NORTH DAKOTA BANKERS ASSOCIATION

NDBA Live
May 13, 2026

Topics Covered:

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Special Guest: Lise Kruse | Commissioner, North Dakota Department of Financial Institutions

Please welcome our guest, Lise Kruse! Lise serves as the Commissioner of the North Dakota Department of Financial Institutions. Lise will be discussing cryptocurrency and digital assets.

Member Questions

May is Older Americans Month, which provides a timely reminder to focus on issues affecting older adults, including financial exploitation. Our first question concerns whether North Dakota banks are required to report suspected financial exploitation of vulnerable or elder adults.

Question 1: Are North Dakota banks mandated reporters of elder financial exploitation?

Response: **In North Dakota, banks are not mandated reporters of suspected financial exploitation. The governing statutes (Chapter 6-08.5, N.D.C.C.) are expressly permissive, using phrases such as "may refuse," "may report" and "does not impose a duty on a financial institution to..." The statutes also provide**

immunity for banks whether they choose to act or not act, so long as their conduct is consistent with the statutes.

Question 2: My understanding has been that Future Advance mortgages allow you to do additional loans in the future, secured against the original mortgage without any additional modification needed, as long as you reference the original mortgage filing on your promissory note to show that this is intended to be security for this new loan. This is assuming the original mortgage maximum is high enough or "Not Limited" and the maturity date on the original mortgage is adequate to cover this new obligation. Are a new note and an advance the same thing in this situation?

I have been told that future advance clauses are not designed to have the mortgage cover future loans to the borrower. I was hoping you could provide some clarification on this. I was always under the impression that future loans were the purpose of the future advance clause in the mortgage. Does the answer depend on whether or not there is a cross-collateralization clause in the mortgage?

Response: **Whether your mortgage secures additional promissory notes will depend upon the specific terms and conditions of your mortgage. I would specifically be looking at how the mortgage defines indebtedness, whether there is a cross-collateralization clause, and whether there is any limitation on the amount secured.**

Question 3: We have a perspective customer with an interesting transaction use-case and some scenarios we'd like to run by you. The prospective customer is a law firm who assists nonprofits with dissolution and winding down. Although these organizations often believe they will no longer receive funds, they occasionally receive checks after their accounts have already been closed.

When this happens, the checks need to be deposited so the funds can be properly distributed. Historically, another bank allowed the customer to deposit these checks into the law firm's trust account on behalf of the nonprofit, but they will no longer permit this. As a result, they currently have several checks and no clear path forward.

The customer is asking whether we would be willing to accept these deposits under appropriate controls. They have confirmed that:

- There is no known legal prohibition against this practice,
- They can provide a letter from the nonprofit authorizing the deposit, and
- They have an engagement letter outlining their role and authority.

Our main goal is to see whether there are any compliant alternative structures we could consider for situations where a dissolved nonprofit receives funds after account closure. If direct deposit into the law firm's account is not an option, we'd

love guidance on whether any of the following could be viable from a risk and compliance standpoint:

- Opening a short term, limited purpose account in the nonprofit's name (where feasible) solely to distribute post closure funds
- Establishing a segregated escrow or fiduciary account structure with clearly defined documentation and controls
- Any other structure you've seen work in similar attorney / fiduciary scenarios

Response: **This inquiry appears to involve specific circumstances and while I cannot provide legal advice, I can offer general information regarding laws and regulatory requirements. Please consult with counsel for your specific situation.**

Uniform Commercial Code (UCC) Articles 3 and 4

UCC Articles 3 and 4 govern the negotiation and deposit of checks. A bank that accepts a check for deposit when the endorsement is unauthorized may be liable for conversion. *See* N.D.C.C. § 41-03-57.

If a bank receives checks payable to a dissolving nonprofit, it must ensure that the person or entity attempting to deposit or negotiate the checks has proper authority to act on behalf of such nonprofit. Without such authority, the bank risks liability for conversion.

Bank Secrecy Act (BSA) / Anti-Money Laundering (AML)

As part of the bank's AML program, banks must implement a Customer Identification Program (CIP) that includes risk-based verification procedures that enable the bank to form a reasonable belief that it knows the true identity of its customers. 31 C.F.R. § 1020.220. The bank must ensure compliance with its CIP when opening a new account.

