

FISCAL NOTE
Requested by Legislative Council
12/21/2018

Bill/Resolution No.: SB 2093

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$112,008	\$0	\$114,000
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Increasing the annual license fee to match cost of regulating the industry. The new scale matches volume of transactions with the licensing fee. This not affect the general fund.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Century code 1309-10. Would increase fees from \$450 to 1/4 of one percent of transactions not to exceed two thousand five hundred dollars A minimum of \$500.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This revenue is special fund and does not affect the general fund. This would increase DFI special fund in the amount of \$112,008.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This change would affect expenditures to the executive budget.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This would not affect the Department appropriation as listed in the Executive Budget.

Name: Joan Becker

Agency: Dept of Financial Inst

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Date Prepared: 12/26/2018

2019 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2093

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

SB 2093
1/7/2019
Job # 30473

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

Relating to the examination of technology service providers, the capital requirement for trust companies, the examination of trust companies, the definition of a financial institution, surety bond requirements for money brokers and collection agencies, notice requirement for deferred presentment.

Minutes:

Att # 1 – Lise Kruse

Chairman Klein: Opened the hearing on SB 2093.

(0:09) Commissioner Lise Kruse Department of Financial Institutions: See attachment # 1 for testimony in support of the bill.

(11:28) Chairman Klein: You stated early on that you spoke with the collection folks so they knew that this was coming also?

Lise: Yes, I did meet with them earlier this fall and I did tell them. I didn't tell the amount I was looking at but I did tell them that it would increase and also we have a legislator, Mike Lefor, I talked with him and he's aware of it as well. I think what is unfortunate is that we never expected this to happen in North Dakota because you're defrauding your neighbor. And it's the first time we could ever recall that this happened. When I talked with the industry they sounded like it was very unfortunate. But they understand why we would want to increase it as a result.

Senator Roers: What happens when one of these situations presents itself and there's not enough bond, does it get given out to the members that lost out?

Lise: Yes, we gave a deadline and gave a press release. We had a lot of people call our department. We even sent it out to our bankers so that they may notify their customers. So, as the claims got in, we asked that the funds not be released until a certain date. Also if our department incurs a lot of extra cost, we can also make a claim but obviously we will not be able to do that because consumers need to be made whole first.

Senator Roers: How often does this happen throughout the month/year? These are very low amounts. Why are they so low? And if we are having situations where this occurs more frequently, the amounts would even be higher.

Lise: We have not had one happen. We're not aware of it being. It really surprised us. I don't think we'd ever thought about looking at it. I tried to research when that \$20,000 amount was set, and I couldn't even find when it was, so its time to look at it. The reason why I set it at \$50,000 and not higher was because I looked at other states and some of them are smaller collection agencies that it could be too burdensome to increase it too much and I didn't want to be too greedy. Most of these are smaller claims, but I think this one was dealing with a lot of businesses so that's why the claims were higher for each entity.

(15:54)Chairman Klein: Do we have a lot of lenders and did you reach out to the payday lenders?

Lise: I did not reach out to the payday lenders. We have 38 that are in state.

(20:04)Chairman Klein: We haven't had any issues at all with the money transaction folks? As we did with these pop up collection agencies? We're spending a lot of time evaluating what they're doing but overall, they've been above board?

Lise: All of the companies vary greatly. We have had some that have been closed or are no longer renewing their license. We haven't had anyone, like, go bad per se that we have had to take action on, in the most recent years. So overall, I would say they are above board. But I can say that as these companies grow we are seeing a lot of lawsuits happen and we get a copy of all those lawsuits. And as you can imagine a company the size of MoneyGram and Western Union that there's lawsuits. And it might not be a North Dakota citizen that is effected but we do have to review all of that legal matter. There has been some that have been bad that didn't transact anything in ND, but other states were effected.

Chairman Klein: So basically they send more money than they said they were going to?

