2021 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2102

2021 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Fort Union Room, State Capitol

SB 2102
1/6/2021

to dissolution, insolvency, suspension, emergency receivership, and liquidation of financial institutions.

Chairman Klein called the hearing to order at 10:00 a.m.

All members present. Senators: Klein, Larsen, Burckhard, Kreun, Marcellais, Vedaa

Discussion Topics:

- Specific wording in the bill
- Liquidation of businesses
-

Lisa Kruse, Commissioner ND Department of Financial Institutions testified in favor and submitted testimonies #80 and #81 [10:04].

Jeff Olson, President of Credit Union testified in favor [10:19]

Rick Clayburgh, CEO of NDCU testified in favor [10:40]

Barry Haugan testified in favor [10:47]

Senator Kreun moved to adopt amendment **LC: 21.8095.01001** to SB 2102 [10:52].
Senator Vedaa seconded the motion [10:52].

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

Senator Vedaa moved DO PASS AS AMMENDED [10:53].
Senator Kreun seconded the motion [10:53].

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0.

Senator Burckhard will carry the bill [10:54].
Chairman Klein closed the hearing at 10:55 AM.

Gail Stanek, Committee Clerk

21.8095.01001
Title.02000

Adopted by the Industry, Business and Labor Committee

January 6, 2021

PROPOSED AMENDMENTS TO SENATE BILL NO. 2102

Page 7, line 23, after the underscored comma insert "state credit union board,"

Page 10, line 21, after the first "the" insert "receiver's"

Page 13, line 11, remove ", at the election of the commissioner,"

Page 16, line 28, replace "a bank" with "an institution"

Page 16, line 29, replace "bank" with "institution"

Page 16, line 30, replace "commission" with "commissioner"

Page 17, line 1, replace "bank" with "institution"

Page 17, line 1, replace "bank's" with "institution's"

Page 17, after line 2, insert:

"3. A bank or credit union may request a hearing before the state banking board or state credit union board within ten days of the emergency temporary suspension or conservatorship to review the factual basis used to issue the emergency temporary suspension or conservatorship. The decision made by the state banking board or state credit union board during the hearing is final. If a hearing is not requested, the initial decision of the commissioner is final."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2102: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2102 was placed on the Sixth order on the calendar.

Page 7, line 23, after the underscored comma insert "state credit union board,"

Page 10, line 21, after the first "the" insert "receiver's"

Page 13, line 11, remove ", at the election of the commissioner,"

Page 16, line 28, replace "a bank" with "an institution"

Page 16, line 29, replace "bank" with "institution"

Page 16, line 30, replace "commission" with "commissioner"

Page 17, line 1, replace "bank" with "institution"

Page 17, line 1, replace "bank's" with "institution's"

Page 17, after line 2, insert:

"3. A bank or credit union may request a hearing before the state banking board or state credit union board within ten days of the emergency temporary suspension or conservatorship to review the factual basis used to issue the emergency temporary suspension or conservatorship. The decision made by the state banking board or state credit union board during the hearing is final. If a hearing is not requested, the initial decision of the commissioner is final."

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2102

Page 7, line 23, after "state banking board," insert "state credit union board,"

Page 10, line 21, replace "the powers" with "the receiver's powers"

Page 13, line 11, remove ", at the election of the commissioner,"

Page 16, line 28, replace "a bank" with "an institution"

Page 16, line 29, replace "bank" with "institution"

Page 16, line 30, replace "commission" with "commissioner"

Page 17, line 1, replace "bank" with "institution"

Page 17, line 1, replace "bank's" with "institution's"

Page 17, after line 2, insert:

"3. A bank or credit union may request a hearing before the state banking board or state credit union board within ten days of the emergency temporary suspension or conservatorship to review the factual basis used to issue the emergency temporary suspension or conservatorship. The decision made by the board during this hearing will be final. If a hearing is not requested, the initial decision of the commissioner will be final."

Renumber accordingly

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MEMORANDUM

DATE: January 6, 2021

TO: Senate Industry, Business and Labor Committee

FROM: Lise Kruse, Commissioner

SUBJECT: Testimony in Support of Senate Bill No. 2102

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2102.

