

## CHAPTER 6-08 GENERAL PROVISIONS

### **6-08-01. Banks to have official number.**

Each bank organized under the laws of this state must be numbered and shall receive from the secretary of state an official number, and the secretary of state shall notify each bank of its official number and also shall file a list of banks and their numbers with the commissioner.

### **6-08-02. Oath of officers - Form and filing.**

Every active officer of any state banking association or trust company organized under this title, before entering upon the duties of the office, shall take and subscribe an oath that the officer will administer the affairs of the association or trust company diligently and honestly, so far as the duty devolves upon the officer, and that the officer will not violate knowingly, nor willingly permit to be violated, any of the provisions of this title. All oaths must be presented to the board of directors and a synopsis thereof recorded in the board's record and then filed with the board.

### **6-08-03. Taxation of banks.**

Domestic banks must be taxed upon the same basis only as banks organized and existing under and by virtue of the laws of the United States of America, it being the purpose, design, and intent of this section to place state banks in a position of parity and equality with national banks in matters of taxation.

### **6-08-04. Bank officer or employee paying overdrafts personally liable.**

Repealed by S.L. 1969, ch. 119, § 1.

### **6-08-05. Bank officer or employee overdrawing own account guilty of misdemeanor.**

Repealed by S.L. 1975, ch. 106, § 673.

### **6-08-06. Banks exempt from attachment and execution.**

Every banking association in this state is exempt from the legal process of attachment and execution. If any bank fails, neglects, or refuses to pay any valid final judgment or decree that may be rendered against it by any court of competent jurisdiction, not properly stayed by an appeal bond within the time prescribed by statute or an order of court after rendition thereof, the state banking board shall declare such bank insolvent or in failing circumstances and forthwith shall cause a receiver to be appointed to wind up its affairs.

### **6-08-07. Liability of bank on forged or raised check restricted.**

Repealed by S.L. 1965, ch. 296, § 32.

### **6-08-08. Bank stock held by decedents - Duty of county judge, commissioner, bank officers, and receivers.**

Repealed by S.L. 1947, ch. 114, § 1.

### **6-08-08.1. Sale or purchase of associations, banking institutions, or holding companies - Notification to commissioner - Hearing.**

1. No person, acting directly or indirectly or through or in concert with one or more other persons, may sell or otherwise dispose of an association, or banking institution, or purchase or otherwise acquire control of an association or banking institution unless the state banking board has been given prior written notice by application of the proposed disposition or acquisition. The written application must include such information as the state banking board shall specify. The transaction may not be consummated before the board has granted approval.
2. The applicant shall publish notice of the application as required by the board by rule.

3. Within ten business days after the date the application is received, the commissioner shall determine if the application is complete and notify the applicant by mail of the determination. If the commissioner determines the application is incomplete, the commissioner will, within the ten business days, request additional information deemed necessary to complete the application. Within ten business days after the receipt of the additional information, the commissioner will notify the applicant by mail of the commissioner's determination of completeness. Within sixty days after the mailing of a notice of completeness by the commissioner, the board must either approve or disapprove the application.
4. The board may disapprove any application if the board determines that:
  - a. The character, reputation, general fitness, financial standing, and responsibility of the persons proposed as new stockholders, directors, or officers is such that the interests of the other stockholders, depositors, and creditors of the institution and the public generally will be jeopardized by the change in control and management.
  - b. The qualifications of management do not include adequate experience with financial institutions or other approved related experience.
5. Within three business days after the board's decision to disapprove an application, the board shall notify the applicant in writing of the disapproval. The notice must provide a statement of the basis for the disapproval.
6. Within twenty days after receipt of the notice of disapproval, the applicant may request a hearing on the disapproval. The board must conduct a hearing, if requested, under the provisions of chapter 28-32. At the conclusion of the hearing, the board shall by order approve or disapprove the application on the basis of the record at the hearing.
7. For purposes of this section, "control" means ownership or control, directly, indirectly, or through the actions of one or more persons of the power to vote twenty-five percent or more of any class of voting securities of an association, banking institution, controlling holding company, or the direct or indirect power to control in any manner the election of a majority of the directors of an association or banking institution, or to direct the management or policies of an association or banking institution, whether by individuals, corporations, limited liability companies, partnerships, trusts, or other entities or organizations of any type. "Holding company" means any partnership, corporation, business trust, association, or entity or organization of any type which controls an association or banking institution.

**6-08-09. Banking association officers - Punishment for violation of duty - Penalty.**

Any officer of any banking association violating, or knowingly permitting to be violated, any provision of this title, violation of which has not specifically been designated as a crime, is guilty of a class B misdemeanor.