Lise: Yes, it also happens that the money doesn't get there. Sometimes the money doesn't get there at all, this is my largest headache, requesting funding for one more full time employee. Because at the moment we don't have enough resources to examine all these companies properly and oversee them as they need to be overseen. We participate with other states on exams but we need to make sure that North Dakota laws are enforced. This is a growing industry. Its where a lot of our sintech companies are coming into play. There's a lot of new product that comes into the industry that are kind of difficult sometimes to understand. But there is a huge risk of the money not making it from point A to point B. The most recent that was large, while they didn't do business here, was transmission to Brazil. The state of Massachusetts was the one that found it and had a lot of customers that lost out as a result. The difference with this industry is that we require them to have permissible investments in addition to their capital requirement, they have to have enough cash and liquid assets on hand to cover the outstanding transmissions. So that is a little bit of protections there, and that needs to be global transmissions not just the North Dakota transmissions. We are thinking that the companies that we spend more time on, would pay a bigger total of their bill.

(25:02)Chairman Klein: This is very encompassing and I guess you said, well we don't like to use the word housekeeping certainly a lot of issues that need to be addressed that you've certainly seen in your year here so with that we have a question from Senator Piepkorn.

Senator Piepkorn: I understand your steps, but when you change the must to may when talking about examination without previous notice, what's the criteria? Who decides this is something we must and we don't?

Lise: That would be determined by the commissioner and it is dependent on if we believe that fraud is occurring or if there's risk to the institution we can at any time do a surprise examination. Our department's objective is to make sure that our institutions are safe and sound so if we have any an inkling whatsoever that something is not right and we believe our immediate intervention is necessary we can go in for a surprise examination.

Senator Piepkorn: So then they have no recourse, if you determine something is wrong they have to let you come examine? Then there has to be something going on that would bring this to your attention.

Lise: Yes, that's exactly right.

Chairman Klein: The idea of giving notice is so they have enough personnel there, so you prepare them for examination to not tie up the banks. Unless information is received that something is awry

Lise: Yes, that is correct. Our federal counterpart on the banking side and us, we all have that authority and sometimes we get monitoring reports. But if we get reports that something is not right we need to have that authority to be able to go in and make immediate action. But we can even make checkups if there are consumer or even employee reports that are severe enough, because our job is to make sure that our banks are safe and sound and consumers are not harmed.

Chairman Klein: So you make examinations but FDIC is also out there making examinations of banks and institutions? So there could be multiple audits over a certain short period of time if their name happens to be drawn?

Lise: Yes, that's correct. The way it's based is that an institution has to be examined every eighteen months. And we alternate with the FDIC so they go in one time and we go in the next time. If the institution is large, more than \$3 billion or if they have issues, we go in annually and in those exams we go jointly with FDIC. We work very closely. The local decision making is important, we don't want to give our supervisory authority to the FDIC. That's why we keep each other in the loop.

Senator Piepkorn: The amendment increasing the amount, it says there are four independent state chartered trust companies, could you tell us what they are?

Lise: Yes, the four is American Trust Company, Harkman Trust Company, Thoreson Steffes Trust Company, and then Ascensus Trust. In addition we do have trust powers within the individual banks, but these are the independent trust companies that fall underneath this law.

Senator Piepkorn: In section 4, it talks about disclosure of customer information, privacy and such, in the past there have been discussions about if you can opt in/opt out, do you have to give permission to do it? Or if you do not respond with an opt out, you're automatically included?

Lise: The way our law is written is that they need to have confirmation from the citizen to be able to share information.

Senator Piepkorn: So you need to approve of the opt in because in the past, if you didn't choose to opt out, you were automatically included. Not in this instance. Its kind of a consumer protection issue. So you need to actually give them permission.

Chairman Klein: Didn't Gramm-Leach-Bliley make us do that? Back in the 90's when we had this whole events issue and we became really involved with privacy and the separation from the banks and insurance and all those things created us to opt, we're all opt in if we had to opt out and that became a part of the North Dakota law. When you talked about failures, how are the banks and credit unions holding up? Are you on top of that?