Mr. Chairman and members of the Committee, Senate Bill No. 2102 creates 6-07.2 of the North Dakota Century Code, replacing 6-07, which is repealed relating to the dissolution, insolvency, suspension, emergency receivership, and liquidation of institutions under the department of financial institutions' supervision. This bill also includes amendments to Chapters 6-01, 6-02, 6-03, 6-05, 6-06 of the North Dakota Century Code relating to financial institutions cross references, cease and desist orders, and prompt corrective action. 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.

Before I go into the specifics of the Bill, I would like to give you an overview and reasoning behind it. This has to do with bank failures. When necessary, the department needs to take possession of a bank, turn it over to the Federal Deposit Insurance Corporation (FDIC), in as smooth of a way as possible, with minimal, if any, impact to the customer. The last bank failure in North Dakota was in 1991 – 30 years ago. Since then, a lot has changed with the process. Our current statute, 6-07 was written in 1887, updated in the 1930s and again with some tweaks in 1991. If we would have a bank failure today, it would be painful for all parties involved. The process has changed at the federal level, which is why we need to change our statute so we can accommodate a seamless transition. Let me walk through a basic scenario: A failure is rarely a surprise unless fraud is involved. Under most circumstances, the failure can be years in the making. As a bank begins to deteriorate, we will institute measures with the goal of restoring the bank to a healthy institution. At some point, capital may be critically low, or the bank may not be able to meet its obligations to customers, and we need to take

possession of the bank to save the customers' deposits. This whole process is done jointly with our federal counterpart with equal say in how we approach the situation. When failure is becoming more and more likely, the FDIC will shop around for potential purchasers of the failing institution. At a particular Friday, the state examiners will enter the institution and all its branches and take possession, turning the charter over to FDIC, the receiver. FDIC will work over the weekend, and the doors will open Monday morning under a new bank name. The customers will not be affected and will hardly notice – other than the new name. However, this is not to minimize that there is always a shock to the community, which is why the process has to be as seamless as possible to minimize any impact – where the community continue to receive banking services without interruption.

I conferred with the FDIC resolutions division, as well as other commissioners throughout the country who have experienced more recent failures, to come up with what is today considered best practice. The new statute is taken from several other states, and with some carryover from the current statute, although with modernized language. Also, when looking at this statute, we also wanted to make sure it covers credit unions. In 2017, the National Credit Union Association (NCUA) took one of our credit unions under conservatorship. Although the state was involved up to that point, due

to our antiquated law, the department was not party to the conservatorship, rather NCUA laws were used. If the state is unable or unwilling to take action, both the FDIC for banks, and the NCUA for credit unions can take possession of the institution. Based upon the experience in 2017, it is in the best interest of North Dakota institutions and customers (or members for the credit unions) that the state has a seat at the table and is involved as much as possible.

The biggest concern with the current law is whether the department would have the authority to intervene if there was a liquidity event (bank run), cyber event, or a ransomware attack. The new law is written to ensure that these scenarios are covered. It includes a provision for the department to take temporary possession where we do not close the institution permanently, rather we hold it for a short time to turn it over to the same management. A ransomware situation is where this can be important. The institution would not need to close permanently (fail), rather it would just need some time to recover.

I want to make clear that I am not anticipating any failures in the foreseeable future; however, there have been a couple of failures in the nation due to fraud in the last few years, and I do not want to assume that

we are immune from fraud – people can become desperate and make poor decisions, especially under economic pressure.

There are three areas that are changed that I want to bring to your attention: First, the procedure is administrative rather than judicial. At least 40 states have an administrative procedure. It can be a hurdle to find a judge at the specific Friday the closure is scheduled. I have found no record of a judge not signing an order, and it would also be strange for a judge to overrule the department's execution of its responsibility. If there was a hindrance of any kind due to a judicial procedure, the FDIC and NCUA may take action, effectively removing state influence in the process.

