

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 184

SENATE BILL NO. 2313
(Ingstad)

LATE PAYMENT CHARGES ON ACCOUNTS RECEIVABLE

AN ACT to amend and reenact section 13-01-14 of the North Dakota Century Code, relating to late payment charges on accounts receivable.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-01-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-01-14. Late payment charge on accounts receivable.

1. A creditor may charge, receive, and collect a late payment charge on all money due on account from thirty days after the obligation of the debtor to pay has been incurred.
2. ~~The~~ Except as provided in subsection 4, the late payment charge may not exceed one and three-fourths percent per month.
3. The late payment charge provided in this section may be charged only if, when the obligation was incurred, the creditor did not intend to extend any credit beyond thirty days and any late payment of the obligation was unanticipated.
4. No creditor may charge, receive, or collect a late payment charge on medical or hospital bills, except that if no payment has been made on the account within the last ninety days, a late payment charge may be imposed at a rate that does not exceed one percent per month, but the charge cannot exceed twenty-five dollars per month.
5. This section does not apply to:
 - a. Money due on retail installment contracts, as defined in chapter 51-13.
 - b. Money due on revolving charge accounts, as defined in chapter 51-14.
 - c. ~~Money due on medical, hospital, and residential utility bills.~~

Approved April 15, 1985

CHAPTER 185

SENATE BILL NO. 2357
(Lips, Nething)

INTEREST ON DELINQUENT ACCOUNTS

AN ACT to provide for the payment of interest on delinquent accounts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Prompt payment required. Every state agency, political subdivision, or school district, which acquires property or services pursuant to a contract with a business shall pay for each complete delivered item of property or service on the date required by contract between such business and agency or, if no date for payment is specified by contract, within forty-five days after receipt of the invoice covering the delivered items or services. The acquisition of property includes the rental of real or personal property.

SECTION 2. When interest payment required. Interest shall accrue and be made on payments overdue under section 1 of this Act at the rate of one and three-fourths percent per month, unless a different rate is specified within the contract upon which the claim is based. Interest shall accrue beginning on the day after payment is due, if payment due date is specified by contract, or on the day of receipt of the invoice covering the delivered goods or services, if payment is not made within forty-five days. Interest ceases to accrue on the date payment is made.

SECTION 3. Interest shall compound. Any interest which remains unpaid at the end of any forty-five-day period or which remains unpaid at the end of any specified period provided by contract shall be added to the principal amount of the debt and shall thereafter accumulate interest.

SECTION 4. Additional appropriation prohibited. An agency of the state is prohibited from seeking additional appropriations to pay interest which accrues as a result of the agency's failure to make payments as required by section 1 of this Act.

SECTION 5. When Act is inapplicable. If the agency or business fails to timely pay interest as required by section 2 and section 6 of this Act and the failure is the result of a dispute between the agency and the business, or a dispute between the business and a subcontractor or supplier, over the amount due or over compliance with the contract, the provisions of this Act are inapplicable. If the settlement of a dispute is found in favor of the business, or the subcontractor or supplier, interest shall accrue and be paid as provided in section 3.

SECTION 6. Subcontractor prompt payment required. Upon payment by a state agency, political subdivision, school district, or agency of the United States, a business which has acquired under contract, property or services in connection with its contract with such agency, political subdivision, or school district, from a subcontractor or supplier, shall pay such subcontractor or supplier within forty-five days after payment from such agency. Interest at the rate specified in section 2 of this Act shall accrue and is due any subcontractor or supplier who is not paid within forty-five days after the business receives payment from the agency, political subdivision, or school district, unless otherwise provided by contract between the business and the subcontractor or supplier.

Approved March 29, 1985

CHAPTER 186

SENATE BILL NO. 2173
(Committee on Industry, Business and Labor)
(At the request of the Commission on Uniform State Laws)

UNIFORM FRAUDULENT TRANSFER ACT

AN ACT to adopt the Uniform Fraudulent Transfer Act, relating to fraudulent property transfers; to amend and reenact section 13-01-03 of the North Dakota Century Code, relating to creditor preferences; and to repeal sections 13-01-05, 13-01-06, 13-01-07, 13-01-08, 13-01-09, and chapter 13-02 of the North Dakota Century Code, relating to fraudulent property transfers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in sections 1 through 9:

1. "Affiliate" means:

- a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole discretionary power to vote the securities or solely to secure a debt, if the person has not exercised the power to vote;
- b. A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole power to vote the securities or solely to secure a debt, if the person has not in fact exercised the power to vote;
- c. A person whose business is operated by the debtor under a lease or other agreement, or a person

- substantially all of whose assets are controlled by the debtor; or
- d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
2. "Asset" means property of a debtor, excluding property to the extent it is encumbered by a valid lien, property to the extent it is generally exempt under nonbankruptcy law, or an interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.
3. "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
4. "Creditor" means a person who has a claim.
5. "Debt" means liability on a claim.
6. "Debtor" means a person who is liable on a claim.
7. a. If the debtor is an individual, an "insider" includes a relative of the debtor or of a general partner of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a corporation of which the debtor is a director, officer, or person in control.
- b. If the debtor is a corporation, an "insider" includes a director of the debtor, an officer of the debtor, a person in control of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a relative of a general partner, director, officer, or person in control of the debtor.
- c. If the debtor is a partnership, an "insider" includes a general partner in the debtor, a relative of a general partner in, of a general partner of, or of a person in control of the debtor, another partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a person in control of the debtor.
- d. An "insider" also includes an affiliate, or an insider of an affiliate as if the affiliate were the debtor, and a managing agent of the debtor.