Lise: Yes, we are on top of it and we monitor them very closely. We haven't had a bank failure in 30 years. Even in the most recent recession our banks remained healthy and with the exception of one credit union, that was taken into conservatorship by the NCUA, but that just really proved how the system works. The examiners identified issues over time and by the time it was very clear that we needed to intervene, we were able to do it in a very clean fashion so no consumers lost any funds.

Senator Kreun: How many people do we have working in the department? If we're doing all of this examining, it must be intense.

Lise: 30 employees, asking for one more to have 31. We have 16 bank examiners, 4 credit union examiners, and 4 in the consumer division.

Chairman Klein: And the fees you charge to everyone, covers the cost of all your employees?

Lise: Yes, we are a special fund agency and so they pay us what we ask, and its based on their size and those fees are set by the state banking board and the state credit union boards on both sides and that covers the cost. On the consumer division, and why I'm asking for a money transmitter is because I think that this is where we are probably falling a little bit low.

Chairman Klein: But in the bank and credit unions situation they can pass it on to the consumer more readily than a money transmitter or a payday lender.

Lise: Maybe so, I believe that the consumer division as well, for instance a money transmitter, they charge a fee for the money transmission and that's how they make up their

funds but they also have these licenses across the nation but on the banks and credit unions we always based on appropriations and so we kind of back into the number so we never have any excess.

Jeff Olson Credit Union of the Dakotas: Testified in support of the bill. Good morning. I represent 73 credit unions in North and South Dakota, and 494,000 credit union members in both states. I want to thank the commissioner and her department for their transparency on this bill and involving all of the stakeholders on it. I'm here to address the issues that specifically deal with the credit unions. Typically, we would oppose this type of legislations, that is third party examinations. The reason being that the third party providers specifically the fintech providers are the same providers that the banks are using and they are already getting examined. We would think it was redundant. The other component of that is that we are required as credit unions to do a significant amount of due diligence on these vendors, so that's required in our supervision already. However, we do know that this stuff is coming because this last month in financial stability oversight council and the government accountability office in DC are warning congressional leaders and that particularly fintech companies and third party providers need a little more oversight. The reason we were probably left out back in 2015 is that our federal regulator the National Credit Union Administration doesn't have the authority to do so. So we just didn't look at the language a few years ago and include credit unions. There are 27 states that do look at examinations and include third party providers and they look at cybersecurity and breeches as a major concern. And again, a lot of those aren't happening on the financial service side, they're happening mostly on the merchant side and some cases credit reporting agencies. But we know that that's an issue and we know that this is probably something that's coming and we do know that our regulator on the federal side, the National Credit Union Administration is looking to congress for help in getting authority on that. So we'll have that battle with our national partners when that comes out. So we're supporting that legislation and language at this point. The other thing is addressing trust. Credit unions don't offer trusts as their main source of financial service to their members, they could through what we call a CUSO which is a Credit Union Service Organization which is a taxed, for-profit organization. Our credit unions do this with mortgage origination companies and insurance companies and so forth and I'm not aware that we have anybody offering trusts at this point.

Barry Haugen President of Independent Community Banks of North Dakota: Testified in support of the bill. We appreciate the transparency of the department in working with our financial services groups early on. We think the modernization makes sense. There's not a lot in this bill that directly effects community banks but certainly section 4 does, and we think it's appropriate that that be approved as opposed so that there is an equal playing field on the privacy notification and disclosure fronts.

Rick Clayburgh President CEO of the North Dakota Bankers Association: Testified in support of the bill. Our banker legislative committee met with the commissioner back in December and we fully support the commissioner's direction on SB 2093 and NDBA supports the passage of SB 2093. There were two questions asked earlier on the privacy, what this allows the commissioner to do is create those companies outside of North Dakota that don't just have brick and mortar or specific locations similar to North Dakota. We believe it is leveling the playing field in terms of the privacy issue. And secondly, in terms of money transmitters and others, when you talk about the ease to pass fees on, the competition in those others have a better

ability to pass those fees on than the highly regulated financial institutions that have restrictions both federally and state on what we can charge consumers.

