



NORTH DAKOTA
BANKERS
ASSOCIATION

2021 Legislative Summary





COUNSEL'S SUMMARY

Tracy Kennedy
NDBA General Counsel

With the conclusion of the 67th North Dakota Regular Legislative Session, I am left amazed at all of NDBA's accomplishments. Looking back at the year's session brings to mind the words "communication," "cooperation" and "commitment." Communication moved three NDBA-sponsored bills from discussion in NDBA's Legislative Committee to legislative hearings (and ultimately law!); and communication directly from NDBA members and their counsel allowed NDBA to timely step in and offer support or opposition for bills affecting our banks. NDBA's cooperation with individuals, groups and other organizations, such as the State Land and Title Association, the Department of Financial Institutions, the State Bar Association, and the State Funeral Home Director's Association was also significant. Cooperation allowed us to define common objectives and create new laws while also ensuring that bad laws (like mandatory farmer-lender mediation and prohibitions on the use of deeds in lieu of foreclosure) were defeated. Finally, I have witnessed the unwavering commitment of our state's banks to working hard to protect our industry and our communities in times of personal and professional adversity. In a year filled with social distancing, I watched as NDBA and its members found creative ways to come together and I am so proud to have been able to play a part in what we accomplished.

Best regards,

Tracy A. Kennedy
NDBA General Counsel

NDBA Mission Statement

Extraordinary Leadership for
North Dakota Banks

NDBA LEGISLATIVE COMMITTEE

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Vaune Johnson
Cornerstone Bank
Dickinson

Jared Bullinger
American Bank Center
Dickinson

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United Valley Bank
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Jeff Stein
Lincoln State Bank
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Harwood State Bank
Harwood

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Citizens State Bank
of Finley

Ernie Strube
Goose River Bank
Mayville

Dan Vollmer
Dacotah Bank
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NDBA EXECUTIVE COMMITTEE

Jolene Muscha
NDBA Chairman
The Union Bank of
Glen Ullin

Christie Obenauer
NDBA Chairman-Elect
Union State Bank
Hazen

Kathy Torske
NDBA Treasurer
American Trust Center
Bismarck

LOBBYING TEAM

Rick Clayburgh
NDBA President & CEO

Tracy Kennedy
NDBA Counsel

The NDBA legislative program is member-driven. Members submit ideas for legislation over the course of the interim and in response to solicitation by NDBA. The legislative committee meets at least three times over a biennium to consider those ideas and makes recommendations to the NDBA Board for bills to be sponsored by NDBA. The committee also meets as needed to determine positions which should be taken by NDBA on bills sponsored by others.



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 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.legis.nd.gov/assembly/67-2021/regular>.

EFFECTIVE DATES

Most bills take effect August 1, 2021. However, any emergency bills took effect when they were signed by the Governor and bills that affect finances typically take effect on July 1, 2021, which starts a new fiscal year. Some bills carry a specific effective date.

NDBA SPONSORED LEGISLATION

This year, NDBA sponsored three pieces of legislation and had a 100% success rate in getting the following bills passed:

SB 2197 – DFI Record Confidentiality

- NDBA proposed amendments to Sections 6-01-07.1 and 54-10-22.1 of the North Dakota Century Code, relating to the confidentiality of facts and information obtained by the commissioner or the department
- Expands the definition of confidential information obtained or created by the DFI to include a complaint or comment from the public regarding a financial institution, credit union, or other licensed entity under the supervision of the Commissioner, unless the Commissioner is providing aggregate, nonspecific information
- Restricts bank information available to the State Auditor
- This will protect banking data and customer information
- Effective August 1, 2021
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0844-02000.pdf>.
- NDBA White Paper available at https://www.legis.nd.gov/assembly/67-2021/testimony/HIBL-2197-20210317-9614-F-CLAYBURGH_RICK.pdf.

SB 2261 – Burial Accounts

- In the last legislative session, the North Dakota Legislature amended the North Dakota Century Code regarding the exemption of funeral expenses for Medicaid eligibility purposes
- The new legislation clarifies the statutes by defining “irrevocable itemized funeral contracts” and requiring that payments made under an irrevocable itemized funeral contract be deposited in or transferred to an ND trust company or federally insured bank, credit union, or savings and loan association in ND within 10 days, and that the deposit must be placed in an FDIC or national credit union administration insured account or CD, or a negotiable debt obligation of the U.S. government
- Also specifies that payments made under the irrevocable itemized funeral contract are to be carried in a separate account or CD with the names of the depositor or transferor, cemetery association or licensed funeral establishment, and the person making payment on behalf of the individual for whose benefit payment is made
- Contains an “emergency clause,” meaning it will become law immediately upon the Governor’s signature
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0954-03000.pdf>.
- NDBA White Paper available at http://www.ndba.com/uploads/57/Burial_Accounts.pdf.

