

MEMORANDUM

DATE: March 16, 2023
TO: House Government and Veterans Affairs Committee
FROM: Lise Kruse, Commissioner, Chair of the State Banking Board and State Credit Union Board
SUBJECT: Testimony in Opposition of Senate Bill No. 2296

Chair Schauer and members of the House Government and Veterans Affairs Committee, thank you for the opportunity to provide this testimony on Senate Bill No. 2296.

The Department of Financial Institutions is tasked with the oversight of banks, credit unions and several nonbank entities that provide financial services in North Dakota. The non-depository institutions include trust companies, collection agencies, payday lenders, money transmitters, debt settlement service providers, and all nonbank lenders (money brokers), and mortgage loan originators.

Our department was established in 1887, two years prior to statehood. The reason was to protect citizens from being taken advantage of financially. My predecessor in 1914 talked about the harm to the “savings of children and hard-working people”. Over the 130 years of the department’s history, unfortunately not much has changed. We are here to protect our citizens from becoming victims of financial fraud.

Financial fraud and scams have increased significantly in recent years. For example, financial exploitation of our elderly citizens is far too common with a national conservative estimate of 1 in 5 being victims with an average loss of \$120,000 a person. Our legislators have passed numerous laws to make sure our department and the State Banking and Credit Union Boards have the ability to protect our citizens. We are here to

protect the rights of North Dakota depositors, borrowers, customers, and shareholders. When money is stolen from North Dakota citizens – our friends, families, and neighbors – our department and the Boards need to have the ability to step in. We need to remove bad actors from the financial industry, and defend our citizens and enforce the laws passed by our legislature to the fullest extent.

Unfortunately, Senate Bill No. 2296 would make it difficult for us to enforce the laws our legislature has put in place to protect our citizens from financial fraud. It appears that this Bill would give the bad actors a legal advantage when we make an effort to enforce laws applicable to the financial services industry. Our department, the State Banking Board, and the State Credit Union Board, each made up of industry professionals, must from time to time interpret facts which are specific to their industries. Banking law and financial regulations can be complex, and it is in everyone's best interest that these are applied fairly and consistently by industry experts. Since banking products are constantly evolving, we make informed decisions on an existing law's applicability to new products and services. If a consumer is harmed, and we are there to help a victim of financial fraud, we would lose if a judge interprets this law to say our current practice is an increase in authority. We would constantly play catch up, legislating each new industry product, with all its variations, into existing law every two years.

If we are unable to help our citizens, their only option is to seek help from the federal government. Our department has long fought against federal pre-emption, since we believe in state's rights. Also, this law would not restrict the federal government, which puts the state at a disadvantage when working for our citizens.

A couple of years ago, we were made aware of an individual attempting to send money to his family overseas. Small claims court ruled that the money never arrived. We were not aware of our out-of-state licensed entity providing services at this location – it was unregistered. In our investigation, we identified numerous violations of law and revoked the license. This has been challenged in court and is still ongoing. With the passage of this Bill, I am concerned that when we are protecting customers from financial fraud, we will lose due to a technicality in law that somehow considers it ambiguous or that we somehow increased our authority.

Although we all favor individual liberty and freedom, this Bill tries to achieve this at the victims' expense. The Bill instructs a judge to exercise doubt in favor of the individual, which in our case is often sizable out-of-state corporations with talented legal teams. Our department is here to step in to enforce laws to protect the public from bad actors. We are acting on behalf of citizens, enforcing laws passed by this legislative body. This Bill tips the legal scale in favor of bad actors at the expense of honest North Dakota citizens, therefore, we respectfully oppose Senate Bill No. 2296.