Senator Kreun: If these money transmitters were able to tack on a fee any particular time they need to transfer that money, is what you're saying?

Rick: My response was more so a philosophical response to the question the Chairman said earlier when he said I'm assuming its easier for financial institutions to pass fees on, I would argue that it's probably easier for others to do it, there are a lot of restrictions that are imposed by our financial institutions.

Senator Kreun: But getting back to that, when we transfer money back and forth, they can change their policy anytime they want as far as being competitive with other transmitters is that correct?

Lise: My assumption would be that that is correct.

Chairman Klein: Just quickly on the bitcoin thing, is that your department's regulation or will it be or?

Lise: That is correct. Last session we did propose that virtual currency transmission should be included, along with other money transmission. And that was killed. Tomorrow there is a bill coming out that will specifically say that virtual currency is excluded and it will be interesting. My counterparts in other states that oversee virtual currency not the exchanges, but just the transmission in North Dakota at the moment we are not allowed to due to that bill. But typically any transmission would fall under our department as far as the capital formation that falls under the securities department on the block chain technology.

Chairman Klein: Closed the hearing on SB 2093. Asked for comments from the committee.

Senator Piepkorn: Just a point of discussion that Senator Roers brought up, the fees seemed low, the 50,000/20,000, the commissioner was saying well we're trustworthy here in North Dakota. I don't know it seems kind of naive maybe.

Chairman Klein: My response would be that the commissioner along with all of the agencies, most of the concerned folks who are in this bill have come to an agreement that should we find that in the next two years the amount is not enough, I'm certain they'll be back and they know what it takes to operate their agency and I'm sure that's what they're trying to do, making sure they're covering their cost. And I will leave it in the commissioner's capable hands.

Senator Piepkorn: Me too. And with that I move **Do Pass**.

Senator Roers: Seconded.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Piepkorn will carry the bill.

Date: 4/7
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2093**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Piephorn Seconded By Roers

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Piepkorn	X	
Vice Chairman Vedaa	X				
Senator Burckhard	X				
Senator Kreun	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Piephorn

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2093: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2093 was placed on the Eleventh order on the calendar.

2019 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2093

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2093
2/27/2019
32892

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Examination of technology service providers, the capital requirement for trust companies, the examination of trust companies, definition of a financial institution, surety bond requirements for money brokers & collection agencies, notice requirement for deferred presentment service providers, fees for money transmitters & reporting requirements for debt-settlement providers. Automatic renewal of license in 2009 for money brokers & 2014 for collection agencies, deferred presentment service providers & money transmitters.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing on SB 2093.

Lise Kruse~Commissioner of ND Financial Institutions: Attachment 1.

14:10

Rep Laning: You increased the bonding from 20 to 50, it almost seems in some cases it's too low. Any thoughts?

Lise Kruse: We wanted to take smaller steps, so there was not too much of a shock.

Rep Richter: Section 4, can you clarify that?

Lise Kruse: That's is accurate. In our overall statute, credit unions are not considered a financial institution, but when it come through the public disclosure, they are considered a financial institution. They are included there but not in the overall statute.

Rep Bosch: Section 7, number 2, is there a provision where there is a link on a web site that is posted that ties you back?

Lise Kruse: We don't have the tool over their web site but on our web site there is a link to the nationwide/multistate licensing system. It is easy to find to see if they are licensed with us.

Rep Bosch: But no requirement to put that on their web site?

Lise Kruse: No, we don't have it in statute.

Rep Kasper: What response from the credit union & have you talked to them?

Lise Kruse: Yes, we have talked to them.

Rep D Ruby: Section 8, then the scale that goes up. Does that increase make a lot of extra work for your department? You are getting a lot of benefit of their dollars without any real work involved. Why is it necessary for a scale that goes up to \$2,500 without any work involved without any additional work required?