Second, the authority is with the commissioner rather than the State Banking Board or State Credit Union Board. However, the boards are informed of the institutions conditions and are involved up to the time of taking possession. Most states act without a board making such decisions. Only 7 other states (14%) have boards make the factual finding on the bank side. For credit unions, only 9 other states (20% of other chartering states) have boards that make the decision. Closing an institution is a safety and soundness issue, which is the commissioner's number one objective, concern, and responsibility. Closure is guided by the condition of the bank - it should not be at anyone's discretion or left to a vote. The new law has a

lengthy list of reasons when the department can take possession, so it is not an arbitrary decision. As mentioned earlier, the process should be as smooth as possible, with limited harm to consumers and institutions alike. We need to make sure the department can work this out with the FDIC or NCUA from a regulatory perspective. It is a high burden to ask a banker or credit union president to vote on closing a friend's, colleague's, and competitor's bank or credit union. In such a small state with few institutions (64 banks and 20 credit unions), it is difficult to put our board members in such a position and could make it difficult to find members. A former board member from the 80s once told me it was the most difficult thing he ever had to do. If there is concern about the commissioner acting irresponsibly, please keep in mind that the commissioner can be removed by the governor, so if we have a corrupt commissioner, there is a safeguard. The commissioner is also confirmed by the senate, so the legislative body has a say as well.

There was some concern about the structure from a couple of credit union individuals. Hearing the credit unions' concerns, we are proposing an amendment to add a level of board appeal to an emergency conservatorship, which we will discuss more shortly. We believe the criteria listed for conservatorship action is specific enough to address any concerns. Additionally, the previously discussed controls over the commissioner

positions including oversight by the legislative body make it appropriate to structure the process as we have proposed, a similar process employed by the majority of state governments.

Third is the appeals process. There are several areas where an institution can appeal a decision, and we have added an amendment to add more controls over the process. The board is aware of the condition of our institutions and any appeals process leading up to the failure is in place. However, as soon as the institution is turned over to the FDIC or NCUA there is no going back. At that point there is nothing the department or boards can do, and we should remove any liability. Current law implies that this can somehow be reversed, but realistically once the final resolution process has commenced, it is not possible to unwind the transaction. Any appeals or grievances should be filed prior to the institution being in possession of the receiver. As mentioned earlier, under normal circumstances, there is a long period leading up to the failure, giving the institution's management and board many opportunities to object to any examination findings.

In listening to the concerns from the credit union industry, we did hear from them an opportunity to add an additional safeguard over emergency conservatorship actions. While the emergency provision is designed to be temporary which itself is a control, adding an appeal to the board in this

section of the law as well will serve to strengthen the controls over the process. We are proposing an amendment to add this additional appeal process to the emergency provision.

The first 8 sections of the Bill are either related administrative actions or cross reference corrections.

Section 1 of the Bill would amend Subsection 4 of 6-01-04.2 regarding emergency, temporary cease and desist orders changing the appeals process to the board. The reasoning is to be consistent with the new Chapter 6-07.2 since that is an administrative procedure.

Section 2 of the Bill provides for an amendment to 6-01-04.4, allows the commissioner to enter an order if a bank is undercapitalized. The thresholds for undercapitalized, significantly undercapitalized, and critically undercapitalized are defined in federal law and the FDIC has the authority to take action as well. The amendment gives the commissioner the same ability for the same reasoning as earlier discussed. This would especially be necessary if the affected institution has a member on the banking board, or when the action must be taken quickly. There is an appeals process with the state banking board as a safeguard, and the procedure is again administrative.

Sections 3, 4, 5, 6, and 7 of the Bill are to update cross references.

Section 8 of the Bill is to amend 6-06-08.4 prompt corrective action for credit unions. The capital thresholds are defined in this section and the commissioner or the board have the authority to take prompt corrective action. The commissioner is able to take possession, consistent with the new Chapter 6-07.2. An appeals process with the state credit union board is included and the process is administrative.

Section 9 of the Bill will create and enact section 6-07.2. I will briefly go through it. The section explains the procedure, giving a lengthy list of reasons which clarifies situations when possession can take place and to remove arbitrary or vague language. It covers termination of possession and notice procedures and details the appointment of the receiver and transfer to the receiver, as well as the powers of the receiver, which includes sale of assets and authority for the receiver to borrow. The receiver would most likely be the FDIC or NCUA; however, the department can appoint a different receiver if circumstances so warrant. Almost identical to our prior statute (6-07-52), the presentation and payment order of claims are detailed.

The emergency temporary suspension or conservatorship was briefly mentioned earlier. One of the primary reasons this is commissioner-initiated action is due to the nature of the emergency. The most likely scenario we foresee is a ransomware attack where an institution is unable to operate and

needs immediate assistance. We would not have the time to notice a meeting of the state boards or ensure a quorum for the board to make the decision. This section is intended to be temporary, which is a safeguard; however, as discussed, an amendment has been proposed to address industry concern and add additional safeguards. Some other tweaks were also discovered in the legislative version, therefore, attached to this testimony, we are including proposed amendments to this Bill.

