

# DEBTOR AND CREDITOR RELATIONSHIP

## CHAPTER 141

### HOUSE BILL NO. 1156

(Industry, Business and Labor Committee)

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

### INTEREST RATE MAXIMUM AND CONSUMER FINANCE LICENSING

AN ACT to create and enact a new section to chapter 13-03.1 of the North Dakota Century Code, relating to the maximum interest charge for loans under one thousand dollars and license exemptions; to amend and reenact subsection 1 of section 6-01-01.1, sections 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 North Dakota Century Code, relating to the financial institutions regulatory fund, the administration and scope of the Consumer Finance Act, application and fees of consumer finance licensees, requirements for the issuance of consumer finance licenses, continuing license fees, consumer finance lending limitations, and setting penalties for legal violations; and to repeal chapter 13-03 of the North Dakota Century Code, relating to the licensing of small loan companies; and to provide a penalty.

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

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

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

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

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

1. Every licensee may make loans under this section in any amount not exceeding one thousand dollars, and may contract for, receive, or collect on the loans, charges not in excess of two and one-half percent per month on that part of the unpaid balance of principal not exceeding two hundred fifty dollars; two percent per month on that part of the unpaid balance of principal exceeding two hundred fifty dollars but not exceeding five hundred dollars; one and three-fourths percent per month on that part of the unpaid balance of principal in excess of five hundred dollars but not exceeding seven hundred fifty dollars; and one and one-half percent per month on that part of the unpaid balance of principal exceeding seven hundred fifty dollars but not exceeding one thousand dollars. For the purpose of computing charges for a fraction of a month, whether at the maximum rate or less, a day is considered one-thirtieth of a month. Amounts to be charged for any small loan by a licensee under this chapter may also be calculated and charged on a stated dollar per hundred basis but the charges over the entire term of the loan may not be in excess of the equivalent percentage charges on the monthly unpaid balances of principal authorized in this section. If charges are calculated and charged on a dollar per hundred basis, the loan must be repayable in substantially equal periodic installments of principal and charges, and the annual percentage simple interest equivalent must be conspicuously stated in the note or small loan contract executed in connection with the loan.
2. When any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis is paid in full by cash, a new loan, renewal or otherwise, one month or more before the final installment date, the licensee shall refund or credit to the borrower a portion of the total charges which must be at least as great as the sum of the full periodic installment balances scheduled to follow the installment date following the date of prepayment in full bears to the sum of all the periodic installment balances of the loan contract, both sums to be determined according to the payment schedules that had been agreed upon in the loan contract. Charges during the month of payment must be prorated in the proportion that the number of days remaining in the installment period bears to the total days of the installment period. No refund of one dollar or less need be made.
3. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, a licensee may charge, collect, and receive on any installment of principal and charges continuing unpaid for five or more days from the date the payment is due a sum that may not exceed the amount of charges during the final full month of the loan before maturity. The charge may not be collected more than once for the same default. The charge may be collected at the time of the default or any time thereafter. However, if the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent installment, no charge may be made for the subsequent default.
4. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, if the payment date for any scheduled installment is deferred one or more full months and a corresponding deferment is made for all subsequent installments, the licensee may charge and receive a deferment charge that may not exceed one-twelfth of the charges authorized in subsection 1 applied to the

balance of principal and charges due at the date of the deferment multiplied by the number of full months during the deferment in which no payment is made. Thereafter, charges must be made over the remaining extended life of the loan in the same manner and at the same ratio as though no deferral or extension had been granted. The charges may be collected at the time of the deferment or any later time. If the loan is prepaid in full during the deferment period, the borrower is entitled to receive in addition to the refund required under subsection 2 a refund of that portion of the deferment charge applicable to any unexpired months of deferment period.

5. A licensee may not enter into any contract of loan under this section under which the borrower agrees to make any scheduled payment of principal and charges more than twenty-four and one-half calendar months from the date of making the contract. Every loan contract must require payment of principal and charges in installments that must be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may be substantially larger than any preceding installment. 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.
6. A licensee may not induce or permit any person, or husband and wife, jointly or severally, to be obligated, directly or indirectly, under more than one contract of loan at the same time if the multiple loans result in a higher rate of charge than would otherwise be permitted by this chapter.
7. No further amount in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. However, this restriction does not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, and the identifiable charge or premium for insurance provided for in section 13-03.1-17. If any sum in excess of the amounts authorized by this chapter is willfully charged, contracted for or received, the licensee or any assignee or other person has no right to collect or receive any charges or recompense.

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

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

1. The administrator may employ such employees as may be necessary to administer and enforce the provisions of this chapter and may delegate ~~his~~ the administrator's powers and duties under this chapter to the supervisor of consumer credit. The supervisor of consumer credit and employees may not have a financial interest, directly or indirectly, in any business which is subject to this chapter, or in any other business which is supervised by the administrator, or in any similar business which is conducted under the authority of any law of the United States. All fees received by the administrator under the provisions of this chapter must be ~~credited 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 4, 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. Each license must state the address at which the business is to be conducted and must state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation, and if a limited liability company, the date and place of organization. Each license must be kept posted in the licensed place of business and is not transferable or assignable.
2. Each license must remain in ~~full force and~~ effect until surrendered, revoked, or suspended; provided, that on or before the tenth day of June of each year the licensee shall pay to the administrator the ~~sum of one hundred dollars~~ annual license fee for each license held ~~by him~~, as a license fee for the succeeding fiscal year.

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

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

1. Every licensee may make loans under this section, including revolving loans, in any principal amount more than one thousand dollars but not more than ~~thirty~~ thirty-five thousand dollars and may contract for, receive, or collect interest on ~~such~~ the loans at any rate agreed upon by the licensee and the borrower.
2. Every loan contract ~~shall~~ must require payment of principal and charges in installments which must be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for may 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 may 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 do 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 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 may have outstanding to the same person at the same time a loan under this chapter and also under chapter 13-03.~~

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

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

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

Approved March 27, 1997  
Filed March 27, 1997

## CHAPTER 142

### SENATE BILL NO. 2135

(Industry, Business and Labor Committee)

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

### COLLECTION AGENCY OFFICER REMOVAL

AN ACT to create and enact a new section to chapter 13-05 of the North Dakota Century Code, relating to removal from office of collection agency officers or employees by the department of banking and financial institutions.

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

**SECTION 1.** A new section to chapter 13-05 of the North Dakota Century Code is created and enacted as follows:

##### **Suspension and removal of collection agency officers or employees.**

1. The commissioner of banking and financial institutions may issue and serve upon any collection agency officer or employee and upon the collection agency involved, a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
  - a. Violating any law, rule, order, or written agreement with the commissioner;
  - b. Engaging in any harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving collection activity; or
  - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the collection agency. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to any position within a licensed collection agency.

5. When an officer or employee, or other person participating in the conduct of the affairs of a collection agency is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the collection affairs, or both. The order is effective immediately upon service of the order on the collection agency and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

Approved March 19, 1997

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