SB 2292 – Mortgages: Expirations, Extensions and Modifications

- Amends Sections 35-04-14 and 35-04-15 of the North Dakota Century Code, relating to the expiration and extension of real estate mortgages
- Creates Section 35-03-15.1 of the North Dakota Century Code, relating to mortgage modifications
- Clarifies that mortgage modifications serve to extend the expiration date of a mortgage
- Effective August 1, 2021
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-1009-02000.pdf>.
- NDBA White Paper available at <http://www.ndba.com/uploads/57/Mortgages.pdf>.

NDBA-BACKED LEGISLATION

NDBA worked in coordination with several entities, including the North Dakota Land Title Association, Automobile Dealers Association of North Dakota, and the North Dakota Funeral Directors Association, to ensure that legislation passed was beneficial for North Dakota Banks and their customers and communities. *Section is organized by topic.*

ABANDONED PROPERTY

SB 2048 – Revised Uniform Unclaimed Property Act

- Uniform Unclaimed Property Act is uniform law which requires holders of unclaimed property to turn it over to the state after a certain period of time
- SB 2048 is the bill through which North Dakota seeks to adopt and enact the [Revised Uniform Unclaimed Property Act \(RUPPA\)](#), which updates numerous provisions and addresses unclaimed gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors
- NDBA had some concerns with certain provisions of the original bill, but NDBA's Amendments were ultimately adopted
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0167-05000.pdf>.

SB 2191 – Disposal of Abandoned Personal Property

- Last session, SB 2205 shortened the foreclosure time period for lenders
- As a result, foreclosing banks and law firms have run into issues with abandoned personal property left in the real property, which causes delays
- This bill streamlines the process of dealing with abandoned personal property by allowing a grantee to retain and dispose of abandoned personal property without any waiting period or notice where the real property has been adjudicated abandoned
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0620-04000.pdf>.

AGRICULTURE

HB 1026 – Ag Warehousing

- Defines “deferred-payment contracts”
- Changes licensing fee structure and amounts
- Creates new section for public warehouse licenses
- Increases bond
- Lowers scale ticket conversion time period from 45 days to 30 days after gain is delivered to warehouse
- Adds provision that “[a] producer that fails to convert a scale ticket...forfeits any trust fund or credit-sale contract indemnity fund protection...”
- Allows for electronic signatures of credit-sale contracts
- States that unsigned contracts must be considered unconverted scale tickets or are not eligible for protection
- Increases power of commissioner (no requirement to go through district court)
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0032-05000.pdf>.

BANK OF NORTH DAKOTA

HB 1187 – Rebuilders Loan Program

- Created BND rebuilders loan program and rebuilders permanent loan fund
- Provides continuing appropriation
- Provides for a transfer of outstanding loans to the rebuilders permanent loan fund
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0309-03000.pdf>.

SB 2014 – BND Budget

- Appropriation for defraying the expenses of the industrial commission and the agencies under its control, to provide contingent funding, to provide for a transfer and to provide an exemption
- BND's and Housing Finance's Budget
- BND's home mortgage loan servicing and origination services will be merged into the North Dakota Housing Finance Agency (NDHFA) to reduce duplication of services
- BND to add staff to provide valuations and appraisals for agricultural and commercial loans (for loans that do not require a certified appraisal according to federal regulations)
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0296-02000.pdf>.

COVID-19

HB 1175 – COVID-19 Liability Protection

- Protects businesses from civil liability lawsuits for their decisions made during the COVID-19 pandemic
- Retroactive business immunity
- Supporting testimony of Rick Clayburgh on behalf of NDBA: https://www.legis.nd.gov/assembly/67-2021/testimony/HIBL-1175-20210127-3194-F-CLAYBURGH_RICK.pdf
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0247-04000.pdf>.

DEPARTMENT OF FINANCIAL INSTITUTIONS (DFI)

SB 2008 – DFI Appropriation

- Appropriations bill for the Department of Financial Institutions
- Appropriates \$9,106,507 for the 2021-2023 biennium
- Authorizes 31 full-time positions
- Appears to support by House members to provide budget transfer authority allowing the Commissioner to transfer funds between budget line items, but to sunset it after 2 years
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0290-03000.pdf>.

SB 2101 – DFI Modernization Bill

- Regulatory fund
- Assessment of civil money penalties
- Appointment of receivers
- Supervision and examinations
- Assessments
- Real estate loans
- Bank mergers
- Bank branches
- Bank investments
- Trust branches
- Credit union powers
- Credit union board notice
- Sale or purchase of banking institutions
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-8094-03000.pdf>.

