



NORTH DAKOTA
BANKERS
ASSOCIATION

North Dakota Bankers Association's
2023 LEGISLATIVE SUMMARY
68th Assembly (2023)
Legislative Assembly Regular Session

DISCLAIMER

The purpose of this Legislative Summary is to summarize recent legislation that may be of interest to bankers. This information is not intended as legal analysis or legal advice. If a bank has a question about any legislation, the bank must obtain legal advice from a licensed attorney who is acting on behalf of the bank.

NDBA's goal in publishing this information is to alert bankers to some of the new laws that have been enacted. However, it is each bank's responsibility to fully inform itself regarding applicable laws. NDBA and its general counsel do not provide legal advice to member banks.

WHERE TO FIND THE LAWS

Bills that have been enacted by the Legislative Assembly and the full text of other laws and administrative rules are accessible through the North Dakota Legislative Branch website, <https://www.legis.nd.gov>. A complete listing of bills that were introduced or enacted into law and a subject index is available at <https://www.ndlegis.gov/assembly/68-2023/bill-index.html>

EFFECTIVE DATES

Most bills take effect August 1, 2023. However, any emergency bills took effect when they were signed by the Governor and bills that affect finances typically take effect on July 1, 2023, which starts a new fiscal year. Some bills carry a specific effective date.

LEGISLATION OF INTEREST

This section summarizes specific legislation that may be of interest to bankers. *Section is organized by topic.*

AGRICULTURE

HB 1371 –Corporate Farming Laws

- *Effective April 28, 2023*
- Creation and enactment of four new sections to chapter 10-06.1 of the North Dakota Century Code, relating to

authorized livestock farm corporation and authorized livestock farm limited liability company requirements, and initial and annual reporting requirements for authorized livestock farm corporations, and authorized livestock farm limited liability companies. And, amendments and reenactments of several sections of Chapter 10-06.1 relating to agricultural definitions, ownership exceptions for beekeeping, agriculture support services, livestock backgrounding and feedlot operations, raising or producing of livestock by persons that have limited landholdings, and required reporting for corporate farming; to provide a penalty; currently in effect.

HB 1393 – Grain and Seed Warehouses, Uniform Accounting for Public Elevators and Warehouses

- *Effective August 1, 2023*
- Shifts all of Title 60's chapters on grain warehouses and buyers to Title 4.1.

SB 2096 – Regulation of Hemp Production

- *Effective August 1, 2023*
- Significant amendments to Chapter 4.1-18.1 restricting the sale and distribution of hemp commodities and products.
- Addition of nine new sections to Chapter 4.1-18.1 relating to administrative rules, hemp commodities or products, powers of the commissioner, and civil enforcement remedies; to amend and reenact sections 4.1-18.1-04 and 4.1-18.1-04.3.

BANK OF NORTH DAKOTA

HB 1014 – BND Retention Incentive Program

- *Effective August 1, 2023*
- Provides appropriation for defraying the expenses of the industrial commission and

the agencies under its control (BND & Housing Finance)

HB 1107 – Regulation of Real Estate Appraisers

- *Effective August 1, 2023*
- Amends statutes relating to the regulation of North Dakota real estate appraisers to provide a specific exemption to Bank of North Dakota to conduct property valuations and appraisal reviews for North Dakota financial institutions

HB 1392 – Authority to Deposit Money into an Institution Account at BND

- *Effective August 1, 2023*
- Affiliated nonprofit organizations providing support for the benefit of higher education may deposit money into an institution account maintained by the Bank of North Dakota.
- Student organizations under the control of the state board of higher education may also deposit money into an institution account maintained by the Bank of North Dakota.

SB 2233 – Audits of BND's Loan Programs

- *Effective August 1, 2023*
- Removes the third-party audit requirement for legislatively directed loan programs administered by the Bank of North Dakota
- Allows the North Dakota Auditors Office to audit legislatively directed loan programs going forward

BANKS AND BANKING

HB 1291 – Execution and Enforcement of Judgments

- *Effective August 1, 2023*
- Judgment creditors now have twenty years from the date that a judgment is entered to execute on that judgment.