**6-08-10. Articles as evidence.**

A certified copy of the articles of incorporation of any association or corporation organized under the provisions of this title may be used as evidence in all courts, for or against any person, association, or corporation in both civil and criminal trials.

**6-08-11. Punishment for violation of duty by director of moneyed corporation - Penalty.**

Every director of any moneyed association or corporation who willfully does any act as such director which is expressly forbidden by law, or who willfully omits to perform any duty by law expressly imposed upon the director as such director, if the punishment for such act or omission is not prescribed otherwise by this code, is guilty of a class B misdemeanor.

**6-08-12. False statements or entries - Felony.**

Repealed by S.L. 1975, ch. 106, § 673.

**6-08-13. False statements to obtain credit - Accepting credit on false statements - Misdemeanor.**

Repealed by S.L. 1975, ch. 106, § 673.

**6-08-14. False statements concerning bank values - Penalty.**

Any person who knowingly makes or publishes any book, prospectus, notice, report, statement, exhibit, or other publication containing any statement which is false and which is intended to give and does give a substantially greater or less apparent value to the shares, bonds, or property, or any part thereof, of any state banking association than said shares, bonds, property, or any part thereof possess in fact, is guilty of a class A misdemeanor.

**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.

**6-08-16. Issuing check or draft without sufficient funds or credit - Notice - Time limitation - Financial liability - Penalty.**

1. A person may not, for that person, as the agent or representative of another, or as an officer or member of an organization make, draw, utter, or deliver any check, draft, or order, or authorize an electronic funds transfer, for the payment of money upon a bank, banker, or depository, if at the time of the making, drawing, uttering, electronically authorizing, or delivery, or at the time of presentation for payment, if the presentation for payment is made within fourteen days after the original delivery thereof, there are not sufficient funds in or credit with the bank, banker, or depository to meet the check, draft, electronic funds transfer, or order in full upon its authorized presentation. Violation of this subsection is:
  - a. An infraction if the amount of insufficient funds or credit is not more than one hundred dollars;
  - b. A class B misdemeanor if the amount of insufficient funds or credit is more than one hundred dollars but not more than five hundred dollars, or if the individual has pled guilty or been found guilty of a violation of this section within three years of issuing an insufficient funds check, draft, or order;
  - c. A class A misdemeanor if the amount of insufficient funds or credit is more than five hundred dollars but not more than one thousand dollars, or if the individual has pled guilty or been found guilty of two violations of this section within three years of issuing an insufficient funds check, draft, or order; or
  - d. A class C felony if the amount of insufficient funds or credit is more than one thousand dollars, or an individual has pled guilty or been found guilty of three or more violations of this section within five years of willfully issuing an insufficient funds check, draft, or order.
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.
  - a. In addition to the criminal penalty, the person is liable for collection fees or costs not in excess of forty dollars which are recoverable by the holder of the check, draft, electronic funds transfer authorization, or order or by the holder's agent or representative. 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. If the state's attorney or holder determines the person identified as the issuer of the instrument did not make, draw, utter, or deliver the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or the holder's agent or representative written notice of the fraud and upon receipt of the notice that holder or the holder's agent or representative may not collect fees or costs under this subdivision.

- b. 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 if recovered by the collection agency.
  - c. If the person does not pay the instrument in full and any collection fees or costs not in excess of forty dollars within ten days from receipt of the notice of dishonor provided for in subsection 4, the holder of the check, draft, electronic funds transfer authorization, or order or the holder's agent or representative is entitled to bring a civil action to recover a civil penalty. The civil penalty is payment to the holder of the instrument or the holder's agent or representative the lesser of two hundred dollars or three times the amount of each instrument.
  - d. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
3. The word "credit" as used in this section means an arrangement or understanding with the bank, banker, or depository for the payment of the check, draft, electronic funds transfer authorization, or order. The making of a postdated check knowingly received as such, or of a check issued under an agreement with the payee that the check would not be presented for payment for a time specified, does not violate this section.
4. A notice of dishonor may be mailed by the holder of the check upon dishonor or by the holder's agent or representative upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date \_\_\_\_\_  
Name of Issuer \_\_\_\_\_  
Street Address \_\_\_\_\_  
City and State \_\_\_\_\_  
You are according to law notified that a check dated \_\_\_\_\_,  
\_\_\_\_\_, drawn on the \_\_\_\_\_ Bank  
of \_\_\_\_\_ in the amount of \_\_\_\_\_ has been returned  
unpaid with the notation the payment has been refused because of  
nonsufficient funds. Within ten days from the receipt of this  
notice, you must pay or tender to \_\_\_\_\_  
(Holder or agent or representative)  
sufficient moneys to pay such instrument in full and any collection  
fees or costs not in excess of forty dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

5. An agent acting for the receiver of a check in violation of this section may present the check to the state's attorney for prosecution if the holder or the holder's agent or representative mailed a notice under subsection 4. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. The criminal complaint for the offense of issuing a check, draft, electronic funds transfer authorization, or order without sufficient funds under this section must be executed within not more than one hundred twenty days after the dishonor by the drawee of said instrument for nonsufficient funds. The

failure to execute a complaint within said time bars the criminal charge under this section.

