

MEMORANDUM

DATE: January 14, 2025
TO: House Industry, Business and Labor Committee
FROM: Lise Kruse, Commissioner
SUBJECT: Testimony in Support of House Bill No. 1127

Chairman Warrey and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 1127.

Mr. Chairman and members of the Committee, Senate Bill No. 1127 includes amendments to several sections in chapters 6 and 13, and the creation of chapter 13-01.2 to address data security for non-depository institutions. The purpose of this bill is to update and clarify sections of the century code to ensure consistency, particularly between banks and other financial corporations. The data security section is adding a model law into state law to ensure the state has the same cyber security protection authority as the Federal government.

Section 1 of the Bill amends section 6-01-04.1 related to the removal of financial institution officers, directors, and employees. The department has authority to remove people from banking when they have violated laws and regulations, participated in unsafe and unsound practice, or there is a breach of fiduciary duties or trust. When such action takes place, there is an opportunity to appeal, pursuant to chapter 28-32. The statute allows a person to request reinstatement after 3 years; however, this determination has no appeal rights, and therefore has caused the department incessant requests when a decision to deny a request has not been accepted. Since we only remove people when they meet our high bar - when there has been embezzlement, fraud and theft, - we do not see an instance where we would re-instate someone to work in a bank. We are therefore removing the ability to ask for termination of the final order.

The second part of this section clarifies that the state banking board or commissioner can issue a prohibition order when a person has been convicted of any charge, not just a felony charge, in the instances where the individual was able to plead to a lesser charge. This authority in the proposed subsection 7 is similar to the existing authority in subsection 6 but covers situations where the department is not aware of the charges until after conviction, closing a loophole in subsection 6.

Section 2 of the Bill amends section 6-01-04.2 where we have previously missed updating this to current practice. An order can be issued against a financial institution either by the board or by the department. When a bank has entered into an order and it escalates to a cease-and-desist order, if the original order is with the department, not the state banking board, we would need to start over with the state banking board. It makes the state banking board having to be party to all actions, which is inefficient. This change brings processes and authority outlined in chapter 6 in line with comparable processes and authority outlined in chapter 13.

Section 3 of the Bill amends section 6-03-02 to reflect the ability of the commissioner, in addition to the state banking board to issue orders or rules regarding permissible activities for our banks, since not all of these need to go to the state banking board. This change increases efficiencies and timeliness for routine requests.

Section 4 of the Bill creates and enacts a new chapter, 13-01.2, to cover data security for non-depository financial corporations. Information security threats and cyberattacks are ongoing concerns to the financial system. Safeguarding customers' data is of utmost importance, which is why banks and credit unions have strict requirements to have safeguards in place to protect consumer data. We want to make sure customer data is safe also

when they are accessing financial services from our non-bank licensees. In 2023, the Federal Trade Commission (FTC) finalized and issued its Safeguards Rule applicable to non-banks. This Bill will add FTC's Safeguards Rule into state statute with this model law.

The reason this is needed in state statute is due to the lack of clarity whether we as a state can enforce compliance with the federal rules directly. We may identify failures in compliance during our exams, and by adopting this model law, we are provided with enforcement authority and the ability to address specific needs such as data breach notifications.

This statute does not create any additional rules for the industry, since the companies are already subject to the requirements, however, it allows us at the state level to have the same authority as the federal government when there are data breaches. It allows us to be proactive in addressing cyber threats, aligns us with standards of other regulators, and since we are leveraging the model law, it reduces regulatory burden for the industry. It is a model law – already enacted by 6, partially enacted by one, and 3 more states in process. Using this model law rather than enacting our own requirements, makes it easier on companies that are operating nationwide. It ensures a streamlined and coordinated approach to data security regulations where we work with other regulators. Coordination results in

effective supervision and consistent standards among regulators. The objective of this law is to ensure the security and confidentiality of customer information, reducing the risk of identity theft and fraud. By adopting robust data security requirements, we continue to ensure consumers' trust and confidence in regulated financial corporations. It results in a safer, more secure and reliable financial environment for all stakeholders.

Section 5 of the Bill amends section 13-04.1-01.1 to add a definition of a loan to our money broker statute. This money broker statute applies to all non-bank lenders, other than the ones doing mortgage lending, which has a separate statute. The language is from the "loan of money definition" in 47-14-01 and includes the additional sentence about "alternative financing products". In recent years we have seen an increase in creative financing products entering the marketplace. To simplify our statute by avoiding a separate chapter for each financing product, this gives us the ability to include these products into the existing law as they are issued. It ensures that our citizens will have access to new lending products, without sacrificing safeguards.

Sections 6, 7, 8, 9, 14, 15, and 18 of the Bill amends sections in chapter 13 related to licensees' (money brokers, collection agencies, mortgage loan originators, debt settlement providers, residential mortgage lenders, and

mortgage servicers) response to department requests. Current practice is to communicate with our licensed entities electronically within our licensing system, which is more efficient for both parties. A timeline is always specified in writing for the expected response, rather than expecting our licensee to keep track of our communication date.

Section 10 of the Bill amends section 13-09.1-14 related to renewal of license for money transmitters. The language in statute was not clear as far as our authority to deny a license renewal when a company no longer meet qualifications in law. When a licensee no longer meets North Dakota legal requirements, the department should be able to deny the license renewal.

Section 11 of the Bill amends section 13-09.1-17 related to money transmitters, updating the appeals request to 20 days, which is consistent with chapter 28-32.

Section 12 of the Bill amends 13-09.1-38 related to money transmitters orders to cease and desist. When we adopted this model law in 2023, this section was not consistent with other parts of North Dakota statutes. Also, the last section stated that the order would expire unless it was appealed, which does not make sense. The order should become final if the licensee does not appeal.

Section 13 of the Bill amends 13-10-05 for mortgage loan originators clarifying licensing when an applicant has been charged with a crime, including when trial is pending, and applicant has pled to lesser charges. The underlying crime has still occurred and should prevent the lender from offering services to North Dakota citizens. This change is consistent with other statutes.

Section 16 of the Bill amends 13-13-01 for mortgage servicers, clarifying certain definitions of the law we enacted in 2023, which seemed to cause confusion in the industry.

Section 17 of the Bill amends 13-13-04 for mortgage servicers, clarifying that entities that are only doing interim servicing are exempt.

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