

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1156

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Banking and Financial Institutions)

1 A BILL for an Act to create and enact a new section to chapter 13-03.1 of the North Dakota
2 Century Code, relating to the maximum interest charge for loans under one thousand dollars
3 and license exemptions; to amend and reenact subsection 1 of section 6-01-01.1, sections
4 13-03.1-02, 13-03.1-03, 13-03.1-05, 13-03.1-06, 13-03.1-07, 13-03.1-15, and 13-03.1-18 of the
5 North Dakota Century Code, relating to the financial institutions regulatory fund, the
6 administration and scope of the Consumer Finance Act, application and fees of consumer
7 finance licensees, requirements for the issuance of consumer finance licenses, continuing
8 license fees, consumer finance lending limitations, and setting penalties for legal violations; and
9 to repeal chapter 13-03 of the North Dakota Century Code, relating to the licensing of small
10 loan companies; and to provide a penalty.

11 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

12 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the 1995
13 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14 1. There is hereby created a special fund designated as the financial institutions
15 regulatory fund. The amounts received under the following ~~sections~~ chapters, and
16 any other moneys received by the department of banking and financial institutions,
17 must be deposited into this fund: ~~sections 6-01-17, 6-01-17.1, 6-01-17.2, 6-03-70,~~
18 ~~6-05-28, subsections 1, 2, and 4 of section 6-06-08, sections 6-10-06, 7-05-01,~~
19 ~~13-03-04, subsection 1 of section 13-03-09, section 13-03.1-05, subsection 1 of~~
20 ~~section 13-03.1-11, section 13-04.1-04, subdivision a of subsection 1 of section~~
21 ~~13-04.1-11, section 13-05-04, subsection 2 of section 13-05-06, subsection 1 of~~
22 ~~section 51-17-07, and section 51-17-10~~ chapters 6-01, 6-03, 6-05, 6-06, 6-10,
23 7-05, 13-03.1, 13-04.1, 13-05, and 51-17.

1 **SECTION 2.** A new section to chapter 13-03.1 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Maximum charges permitted for loans not in excess of one thousand dollars -**
4 **Refund - Installment payments - Permitted charges.**

- 5 1. Every licensee may make loans under this section in any amount not exceeding
6 one thousand dollars, and may contract for, receive, or collect on the loans,
7 charges not in excess of two and one-half percent per month on that part of the
8 unpaid balance of principal not exceeding two hundred fifty dollars; two percent per
9 month on that part of the unpaid balance of principal exceeding two hundred fifty
10 dollars but not exceeding five hundred dollars; one and three-fourths percent per
11 month on that part of the unpaid balance of principal in excess of five hundred
12 dollars but not exceeding seven hundred fifty dollars; and one and one-half percent
13 per month on that part of the unpaid balance of principal exceeding seven hundred
14 fifty dollars but not exceeding one thousand dollars. For the purpose of computing
15 charges for a fraction of a month, whether at the maximum rate or less, a day is
16 considered one-thirtieth of a month. Amounts to be charged for any small loan by
17 a licensee under this chapter may also be calculated and charged on a stated
18 dollar per hundred basis but the charges over the entire term of the loan may not
19 be in excess of the equivalent percentage charges on the monthly unpaid balances
20 of principal authorized in this section. If charges are calculated and charged on a
21 dollar per hundred basis, the loan must be repayable in substantially equal periodic
22 installments of principal and charges, and the annual percentage simple interest
23 equivalent must be conspicuously stated in the note or small loan contract
24 executed in connection with the loan.
- 25 2. When any note or loan contract in which charges have been calculated and
26 charged on a dollar per hundred basis is paid in full by cash, a new loan, renewal
27 or otherwise, one month or more before the final installment date, the licensee
28 shall refund or credit to the borrower a portion of the total charges which must be
29 at least as great as the sum of the full periodic installment balances scheduled to
30 follow the installment date following the date of prepayment in full bears to the sum
31 of all the periodic installment balances of the loan contract, both sums to be

1 determined according to the payment schedules that had been agreed upon in the
2 loan contract. Charges during the month of payment must be prorated in the
3 proportion that the number of days remaining in the installment period bears to the
4 total days of the installment period. No refund of one dollar or less need be made.

5 3. On any note or loan contract in which charges have been calculated and charged
6 on a dollar per hundred basis, a licensee may charge, collect, and receive on any
7 installment of principal and charges continuing unpaid for five or more days from
8 the date the payment is due a sum that may not exceed the amount of charges
9 during the final full month of the loan before maturity. The charge may not be
10 collected more than once for the same default. The charge may be collected at
11 the time of the default or any time thereafter. However, if the charge is taken out
12 of any payment received after a default occurs and if the deduction results in the
13 default of a subsequent installment, no charge may be made for the subsequent
14 default.