**6-08-16.1. Issuing check or draft without account - Penalty.**

Any person who issues any check, draft, or order, or authorizes an electronic funds transfer, upon any bank or depository, for the payment of money, and, at the time of the issuance does not have an account with the bank or depository upon which the check, draft, electronic funds transfer authorization, or order was written, is guilty of a class A misdemeanor.

**6-08-16.2. Issuing check without account - Financial liability - Penalty - Exceptions.**

1. As used in this section unless the context otherwise requires:
  - a. "Account" means any account at a bank or depository from which an instrument could legally be paid.
  - b. "Dishonor" is synonymous with "nonpayment".
  - c. "Instrument" means any check, draft, electronic funds transfer authorization, or order for the payment of money.
  - d. "Issues" means draws, utters, electronically authorizes, or delivers.
2. A person that, for that person or as agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if that person has been previously convicted of issuing an instrument without an account pursuant to section 6-08-16.1, and at the time of issuing the instrument the drawer does not have an account with the bank or depository on which the instrument is drawn.
3. A person that, for that person or an agent or representative of another, willfully as defined in section 12.1-02-02 issues any instrument is guilty of a class C felony if the instrument was for at least one thousand dollars or that person, agent, or representative of another, issues more than one instrument for which the aggregate total of all instruments issued exceeds one thousand dollars, and at the time of issuing the instrument, the drawer does not have an account with the bank or depository on which the instrument is drawn.
4. A person that issues an instrument under subsection 2 or 3 is liable for collection fees or costs not in excess of forty dollars per instrument which are recoverable by the holder of the instrument, or the holder's agent or representative. If the state's attorney or holder determines the person identified as the issuer of the instrument did not issue the instrument in violation of this section but instead is the victim of fraud, that state's attorney or holder shall provide the holder or the holder's agent or representative written notice of the fraud and upon receipt of the notice that holder or that holder's agent or representative may not collect fees or costs under this subsection. The holder of the instrument or the holder's agent or representative is entitled to bring a civil action to recover a civil penalty. The civil penalty is payment to the holder of the instrument of the lesser of two hundred dollars or three times the amount of each instrument.
5. An agent acting for the receiver of an instrument issued in violation of this section may present the instrument to the state's attorney for prosecution if the holder or the holder's agent or representative mailed a notice under subsection 6. During the first one hundred twenty days after the drawer received notice under this subsection the state's attorney shall accept the instrument presented by the agent. A criminal complaint for violating this section must be executed within one hundred twenty days after the drawer receives notice from the holder of a no-account or closed-account instrument or the holder's agent or representative.
6. A notice of dishonor may be mailed by the holder of the instrument upon dishonor or by the holder's agent or representative upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Instrument

Date \_\_\_\_\_

Name of Issuer \_\_\_\_\_  
Street Address \_\_\_\_\_  
City and State \_\_\_\_\_  
You are according to law notified that an instrument dated \_\_\_\_\_,  
\_\_\_\_\_, drawn on the \_\_\_\_\_ Bank of  
\_\_\_\_\_ in the amount of \_\_\_\_\_ has been  
returned unpaid with the notation the payment has been refused  
because (of nonsufficient funds) (the drawer does not have an  
account). Within ten days from the receipt of this notice,  
you must pay or tender to \_\_\_\_\_  
(Holder or agent or representative)  
sufficient moneys to pay such instrument in full and any collection  
fees or costs not in excess of forty dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

### **6-08-16.3. Consolidation of offenses - Dishonored checks.**

When the same person commits two or more offenses under sections 6-08-16, 6-08-16.1, and 6-08-16.2 in more than one county of this state, the offenses may be combined and prosecution may be brought in any county in which one of the dishonored checks was issued.

### **6-08-16.4. Return of paid checks to the issuer.**

When the holder, or its agent or representative, of a check receives full payment for the amount of a check issued without sufficient funds or credit, or without account, the check must be returned to the issuer upon the payment of any civil penalty assessed if the issuer appears and requests the return of the check or the issuer furnishes a self-addressed stamped envelope.