8. "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien, a common-law lien, or a statutory lien.
9. "Person" means an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.
10. "Property" means anything that may be the subject of ownership.
11. "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.
12. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.
13. "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal process or proceedings.

SECTION 2. Insolvency.

1. A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation. A debtor who is generally not paying debts as they become due is presumed to be insolvent. A partnership is insolvent if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.
2. Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under sections 1 through 9.
3. Debts under this section do not include an obligation to the extent it is secured by a valid lien on property of the debtor not included as an asset.

SECTION 3. Value.

1. Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person.
2. For the purposes of subdivision b of subsection 1 of section 4 and section 5, a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default under a mortgage, deed of trust, or security agreement.
3. A transfer is made for present value if the exchange between the debtor and the transferee is intended by them to be contemporaneous and is in fact substantially contemporaneous.

SECTION 4. Transfers fraudulent as to present and future creditors.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:
 - a. With actual intent to hinder, delay, or defraud any creditor of the debtor; or
 - b. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction or the debtor intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.
2. In determining actual intent under subdivision a of subsection 1, consideration may be given, among other factors, to whether:
 - a. The transfer or obligation was to an insider;
 - b. The debtor retained possession or control of the property transferred after the transfer;
 - c. The transfer or obligation was disclosed or concealed;

- d. Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;
- e. The transfer was of substantially all the debtor's assets;
- f. The debtor absconded;
- g. The debtor removed or concealed assets;
- h. The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
- i. The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- j. The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- k. The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

SECTION 5. Transfers fraudulent as to present creditors.

- 1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.
- 2. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

SECTION 6. When transfer is made or obligation is incurred. For the purposes of sections 1 through 9:

- 1. A transfer is made with respect to an asset that is real property other than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against whom applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee. A transfer is made

with respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under sections 1 through 9 that is superior to the interest of the transferee.

2. If applicable law permits the transfer to be perfected as provided in subsection 1 and the transfer is not so perfected before the commencement of an action for relief under sections 1 through 9, the transfer is deemed to have been made immediately before the commencement of the action.
3. If applicable law does not permit the transfer to be perfected as provided in subsection 1, the transfer is made when it becomes effective between the debtor and the transferee.
4. A transfer is not made until the debtor has acquired rights in the asset transferred.
5. An oral obligation is incurred when it becomes effective between the parties. An obligation evidenced by a writing is incurred when the writing executed by the obligor is delivered to or for the benefit of the obligee.

SECTION 7. Remedies of creditors.

1. In an action for relief against a transfer or obligation under sections 1 through 9, a creditor, subject to the limitations in section 8, may obtain:
 - a. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
 - b. Attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by chapter 32-08.1; or
 - c. Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, an injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property, an appointment of a receiver to take charge of the asset transferred or of other property of the transferee, or any other relief the circumstances may require.
2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

SECTION 8. Defenses - Liability - Protection of transferee.

1. A transfer or obligation is not voidable under subdivision a of subsection 1 of section 4 against a person who took in good faith and for a reasonably equivalent value or against any subsequent transferee or obligee.
2. Except as otherwise provided in this section, to the extent a transfer is voidable in an action by a creditor under subdivision a of subsection 1 of section 7, the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection 3, or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against the first transferee of the asset or the person for whose benefit the transfer was made or any subsequent transferee other than a good-faith transferee who took for value or from any subsequent transferee.
3. If the judgment under subsection 2 is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.
4. Notwithstanding voidability of a transfer or an obligation under sections 1 through 9, a good-faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to a lien on or a right to retain any interest in the asset transferred, enforcement of any obligation incurred, or a reduction in the amount of the liability on the judgment.
5. A transfer is not voidable under subdivision b of subsection 1 of section 4 or section 5 if the transfer results from termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law or enforcement of a security interest in compliance with chapter 41-09.
6. A transfer is not voidable under subsection 2 of section 5:
 - a. To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made unless the new value was secured by a valid lien;
 - b. If made in the ordinary course of business or financial affairs of the debtor and the insider; or
 - c. If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

SECTION 9. Extinguishment of claim for relief. A claim for relief with respect to a fraudulent transfer or obligation under sections 1 through 9 is extinguished unless action is brought:

1. Under subdivision a of subsection 1 of section 4, within four years after the transfer was made or the obligation was incurred or, if later, within one year after the transfer or obligation was or could reasonably have been discovered by the claimant;
2. Under subdivision b of subsection 1 of section 4 or subsection 1 of section 5, within four years after the transfer was made or the obligation was incurred; or
3. Under subsection 2 of section 5, within one year after the transfer was made or the obligation was incurred.