- Previously judgment creditors had ten years to execute on a judgment.

HB 1323 – Construction Liens

- *Effective August 1, 2023*
- Clarifies that a construction lien will not attach against any person that acquires an interest in the improved real estate, in good faith, and without notice of the claimant's construction lien.
- Prohibits construction liens when a tenant of the legal owner of the property orders improvements unless the legal owner has actual or constructive notice of the improvements and fails to object.

HB 1487 – Financial Institutions' Use of Merchant Codes to Track Firearm and Ammunition-Related Purchases

- *Effective August 1, 2023*
- Prohibits financial entities (including banks) from requiring the use of a firearms code in a manner that distinguishes a firearms retailer located in North Dakota from a general merchandise retailer or a sporting goods retailer
- Financial entities (banks) are also prohibited from declining a lawful payment card transaction based solely on the assignment of a firearms code or taking any action against a customer which is intended to suppress or track lawful commerce involving firearms or ammunition
- Permits any person to allege violations to the attorney general; and for the attorney general to investigate claims of violations, provide a notice to cease; pursue an injunction, and assess a fee of \$10,000 per transaction for willful violations

SB 2206 – Insurance Cash Value Exemptions and Homestead Exemption

- *Effective August 1, 2023*
- The exemption in lieu of a homestead exemption was increased from ten

thousand dollars to twenty five thousand dollars

- Motor vehicle exemption was increased from two thousand nine hundred fifty dollars to ten thousand dollars
- The homestead exemption was increased from one hundred thousand dollars to one hundred and fifty thousand dollars
- Unmatured life insurance exemption increased from eight thousand dollars to one hundred thousand dollars

CONTRACTS

HB 1228 – Marketing Practices Involving Agreement for Automatic Renewal

- *Effective August 1, 2023*
- Amends Chapter 51-37, N.D.C.C., concerning customer contract clauses and automatic renewals
- The chapter will now encompass contracts for services (in addition to the sale of merchandise)
- Noncompliance will now result in voiding the automatic renewal provision itself (rather than the entire contract)
- Applies to contracts entered after July 31, 2023

HB 1368 – Contracts with Companies that Boycott Israel; Prohibition on Investments

- *Effective August 1, 2023*
- Creates a new section to Chapter 54-06 of the North Dakota Century Code
- North Dakota may not adopt any investment policy that has the effect of requiring or inducing any person to boycott Israel
- Requires a state entity that enters a contract that includes a provision prohibiting discrimination to require that the contract include a provision prohibiting

the parties from boycotting Israel for the duration the contract

HB 1429 – Social Investment - Prohibition

- *Effective August 1, 2023*
- Relating to unfair discrimination in the business of insurance and the investment and management of public funds
- Includes refusing to insure and charging a different rate based solely in consideration of ESG criteria or diversity equity and inclusion policies as unfair discrimination
- Adds ESG (environmental, social, and governance) impact criteria to the definition of "social investment" in N.D.C.C. § 21-10-08.1
- Clarifies that agencies are not allowed to create or renew a contract perpetually and without limitation

DEPARTMENT OF FINANCIAL INSTITUTIONS (DFI)

HB 1008 – Appropriation for Defraying the Expenses of the DFI

- *Effective August 1, 2023*
- Provides additional money to the Department of Financial Institutions to help defray the cost of overseeing North Dakota banks

HB 1068 – Residential Mortgage Loan Servicers

- *Effective August 1, 2023*
- DFI introduced HB 1068, creating chapter 13-13 of the North Dakota Century Code, which requires loan servicers to also be licensed (previously, only lenders were required to have a license)

SB 2090 – Residential Mortgage Lenders

- *Effective August 1, 2023*
- DFI introduced SB 2090

- Removes residential mortgage lending from the money broker chapter of the North Dakota Century Code and creates stand-alone statutes for residential mortgage lenders