Finally, this statute (6-07.2-18) includes clear guidelines for when an institution decides to voluntarily liquidate, turning itself over to the department. This is a scenario that has been discussed in recent years, when bankers are nearing retirement and may have a challenge finding a merging or purchasing partner, giving this as an option.

Section 10 of this Bill repeals Chapter 6-07.

To conclude, I want to make clear that the department is committed to our oversight of the safety and soundness of our financial institutions. A bank or credit union's failure always has an impact on the local community, and no one wants to see that happen, and we will do our best to prevent it.

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

2021 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2102

2021 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

SB 2102
3/17/2021

Financial institutions cross references, cease & desist orders, dissolution, insolvency, suspension, emergency receivership & liquidation of institutions under the department of financial institutions' supervision.

(9:30) Chairman Lefor called the hearing to order.

Representatives	Attendance	Representatives	Attendance
Chairman Lefor	A	Rep Ostlie	P
Vice Chairman Keiser	P	Rep D Ruby	P
Rep Hagert	P	Rep Schauer	P
Rep Kasper	A	Rep Stemen	P
Rep Louser	P	Rep Thomas	P
Rep Nehring	P	Rep Adams	P
Rep O'Brien	P	Rep P Anderson	P

Discussion Topics:

- Bank failure
- Dissolution, insolvency, suspension, emergency receivership & liquidation

Lise Kruse~Commissioner-ND Financial Institutions. Attachment #9660.

Rick Clayburgh~President & CEO-ND Bankers Association. Testified in support.

Barry Haugen~President-Independent Community Banks of ND. Testified in support.

Kayla Pulvermacher~Dakota Credit Union Association. Testified in support.

Vice Chairman Keiser closes the hearing.

Rep Adams moved a Do Pass.

Rep Schauer second.

Representatives	Vote
Chairman Lefor	A
Vice Chairman Keiser	Y
Rep Hagert	Y
Rep Jim Kasper	A
Rep Scott Louser	Y
Rep Nehring	Y
Rep O'Brien	A
Rep Ostlie	Y
Rep Ruby	Y
Rep Schauer	Y
Rep Stemen	Y
Rep Thomas	Y
Rep Adams	Y
Rep P Anderson	Y

Vote roll call taken Motion carried 11-0-3 & Rep Thomas is the carrier.

(10:10) End time.

Ellen LeTang, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2102, as engrossed: Industry, Business and Labor Committee (Rep. Lefor, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2102 was placed on the Fourteenth order on the calendar.

9660

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MEMORANDUM

DATE: March 17, 2021

TO: House Industry, Business and Labor Committee

FROM: Lise Kruse, Commissioner

SUBJECT: Testimony in Support of Engrossed Senate Bill No. 2102

Chairman Lefor and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2102.

Mr. Chairman and members of the Committee, Engrossed Senate Bill No. 2102 creates 6-07.2 of the North Dakota Century Code, replacing 6-07, which is repealed relating to the dissolution, insolvency, suspension, emergency receivership, and liquidation of institutions under the department of financial institutions' supervision. This bill also includes amendments to Chapters 6-01, 6-02, 6-03, 6-05, 6-06 of the North Dakota Century Code relating to financial institutions cross references, cease and desist orders, and prompt corrective action. 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.

Before I go into the specifics of the Bill, I would like to give you an overview and reasoning behind it. This has to do with bank failures. When necessary, the department needs to take possession of a bank, turn it over to the Federal Deposit Insurance Corporation (FDIC), in as smooth of a way as possible, with minimal, if any, impact to the customer. The last bank failure in North Dakota was in 1991 – 30 years ago. Since then, a lot has changed with the process. Our current statute, 6-07 was written in 1887, updated in the 1930s and again with some tweaks in 1991. If we would have a bank failure today, it would be painful for all parties involved. The process has changed at the federal level, which is why we need to change our statute so we can accommodate a seamless transition. Let me walk through a basic scenario: A failure is rarely a surprise unless fraud is involved. Under most circumstances, the failure can be years in the making. As a bank begins to deteriorate, we will institute measures with the goal of restoring the bank to a healthy institution. At some point, capital may be critically low, or the bank may not be able to meet its obligations to customers, and we need to take

possession of the bank to save the customers' deposits. This whole process is done jointly with our federal counterpart with equal say in how we approach the situation. When failure is becoming more and more likely, the FDIC will shop around for potential purchasers of the failing institution. At a particular Friday, the state examiners will enter the institution and all its branches and take possession, turning the charter over to FDIC, the receiver. FDIC will work over the weekend, and the doors will open Monday morning under a new bank name. The customers will not be affected and will hardly notice – other than the new name. However, this is not to minimize that there is always a shock to the community, which is why the process has to be as seamless as possible to minimize any impact – where the community continue to receive banking services without interruption.

