

MEMORANDUM

DATE: March 1, 2023
TO: House Industry, Business and Labor Committee
FROM: Lise Kruse, Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2092

Chairman Louser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2092.

Mr. Chairman and members of the Committee, Senate Bill No. 2092 includes the creation of 6-07.2, amendment to section 6-01-04.1, and the repeal of chapter 6-06.1 of the North Dakota Century Code relating to financial institutions. I would like to note that prior to filing this Bill, the department met with various staff and committee members of the North Dakota Bankers Association, Independent Community Banks of North Dakota, and the Dakota Credit Union Association, and had discussions with

several bankers and credit union officials to review our proposed legislation. Input from these stakeholders was considered and is reflected in this Bill.

Section 1 of the Bill would amend section 6-01-04.1, which addresses the removal of officers, directors, and employees of financial corporations or institutions. To ensure the safety of our financial system, the Department has the ability to take action against bad actors. When fraud or violations of law are occurring, the Department can issue an order against the perpetrator; however, it goes into effect upon service. Since law enforcement may not immediately be able to locate the individual, especially if the individual is outside of North Dakota, the individual can effectively avoid action against them simply by evading service. The federal banking regulators have this same authority, and their orders are effective upon issuance. We are proposing copying our federal counterparts and making orders effective upon issuance so that orders are effective immediately, thereby alerting North Dakota citizens of these bad actors. The individual or entity must still be served, and the appeals process will not start until service. In this way, the individual is afforded their due process rights under North Dakota Century Code 28-32. The Department would also have more control over how and when an order is served, which would be less disruptive for a local community financial institution.

Section 1 also clarifies how and when a previously issued order is made final. It removes inconsistencies between the reasons an order can be initially issued and the reasons an order can be made final. It also clarifies that an order can be final if a person is convicted of or pleading to a lesser charge.

Section 2 is the creation of a new section to chapter 6-07.2. Voluntary liquidation of credit unions was addressed in a stand-alone chapter, and it made more sense to include this in the same chapter as bank voluntary liquidations. The language has been modernized to correspond with current practices, including requirements by our federal counterpart. This section includes an amendment, which I am attaching to this testimony. We were unaware of outdated language in this statute related to unclaimed property. The Department of Trust Lands reviewed our amendment, and it should now be up to date.

Section 3 repeals chapter 6-06.1 regarding voluntary liquidation of credit unions since this was moved to a section in chapter 6-07.2.

Mr. Chairman, thank you for the opportunity to provide this testimony. I would be happy to answer any questions the Committee may have.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2092

Page 6, line 31, replace “, if” with a period

Page 7, line 1, replace “any, due members” with “Members”

Page 7, line 1, remove “in”

Page 7, line 2, remove all

Page 7, line 3, replace “escheat or abandoned property laws, and of” with “, any”

Page 7, line 3, remove “if any, due members or”

Page 7, line 4, replace “creditors who failed to cash” with “and”

Page 7, line 4, after “checks” insert “not cashed”

Page 7 Line 4, remove the period

Page 7, line 5, replace all with “shall be reported to the North Dakota department of trust lands unclaimed property division pursuant to subsection 47-30.2.”

Page 7, line 6, remove all

Page 7, line 7, remove all

Page 7, line 8, remove all

Page 7, line 9, remove all

Page 7, line 10, remove all

1 union administration. Further liquidation of credit union assets or distributions to
2 shareholders after notice requires written approval from the commissioner.

3 13. With the written approval of the commissioner, a partial distribution of the credit
4 union's assets may be made to its members from cash funds available on
5 authorization by its board of directors or by a duly authorized liquidating agent whose
6 appointment specifically includes the authority. Partial distributions cannot exceed the
7 national credit union share insurance limit.

8 14. When all assets of the credit union have been converted to cash or found to be
9 worthless and all loans and debts owing to it have been collected, sold, or found to be
10 uncollectible and all obligations of the credit union have been paid, with the exception
11 of amounts due its members:

- 12 a. The books must be closed and the pro rata distribution to members computed.
13 This computation must be based on the total amount in each member's share
14 accounts as of the date the board of directors voted to voluntarily liquidate.
- 15 b. The amount of gain or loss must be entered in each member's share account and
16 should be entered in the member's passbook or statement of account.
- 17 c. Promptly, funds must be distributed to each member. The funds must be mailed
18 to such members at their last-known addresses, electronically transmitted to the
19 members designated account, or handed to them in person.
- 20 d. The passbooks or written confirmations submitted by members to verify balances
21 must be retained with the credit union records.
- 22 e. Unclaimed share accounts subject to the escheat or abandoned property laws of
23 the state or the state of the members' residence must be paid to the state as
24 required by such laws.
- 25 f. The commissioner must be promptly notified of the date final distribution of
26 assets to the members is started.
- 27 g. In the event of a loss on members share accounts, a claim must be submitted by
28 the board of directors or the liquidating agent if appointed, to the national credit
29 union administration, private share insurance if available, and bonding company.

30 15. Within one hundred twenty days after the final distribution to members is started, the
31 credit union shall furnish to the commissioner's office a schedule of unpaid claims, if,

1 ~~any, due members~~Members who failed to surrender their passbooks or confirm their
balances in
2 ~~writing during liquidation whose accounts are not payable to the state under applicable~~
3 ~~escheat or abandoned property laws, and of any unpaid claims, if any, due members or~~
4 ~~creditors who failed to cash and final distribution checks not cashed~~ within one hundred
twenty days.
5 ~~This schedule must be accompanied by a certified check or money order payable to~~shall
be reported to the North Dakota department of trust lands unclaimed property division
pursuant to subsection 47-30.2.
6 ~~the state treasurer in the exact amount of the total of these unpaid claims. The state~~
7 ~~treasurer shall deposit the funds in a special account where they will be held for the~~
8 ~~account of the individuals named on the schedule. Each individual or any authorized~~
9 ~~person on the individual's behalf may submit to the state treasurer a written claim for~~
10 ~~the amount of funds held for the individual.~~

11 **SECTION 3. REPEAL.** Chapter 6-06.1 of the North Dakota Century Code is repealed.