SECTION 10. Supplementary provisions. Unless displaced by the provisions of sections 1 through 9, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement their provisions.

SECTION 11. AMENDMENT. Section 13-01-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-01-03. Creditors may be preferred. A debtor, except as otherwise provided in section 13-01-09, 5 of this Act, a debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

SECTION 12. REPEAL. Sections 13-01-05, 13-01-06, 13-01-07, 13-01-08, 13-01-09, and chapter 13-02 of the North Dakota Century Code are hereby repealed.

Approved March 28, 1985

CHAPTER 187

HOUSE BILL NO. 1184
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

EXAMINATIONS OF SMALL LOAN OR CONSUMER FINANCE COMPANIES

AN ACT to amend and reenact subsection 1 of section 13-03-09 and subsection 1 of section 13-03.1-11 of the North Dakota Century Code, relating to the frequency of examinations of small loan companies and consumer finance companies.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 13-03-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. At least once each ~~year~~ thirty months the commissioner or ~~his~~ duly authorized representatives shall make an examination of the place of business of each licensee and of the loans, transactions, books, papers, annual reports, and records of such licensee so far as they pertain to the business licensed under this chapter. The actual cost of every examination shall be charged by the commissioner for every licensee so examined. Such costs shall be paid to the state treasurer.

SECTION 2. AMENDMENT. Subsection 1 of section 13-03.1-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The administrator shall conduct a yearly ~~At least once each thirty months the administrator or his a duly authorized representative shall make an examination of the~~ loans, business, and records of every licensee. In addition, for the purpose of rediscovering violations of this chapter or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any lender. For these purposes ~~he the administrator~~ shall have free and reasonable access to the offices, places of business, and records of the lender. The actual costs of the examination shall be paid by the licensee.

Approved March 14, 1985

CHAPTER 188

SENATE BILL NO. 2333
(Senator Langley)
(Representative Dotzenrod)

CONSUMER FINANCE LOAN CEILINGS

AN ACT to amend and reenact sections 13-03.1-03 and 13-03.1-15 of the North Dakota Century Code, relating to the maximum loan ceiling for consumer finance loan businesses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-03.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03.1-03. Scope. Persons licensed under the provisions of this chapter may engage in the business of lending in amounts of more than one thousand dollars and not more than ~~fifteen~~ thirty thousand dollars and contract for, exact, or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than that permitted by section 47-14-09. This chapter shall not apply to loans made under chapter 13-03, but persons licensed under that chapter may obtain licenses to make loans under this chapter.

SECTION 2. AMENDMENT. Section 13-03.1-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03.1-15. Maximum charges permitted - Installment payments - Other charges.

1. Repealed by S.B. 1981, ch. 463, § 3 Every licensee may make loans, including revolving loans, in any principal amount not less than one thousand dollars and not more than thirty thousand dollars and may contract for, receive, or collect interest on such loans at any rate agreed upon by the licensee and the borrower.
2. Every loan contract shall require payment of principal and charges in installments which shall be payable at

approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall be substantially larger than any preceding installment, except in the case of revolving loan contracts. When a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.

3. Interest may be collected on the unpaid balance of any judgment at a rate not exceeding that permitted by section 47-14-09.
4. No further amount whatsoever in addition to the charges provided for in this chapter shall be directly or indirectly charged, contracted for, or received. No agreement may provide for the payment by the debtor of attorney fees. However, such restrictions shall not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, an amount not exceeding seventy-five dollars for closing costs actually incurred in connection with a loan secured by an interest in land (including fees or premiums for title examination, title insurance, and surveys, fees for notarizing title or mortgage documents, and appraisal fees), and the identifiable charge or premium for insurance provided for in section 13-03.1-17. A bona fide error of law or fact is not deemed a violation of this section. A bona fide clerical error in the calculation of interest is not deemed a violation of this section if the licensee corrects the error.
5. No licensee shall have outstanding to the same person at the same time a loan under this chapter and also under chapter 13-03.

Approved March 22, 1985

CHAPTER 189

HOUSE BILL NO. 1121
(Committee on Industry, Business and Labor)
(At the request of the Department of Banking and
Financial Institutions)

MONEY BROKER SURETY BONDS

AN ACT to amend and reenact section 13-04.1-04 of the North Dakota Century Code, relating to the surety bond requirement for money brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license shall be accompanied by the annual license fee for a money broker license, which is fixed at one hundred dollars, and by a surety bond in the sum of ~~ten~~ twenty-five thousand dollars.

Approved March 14, 1985