Lise Kruse: The start of the application is very expensive. They sent us hundreds of pages of material & a lot of these companies are so different. All the changes come in & we have to review it; we see how it will impact the licensing & approve it. There is a lot of work that goes on & as the business grows, it just increases.

Rep Schauer: Additional income of \$112,000, what would you do with that money?

Lise Kruse: The way it's funded is all special funds. The consumer license fees for each of the divisions. We are trying to match up which is taking more time to get the revenue, matching up. Most states just have a flat fee.

Rep D Ruby: Wouldn't it make more sense to actually put a surcharge on the companies that are requiring the most work because they are causing the complications to your department?

Lise Kruse: That would be burdensome for us, we don't want to count the hours. No other state does that. We don't want to discourage them from coming to our state to operate. We are trying to strike a balance.

Lise Kruse: There is an amendment forthcoming.

Chairman Keiser: Anyone else here to testify in support in of SB 2093, opposition, neutral?
Closes the hearing. We will wait to receive the amendment from Rep Beadle.

2019 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2093
3/4/2019
33114

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Examination of technology service providers, the capital requirement for trust companies, the examination of trust companies, definition of a financial institution, surety bond requirements for money brokers & collection agencies, notice requirement for deferred presentment service providers, fees for money transmitters & reporting requirements for debt-settlement providers. Automatic renewal of license in 2009 for money brokers & 2014 for collection agencies, deferred presentment service providers & money transmitters.

Minutes:

Chairman Keiser: Reopens the hearing on SB 2093.

Chairman Keiser: Rep Beadle requested to hold the bill in request from one of his constituents. Rep Beadle said that he didn't have a bill coming & supports the bill as it was given to us. What are the wishes of the committee?

Vice Chairman Lefor: Moves a Do Pass.

Rep P Anderson: Second.

Chairman Keiser: Further discussion?

Roll call was taken on SB 2093 for a Do Pass with 11 yes, 0 no, 3 absent & Rep Richter is the carrier.

Date: Mar 4, 2019

Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2093

House _____ Industry, Business and Labor _____ Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation

- Adopt Amendment
- Do Pass Do Not Pass Without Committee Recommendation
- As Amended Rerefer to Appropriations
- Place on Consent Calendar

Other Actions Reconsider _____

Motion Made by Rep Lefor Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep O'Brien	Ab	
Vice Chairman Lefor	X		Rep Richter	X	
Rep Bosch	X		Rep D Ruby	X	
Rep C Johnson	X		Rep Schauer	X	
Rep Kasper	Ab		Rep Adams	X	
Rep Laning	X		Rep P Anderson	X	
Rep Louser	X		Rep M Nelson	Ab	

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep Richter

REPORT OF STANDING COMMITTEE

SB 2093: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).
SB 2093 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2093

SB 2093 1/7/19 Attach # 1 pg 1

MEMORANDUM

DATE: January 7, 2019
TO: Senate Industry, Business and Labor Committee
FROM: Lise Kruse, Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2093

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. 2093.

Mr. Chairman and members of the Committee, Senate Bill No. 2093 includes amendments to Chapters 6-01, 6-05, 6-08, 13-04, 13-05, 13-08, 13-09, and 13-11 of the North Dakota Century Code relating to financial institutions. I would like to note that 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, the Credit Union Association of the Dakotas, and had discussions with our independent trust companies to review our proposed legislation.

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Section 1 of the Bill would amend 6-01-09 to also include credit unions in the language that gives the department authority to examine technology service providers. When this authority was granted in 2015, credit unions were excluded since authority exists for companies providing data processing services to state-chartered credit unions under 6-06-08.3. However, with the increased reliance of our institutions on other technology service providers, such as networking, including credit unions in 6-01-09 expands the authority beyond data processing, allowing the department to also supervise other crucial providers. The purpose of this section is to allow the department to evaluate the technology service provider's risk management systems and controls, and also review the entity's compliance with applicable laws that could have an impact on North Dakota financial institutions and corporations. Feedback from the banking industry since this bill was originally enacted in 2015, has been positive, and the department expects it to be equally beneficial to credit unions.