North Dakota Nonprofit Dissolution Statutes

A nonprofit corporation may be dissolved voluntarily by the incorporators, by the board and members with voting rights, by order of a court, or by the secretary of state. *See* N.D.C.C. § 10-33-96.

Once a notice of intent to dissolve has been filed with the secretary of state, the nonprofit corporation generally may not carry on its activities except to the extent necessary for the winding up of the corporation. *See* N.D.C.C. § 10-33-99. "The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state." *Id.*

"When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation…" N.D.C.C. § 10-33-100.

In accordance with the foregoing, a nonprofit corporation can continue to carry on activities necessary for winding up, including the collection of debts owed to the corporation. It can continue to do so until either the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

North Dakota Power of Attorney

"A power of attorney is a written instrument in which one authorizes another to act as one's agent." ***Alerus Fin., N.A. v. W. State Bank*****, 2008 ND 104, ¶ 19, 750 N.W.2d 412 (citation omitted). "The agent holding the power of attorney is the attorney-in-fact."** ***Id.*** **"Because a power of attorney creates an agency relationship, agency principles are applicable in determining the authority and duties of the attorney in fact."** ***Id.*** **"An agency relationship involves both a contractual and a fiduciary relationship, and the interpretation of an agent's authority is governed by the rules for construing contracts, except to the extent the fiduciary relationship requires a different rule."** ***Id.*** **"An agency created under a durable power of attorney entails a confidential relationship and fiduciary duties."** ***Id.*** **at ¶ 20.**

North Dakota has adopted the Uniform Durable Power of Attorney Act as Chapter 30.1-30, N.D.C.C.

North Dakota Rules of Professional Conduct

Lawyers are required to maintain client funds in interest bearing trust accounts that comply with specific requirements, including the North Dakota Rule of Professional Conduct governing the safekeeping of client funds:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be deposited in one or more identifiable interest bearing trust accounts in accordance with the provisions of paragraph (f)…

(b) ... A lawyer may deposit the lawyer's own funds in a client trust account only for the purpose of paying bank service charges and fees associated with credit card payments or electronic funds transfer payments related to that account, but only in an amount necessary for that purpose.

(c) Except as provided in Rule 1.5 (f), a lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving, in connection with a representation, funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any

funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When, in the course of representation, a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Each trust account referred to in paragraph (a) shall be an interest bearing trust account in an eligible financial institution selected by a lawyer in the exercise of ordinary prudence. An eligible financial institution is a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company authorized by federal or state law to do business in North Dakota and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Federal Savings and Loan Insurance Corporation. Interest bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made by the depositing lawyer or law firm without delay, subject only to any notice period which the depository institution is required to reserve by law or regulation.

(1) A lawyer who receives funds of clients or third persons shall maintain a pooled interest bearing trust account for deposit of all such funds received that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to and administered by the North Dakota Bar Foundation in accordance with Administrative Rule 24 of the Supreme Court of North Dakota. The North Dakota Bar Foundation holds the entire beneficial interest in all interest monies accruing on this account.

(2) All funds of a client or third person shall be deposited in the account specified in paragraph (f)(1) unless they are deposited in:

(i) a separate interest bearing trust account for the particular client or third person on which the interest, net of any transaction costs, will be paid to the client or third person; or

(ii) a pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs,

to the client or third person.

(3) In determining whether to use the account specified in paragraph (f)(1) or an account specified in paragraph (f)(2), a lawyer should take into consideration the following factors when deciding whether the funds to be invested may be utilized to provide a positive net return to the client or third person:

(i) the amount of interest which the funds would earn during the period they are expected to be deposited;

(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's or third person's benefit; and

(iii) the capability of financial institutions described in paragraph (f) to calculate and pay interest on individual accounts or subaccounts.

(4) As to accounts under paragraph (f)(1), a lawyer or law firm shall direct the depository institution:

(i) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the North Dakota Bar Foundation (the foundation); and

(ii) to transmit with each remittance to the foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing lawyer or law firm.