SB 2092 – Voluntary Liquidation of Credit Unions

- *Effective August 1, 2023*
- Introduced by DFI
- Process for voluntary liquidation of credit unions incorporated into the same chapter of the North Dakota Century Code as voluntary bank liquidations
- DFI's orders against fraud perpetrators become effective upon issuance rather than effective upon service

SB 2119 – Regulation of Money Transmitters

- *Effective August 1, 2023*
- Introduced by DFI
- Repeals existing chapter dealing with the regulation of money transmitters and creates a new chapter regarding money transmitters
- The new chapter enacts the Money Transmission Modernization Act, a nationwide set of standards governing money transmitters
- standardizes definitions, exemptions, the licensing process, and safety and soundness requirements ensuring consistency across state lines

MOTOR VEHICLES – TITLE

SB 2111 – Electronic Certificates of Title

- *Effective August 1, 2023*
- Allows a certificate of title to be issued in either paper or electronic form
- NDDOT representative does not think we will be seeing electric titles for another 3-5 years as they try to work out a system.

PROPERTY

SB 2263 – Escrow Accounts

- *Effective August 1, 2023*
- Aligns with the requirements of the Federal Real Estate Settlement Procedures Act (RESPA) with respect to surplus amounts in real estate mortgage escrow accounts.

SB 2371 – Ownership of Real Estate

- *Effective August 1, 2023*
- Create and enact a new section to chapter 11-11 and a new section to chapter 40-05 of the North Dakota Century Code, relating to the power of counties and municipalities to prohibit local development by a foreign adversary; to amend and reenact section 47-01-09 of the North Dakota Century Code, relating to the prohibition on ownership of real property by a foreign adversary;
- to provide for a legislative management study; and to provide an expiration date.

TRUSTS

SB 2210 – Individual Retirement and Employee Benefit Trusts

- *Effective August 1, 2023*
- North Dakota adopted the Uniform Trust Code (UTC) in 2007 (Title 59, N.D.C.C.)
- North Dakota explicitly excludes trusts that are part of an employee benefit arrangement or an individual retirement account from the provisions of the UTC
- SB 2210 removes the exclusion, meaning trusts that are part of an employee benefit arrangement or an individual retirement account will now fall under the provisions of the UTC.

UNIFORM COMMERCIAL CODE

HB 1082 – Amendments to Uniform Commercial Code

- *Effective August 1, 2023*

- North Dakota adopted the Uniform Commercial Code (UCC) amendments (set forth by the Uniform Law Commission in 2022), adding new Article 12 concerning digital assets, and amendments to other articles of the UCC to reflect and address other technological developments
- The enactment of Article 12 and the corresponding amendments will attempt to bring uniformity and provide a legal framework for utilizing digital assets as collateral

SB 2392 – Definition of Deposit Account

- *Effective August 1, 2023*
- Excludes a United States central bank digital currency from the definition of “deposit account” in Article 9 of the Uniform Commercial Code (adopted in North Dakota as Ch. 41-09, N.D.C.C.)

UNIFORM LAWS (OTHER THAN UNIFORM COMMERCIAL CODE)

HB 1054 – Notary Commission

- *Effective August 1, 2023*
- Allows the North Dakota Secretary of State to create a Notary Commission application form and when and how to renew the commission.

HB 1083 – Revised Uniform Law on Notarial Acts

- *Effective August 1, 2023*
- Update to the Revised Uniform Law on Notarial Acts (RULONA) in accordance with 2021 recommendations of the Uniform Law Commission

HB 1360 – Revised Uniform Unclaimed Property Act

- *Effective August 1, 2023*
- Amends Ch. 47-30.2, N.D.C.C., to add requirements for the retention of records upon notice of an examination.

INTERIM STUDIES

Legislative Council has prioritized matters recommended during the session for interim study. Below are studies affecting banking.

