

Introduced by

Representatives Satrom, Grueneich, Ostlie, Schauer, Strinden

Senators Clemens, Conley

1 A BILL for an Act to create and enact five new sections to chapter 6-01 of the North Dakota
2 Century Code, relating to the state treasurer and financial institutions engaged in boycotts of
3 energy companies; and to amend and reenact section 6-01-02 of the North Dakota Century
4 Code, relating to definitions.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 6-01-02 of the North Dakota Century Code is amended
7 and reenacted as follows:

8 **6-01-02. Definitions.**

9 As used in this title, unless the context or subject matter otherwise requires:

- 10 1. "Association", "banking association", or "state banking association" means any
11 corporation organized under the laws of this state covering state banking associations,
12 and all corporations, limited liability companies, partnerships, firms, or associations
13 whose business in whole or in part consists of the taking of money on deposit, except
14 national banks, trust companies, and the Bank of North Dakota.
- 15 2. "Bank" means any national bank, national banking association, corporation, state
16 bank, state banking association, or savings bank, whether organized under the laws of
17 this state or of the United States, engaged in the business of banking.
- 18 3. "Bank holding company" means bank holding company as defined in 12 U.S.C.
19 1841(a)(1).
- 20 4. "Banking" means the business of receiving deposits, making loans, discounting
21 commercial paper, issuing drafts, traveler's checks, and similar instruments, handling
22 and making collections, cashing checks and drafts, and buying and selling exchange.
- 23 5. "Banking contract" means a contract entered by the state treasurer and a financial
24 institution under this chapter, to provide banking goods or services to a spending unit.

1 reasonable rate of interest, and providing an opportunity for its members to improve
2 their economic and social condition.

3 ~~44-14.~~ "Derivative transaction" means derivative transaction as defined in 12 U.S.C. 84(b)(3).

4 ~~42-15.~~ "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
5 optical, electromagnetic, or similar capabilities.

6 ~~43-16.~~ "Electronic communication" means any form of communication, not directly involving
7 the physical transmission of paper that creates a record that may be retained,
8 retrieved, and reviewed by a recipient of the communication and may be directly
9 reproduced in paper form by the recipient through an automated process.

10 ~~44-17.~~ "Electronic record" means a record created, generated, sent, communicated, received,
11 or stored by electronic means.

12 ~~45-18.~~ "Electronic signature" means an electronic sound, symbol, or process attached to or
13 logically associated with a record and signed or adopted by a person with the intent to
14 sign the record.

15 ~~46-19.~~ "Financial corporation" means all entities regulated by the department of financial
16 institutions, excluding financial institutions and credit unions.

17 ~~47-20.~~ "Financial institution" means ~~any bank, industrial loan company, or savings and loan~~
18 ~~association organized under the laws of this state or of the United States~~ a bank,
19 national banking association, nonbank financial institution, a bank and trust company,
20 a trust company, a savings and loan association, a building and loan association, a
21 mutual savings bank, a credit union, or a savings bank.

22 ~~48-21.~~ "Market value" means the highest price for which property can be sold in the open
23 market by a willing seller to a willing purchaser, neither acting upon compulsion and
24 both exercising reasonable judgment.

25 ~~49-22.~~ "Merger" or "merge" means the merging or consolidation of two or more banks
26 including the purchase of all or substantially all of the assets and assumption of
27 liabilities of a bank, facility, or branch.

28 ~~20-23.~~ "Mutual investment corporation" or "mutual savings corporation" means a corporation
29 organized to engage in the investment or savings business, but having no capital
30 stock or a nominal capital stock.

1 ~~21-24.~~ "National bank" or "national banking association" means an institution chartered by the
2 comptroller of the currency under the National Bank Act [12 U.S.C. 24].

3 ~~22-25.~~ "Reasonable business purpose" includes any purpose directly related to promoting the
4 financial success or stability of a financial institution, mitigating risk to a financial
5 institution, limiting liability of a financial institution, or complying with legal or regulatory
6 requirements.

7 26. "Record" means information that is inscribed on a tangible medium or that is stored in
8 an electronic or other medium and is retrievable in perceivable form.

9 ~~23-27.~~ "Restricted financial institution" means a financial institution included in the most
10 recently updated restricted financial institution list.

11 28. "Restricted financial institution list" means the list of restricted financial institutions
12 prepared, maintained, and published under this chapter.

