

## **CHAPTER 6-08.4 INTERSTATE BRANCHING**

### **6-08.4-01. Definitions.**

For purposes of this chapter, unless the context otherwise requires:

1. "Affiliate" means a company that controls, is controlled by, or is under common control with another company.
2. "Bank" means insured depository institution as defined in 12 U.S.C. 1813(c)(2), but the term does not include "foreign bank" as defined in 12 U.S.C. 3101(7), except any foreign bank organized under the laws of a territory of the United States, the deposits of which are insured by the federal deposit insurance corporation.
3. "Commercial activities" means activities in which a bank holding company, a financial holding company, a national bank, or a national bank financial subsidiary may not engage under federal law.
4. "Home state" means:
  - a. With respect to a national bank, the state in which the main office is located; and
  - b. With respect to a state bank, the state by which the bank is chartered.
5. "Transaction" means a bank's establishment, operation, and, as applicable, retention of a bank branch office in a state other than its home state, whether de novo, by acquisition of a separate branch office, or through a merger of a North Dakota bank with another bank.

### **6-08.4-02. Interstate branches.**

Subject to section 6-08.4-06, the responsible federal regulatory authority may approve a transaction under the Federal Deposit Insurance Act [Pub. L. 81-967; 64 Stat. 87; 12 U.S.C. 1811 et seq.].

### **6-08.4-03. Authority of state banks to establish interstate branches.**

Notwithstanding section 6-08.4-02, a North Dakota state-chartered bank, with approval of the commissioner or board, may establish, acquire, retain, and operate one or more branches in a state other than this state. An application must be filed with the commissioner or board at the time an application is filed with the responsible federal regulatory authority. The North Dakota state-chartered bank must also comply with section 6-03-11 or 6-03-13.3, as applicable. The commissioner or board may approve the transaction if the commissioner or board finds that:

1. The proposed transaction will not be detrimental to the safety and soundness of the North Dakota state-chartered bank;
2. Any new officers and directors are qualified, and possess appropriate experience and financial responsibility; and
3. The proposed transaction is consistent with the convenience and needs of the communities to be served by the bank in this state and is otherwise in the public interest.

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

### **6-08.4-04. Interstate merger transactions and branching permitted.**

Effective May 31, 1997, one or more North Dakota banks may merge with one or more out-of-state banks under this chapter, and an out-of-state bank resulting from an interstate merger may maintain and operate branches of a merged North Dakota bank in this state if the conditions and filing requirements of this title are met.

### **6-08.4-05. Notice and filing requirements.**

Any out-of-state bank that proposes a transaction for a branch in this state must notify and submit a copy of its transaction application to the board not later than the date on which it files the application with the responsible federal regulatory authority.

#### **6-08.4-06. Powers.**

1. An out-of-state state-chartered bank that establishes, acquires, and retains one or more branches in this state under this chapter may conduct any activities at the branch or branches that are authorized under the laws for North Dakota state banks, except to the extent those activities may be prohibited by the laws, rules, or orders of the home state applicable to the out-of-state state-chartered bank.
2. A North Dakota state-chartered bank may conduct any activities at any branch outside this state which are permissible for an out-of-state state-chartered bank where the branch is located, except to the extent those activities are expressly prohibited by North Dakota law, rule, or order.
3. A bank may not establish or maintain a branch in this state on the premises or property or within one mile [1.60 kilometers] of the premises or property of an affiliate if the affiliate engages in commercial activities.

#### **6-08.4-06.1. Reciprocity required.**

To the extent a state imposes a restriction on the ability of a North Dakota bank to establish, acquire, or retain a branch in that state, that restriction must apply to the establishment, acquisition, or retention of a branch in this state by the out-of-state bank.

#### **6-08.4-07. Enforcement.**

If the board or commissioner determines that a branch maintained by an out-of-state state-chartered bank is being operated in violation of any provision of North Dakota law, or that the branch is being operated in an unsafe and unsound manner, the board or commissioner has the same authority to take all enforcement actions as if the branch were a North Dakota state-chartered bank.

#### **6-08.4-08. Powers of industrial bank.**

An industrial bank may not accept deposits or make loans at a commercial location unless the industrial bank is owned by a financial holding company as defined in 12 U.S.C. 1841(p). For purposes of this section, "commercial location" means a location owned, operated, leased, or otherwise controlled by an entity that derives fifteen percent or more of its annual gross revenues, on a consolidated basis, including all affiliates of the entity, from engaging, on an ongoing basis, in activities that are not financial in nature or incidental to a financial activity during at least three of the prior four calendar quarters, as determined by the department of financial institutions.