Sixty-third
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1164

Introduced by

Representative N. Johnson

Senator Campbell

A BILL for an Act to create and enact a new section to chapter 6-03 of the North Dakota Century Code, relating to a standard of conduct for directors of financial institutions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 6-03 of the North Dakota Century Code is created and enacted as follows:

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.