Section 2 of the Bill provides for an amendment to 6-05-03, increasing the minimum capital requirement for a trust company to \$1,000,000 with \$500,000 of that amount in liquid assets. Although the statute reads \$100,000, this is confusing since the North Dakota Administrative Rules 13-02-19.03 require a minimum capital level of

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\$500,000. The \$500,000 requirement was set in 1994, and using the consumer price index, that amount today equates \$895,000. The State Banking Board has the authority to increase the minimum capital requirement based on the activities and volume of trust assets under the company's management, which is consistent with other states and is also necessary to protect consumers. Surveying 28 other states, the minimum capital requirement range is \$50,000 to \$5,000,000, with an average of \$1,300,000 and median of \$1,000,000. There were 12 states with a requirement of \$500,000 or less. The capital of a trust company protects consumers whose assets these companies manage, and since North Dakota does not have a trust resolution fund, requiring a healthy capital level is important. Amending this section and increasing the amount, will provide better clarity of the capital requirement and provide better protection for customers. There are currently four independent state-chartered trust companies, which were contacted about this proposed legislation. There were no objections, and it should be noted that they all have capital above this required minimum. If this increase is approved, the department will update the administrative rules to eliminate confusion.

Section 3 of the Bill is to amend 6-05-28 regarding examination notification to reflect actual practice. For many years the department has

notified institutions in advance of its examination. Although the department needs to retain the ability to conduct surprise examinations if urgent issues arise, in the normal course of business it is more efficient and also easier on the companies with advance examination notice.

Section 4 of the Bill is to amend Subsection 3 of section 6-08.1-01. This section pertains to the privacy and disclosure of customer information and the proposed amendment specifically addresses the definition of financial institutions that need to send disclosure statements to customers. These opt-in disclosures are important to ensure customers' privacy; however, with the current definition it appears that disclosure requirements apply only to entities with a physical location within the state. Many lenders serving our citizens are located outside of North Dakota, soliciting business via the Internet. These out-of-state lenders should not be allowed to share North Dakota customers' information without the customer granting consent in accordance with this chapter and should be required to provide the same notices and disclosures as local financial institutions.

Section 5 of the Bill amends section 13-04.1-04.1 relating to required surety bond amount for money brokers. The department licenses 435 entities, most with out-of-state headquarters. The proposed amendment would increase the bond amount from \$25,000 to \$50,000. The surety

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bond is in place to protect consumers from fraud and malpractice, and over time, loan amounts have increased, yet our bond requirement has remained the same for decades. Reviewing bond requirements for 40 other states, only 8 states had a requirement of less than \$50,000. The range was \$12,000 to \$500,000, with an average of \$122,000 and median of \$100,000. In North Dakota, money brokers include a variety of lenders, including mortgage companies. Other states may license these separately, and therefore surety bond requirements can be higher in those states. To recognize the growth in this industry and higher loan amounts, increasing the bond requirement is appropriate to protect consumers from risk.

Section 6 of the Bill amends section 13-05-04.1 relating to required surety bond amount for collection agencies. The department licenses 556 entities, again most of these with out-of-state headquarters. The proposed amendment would increase the bond amount from \$20,000 to \$50,000. The surety bond is in place to protect consumers from fraud and malpractice, and recent experience indicates that the current amount is not enough to cover consumer and business client losses. In May 2018 the department issued a Cease and Desist Order against a Minot collection agency and claims against the bond to date is in excess of \$50,000. The highest individual claim was about \$14,000, which makes it clear that at the

current level, the bond can be exhausted quickly. The proposed \$50,000 requirement is higher than most states, although it is the same as Minnesota's requirement.

