the functions of the delinquent credit union until payment of the amount due. The commissioner may assess a penalty of five dollars for each day that the penalty is delinquent. The examination fee for ~~North Dakota central~~ any "corporate central" or "corporate" credit union shall be charged by the

department at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination. All fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 6. AMENDMENT. Section 6-06-12 of the North Dakota Century Code is amended and reenacted as follows:

6-06-12. Directors - Duties and powers - Loan limitations.

1. The directors shall have general management of the credit union, and it is their duty particularly:
 4. a. To act on applications for membership, unless a membership officer is appointed.
 2. b. To determine interest rates on loans and deposits or designate a representative to determine these rates.
 3. c. To fix, subject to the approval of the commissioner, the amount of surety bond which must be required of all officers and employees handling money.
 4. d. To declare dividends.
 5. e. To transmit to the members recommendations for changes in the bylaws.
 6. f. To fill vacancies on the board of directors and on the credit committee who shall serve until their successors are chosen and qualified.
 7. g. To determine the maximum individual shareholdings and the maximum aggregate liability to the credit union of any one borrower but such maximum aggregate liability allowed by the board may not exceed the amounts listed in the following schedule:

| Total Assets | Loan Limit |
|--------------------|---------------------------|
| 0 to 70,000 | 10% with a limit of 5,000 |
| 70,001 to 100,000 | 6,000 limit |
| 100,001 to 200,000 | 8,000 limit |
| 200,001 to 300,000 | 10,000 limit |
| 300,001 to 400,000 | 12,000 limit |
| 400,001 to 500,000 | 14,000 limit |
| over 500,000 | 3% of assets |

For purposes of this subsection, the aggregate liability of one borrower to a credit union includes the total direct, indirect, and contingent liabilities of the borrower, and the liabilities of separate borrowers for which the repayment of separate loans or extensions of credit is substantially from the same source. The aggregate liability of any one borrower to the credit union does not include any loan or portion of a loan guaranteed by the government, to the extent of the guarantee, nor any loan secured by shares in the credit union, to the extent of the security.

In all cases a credit union is allowed to loan up to and including two hundred dollars to any individual regardless of the amount of total assets in said credit union. Provided, that the foregoing provisions do not apply to the North Dakota central credit union.

8. h. To supervise and control investments other than loans to members.
9. i. To establish a schedule of fines for delinquency in the payment of principal or interest, which the board shall impose at its discretion.

- ~~10.~~ 2. The board may appoint membership officers authorized to approve applications for membership under such conditions as the board may prescribe; except that such membership officers so authorized shall submit to the board at each monthly meeting a list of approved or pending applications for membership received since the previous monthly meeting, together with such other related information as the bylaws or the board may require.
3. No immediate family member of the president, general manager, or chief executive officer of the credit union may serve on the board of directors of the credit union.
4. A majority of the board of directors of a credit union may not be immediate family members of each other.

SECTION 7. AMENDMENT. Section 6-06-13 of the North Dakota Century Code is amended and reenacted as follows:

6-06-13. Officers - Elections - Duties. At their organization meeting and within thirty days following each annual meeting of the members, the directors shall elect from their own number an executive officer, who may be designated as chairman of the board or president; a vice chairman of the board or one or more vice presidents; a treasurer; and a secretary. The treasurer and the secretary may be the same individual. The persons so elected are the executive officers of the corporation. The terms of the officers must be one year, or until their successors are chosen and have duly qualified. The duties of the officers must be prescribed in the bylaws. The board of directors may employ an officer in charge of operations whose title must be ~~either president or~~ chief executive officer, general manager, or both any combination thereof; or, in lieu thereof, the board of directors may designate the treasurer or an assistant treasurer to act as general manager and be in active charge of the affairs of the credit union.

SECTION 8. AMENDMENT. Section 6-06-13.1 of the North Dakota Century Code is amended and reenacted as follows:

6-06-13.1. Credit union volunteers - Immunity. A person who serves as a volunteer, including a director, credit committee member, or supervisory committee member, of a federal or state-chartered credit union is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The volunteer was acting in good faith and in the scope of that person's official duties as a volunteer of the credit union.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the volunteer.
3. The volunteer did not receive or expect to receive reimbursement for or payment of expenses in excess of ~~two~~ five thousand dollars per year for expenses actually incurred as a result of providing services as a volunteer of the credit union and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a volunteer of the credit union.

This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

SECTION 9. 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 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 ~~the North Dakota central~~ 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 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 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 ~~two thousand five hundred dollars or one percent of the credit union's total share and deposit accounts, whichever is the higher, but not to exceed fifty thousand dollars~~ 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 in its discretion may deem adequate. No loan may be made unless it is approved by a majority of the entire committee; except that the credit committee may appoint and delegate to one or more loan officers the power to approve loans up to the limit established by the credit committee, 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. Every loan by a credit union to its directors, officers, managers, and committee members must be made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with other persons and must be in strict conformity with the credit union's rules and regulations.