HB 1003 – Section 44 Artificial Intelligence

- *Effective August 1, 2023*
- Consider studying the impact of artificial intelligence on state institutions, businesses, citizens, and youth

HB 1008 – Section 3 – Department of Financial Institutions

- *Effective August 1, 2023*
- Possible study regarding the appropriation procedures of the department of financial institutions.
- Study may include an analysis which evaluates alternative appropriation methods, management structures, and reporting methods of the Department of Financial Institutions.

HB 1429 - Section 5 – BND Study – ESG Trends

- *Effective August 1, 2023*
- Section 5 of H.B. 1429 provides for a study by Bank of North Dakota, during the 2023-24 interim, to study environmental, social, and governance trends, laws, and policies that impact businesses and industries of North Dakota, and to provide a report of its findings and recommendations to the legislative management prior to June 1, 2024.

HCR 3036 – Resolution Urging Congress not to Support or Adopt a Central Bank Digital Currency in the United States

- Requires the North Dakota Secretary of State to forward copies of the resolution to high-ranking members of congress and the President of the United States

- Outlines privacy and personal freedom concerns that come with the implementation of a central bank digital currency

SB 2371 – Section 4 Ownership of Business or Real Property by Foreign Adversary

- *Effective August 1, 2023*
- Requires a study of the number of persons that own or control any real estate or business which is owned by or subject to the control of “foreign adversaries.”

DEFEATED BILLS

Some bills were defeated after testimony or lobbying by NDBA.

HB 1283 – Fair Access to Financial Products and Services

- Would have prohibited banks from adopting or acting upon environmental, social, governance related policies or lending criteria

HB 1345 – State Purchasing Contracts

- Created a new section in the state purchasing laws providing that all contracts between a state entity and vendor must include a provision indicating the vendor’s support of the state’s agriculture and energy industries
- Opposed because it would complicate procurement and state contracting

HB 1347 – Financial Institution Boycotts of Energy Companies

- Created a “restricted financial institutions list” comprised of financial institutions engaged in a boycott of energy companies

HB 1356 – Financial Institution Boycotts of Energy Companies

- Created a state agricultural foreign investment review board to review

proposed acquisitions of agricultural land in North Dakota

- Requires approval of the board before agricultural land can legally be acquired by an alien individual

HB 1469 – Investment and Management of Public Funds

- To ensure that firms investing retirement funds on behalf of North Dakota teachers and state and local government employees closely follow the provisions of 21-10-07
- Imposes non-uniform regulatory requirements on vendors that may conflict with federal law and may be infeasible to administer by increasing cost and resources needed to perform compliance monitoring

SB 2217 – Calculation of Interchange Fees for Electronic Payment Transactions

- Sought legislative management study of interchange fees charged on electronic payment transactions and the effect on merchants or sellers of applying interchange fees on electronic payment transactions to state and local taxes imposed at the point of sale
- Largely opposed due to the lack of current systems to carry out the same

SB 2266 – Credit Union Membership

- Original draft legislation would have increased credit unions’ field of membership from a 75-mile radius to a 250-mile radius
- After strong opposition and intense lobbying, the field of membership criteria in the bill was decreased to a 125-mile radius and the ability to measure that radius from any branch location was also removed
- The bill was ultimately passed in the senate but failed to get the required votes in the house, consequently, the bill was defeated

- This bill was an NDBA priority and its defeat was a major win for the organization

2023-2025

Although it seems far off, NDBA will be planning for 2025 Legislative Session before we know it. Please remind bankers to keep track of problems they are having that may be improved by state legislation. They can email Rick Clayburgh (rick@ndba.com) or Tracy Kennedy (tracy@ndba.com) about ideas to improve legislation.

THIS REALLY HAPPENED

HB 1361 – Definition of Person

- *Effective April 11, 2023*
- Now in effect “Person” means: “an individual, organization, government, political subdivision, or government agency, or instrumentality. The term does not include environmental elements, artificial intelligence, an animal, or an inanimate object.”