Section 7 of the Bill amends section 13-08-06 relating to required posting of license for deferred presentment service providers (payday lenders). The current requirement requires the company to post its license at the place of business and notice to be provided to customers. The department no longer issues paper licenses and there is a risk that posted licenses may be outdated or no longer active. A better way to protect consumers is for licensees to post and provide the license number and instructions for customers to look up the information in the Nationwide Multi-State Licensing System (NMLS). NMLS' search feature provides real-time license information. This is a more reliable method for customers to determine if the business is in good standing to operate in North Dakota. Our department will provide a fillable form to ensure that the size and language of the notice is consistent and determined by the department. The second amendment to this section is to recognize that the fiscal year has changed from June 30 to December 31, which is consistent with all other licensees.

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Section 8 of the Bill amends subsection 1 of section 13-09-10 relating to renewal fees for money transmitters, and a fiscal note is attached. Money transmitter licensed entities continue to grow with current number at 114, and the volume of business in North Dakota has increased to over \$9.4 billion a year. These companies are often complex and require enhanced oversight and review due to the varied business plans and volume of activities. This includes significant increase in time spent on license application and renewals. Only one entity has its main location in North Dakota. Due to the increase in companies and complexities, the current fee structure does not cover the cost of overseeing these entities, and it would make more sense to charge the companies based on transaction volume rather than a flat fee. Looking at 30 other states, the average renewal fee is \$1,183 with a range of \$200-\$5,000. South Dakota charges \$800 and Minnesota \$2,500. The current fee is \$450; the proposed amendment would increase the fee to 0.25% of transmission volume (over 12 months) with a \$500 minimum and a \$2,500 maximum. This would result in additional income of \$112,000 to our department that will provide the resources required to oversee this industry. Based on the 12 months ending June 30, 2018, the minimum fee would be paid by 60 companies and 40 of these companies maintain a license but do not

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transact any business in North Dakota. The formula is applied when a licensee transmits \$200,000 and above. The maximum fee would apply to 39 companies and this level is reached when volume is at \$1,000,000 and above.

Section 9 of the Bill amends 13-11-08 regarding annual reporting requirements for debt settlement providers. Requiring reports filed before August is excessive since each company is required to file reports with their renewals due December 31 each year. Changing the date will help streamline the process and reduce regulatory burden upon the industry.

Finally, section 10 of the Bill would repeal sections 13-04.1-05.1, 13-05-05.2, 13-08-05.2, and 13-09-10.1, which refers to outdated language addressing the 2009 and 2014 calendar years.

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

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FISCAL NOTE
 Requested by Legislative Council
 12/21/2018

Bill/Resolution No.: SB 2093

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$112,008	\$0	\$114,000
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Increasing the annual license fee to match cost of regulating the industry. The new scale matches volume of transactions with the licensing fee. This not affect the general fund.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Century code 1309-10. Would increase fees from \$450 to 1/4 of one percent of transactions not to exceed two thousand five hundred dollars A minimum of \$500.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This revenue is special fund and does not affect the general fund. This would increase DFI special fund in the amount of \$112,008.

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This change would affect expenditures to the executive budget.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This would not affect the Department appropriation as listed in the Executive Budget.

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Name: Joan Becker
Agency: Dept of Financial Inst
Telephone: 7013289958
Date Prepared: 12/26/2018

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MEMORANDUM

DATE: February 27, 2019
TO: House Industry, Business and Labor Committee
FROM: Lise Kruse, Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2093

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2093.

Mr. Chairman and members of the Committee, Senate Bill No. 2093 includes amendments to Chapters 6-01, 6-05, 6-08, 13-04, 13-05, 13-08, 13-09, and 13-11 of the North Dakota Century Code relating to financial institutions. I would like to note that 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, the Credit Union Association of the Dakotas, and had discussions with our independent trust companies to review our proposed legislation.

Section 1 of the Bill would amend 6-01-09 to also include credit unions in the language that gives the department authority to examine technology service providers. When this authority was granted in 2015, credit unions were excluded since authority exists for companies providing data processing services to state-chartered credit unions under 6-06-08.3. However, with the increased reliance of our institutions on other technology service providers, such as networking, including credit unions in 6-01-09 expands the authority beyond data processing, allowing the department to also supervise other crucial providers. The purpose of this section is to allow the department to evaluate the technology service provider's risk management systems and controls, and also review the entity's compliance with applicable laws that could have an impact on North Dakota financial institutions and corporations. Feedback from the banking industry since this bill was originally enacted in 2015, has been positive, and the department expects it to be equally beneficial to credit unions.