(g) Lawyers who are admitted to practice in a jurisdiction other than the state of North Dakota and lawyers who are associated in a law firm with at least one lawyer who is admitted to practice in a jurisdiction other than the state of North Dakota are exempt from the requirements of paragraph (f) if the lawyer or law firm maintains a pooled interest bearing trust account for the deposit of funds of clients or third persons in a financial institution located outside the state of North Dakota and the interest, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds, or to a non-profit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located. This exemption shall not relieve a lawyer from any of the other obligations

imposed by this rule.

(h) A lawyer shall maintain or cause to be maintained on a current basis records sufficient to demonstrate compliance with the provisions of this Rule. Such records shall be preserved for at least six years after termination of the representation.

(i) A lawyer shall certify, in connection with the annual renewal of the lawyer's license and in such form as the clerk of the supreme court of North Dakota may prescribe, that the lawyer is complying with the provisions of this Rule.

(j) The form required in subsection (i) shall also contain a provision for each licensed lawyer to certify (1) whether the lawyer represents private clients; (2) if the lawyer represents private clients, whether the lawyer is currently covered by professional liability insurance; (3) whether the lawyer intends to maintain such insurance during the next twelve months; and (4) the name of the insurance company and policy number. A lawyer shall notify the clerk in writing within 30 days if the lawyer's professional liability coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption. This information shall be disclosed to the public upon request.

(k) Lawyer trust accounts, as referred to in paragraphs (a) and (f), shall be maintained only in eligible financial institutions approved by the Disciplinary Board. Every check, draft, electronic transfer, or other withdrawal instrument or authorization must be personally signed or, in the case of electronic, telephone, or wire transfer, directed by one or more lawyers authorized by the law firm.

(l) A financial institution, to be approved as a depository for lawyer trust accounts, shall file with the Disciplinary Board an agreement, in a form provided by the Board, to report to the Board if any properly payable* instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. The Disciplinary Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account may be maintained in any financial institution that does not agree to make overdraft notification reports. Any overdraft notification agreement must apply to all branches of the financial institution and may not be canceled except upon three days notice in writing to the Board.

(m) The overdraft notification agreement must provide that all reports made by the financial institution be in the following format:

(1) in the case of a dishonored instrument, the report must be identical to the overdraft notice customarily forwarded to the

depositor, and should include a copy of the dishonored instrument, if a copy is normally provided to depositors;

(2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report must identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

Reports must be made simultaneously with the notice of dishonor* and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report must be made within five banking days of the date of presentation for payment against insufficient funds.

(n) …

(o) Nothing in this rule precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

N.D. R. Prof. Conduct Rule 1.15.

FBI Releases 2025 Internet Crime Report

The FBI's 2025 Internet Crime Report shows cyber-enabled crimes defrauded Americans of nearly $21 billion, which is a 26% increase from 2024. Some key takeaways include:

- $7.7 billion in losses were attributed to the 60+ age group.
- The most frequently reported complaints involved phishing/spoofing, extortion, and investment schemes.
- Complaints involving cryptocurrency reported the highest losses.
- Account takeover fraud via impersonation of financial institution support caused $359.7 million in losses.
- The Financial Fraud Kill Chain (FFKC) is described on pages 17-18 and 23. The FBI notes that the majority of FFKC incidents were previously business email compromises, but in 2025, the FFKC process saw a rise in tech support and account takeover (ATO) initiations.
- Artificial Intelligence (AI)-enabled synthetic content is becoming increasingly difficult to detect and easier to make. This enables criminals to generate convincing communications or impersonate executives to authorize transfers. Complaints reporting AI-related information in 2025 exceed $893 million.
- Elder fraud continues to rise, with $7.748 billion in reported losses, up 59% from 2024.
- There were $389 million in losses related to cryptocurrency ATMs/kiosks, a 58% increase from 2024.

CFPB Finalizes Regulation B Final Rule

The Consumer Financial Protection Bureau (CFPB) has issued a final rule amending Regulation B under the Equal Credit Opportunity Act (ECOA), with an effective date of July 21, 2026.

Removal of Disparate Impact Liability

A central shift is the removal of disparate impact liability. Lenders are no longer held accountable for neutral policies that disproportionately affect protected groups unless there is evidence of intentional discrimination.

