

MEMORANDUM

DATE: January 22, 2025
TO: House Industry, Business and Labor Committee
FROM: Lise Kruse, Commissioner
SUBJECT: Testimony in Opposition of House Bill No. 1441

Chairman Warrey and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in opposition of House Bill No. 1441.

Our department oversees banks, credit unions, trust companies, and other nonbank financial corporations such as money transmitters and lenders. The department is in opposition to this bill due to what I assume are unintended consequences.

In Section 1 of the Bill, there is a new addition to what is considered legal tender in the state of North Dakota. It would add gold and silver to be legal tender. Legal tender in federal law (31 U.S.C § 5103) is defined as money that is legally recognized as valid form of payment for debts, taxes,

and other dues. It includes all U.S. coins and currency, including Federal Reserve notes. Local jurisdictions such as states can set their own definition for what is considered legal tender, and the proposal is to include gold or silver. Legal tender does not require businesses to accept it for purchases of goods. A business can establish their own policies about whether to accept what is considered legal tender. That is why businesses can now accept Bitcoin if they so choose, or gold, or any other commodity. It does not address the ability of bartering, which is what happens when a business is willing to accept a commodity in exchange for their products.

Other states that have included gold as legal tender have included exemptions or otherwise made it clear that the state does not force anyone or any business to accept legal tender. Since legal tender must be accepted for debt repayments, it appears that this Bill requires banks and credit unions to accept gold as payment, which is problematic for the industry. Banks and credit unions are required to have fair value expressed in dollars on their balance sheet. Since any commodity can fluctuate in value, even on the same day, it will be a challenge for banks and credit unions to determine value. Since these instruments are likely not issued by the U.S. government, but a private party, and sold through third party vendors, the ability to validate the authenticity is difficult. This is also a risk for the customer. A customer

may spend \$5,000 to buy gold, but find when they spend it, it will not be valued the same. And again, to know that it is authentic, that the gold content is appropriate is difficult to ascertain for a person unfamiliar with precious metals.

Section 2 of the Bill amends our money transmitter law's definition of money to include what is legal tender. Also note that this definition is identical to what is in chapter 41 and Section 3 of the Bill. This definition change would require the department to regulate any transmission of gold and silver. I do not believe that the issuers of these instruments or any of our precious metal and coin dealers in the state would want that. Our department would advise against this, since it would take tremendous amounts of resources. With the difficulty in validating the authenticity of these instruments that are created by a third party - to determine if a specific instrument has the amount of gold as advertised - would take special expertise.

Finally, when it comes to Central Bank Digital Currency, I would advise to also take that out of our section of the Bill. There is no such thing as a Central Bank Digital Currency in the United States today, and any authorization of such would have to come from Congress. Although it is not in the United States, many of our citizens transact and send money outside

of our country with jurisdictions which may have, or may adopt, a Central Bank Digital Currency. Those transmissions should still be regulated, and the customer should be protected, which they lose if this is exempted from the statute.

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