

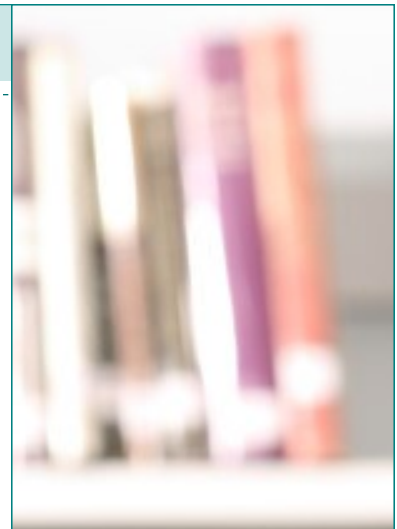
A MESSAGE FROM COMMISSIONER KRUSE

As the legislative session is coming to an end, we want to make sure you are aware of changes in our law that may affect you. The Department's bill with bank and credit union legislative changes contained 16 amendments. This newsletter addresses the ones that are most important for you and what you should know. Please note that these changes went into effect when the Governor signed the bill.

Our overall goal this legislative session was to remove unnecessary red tape and modernize portions of our statute. We appreciate the input we have received from the banks we regulate, and we value the working relationship we have with our two bankers' associations. When we are able to work together to address problems and find solutions, everyone benefits.

The Department will have a virtual "Day with the Commissioner" event on May 12. It will not be a whole day, since we have found that virtual events are more effective when they are not so long. We will cover our legislative session, the state of the banking industry and, as part of the registration, we will solicit questions from you to ensure we address topics you are interested in.

I also want to take this opportunity to extend my thank you for your patience and understanding this last year as we have tackled the most unique year we have ever experienced. We appreciate how you have accommodated virtual examinations, and we recognize the tremendous service you are providing to your communities in the midst of being short on staff and limited lobby access. I am pleased to report that our Department has not received a single formal complaint from a citizen regarding banking access. I believe the community bank model has again been proven to be very successful. This pandemic has again showed how essential you are to our North Dakota communities, and how central you are to any economic recovery efforts.



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LEGISLATIVE CHANGES AFFECTING YOU

Assessments will now be paid semi-annually (NDCC 6-01-17)

The State Banking Board sets the assessments that are to be paid by our institutions. As this last year has shown, it can be difficult to predict budgetary needs far in the future. To ensure better responsiveness and flexibility in our budgeting process, the Department will now bill for assessments twice a year, rather than just once. This is consistent with the OCC's process. Assessments will be due within 30 days of 6/30 and 12/31. This may also assist you as you monitor your income statement in relation to your budget by spreading out the impact of assessments over time.

Our Mission: To maintain public confidence in North Dakota financial institutions by ensuring the financial industry operates in a safe and sound manner while complying with applicable rules and laws.



Temporary relocation of bank operations (NDCC 6-03-15.1)

If you need to temporarily relocate for any reason, for example if you need to remodel your main bank building, you now only need to provide the Department notice, rather than an application with approval from the Commissioner. This makes more sense and is less tedious for the bank. Also, it is important that your customers know where to find you, so you should also provide notice to your customers. Customer notice does not need to be a formal publication, rather it can be any reasonable and commercially accepted means of business communication. The section of the law reads as follows, with the underlined being the new language:

In the event of an emergency or other temporary relocation, a bank ~~may apply to~~ must notify the commissioner to relocate its main banking house or facility until the former location is repaired to allow bank operations to resume. No notice or public hearing need be held to act upon the temporary relocation request. The bank shall give the commissioner notice of the bank's decision to relocate promptly and in any case within three days in the event of an emergency, and at least thirty days prior for other temporary relocations. The notice must describe the bank's actions and the expected duration of the bank's relocation. Unless extended by the commissioner, a bank's authority to change the bank's location under this section may not exceed sixty days. Notice of the bank's intention to temporarily relocate shall be provided to customers at least ten days prior to the relocation.