15 4. On any note or loan contract in which charges have been calculated and charged
16 on a dollar per hundred basis, if the payment date for any scheduled installment is
17 deferred one or more full months and a corresponding deferment is made for all
18 subsequent installments, the licensee may charge and receive a deferment charge
19 that may not exceed one-twelfth of the charges authorized in subsection 1 applied
20 to the balance of principal and charges due at the date of the deferment multiplied
21 by the number of full months during the deferment in which no payment is made.
22 Thereafter, charges must be made over the remaining extended life of the loan in
23 the same manner and at the same ratio as though no deferral or extension had
24 been granted. The charges may be collected at the time of the deferment or any
25 later time. If the loan is prepaid in full during the deferment period, the borrower is
26 entitled to receive in addition to the refund required under subsection 2 a refund of
27 that portion of the deferment charge applicable to any unexpired months of
28 deferment period.

29 5. A licensee may not enter into any contract of loan under this section under which
30 the borrower agrees to make any scheduled payment of principal and charges
31 more than twenty-four and one-half calendar months from the date of making the

1 contract. Every loan contract must require payment of principal and charges in
2 installments that must be payable at approximately equal periodic intervals except
3 that payment dates may be omitted to accommodate borrowers with seasonal
4 incomes. No installment contracted for may be substantially larger than any
5 preceding installment. When a loan contract provides for monthly installments, the
6 first installment may be payable at any time within forty-five days after the date of
7 the loan.

8 6. A licensee may not induce or permit any person, or husband and wife, jointly or
9 severally, to be obligated, directly or indirectly, under more than one contract of
10 loan at the same time if the multiple loans result in a higher rate of charge than
11 would otherwise be permitted by this chapter.

12 7. No further amount in addition to the charges provided for in this chapter may be
13 directly or indirectly charged, contracted for, or received. However, this restriction
14 does not apply to court costs, lawful fees for the filing, recording, or releasing in
15 any public office of any instrument securing a loan, and the identifiable charge or
16 premium for insurance provided for in section 13-03.1-17. If any sum in excess of
17 the amounts authorized by this chapter is willfully charged, contracted for or
18 received, the licensee or any assignee or other person has no right to collect or
19 receive any charges or recompense.

20 **SECTION 3. AMENDMENT.** Section 13-03.1-02 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **13-03.1-02. Administration and exemptions.**

23 1. The administrator may employ such employees as may be necessary to administer
24 and enforce the provisions of this chapter and may delegate his the administrator's
25 powers and duties under this chapter to the supervisor of consumer credit. The
26 supervisor of consumer credit and employees may not have a financial interest,
27 directly or indirectly, in any business which is subject to this chapter, or in any
28 other business which is supervised by the administrator, or in any similar business
29 which is conducted under the authority of any law of the United States. All fees
30 received by the administrator under the provisions of this chapter must be credited
31 to deposited in the general fund of this state financial institutions regulatory fund.

2. This chapter does not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banking associations, banking institutions, banks, savings banks, trust companies, savings or building and loan associations, mutual investment corporations, mutual savings corporations, or credit unions nor to any person conducting a bona fide pawnbroking business transacted under a pawnbroker's license for loans in an amount not to exceed one thousand dollars and such persons are not eligible to become a licensee under this chapter.

SECTION 4. AMENDMENT. Section 13-03.1-03 of the North Dakota Century Code is amended and reenacted 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 thirty~~ not to exceed thirty-five 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 does not apply to loans made under chapter 13-03, but persons licensed under that chapter may obtain licenses to make loans under~~ subject to the limitations provided in this chapter.

SECTION 5. AMENDMENT. Section 13-03.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-05. Application and fees. Application for a license must be in writing, under oath, and in the form prescribed by the administrator. The application must give the location where the business is to be conducted and must contain such further information as the administrator may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 13-03.1-06. When making such application, the applicant shall include payment in the amount of three hundred dollars, which is not subject to refund, as a fee for investigating the application, and two hundred dollars for the annual license fee. ~~Fees must be deposited in the financial institutions regulatory fund.~~

SECTION 6. AMENDMENT. Section 13-03.1-06 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-06. Investigation of application - Requirements for issuance of license - Denial of license - Public record.