I conferred with the FDIC resolutions division, as well as other commissioners throughout the country who have experienced more recent failures, to come up with what is today considered best practice. The new statute is taken from several other states, and with some carryover from the current statute, although with modernized language. Also, when looking at this statute, we also wanted to make sure it covers credit unions. In 2017, the National Credit Union Association (NCUA) took one of our credit unions under conservatorship. Although the state was involved up to that point, due

to our antiquated law, the department was not party to the conservatorship, rather NCUA laws were used. If the state is unable or unwilling to take action, both the FDIC for banks, and the NCUA for credit unions can take possession of the institution. Based upon the experience in 2017, it is in the best interest of North Dakota institutions and customers (or members for the credit unions) that the state has a seat at the table and is involved as much as possible.

The biggest concern with the current law is whether the department would have the authority to intervene if there was a liquidity event (bank run), cyber event, or a ransomware attack. The new law is written to ensure that these scenarios are covered. It includes a provision for the department to take temporary possession where we do not close the institution permanently, rather we hold it for a short time to turn it over to the same management. A ransomware situation is where this can be important. The institution would not need to close permanently (fail), rather it would just need some time to recover.

I want to make clear that I am not anticipating any failures in the foreseeable future; however, there have been a couple of failures in the nation due to fraud in the last few years, and I do not want to assume that

we are immune from fraud – people can become desperate and make poor decisions, especially under economic pressure.

There are three areas that are changed that I want to bring to your attention: First, the procedure is administrative rather than judicial. At least 40 states have an administrative procedure. It can be a hurdle to find a judge at the specific Friday the closure is scheduled. I have found no record of a judge not signing an order, and it would also be strange for a judge to overrule the department's execution of its responsibility. If there was a hindrance of any kind due to a judicial procedure, the FDIC and NCUA may take action, effectively removing state influence in the process.

Second, the authority is with the commissioner rather than the State Banking Board or State Credit Union Board. However, the boards are informed of the institutions' conditions and are involved up to the time of taking possession. Most states act without a board making such decisions. Only 7 other states (14%) have boards make the factual finding on the bank side. For credit unions, only 9 other states (20% of other chartering states) have boards that make the decision. Closing an institution is a safety and soundness issue, which is the commissioner's number one objective, concern, and responsibility. Closure is guided by the condition of the bank - it should not be at anyone's discretion or left to a vote. The new law has a

lengthy list of reasons when the department can take possession, so it is not an arbitrary decision. As mentioned earlier, the process should be as smooth as possible, with limited harm to consumers and institutions alike. We need to make sure the department can work this out with the FDIC or NCUA from a regulatory perspective. It is a high burden to ask a banker or credit union president to vote on closing a friend's, colleague's, and competitor's bank or credit union. In such a small state with few institutions (64 banks and 20 credit unions), it is difficult to put our board members in such a position and could make it difficult to find members. A former board member from the 80s once told me it was the most difficult thing he ever had to do. If there is concern about the commissioner acting irresponsibly, please keep in mind that the commissioner can be removed by the governor, so if we have a corrupt commissioner, there is a safeguard. The commissioner is also confirmed by the senate, so the legislative body has a say as well.

The board members are appointed by the Governor. The qualification criteria are outlined in state law, but there is no clear process to address issues such as a board member who may vote against a closure due to self-dealing, wanting a merger partner, or the institution being a friend. There is also the concern about confidentiality and how to handle a scenario where we have to close a board member's institution. Finally, if there is pressure

or threats associated with the action taken, there is not much impact or consequence to the commissioner as a government official or to the department. However, a board member who is an institution president and their institution itself may suffer business harm if threatened or attacked. Placing the closure responsibility with the commissioner creates the most safeguards for the boards, the institution being conserved, and the bank's customers.