LEGISLATIVE CHANGES AFFECTING YOU-CONTINUED

Investments of state banks (NDCC 6-03-15.2)

The federal regulatory agencies no longer use the reference to a specific rating for investments in corporate bonds, notes, or debentures. This statute is now updated for consistency and mirrors the language OCC uses in their guidance. The 25 percent aggregate limitation remains unchanged. The below is a subsection from the bill:

In addition to the other powers authorized by law under this title, any state banking

association may invest its funds in:

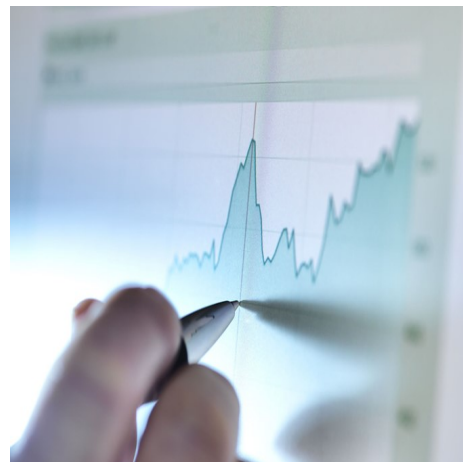
1. Bonds, notes, or debentures of any corporation rated at "A" or higher by a nationally recognized rating service approved by the commissioner, provided that the lesser of the book value or face value of the investments at the time of purchase may not exceed for any one corporation twenty-five percent of the unimpaired capital and surplus of the banking association that have been rated in one of the four highest rating categories by a Nationally Recognized Statistical Rating Organization (NRSRO) registered with the Securities and Exchange Commission. In the case of different ratings from different rating organizations, the lower rating applies. If no NRSROs have rated the security, the bank shall determine that the security is the credit equivalent of a security rated in the four highest rating categories by a NRSRO. This shall include documentation demonstrating that the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure and the issuer has adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. The aggregate par value of investments issued by any one corporation may not exceed twenty-five percent of unimpaired capital and surplus at the time of purchase.



LEGISLATIVE CHANGES AFFECTING YOU-CONTINUED

Bank investment in service corporation—Service corporation services and activities (NDCC 6-03-49.1)

After approval by the State Banking Board, banks may invest in service providers and can now also invest in service providers outside North Dakota. The investment must be in a U.S. corporation, and the limitation of 10 percent of paid-in and unimpaired capital and unimpaired surplus for each corporation is still in place. This section is addressing investments only – it does not limit a general partnership with a FinTech, it only limits your equity investments in the FinTech. The entire bill language is below and although some of the content did not change, we did change the format so it would be easier to read. The below is a subsection from the bill:



Subject to the approval of the state banking board, any bank may invest ~~not more than~~ in a service corporation and provide services and activities through the service corporation, provided that:

1. The service corporation is a United States corporation and is organized as a bank service corporation having its principal place of business in the United States.
2. The investment in stocks, bonds, debentures, or other obligations does not exceed ~~not more than~~ ten percent of paid-in and unimpaired capital and unimpaired surplus in each corporation. ~~in stocks, bonds, debentures, or other obligations of any North Dakota corporation organized as a bank service corporation having its principal place of business in the state and~~
3. The service corporation is operated exclusively for the purpose of providing for such bank and one or more other banks, bank services which the banks would otherwise be required or permitted to provide for on an individual bank basis. The term bank services in this section includes:
 - a. ~~services such as eCheck~~ and deposit sorting and posting.
 - b. ~~eComputation~~ and posting of interest and other credits and charges.
 - c. ~~pPreparation~~ and mailing of checks, statements, notices and similar items. ~~or~~
 - d. ~~a~~Any other clerical, bookkeeping, accounting, statistical, or similar functions performed by a bank.
 - e. Owning and administering a credit card program for customers of banks.
 - f. Engaging in activities incidental to banking services.
 - g. Other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long as such services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state.