1. Upon the filing of an application and the payment of the fees therefor the administrator shall investigate the facts concerning the application.
2. The administrator shall issue a license to operate a consumer finance loan business if ~~he~~ the administrator finds:
 - a. That the financial responsibility, experience, character, and general fitness of the applicant are such as to warrant the belief that the business will be operated lawfully, and fairly; and
 - b. That the applicant has assets of at least twenty-five thousand dollars for the operation of the business.
3. The administrator shall approve or deny every application for a license hereunder within sixty days from the filing thereof with the fee.
4. No application may be denied until the applicant has had a notice of a hearing on the application and an opportunity to be heard thereon. Whenever an application is denied, the administrator shall, within twenty days thereafter, prepare and keep on file in ~~his~~ the administrator's office a written order of denial thereof. The order must contain its findings with respect thereto and the reasons supporting the denial, and the administrator shall send a copy thereof by registered mail to the applicant at the address set forth in the application within five days after the filing of ~~such~~ the order. If the administrator finds the applicant is not qualified to be issued a license, ~~he~~ the administrator shall ~~also forthwith~~ return the license fee but may retain the investigation fee.
5. ~~All persons licensed or otherwise authorized under the provisions of chapter 13-03 on July 1, 1975, may obtain licenses to make loans under this chapter.~~ The administrator shall, upon request and payment of the annual license fee, deliver evidence of licensing under this chapter to the persons so previously licensed or authorized.

SECTION 7. AMENDMENT. Section 13-03.1-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13-03.1-07. Posting of license - Continuing license - Annual fee.

- 1 1. Each license must state the address at which the business is to be conducted and
2 must state fully the name of the licensee, and if the licensee is a copartnership or
3 association, the name of the members thereof, and if a corporation, the date and
4 place of incorporation, and if a limited liability company, the date and place of
5 organization. Each license must be kept posted in the licensed place of business
6 and is not transferable or assignable.
- 7 2. Each license must remain in ~~full force and~~ effect until surrendered, revoked, or
8 suspended; provided, that on or before the tenth day of June of each year the
9 licensee shall pay to the administrator the ~~sum of one hundred dollars~~ annual
10 license fee for each license held ~~by him~~, as a license fee for the succeeding fiscal
11 year.

12 **SECTION 8. AMENDMENT.** Section 13-03.1-15 of the 1995 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

14 **13-03.1-15. Maximum charges permitted - Installment payments - Other charges.**

- 15 1. Every licensee may make loans under this section, including revolving loans, in
16 any principal amount more than one thousand dollars but not more than ~~thirty~~
17 thirty-five thousand dollars and may contract for, receive, or collect interest on
18 ~~such~~ the loans at any rate agreed upon by the licensee and the borrower.
- 19 2. Every loan contract ~~shall~~ must require payment of principal and charges in
20 installments which must be payable at approximately equal periodic intervals
21 except that payment dates may be omitted to accommodate borrowers with
22 seasonal incomes. No installment contracted for may be substantially larger than
23 any preceding installment, except in the case of revolving loan contracts. When a
24 loan contract provides for monthly installments, the first installment may be
25 payable at any time within forty-five days after the date of the loan.
- 26 3. Interest may be collected on the unpaid balance of any judgment at a rate not
27 exceeding that permitted by section 47-14-09.
- 28 4. No further amount whatsoever in addition to the charges provided for in this
29 chapter may be directly or indirectly charged, contracted for, or received. No
30 agreement may provide for the payment by the debtor of attorney fees. However,
31 such restrictions do not apply to court costs, lawful fees for the filing, recording, or

1 releasing in any public office of any instrument securing a loan, an amount not
2 exceeding closing costs actually incurred in connection with a loan secured by an
3 interest in land (including fees or premiums for title examination, title insurance,
4 and surveys, fees for notarizing title or mortgage documents, and appraisal fees),
5 and the identifiable charge or premium for insurance provided for in section
6 13-03.1-17. A bona fide error of law or fact is not deemed a violation of this
7 section. A bona fide clerical error in the calculation of interest is not deemed a
8 violation of this section if the licensee corrects the error.

9 ~~5. No licensee may have outstanding to the same person at the same time a loan~~
10 ~~under this chapter and also under chapter 13-03.~~

11 **SECTION 9. AMENDMENT.** Section 13-03.1-18 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **13-03.1-18. Penalty.** ~~Any~~ A person who violates any of the provisions of this chapter
14 or ~~regulations rules or orders promulgated~~ adopted thereunder is guilty of a class A
15 misdemeanor. ~~In the event and~~ If a contract of loan in an amount exceeding one thousand
16 dollars or any act in its making or collection violates the provisions of this chapter, the lender
17 has no right to collect, receive, or retain any interest or charges whatsoever. If a contract of
18 loan in an amount of one thousand dollars or less, or any willful act in its making or collection
19 violates the provisions of this chapter, the lender has no right to collect, receive, or retain any
20 interest or charges on that loan.

21 **SECTION 10. REPEAL.** Chapter 13-03 of the North Dakota Century Code is repealed.