SECTION 10. AMENDMENT. Section 6-06-19 of the North Dakota Century Code is amended and reenacted as follows:

6-06-19. Authority to borrow - Limitation - Exception. A credit union may borrow money from any source, but the total borrowings may not exceed twenty-five percent of the credit union's assets unless the commissioner authorizes a larger amount. The board or commissioner may suspend or restrict the borrowing powers of a credit union. The limitation on borrowing does not apply to a corporate central credit union which is limited to borrowing up to five times the corporate central credit union's capital, surplus, and reserve fund. For purposes of this section, capital, surplus, and reserve fund for a corporate central credit union includes statutory or regulatory reserves, reserves established for contingencies or any other purposes, undivided earnings, all sums on deposit by other credit unions which are ~~permanent membership capital base funds share deposits~~ as defined by the bylaws of the corporate central credit union, or any other funds being held by the corporate central credit union for the purpose of maintaining a capital base. A credit union must provide within one week written notification to the commissioner of the amount, terms, and source of all borrowings under this section. Written notification is not required if the borrowings are provided by the corporate central credit union and that information is available to the commissioner through electronic inquiry.

SECTION 11. AMENDMENT. Section 6-06-20 of the North Dakota Century Code is amended and reenacted as follows:

6-06-20. Borrowings of directors and committee members limited - Repayment of loans. A director or member of any committee may not borrow from the credit union in which the director or member holds office more than ~~twenty one hundred thousand~~ one hundred thousand dollars plus pledged shares and deposits less any loan balance therein, unless the application is approved by three-fourths of the other members of the board of directors. The director or member may guarantee or endorse paper for other borrowers. A borrower may repay the borrower's loan in whole or in part on any day that the office of the credit union is open for business.

SECTION 12. AMENDMENT. Section 6-06-21 of the North Dakota Century Code is amended and reenacted as follows:

6-06-21. Reserve fund. Every credit union, including corporate central credit unions, shall maintain ~~a reserve fund in accordance with the rules of the national credit union administration to be used as a reserve against bad loans and other losses. This fund may not be distributed except upon prior approval of the state credit union board~~ an allowance for loan and lease loss account in accordance with generally accepted accounting principles and rules of the national credit union

administration. If it is found through an examination that the allowance for loan and lease loss account is not sufficient in disclosing the exposure to loan losses, then the credit union will increase the allowance for loan and lease loss account within thirty days as directed by the commissioner.

SECTION 13. AMENDMENT. Section 6-06-26 of the North Dakota Century Code is amended and reenacted as follows:

6-06-26. Dividends. ~~A credit union, upon action by its union's board of directors, may declare and pay a dividend to be paid from the remaining on shares from current or accumulated net earnings, or both, in the absence of sufficient net earnings, as authorized by the board or commissioner. The board of directors shall establish the dividend and the dividend period. The members may fix the maximum rate of dividends to be paid. The dividends must be paid from the net earnings of the credit union, after establishing a special reserve for delinquent loans as required by the board or commissioner. A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. Interest refunds may be made to borrowers only after provision has been made for a special reserve for delinquent loans if required by the board or commissioner but only after providing for required reserves, accrued and unpaid expenses, and established loan and lease losses. A credit union may pay a dividend on partial or full shares and may pay the dividend at differing levels and at differing intervals based on the type of share accounts owned by a member, the liquidation priority of share accounts, and the balances of a member's share accounts. A credit union may determine the rate and amount of a dividend before the end of the dividend period involved. A credit union, upon action of its board of directors, may authorize an interest refund to members of record at the close of business the last day of any dividend period in proportion to the interest paid during that dividend period. A credit union shall not pay a dividend if payment would result in the insolvency of the credit union.~~

SECTION 14. AMENDMENT. Section 6-08-15 of the North Dakota Century Code is amended and reenacted as follows:

6-08-15. Slander or libel of bank or credit union - Safe deposit, annuity, surety, or trust company - Aiding or abetting - Penalty - Liability for damages. Any person who willfully and maliciously makes, circulates, or transmits to another or to others, any false statement, rumor, or suggestion, written, printed, or by word of mouth, which directly or by inference is derogatory to the financial condition, or which affects the solvency or financial standing, of any state or national bank, of any state or federal credit union, or of any annuity, safe deposit, surety, or trust company authorized to do business in this state, or who counsels, aids, procures, or induces another to start, transmit, or circulate any such false statement or rumor, is guilty of a class A misdemeanor, and in addition thereto is liable in damages to such association, or corporation, or the receiver thereof, to be recovered in a civil action brought for that purpose.

SECTION 15. AMENDMENT. Subsection 2 of section 6-08-16 of the North Dakota Century Code is amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of twenty-five dollars, which are recoverable by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. If the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative uses the automated clearinghouse network to collect the collection fees or costs, that person shall comply with the network's rules and requirements. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. If the person does not pay the instrument in full and any collection fees or costs not in excess of twenty-five dollars within ten days from receipt of the notice of dishonor

provided for in subsection 4, a civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

SECTION 16. REPEAL. Sections 6-06-21.1 and 6-06-39 of the North Dakota Century Code are repealed.

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 Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1163.

House Vote: Yeas 87 Nays 1 Absent 6

Senate Vote: Yeas 44 Nays 0 Absent 3

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State