SB 2102 – DFI Modernization Bill

- Dissolution, insolvency, suspension, emergency receivership, and liquidation of institutions under DFI's supervision
- Financial institutions cross references
- Cease and desist orders and prompt corrective action
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-8095-03000.pdf>.

HEALTH INSURANCE

SB 2130 – Health Insurance Cost-benefit Analysis

- Requires a cost-benefit analysis for mandated health insurance coverage legislation
- If a mandate would cause a policy to fail to qualify as a high deductible plan under federal law, then that mandate would not apply to the high deductible plan
- Effective date of May 1, 2021
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0058-04000.pdf>.

LIENS

HB 1366 – Repairman's Liens

- Adds storage fees and transportation costs to those charges for which a repairman can obtain a statutory repairman's lien
 - Though NDBA voiced concerns with the addition of storage fees, they remain in the current enrolled bill
 - Bill clarifies that storage fees may not begin to accrue until 15 days after the owner is requested to take possession of the property
- Updates values required for priority and language of statutes
- Includes requirements for notice before foreclosure
- Provides for nonjudicial disposition of property similar to that of UCC Article 9
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0191-06000.pdf>.

STATE INVESTMENT BOARD

HB 1425 – Legacy Fund Investment Preference to Firms and Financial Institutions in the State

- Bill includes requirement that the state investment board (SIB) give preference to qualified investment firms with a presence in North Dakota when investing legacy fund assets
- Sets specific targets for investing legacy fund assets within the state and within specified asset classes
- Rick Clayburgh submitted testimony on behalf of NDDBA in support of the bill: https://www.legis.nd.gov/assembly/67-2021/testimony/SFINTAX-1425-20210310-8538-F-CLAYBURGH_RICK.pdf
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0415-11000.pdf>.

WILLS

HB 1077 – Electronic Wills

- North Dakota’s adoption of the Uniform Electronic Wills Act (created by the Uniform Law Commission in 2019)
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0168-03000.pdf>.
- NDDBA White Paper available at http://www.ndba.com/uploads/57/Electronic_Wills.pdf.

INTERIM STUDIES

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

HB 1231 – Investing Legacy Fund Moneys Locally

- During the 2021-22 interim, the legislative management shall consider studying the benefits of investing legacy fund moneys locally before investing any moneys outside the state
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0127-03000.pdf>.

FAILED BILLS

Some bills were defeated after testimony or lobbying by NDDBA.

HB 1363 – Ante-Mortem Probate

- Would have allowed persons other than the testator to petition courts to declare a living person’s will valid or invalid
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0519-01000.pdf>.

HB 1364 – Duties of Personal Representative and Actions Against Trustee

- Would have required that all real property be left with or surrendered to “the person presumptively entitled thereto” and required the personal representative to petition the court to determine that possession by the personal representative is necessary for purposes of administration (currently, the personal representative has the power to determine whether property is necessary for purposes of administration without court oversight)
- The original bill also sought to amend the statute governing time limits for actions against a trustee by stating that a trust terminates “when it becomes the duty of the trustee to wind up administration of the trust, not when that winding up period actually is accomplished”
- Testimony of Rick Clayburgh in Opposition: https://www.legis.nd.gov/assembly/67-2021/testimony/SJUD-1364-20210322-10393-A-CLAYBURGH_RICK.pdf
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0919-01000.pdf>.

HB 1267 – Cryptocurrency Custodian Services and Exchanges*

- Would have allowed Bank of North Dakota (BND) to provide custodian services for digital currency and to implement a digital currency exchange
- Provided for an interim study by BND of the feasibility and desirability of providing digital currency custodian services and of implementing a digital currency exchange
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0720-01000.pdf>.

* Though this bill did not pass, [House Concurrent Resolution No. 3024](#) directs the Legislative Management to consider studying the feasibility and desirability of regulating special purpose depository institutions (SPDIs) and regulating other entities engaged in virtual currency business activities.

SB 2223 – Deed In Lieu

- This bill would have essentially prohibited deeds in lieu of foreclosure by requiring that a judgment of foreclosure be entered before title could be transferred
- Testimony of Rick Clayburgh in Opposition: https://www.legis.nd.gov/assembly/67-2021/testimony/SPOLSUB-2223-20210128-4105-A-CLAYBURGH_RICK.pdf
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0857-01000.pdf>.

HB 1172 – Farmer Mediation

- Would have made farmer-lender mediation mandatory for banks in North Dakota (see [proposed amendments from Rep. Kempenich](#))
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0062-02000.pdf>.

HB 1268 – Fintech Sandbox

- Relating to financial technology sandbox program for innovative financial products and services and criminal history background checks
- Access the bill at <https://www.legis.nd.gov/assembly/67-2021/documents/21-0694-01000.pdf>.

2023-2025 Legislative Session

Although it seems far off, NDBA will be planning for the 2021-2023 biennium 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.

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