Discouragement Provision

Regulation B prohibits creditors from making "any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application." 12 C.F.R. § 1002.4(b).

The final rule narrows the scope of this provision by clarifying that:

- "Oral or written statement" is limited to spoken or written words or visual images and does not extend to "acts or practices" such as branch placement, overall marketing footprint, or outreach patterns.
- Liability only attaches to statements directed at applicants or prospective applicants. Encouraging, targeted outreach to one group is not treated as discouragement of other groups who are not the intended recipient.
- A statement is only discouraging if the creditor knows or should know that it would cause a reasonable person to believe the creditor would deny, or grant on less favorable terms, a credit application based on prohibited criteria.

Special Purpose Credit Programs

The rule also tightens the framework for Special Purpose Credit Programs. For-profit lenders face stricter limitations, particularly around the use of protected characteristics such as race or sex in determining eligibility, and must meet more rigorous criteria to justify these programs.

CFPB Finalizes Small-Business Lending Rule

The CFPB has finalized a scaled-back version of its small-business lending rule (Section 1071 of the Dodd-Frank Act). The final rule:

- Applies only to large lenders making at least 1,000 small-business loans in each of 2 consecutive years;
- Requires reporting of 13 data fields;
- No longer uses disaggregated ethnicity and race categories;
- Defines a "small business" as an entity with $1 million in revenue;

- Excludes data on loan pricing and denial reasons; and
- Omits several loan products, including agricultural loans.

Bankers will begin collecting data in 2028 and report it in 2029. Banker associations continue to lobby Republican lawmakers to repeal the rule altogether.

FCC Advances Proposed Rules for Scam Calls

The Federal Communications Commission (FCC) has advanced a notice of proposed rulemaking to impose stronger "Know-Your-Customer" (KYC) requirements on voice service providers that originate calls. Under the proposal, providers would be required to collect and verify specific information about their customers before allowing them to place calls on their networks, with violations subject to penalties assessed on a per-call basis. In addition, the FCC is considering measures to remove voice service providers from U.S. telecommunications networks if they are found to enable illegal robocalls (the "Know Your Upstream Provider" Proposed Rulemaking).

2026 Kansas Banker's Guide to Understanding, Preventing and Responding to Fraud Loss

The Kansas Bankers Association will be presenting a virtual session to discuss fraud scenarios banks encounter, trends, bank liability assessment, and an overview of regulations relating to ACH, Check and Wire Fraud liability.

The session will be held from 9:00 a.m. to 12:00 p.m. on June 24, 2026.

[Registration Link]

Payments Access and Consumer Efficiency (PACE) Act Would Open Fed Payment Rails to Nonbanks

The PACE Act is a proposed law that would create a formal framework allowing certain nonbank payment firms, such as fintech companies and potentially some crypto related entities, to obtain direct access to the Federal Reserve's core payment systems, including Fedwire, ACH, and FedNow. Currently, access to these systems is largely restricted to banks, meaning nonbanks must rely on intermediary financial institutions to send and settle payments.

The legislation would establish a new regulatory category for eligible firms, referred to as "registered covered providers." These entities would not become banks but would be permitted to open accounts with the Federal Reserve and connect directly to its payment infrastructure if they meet specific requirements.

To participate, firms would need to comply with a defined set of regulatory standards. These include maintaining 1:1 reserves, segregating customer balances from company funds, and implementing systems for risk management, compliance, and consumer protection. They would also be subject to ongoing federal supervision, administered by the Office of the Comptroller of the Currency. The framework is designed specifically for payment activities and does not grant broader banking powers like lending.

ABA Emerging Leaders

The ABA Emerging Leader Awards recognize up-and-coming banking professionals for leadership, innovation, and community impact. Individuals may apply or nominate a peer. [Link]

Upcoming Events

NDBA has many exciting and informational events planned. Below are some special dates to mark on your calendars!