### **6-08-17. Punishment of felonies.**

Repealed by S.L. 1975, ch. 106, § 673.

### **6-08-18. Punishment of misdemeanors.**

Repealed by S.L. 1975, ch. 106, § 673.

### **6-08-19. Punishment for offenses when corporation or association is convicted.**

Repealed by S.L. 1975, ch. 106, § 673.

### **6-08-20. Penalties - How recovered.**

All penalties provided for in this title, to which any association or corporation may become subject, must be recovered on complaint of the commissioner before any court of competent jurisdiction, and all penalties so recovered must be paid into the state treasury.

### **6-08-21. Execution of instruments.**

Any loan, trust, or banking corporation in its bylaws may empower any one or more of its officers severally or conjointly to execute and acknowledge in its behalf conveyances, transfers, assignments, releases, satisfactions, or other instruments affecting liens upon, titles to, or interests in real estate. In the absence of such provision in the bylaws, the president, secretary, treasurer, or cashier of any loan, trust, or banking corporation may execute and acknowledge such instruments on behalf of the corporation when authorized so to do by resolution of its board of directors.

### **6-08-22. Holiday transactions.**

Nothing in any law in this state may in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument or any other transaction by a bank or trust company in this state because done or

performed during any other than regular banking hours, provided, further, that nothing herein may be construed to compel any bank or trust company in this state, which by law or custom is entitled to close at twelve noon on any Saturday, or for the whole or any part of any legal holiday, to keep open for the transaction of business, or to perform any of the acts or transactions aforesaid on any Saturday after such hour, or on any legal holiday, except at its own option.

**6-08-23. Retention of records.**

No bank may be required to preserve and retain its records of accounts or files for a longer period than six years next after the first day of January of the year following the date of such record or files.

**6-08-24. Actions on accounts and claims limited.**

No depositor or other creditor may commence an action against a bank on any account or claim of any kind after the expiration of the six-year period provided for in section 6-08-23, unless such depositor or creditor has, within such six-year period, made demand in writing on such bank requesting a settlement or adjustment of such claim; provided, however, that ledger sheets showing unpaid balances in favor of depositors may not be destroyed unless a photographic copy is retained in accordance with section 31-08-01.1, and nothing in sections 6-08-23 and 6-08-24 may be construed as limiting the time when actions may be brought to recover such balances.

**6-08-24.1. Disposition of certain unclaimed accounts.**

Repealed by S.L. 1975, ch. 425, § 29.

**6-08-25. When foreign bank or trust company may serve in fiduciary capacity in state - Reciprocity.**

A bank or trust company organized and doing business under the laws of any state or territory of the United States of America, including the District of Columbia, other than the state of North Dakota, and a national bank, duly authorized so to act, may be appointed and may serve in this state as trustee, whether of a corporate or personal trust, executor, administrator, guardian for a minor or for an incompetent person, or in any other fiduciary capacity, whether the appointment is by will, deed, court order, or decree, or otherwise, when and to the extent that the state, territory, or district in which such bank or trust company is organized or has its principal place of business grants authority to serve in like fiduciary capacities to a bank or trust company organized and doing business under the laws of this state.

**6-08-26. Requirements of foreign bank or trust company serving as fiduciary in state.**

Before qualifying or serving in this state in any fiduciary capacity as defined in section 6-08-25, such bank or trust company shall file in the office of the secretary of state a filing fee of fifty dollars, a copy of its charter certified by its secretary, and a power of attorney designating the said secretary of state or the secretary of state's successor in office as the person upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter within this state in respect of which such bank or trust company is acting in any fiduciary capacity with like effect as personal service on such bank or trust company. Such power of attorney is irrevocable so long as any such liability remains outstanding against such bank or trust company in this state. Upon receipt of such notice or process with a filing fee of twenty-five dollars, it is the duty of the said secretary of state forthwith to forward the same by registered or certified mail to such bank or trust company at the address stated in the said power of attorney, and such bank or trust company shall comply with the provisions of chapter 6-05, insofar as the provisions of said chapter pertain to banks or trust companies.

**6-08-27. Resident place of business, branch office, or agency authorized - Application.**

A bank or trust company, organized and doing business under the laws of any other state, territory, or district than the state of North Dakota, including a national bank doing business in any other state, may establish in this state a place of business, branch office, or agency for the conduct of business as a fiduciary to the extent that the state, territory, or district in which such bank or trust company is organized or has its principal place of business grants authority for a North Dakota state-chartered bank or trust company to establish a place of business, branch office, or agency for the conduct of business as a fiduciary within that state's, territory's, or district's jurisdiction.