Section 2 of the Bill provides for an amendment to 6-05-03, increasing the minimum capital requirement for a trust company to \$1,000,000 with \$500,000 of that amount in liquid assets. Although the statute reads \$100,000, this is confusing since the North Dakota Administrative Rules 13-02-19.03 require a minimum capital level of

\$500,000. The \$500,000 requirement was set in 1994, and using the consumer price index, that amount today equates \$895,000. The State Banking Board has the authority to increase the minimum capital requirement based on the activities and volume of trust assets under the company's management, which is consistent with other states and is also necessary to protect consumers. Surveying 28 other states, the minimum capital requirement range is \$50,000 to \$5,000,000, with an average of \$1,300,000 and median of \$1,000,000. There were 12 states with a requirement of \$500,000 or less. The capital of a trust company protects consumers whose assets these companies manage, and since North Dakota does not have a trust resolution fund, requiring a healthy capital level is important. Amending this section and increasing the amount, will provide better clarity of the capital requirement and provide better protection for customers. There are currently four independent state-chartered trust companies, which were contacted about this proposed legislation. There were no objections, and it should be noted that they all have capital above this required minimum. If this increase is approved, the department will update the administrative rules to eliminate confusion.

Section 3 of the Bill is to amend 6-05-28 regarding examination notification to reflect actual practice. For many years the department has

notified institutions in advance of its examination. Although the department needs to retain the ability to conduct surprise examinations if urgent issues arise, in the normal course of business it is more efficient and also easier on the companies with advance examination notice.

Section 4 of the Bill is to amend Subsection 3 of section 6-08.1-01. This section pertains to the privacy and disclosure of customer information and the proposed amendment specifically addresses the definition of financial institutions that need to send disclosure statements to customers. These opt-in disclosures are important to ensure customers' privacy; however, with the current definition it appears that disclosure requirements apply only to entities with a physical location within the state. Many lenders serving our citizens are located outside of North Dakota, soliciting business via the Internet. These out-of-state lenders should not be allowed to share North Dakota customers' information without the customer granting consent in accordance with this chapter and should be required to provide the same notices and disclosures as local financial institutions.

Section 5 of the Bill amends section 13-04.1-04.1 relating to required surety bond amount for money brokers. The department licenses 435 entities, most with out-of-state headquarters. The proposed amendment would increase the bond amount from \$25,000 to \$50,000. The surety

bond is in place to protect consumers from fraud and malpractice, and over time, loan amounts have increased, yet our bond requirement has remained the same for decades. Reviewing bond requirements for 40 other states, only 8 states had a requirement of less than \$50,000. The range was \$12,000 to \$500,000, with an average of \$122,000 and median of \$100,000. In North Dakota, money brokers include a variety of lenders, including mortgage companies. Other states may license these separately, and therefore surety bond requirements can be higher in those states. To recognize the growth in this industry and higher loan amounts, increasing the bond requirement is appropriate to protect consumers from risk.

Section 6 of the Bill amends section 13-05-04.1 relating to required surety bond amount for collection agencies. The department licenses 556 entities, again most of these with out-of-state headquarters. The proposed amendment would increase the bond amount from \$20,000 to \$50,000. The surety bond is in place to protect consumers from fraud and malpractice, and recent experience indicates that the current amount is not enough to cover consumer and business client losses. In May 2018 the department issued a Cease and Desist Order against a Minot collection agency and claims against the bond to date is in excess of \$50,000. The highest individual claim was about \$14,000, which makes it clear that at the

current level, the bond can be exhausted quickly. The proposed \$50,000 requirement is higher than most states, although it is the same as Minnesota's requirement.

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