- **FDIC Directors College** | May 19, 2026 | Radisson Hotel, Bismarck
- **Dakota School of Banking** | May 31 – June 5, 2026 | University of Jamestown, Jamestown, ND
- **NDBA/SDBA Annual Convention** | June 15-17, 2026 | Bismarck, ND | Registration Link
- **National School for Beginning Ag Lenders** | June 22-25, 2026 | Spearfish SD
- **NDBA Ag Credit Conference |** October 1-2, 2026 | Hilton Garden Inn, Fargo

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CAMPAIGN ACCOUNTS

Legal Framework

The primary source of law governing campaign finance in North Dakota is Chapter 16.1-08.1 of the North Dakota Century Code, titled "Campaign Contribution Statements." The North Dakota Secretary of State administers this chapter and publishes a Campaign Practices Guide (updated January 2026) that interprets its requirements for candidates and committees. Federal tax law may also apply (IRC § 527).

The Separation-of-Funds Requirement

North Dakota law mandates that candidates maintain dedicated campaign accounts that are separate from any personal accounts to ensure accurate reporting and avoid the commingling of campaign and personal funds. *See* N.D.C.C. § 16.1-08.1-02.3(8).

Account Opening

Who Opens Campaign Accounts?

Type	Description
Candidate	An individual holding or seeking public office
Candidate Committee	Political committee established to support an individual candidate seeking public office which solicits or receives contributions for political purposes
Political Action Committee (PAC)	Political committee not connected to another organization and free to solicit funds from the general public, or derived from a corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or an association that solicits or receives contributions from its employees or members or makes expenditures for political purposes on behalf of its employees or members
Political Organization	Political committee registered with the federal election commission which solicits or receives contributions or makes expenditures for political purposes
Multicandidate Political Committee	Political committee, including a caucus, established to support multiple groups or slates of candidates seeking public office, which solicits or receives contributions for political purposes
Measure Committee	Political committee, including an initiative or referendum sponsoring committee at any stage of its organization, which solicits or receives contributions or makes expenditures for the purpose of aiding or opposing a measure sought to be voted upon by the voters of the state, including any activities undertaken for the purpose of drafting an initiate or referendum petition, seeking approval of the secretary of state for the circulation of a petition, or seeking approval of the submitted petitions

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Type	Description
Political Party	Any association, committee, or organization which nominates a candidate for election to any office which may be filled by a vote of the electors of this state or any of its political subdivisions and whose name appears on the election ballot as the candidate of such association, committee, or organization

Registration of Political Committees and Candidates

Section 16.1-08.1-03.2 requires political committees and candidates to register with the Secretary of State:

1. A political committee as defined in section 16.1-08.1-01 shall register its name, mailing address, telephone number, and nongovernment issued electronic mail address, its agent's name, mailing address, telephone number, and nongovernment issued electronic mail address, and a designation as to whether the committee is incorporated solely for the purpose of liability protection, with the secretary of state. A candidate who does not have a candidate committee shall register the candidate's name, mailing address, telephone number, and nongovernment issued electronic mail address with the secretary of state. If the candidate has an agent, the candidate also shall register the agent's name, mailing address, telephone number, and nongovernment issued electronic mail address with the secretary of state. The registration required under this section for a candidate or political committee that has not previously registered with the secretary of state must be submitted within fifteen business days of the receipt of any contribution or expenditure made.
2. …
3. …
4. Registration by a political committee under this section does not reserve the name for exclusive use nor does it constitute registration of a trade name under chapter 47-25.

In relevant part, political committees (which encompasses candidate committees, PACs, political organizations, multicandidate political committees, and measure committees) are required to register their name and the name of their agent with the Secretary of State. This registration is for campaign finance disclosures and does not create a legal entity or organization. However, the registration will indicate whether the committee incorporated solely for the purpose of liability protection. If the committee is not incorporated, review the registration for the name of the committee and its agent. If the registration indicates the committee is incorporated, there is a legal entity or organization and the bank should obtain and review organization formation documents in addition to campaign registration records.

For individual candidates, review the registration for the name of the candidate and any agents. Keep in mind the requirement that candidates maintain dedicated campaign accounts that are separate from any personal accounts. Accordingly, banks should ensure the account is titled in a way that makes it clear the account is a campaign account rather than just another personal account of the individual candidate.

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Taxpayer Identification Number (TIN)

The Internal Revenue Service (IRS) requires an Employer Identification Number (EIN) for political organizations[1]. "Political organizations" are defined to include a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function. 26 U.S.C. § 527(e)(1). "Exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors. *See* 26 U.S.C. § 527(e)(2).