Prior to the establishment of any place of business, branch office, or agency, under this section, a bank or trust company organized and doing business under the laws of any state or territory of the United States of America, or of the District of Columbia, other than the state of North Dakota, or a national bank doing business in any other state, territory, or district, must submit a copy of its application to the North Dakota department of financial institutions for review and comment.

**6-08-28. Penalty.**

Any bank or trust company violating any provisions of sections 6-08-25 through 6-08-28 is guilty of a class A misdemeanor and, upon conviction thereof, may, in the discretion of the court, be prohibited thereafter from serving in this state in any fiduciary capacity.

**6-08-29. Annual escrow account statement.**

Each banking institution and credit union that maintains an escrow account for the payment of taxes, assessments, insurance premiums, and other charges upon the mortgagor's residence shall furnish annually each mortgagor with a detailed statement showing all debits and credits to the escrow account.

**6-08-30. Limitation on control of deposits.**

No financial institution or financial institution holding company may acquire direct or indirect ownership or control of more than twenty-five percent of North Dakota deposits through the direct or indirect acquisition of an interest in, ownership of, or control over another financial institution in this state. No financial institution or financial institution holding company may purchase the assets and assume the liabilities of a banking house or facility of any financial institution located in this state if the consummation of the acquisition results in the acquiring financial institution or financial institution holding company having direct or indirect interest in, ownership of, or control over more than twenty-five percent of North Dakota deposits. No financial institution may establish a facility outside the corporate city limits of the location of the main banking house or any authorized facility if the financial institution or its financial institution holding company has a direct or indirect interest in, ownership of, or control over more than twenty-five percent of North Dakota deposits. For purposes of this chapter, "North Dakota deposits" means North Dakota deposits as that term is defined in section 6-08.3-01.

**6-08-31. Electronic funds transfer fees.**

The operator of any electronic funds transfer facility providing for electronic funds transfer in this state may impose a transaction fee for the use of an electronic funds transfer facility if the imposition of the fee is disclosed at the time and in a manner that allows the user to terminate or cancel the transaction without incurring the transaction fee. The fee may be in addition to any other charge imposed by the operator at an electronic funds transfer facility or by any other financial institution. The name of the owner of an automated teller machine must be shown on each automated teller machine located separate from a financial institution.

**6-08-32. Funds transfers - Disclosure to financial institution required.**

A person may not direct, cause, arrange, or permit a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the intended beneficiary of



the funds transfer unless the person has first disclosed to the financial institution the fact that the account is not owned by the intended beneficiary of the funds transfer and has obtained the express, written consent of the financial institution for each transfer. A person who directs, causes, arranges, or permits a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the intended beneficiary of the funds transfer may not withdraw the funds without the written consent of the accountholder and may not recover from the financial institution any damages, costs, or expenditures, including reasonable attorney's fees, incurred in connection with the transfer or the use or withdrawal of the transferred funds by the owner of the account.

**6-08-33. Unauthorized funds transfer - Liability.**

A person who directs, causes, arranges, or permits a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the beneficiary of the funds transfer is liable to the financial institution for all damages, costs, or expenditures, including reasonable attorney's fees, which the financial institution suffers or incurs in connection with the unauthorized funds transfer transaction or any use or withdrawal of the funds by the owner of the account.

**6-08-34. Documenting customer identity.**

Notwithstanding any other provision of law, a financial institution, trust company, or credit union may make and retain a copy of any motor vehicle operator's license, permit, or nondriver's photo identification card used in connection with the process of verifying the identity of a customer or potential customer.

**6-08-35. Legal recognition of electronic records and electronic signatures.**

A record or signature on a record or document may not be denied legal effect or enforceability solely because it is in electronic form. A contract between a financial institution and another person may not be denied legal effect or enforceability solely because an electronic record was used in its formation. If a provision requires a record to be in writing, an electronic record satisfies the requirement. If a provision requires a signature, an electronic signature satisfies the requirement.

**6-08-36. Automated teller machines - Definitions - International charges - Application.**

1. In this section:
  - a. "Automated teller machine" means any electronic information processing device or electronic funds transfer facility located in this state that accepts or disposes cash in connection with a credit, deposit, or other account. "Automated teller machine" does not include a device that is used solely to facilitate check guarantees or check authorizations, or that is used in connection with the acceptance or dispensing of cash on a person-to-person basis.
  - b. "Foreign account" means an account with a financial institution located outside the United States.
2. An agreement to operate or share an automated teller machine may not prohibit an owner or operator of the automated teller machine from imposing on an individual who conducts a transaction using a foreign account an access fee or surcharge that is not otherwise prohibited under federal or state law.
3. This section first applies to agreements entered into, modified, or renewed after August 1, 2009.