~~Payment for rent earned, goods sold and delivered, or services rendered prior to the making of the payment is not an investment under this subsection. A bank service corporation may not accept deposits. be chartered under the laws of this state with shareholders limited to state and national banks located within the state and corporations that are organized as associations of state and national banks located within the state to provide all the services, except deposit taking, that all the banks that are its shareholders can offer directly to their own customers at any place in the state where they can offer their services, including owning and administering a credit card program for customers of banks and engaging in activities incidental to banking services and other activities that further or facilitate the corporate purposes of a bank or subsidiaries of a bank, so long as such services may be lawfully performed by both its national bank shareholders under the laws of the United States and its state bank shareholders under the laws of this state.~~

LEGISLATIVE CHANGES AFFECTING YOU-CONTINUED

Bank application changes (NDCC 6-03-11, NDCC 6-03-13.3, and NDCC 6-08-08.1)

To shorten the timeframe of application approvals, mergers and change of control applications can now be filed either with the Commissioner or the State Banking Board. Also, we removed the criteria for us to consider “whether other banks will be seriously injured” if we approve a branch application. That criteria is too subjective and therefore difficult to defend, and for that reason made sense to remove it.



“Good legislation should bring clarity and not confusion.” -Bill Haslam

Removing the legal requirement of examination frequency (NDCC 6-01-09)

Examination frequency is already addressed by Federal rules. Removing this requirement in state law allows the Department more flexibility as we coordinate with our Federal counterparts.

Civil money penalties (NDCC 6-01-04.3)

Although civil money penalties are seldom used, it is an important tool to have available to avoid the Department being forced to take more disruptive measures such as taking possession. The levels have not been adjusted since 1989 and the new levels are consistent with levels in other states.

The entirety of the Department bill SB 2101 can be found here:

[Enrolled Senate Bill No. 2101 - Sixty-seventh Legislative Assembly of North Dakota - LC Number 21.8094.03000 \(nd.gov\)](#)



DEPARTMENT OF FINANCIAL INSTITUTIONS

The Department of Financial Institutions traces its lineage to the North Dakota legislature's creation of a State Examiner in 1893. A detailed chronology of the Department and its predecessors can be found in the archives of the State Historical Society: <http://history.nd.gov/archives/stateagencies/Bankingandfinancial.html>

Through the Bank and Credit Union divisions, the Department has charge of the execution of all laws relating to state-chartered banks, trust companies, and credit unions. The Commissioner, in conjunction with the State Banking Board (seven members) and State Credit Union Board (five members), provides supervisory authority over North Dakota state-chartered banks and credit unions. All members of these Boards are appointed by the Governor. The Commissioner is appointed by the Governor and confirmed by the North Dakota Senate and serves as the Chair of each Board. The Department's Consumer Division regulates money brokers, mortgage loan originators, deferred presentment service providers (payday lenders), collection agencies, debt settlement service providers, and money transmitters.

Our mission is to maintain public confidence in North Dakota financial institutions by ensuring the financial industry operates in a safe and sound manner while complying with applicable rules and laws. Our vision is a safe, secure and competitive financial services environment, which promotes the economic well-being of North Dakota businesses and consumers.

The Department is committed to maintaining a standard of excellence in meeting its regulatory responsibilities. In 1993, the Department was accredited by the Conference of State Bank Supervisors (CSBS). In 2000, the Department was accredited by the National Association of State Credit Union Supervisors (NASCUS). In 2015, the Department received a certificate of accreditation from the CSBS/AARMR (American Association of Residential Mortgage Regulators) Mortgage Accreditation Program. Accreditation is only accorded to state regulatory agencies that meet minimum standards established by these accrediting organizations. Once obtained, the Department is subject to a re-accreditation process every five years after the initial accreditation.

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LEGISLATIVE CHANGES AFFECTING YOU-CONTINUED

Bank failures, emergency conservatorships, and voluntary liquidations (NDCC 6-07.2)

A considerable undertaking for the Department this legislative session was to address bank closures. The last bank closure in North Dakota was 30 years ago, and while we certainly hope we never need to use this, we need to be ready just in case. Therefore, we repealed the entire chapter 6-07, which was written in 1887, and replaced it with a new chapter, 6-07.2. The new chapter includes current processes, possible situations, and industry best practices. This was a separate bill without an emergency provision, and therefore has an effective date of 8/1/2021.

The entirety of bill SB 2102 can be found here:

[Enrolled Senate Bill No. 2102 - Sixty-seventh Legislative Assembly of North Dakota - LC](#)



SAVE THE DATE
Virtual “Day with Commissioner”
May 12.