The IRS does not expressly require an EIN for an individual candidate, so the Social Security Number (SSN) would need to be used.

Type	TIN
Candidate	SSN
Candiate Committee	EIN
Political Action Committee (PAC)	EIN
Political Organization	EIN
Multicandidate Political Committee	EIN
Measure Committee	EIN
Political Party	EIN

<u>Contributions: What Can Be Deposited</u>

North Dakota law governs which sources may make contributions to candidates.

Source	May Contribute?	Notes
Individuals	Yes	
Political Committees	Yes	
Other Candidates	Yes	
Political Parties	Yes	

[1] https://www.irs.gov/charities-non-profits/political-organizations/filing-requirements-for-political-organizations

Source	May Contribute?	Notes
Corporations / LLCs	No*	A corporation, cooperative corporation, limited liability company, affiliate, subsidiary, or association may not make a contribution for a political purpose. N.D.C.C. § 16.1-08.1-03.5(1). *May establish a PAC in order to give contributions to candidates.
Foreign Nationals	No	N.D.C.C. § 16.1-08.1-03.15.
"Pass the Hat" Donations	No	North Dakota requires that candidates know the identity of each contributor. "Pass the Hat" donations are not trackable as it is unknown who gave the money received.

Personal Use of Campaign Funds is Prohibited

North Dakota law prohibits the personal use of campaign contributions. Candidates may not use contributions to:

- Give a personal benefit to the candidate or another person;
- Make a loan to another person;
- Knowingly pay more than the fair market value for goods or services purchased for the campaign; or
- Pay a criminal fine or civil penalty.

N.D.C.C. § 16.1-08.1-04.1. If the Secretary of State has substantial reason to believe any person knowingly violated this section, the Secretary of State shall arrange for an audit. *See id.*

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CIPA WEBSITE TRACKING LITIGATION RISK FOR BANKS

What is CIPA?

The California Invasion of Privacy Act (CIPA) (Cal. Penal Code § 631) was enacted in 1967 to address telephone wiretapping, but is now being applied to internet communications. CIPA provides for a private right of action with statutory damages of $5,000 per violation or treble damages, whichever is greater.

How is CIPA Being Applied to Websites?

Banks nationwide, including community institutions, are facing a surge of lawsuits and demand letters alleging violations of CIPA based on routine website tracking. The core allegation is that when a user types into a form or search bar, that data may be transmitted in real time to third parties. This transmission is characterized as unlawful interception of a communication in transit under CIPA § 631(a), or alternatively as unauthorized capture of routing data under the statute's pen register provisions. Courts have not reached consistent conclusions on these theories, leaving the law unsettled and highly fact dependent. North Dakota has not issued any decisions on the issue.

Why Should North Dakota Banks Be Concerned with California Law?

Courts have determined that CIPA applies to communications originating *from* California.[1] Accordingly, it provides a right of action to California residents and is not limited to California-based institutions. Any North Dakota bank with California website visitors can face claims.

The Vivek Shah Campaign

Vivek Shah is a serial pro se litigant known for sending pre-litigation demand letters and filing lawsuits against businesses across the country, including North Dakota banks. He alleges a visit to the business's website, lack of cookie banner/opportunity to consent, and transmission of his search terms in real time; resulting in an alleged violation of CIPA. There are reports that the volume of letters is increasing, with some actions being filed in state and federal courts.

Key Takeaway for North Dakota Banks

CIPA is not a California-only problem. Any bank with a public-facing website can receive a demand letter. Review your website and contact your website developer to ask if they are familiar with the most up-to-date state and federal privacy laws and whether they have the capabilities to comply.

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[1] *See Shahnaz Zarif v. Hwareh.com, Inc.*, 789 F.Supp.3d 880, 898 (S.D. Cal. 2025) ("Section 631 …applies to a communication that 'is in transit or passing over any wire, line, or cable, or is being sent from, or received at any place within this state.' Health Warehouse is based in Kentucky. Plaintiff alleges she is a California resident, and her communications originated 'from her home in…San Diego.' Thus, Plaintiff sufficiently alleges that her communications were 'being *sent from*…any place within this state.'") (internal citations omitted).