13 29. "Technology service provider" includes any person that provides services to a financial
14 institution, financial corporation, or credit union, including: core processing; information
15 and transaction processing and settlement activities that support banking functions
16 such as lending, deposit-taking, funds transfer, fiduciary, or trading activities;
17 internet-related services; security monitoring; and system development and
18 maintenance.

19 ~~24-30.~~ "Tier 1, tier 2, and tier 3 capital" means those terms as set under title 12, Code of
20 Federal Regulations, part 325, in effect on August 1, 2011.

21 ~~25-31.~~ "Trust company" means any corporation formed for the purpose of transacting
22 business as an annuity, safe deposit, surety, or trust company.

23 **SECTION 2.** A new section to chapter 6-01 of the North Dakota Century Code is created
24 and enacted as follows:

25 **Restricted financial institutions list.**

26 1. The state treasurer shall prepare and maintain a list of financial institutions engaged in
27 a boycott of energy companies.

28 2. The state treasurer shall publicly post the restricted financial institutions list on the
29 state treasurer's website and submit a copy of the list to the governor, the president of
30 the senate, and the speaker of the house of representatives.

- 1 3. The statutory authority for the list and a brief summary of the purpose of the list must
2 appear at the top of the list, including a statement that inclusion on the list is not an
3 indication of unsafe or unsound operating conditions of the financial institution nor a
4 risk to consumer deposits.
- 5 4. The state treasurer shall update the restricted financial institution list annually, or more
6 often as the state treasurer deems necessary.

7 **SECTION 3.** A new section to chapter 6-01 of the North Dakota Century Code is created
8 and enacted as follows:

9 **Notice to financial institutions.**

- 10 1. Forty-five days before including a financial institution on the restricted financial
11 institution list, the state treasurer shall send a written notice to the financial institution
12 indicating:
 - 13 a. The state treasurer has determined the financial institution is a restricted financial
14 institution;
 - 15 b. The financial institution will be placed on the restricted financial institution list in
16 forty-five days unless, within thirty days following the receipt of the written notice,
17 the restricted financial institution demonstrates it is not engaged in a boycott of
18 energy companies;
 - 19 c. The restricted financial institution list is published on the state treasurer's website;
20 and
 - 21 d. The institution's placement on the list may render the institution ineligible to enter,
22 or remain in, banking contracts with the state.
- 23 2. The state treasurer shall remove a financial institution from the restricted financial
24 institutions list if the financial institution demonstrates it has ceased all activity that
25 boycotts energy companies.

26 **SECTION 4.** A new section to chapter 6-01 of the North Dakota Century Code is created
27 and enacted as follows:

28 **Source of information.**

- 29 1. In determining whether to include a financial institution on the restricted financial
30 institution list, the state treasurer shall consider and may rely on the following
31 information:

- 1 a. A financial institution's certification that it is not engaged in a boycott of energy
2 companies;
- 3 b. Publicly available information or statements made by the financial institution,
4 including statements by a member of a financial institution's governing body, an
5 executive director of a financial institution, or any other office or employee of the
6 financial institution with the authority to issue policy statements on behalf of the
7 financial institution; or
- 8 c. Information published by a state or federal government entity.
- 9 2. In determining whether to include a financial institution on the restricted financial
10 institution list, the state treasurer may not rely solely on the following information:
 - 11 a. Statements or complaints by an energy company; or
 - 12 b. Media reports of a financial institution's boycott of energy companies.
- 13 3. A financial institution may not be compelled to produce or disclose any data or
14 information deemed confidential, privileged, or otherwise protected from disclosure by
15 state or federal law.

16 **SECTION 5.** A new section to chapter 6-01 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Restricted financial institutions.**

- 19 1. In selecting a financial institution to enter a banking contract, the state treasurer may
20 disqualify restricted financial institutions from the competitive bidding process or from
21 any other official selection process.
- 22 2. The state treasurer may:
 - 23 a. Refuse to enter a banking contract with a restricted financial institution based on
24 its restricted financial institution status; and
 - 25 b. Require, as a term of any banking contract, an agreement by the financial
26 institution not to engage in a boycott of energy companies for the duration of the
27 contract.

28 **SECTION 6.** A new section to chapter 6-01 of the North Dakota Century Code is created
29 and enacted as follows:

1 **Limitations on liability.**

2 A public agency, public official, public employee, or member or employee of a financial
3 institution is immune from liability arising from actions taken in compliance with this chapter.