There was initially some concern about the structure from a couple of credit union individuals. Hearing the credit unions' concerns, we made an amendment which was approved by the Senate and reflected in this bill to add a level of board appeal to an emergency conservatorship, which we will discuss more shortly. We believe the criteria listed for conservatorship action is specific enough to address any concerns. Additionally, the previously discussed controls over the commissioner positions including oversight by the legislative body make it appropriate to structure the process as we have proposed, a similar process employed by the majority of state governments.

Third is the appeals process. There are several areas where an institution can appeal a decision, and we added an amendment to add more controls over the process. The board is aware of the condition of our

institutions and any appeals process leading up to the failure is in place. However, as soon as the institution is turned over to the FDIC or NCUA there is no going back. At that point there is nothing the department or boards can do, and we should remove any liability. Current law implies that this can somehow be reversed, but realistically once the final resolution process has commenced, it is not possible to unwind the transaction. Any appeals or grievances should be filed prior to the institution being in possession of the receiver. As mentioned earlier, under normal circumstances, there is a long period leading up to the failure, giving the institution's management and board many opportunities to object to any examination findings.

In listening to the concerns from the credit union industry, we did hear from them an opportunity to add an additional safeguard over emergency conservatorship actions. While the emergency provision is designed to be temporary which itself is a control, adding an appeal to the board in this section of the law as well will serve to strengthen the controls over the process. The Senate adopted this amendment to add this additional appeal process to the emergency provision.

The first 8 sections of the Bill are either related administrative actions or cross reference corrections.

Section 1 of the Bill would amend Subsection 4 of 6-01-04.2 regarding emergency, temporary cease and desist orders changing the appeals process to the board. The reasoning is to be consistent with the new Chapter 6-07.2 since that is an administrative procedure.

Section 2 of the Bill provides for an amendment to 6-01-04.4, allows the commissioner to enter an order if a bank is undercapitalized. The thresholds for undercapitalized, significantly undercapitalized, and critically undercapitalized are defined in federal law and the FDIC has the authority to take action as well. The amendment gives the commissioner the same ability for the same reasoning as earlier discussed. This would especially be necessary if the affected institution has a member on the banking board, or when the action must be taken quickly. There is an appeal process with the state banking board as a safeguard, and the procedure is again administrative.

Sections 3, 4, 5, 6, and 7 of the Bill are to update cross references.

Section 8 of the Bill is to amend 6-06-08.4 prompt corrective action for credit unions. The capital thresholds are defined in this section and the commissioner or the board have the authority to take prompt corrective action. The commissioner is able to take possession, consistent with the

new Chapter 6-07.2. An appeal process with the state credit union board is included and the process is administrative.

Section 9 of the Bill will create and enact section 6-07.2. I will briefly go through it. The section explains the procedure, giving a lengthy list of reasons which clarifies situations when possession can take place and to remove arbitrary or vague language. It covers termination of possession and notice procedures and details the appointment of the receiver and transfer to the receiver, as well as the powers of the receiver, which includes sale of assets and authority for the receiver to borrow. The receiver would most likely be the FDIC or NCUA; however, the department can appoint a different receiver if circumstances so warrant. Almost identical to our prior statute (6-07-52), the presentation and payment order of claims are detailed.

The emergency temporary suspension or conservatorship was briefly mentioned earlier. One of the primary reasons this is commissioner-initiated action is due to the nature of the emergency. The most likely scenario we foresee is a ransomware attack where an institution is unable to operate and needs immediate assistance. We would not have the time to notice a meeting of the state boards or ensure a quorum for the board to make the decision. This section is intended to be temporary, which is a safeguard; however, as discussed, an amendment was proposed and adopted by the

Senate to address industry concern and add additional safeguards. Some other tweaks were also discovered in the original bill which were corrected with that same amendment.

Finally, this statute (6-07.2-18) includes clear guidelines for when an institution decides to voluntarily liquidate, turning itself over to the department. This is a scenario that has been discussed in recent years, when bankers are nearing retirement and may have a challenge finding a merging or purchasing partner, giving this as an option.

Section 10 of this Bill repeals Chapter 6-07.

To conclude, I want to make clear that the department is committed to our oversight of the safety and soundness of our financial institutions. A bank or credit union's failure always has an impact on the local community, and no one wants to see that happen, and we will do our best to prevent it.

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