

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 142

HOUSE BILL NO. 1081

(Industry, Business and Labor Committee)

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

MONEY BROKER LICENSES

AN ACT to amend and reenact section 13-04.1-02 of the North Dakota Century Code, relating to money broker licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02. Money broker license required. Except as otherwise herein provided, a person other than a money broker licensed and authorized under this chapter may not provide loans; ~~consumer~~ or leases as a form of financing, or advertise; or solicit either in print, by letter, in person, or otherwise in North Dakota, the right to find lenders or provide loans or ~~consumer~~ leases for persons or businesses desirous of obtaining funds for any purposes. As used in this chapter, the term "money broker" does not include banks, credit unions, savings and loan associations, insurance companies, small loan companies, consumer finance companies, state or federal agencies and their employees, institutions chartered by the farm credit administration, trust companies, or any other person or business regulated and licensed by the state of North Dakota. The term "money broker" also does not include a real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson. The term "money broker" also does not include any persons, retail sellers, or manufacturers providing lease financing for their own property or inventory held as a normal course of business, or to leases on any real property.

Approved March 6, 2001
Filed March 6, 2001

CHAPTER 143

HOUSE BILL NO. 1273

(Representatives Carlisle, Keiser, Kliniske)
(Senators G. Nelson, Stenehjem, Wardner)

DEFERRED PRESENTMENT SERVICE PROVIDER LICENSING

AN ACT to create and enact a new chapter to title 13 of the North Dakota Century Code, relating to the licensing of deferred presentment service providers; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

Definitions. As used in this chapter, unless the context otherwise requires:

1. "Check" means a personal check signed by the maker and made payable to a licensee.
2. "Commissioner" means the commissioner of banking and financial institutions.
3. "Completed deferred presentment service transaction" means a transaction that is completed when a check is redeemed by the maker by payment in full to the licensee in cash, money order, or certified check or by negotiation or deposit by the licensee.
4. "Deferred presentment service transaction" means a transaction made under a written agreement between a licensee and the maker of a check under which the licensee (a) pays to the maker of the check the amount of the check, less the fees permitted under this chapter, and accepts a check from the maker dated on the date of the transaction and agrees to hold the check for a period of time before negotiation or presentment or (b) accepts a check dated after the date of the transaction and agrees to hold the check for deposit until the date written on the check.
5. "Licensee" means a person licensed under this chapter to provide deferred presentment services.

License requirements. A person may not engage in the business of deferred presentment service without a license issued under this chapter. A separate license is required for each location from which the business of deferred presentment service is conducted.

Qualifications for license. To qualify for a license, an applicant shall satisfy the following requirements:

1. Each applicant shall maintain unencumbered assets of at least twenty-five thousand dollars per licensed location, determined in accordance with generally accepted accounting principles.
2. The financial responsibility, financial condition, business experience, character, and general fitness of the applicant must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and the capital adequacy of the applicant and the competence, experience, integrity, and financial ability of any person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.
3. Each applicant shall establish that neither the applicant nor any principal of the applicant has been convicted of a felony. A deferred sentence or federal pretrial diversion must be considered a conviction for purposes of this section.
4. Each applicant shall maintain a bond issued by a surety company authorized to do business in this state, in the amount of twenty thousand dollars, and the commissioner may require a larger bond if the commissioner determines the larger bond is necessary based on the volume of the applicant's business.

Application for license. Each application for a license must be in the form prescribed by the commissioner and must include:

1. The legal name of the applicant, residence of the applicant, business address of the applicant, and address at which deferred presentment service is provided if different from the business address and, if the applicant is a partnership, association, or corporation, the name and address of every member, officer, and director;
2. The location at which the registered office of the applicant is located; and
3. Other data and information the commissioner may require with respect to the applicant and the applicant's directors, officers, members, and shareholders.

Application fees - Financial statements - Annual fee - Deposit of fees.

Each applicant for licensure shall include with the application an application and background investigation fee of eight hundred fifty dollars, which is not subject to refund but which, if the license is granted, constitutes the license fee for the first license year or part of the first license year, and each applicant for licensure shall include with the application proof of the required surety bond. The annual license fee is four hundred fifty dollars. Each fee set forth in this section is applicable to each location. The commissioner shall deposit fees and costs collected by the commissioner under this chapter in the department of banking and financial institutions regulatory fund.

Issuance of license - Posting.

1. Upon receipt of a complete application, the commissioner shall determine whether the qualifications prescribed under this chapter are

satisfied. If the commissioner determines the qualifications are satisfied and approves the documents, the commissioner shall issue to the applicant a license to engage in the deferred presentment service business.

2. A licensee shall keep the license conspicuously posted in the place of business of the licensee.
3. A license issued under this section is effective through the remainder of the fiscal year ending June thirtieth after the license's date of issuance unless earlier surrendered, suspended, or revoked under this chapter.

Nontransferability - Change in control of license. A license issued under this chapter is not transferable or assignable. The prior written approval of the commissioner is required for the continued operation of a deferred presentment service business if a change in control of a licensee occurs. Control in the case of a corporation means direct or indirect ownership; the right to control twenty-five percent or more of the voting shares of the corporation; or the ability of any person to elect a majority of the directors or otherwise affect a change in policy. Control in the case of any other entity means the ability to exchange the principals of the organization, whether active or passive. In the case of a change of control request, the commissioner may require information the commissioner deems necessary to determine whether a new application is required. A licensee shall notify the commissioner fifteen days before any proposed change in the licensee's business location or name.

Reports of commissioner. Within fifteen days of the occurrence of any one of the following events, a licensee shall file a written report with the commissioner describing the event and the event's expected impact on the activities of the licensee in the state:

1. The filing for bankruptcy or reorganization by the licensee;
2. The institution of revocation or suspension proceedings against the licensee by any governmental authority;
3. Any felony charges of the licensee or any of the licensee's members, directors, officers, or shareholders; and
4. Any other event the commissioner identifies by rule.

Expiration of license - Renewal. Licenses issued under this chapter expire as of July first of each year. A license may be renewed for the ensuing twelve-month period upon application by the licensee establishing continued compliance with the requirements of this chapter and the payment to the commissioner of the annual license fee before July first of each year.

Regulations - Examinations. The commissioner may adopt rules for the implementation and enforcement of this chapter. A copy of a rule adopted by the commissioner must be mailed to each licensee at least thirty days before the date the rule takes effect. To assure compliance with this chapter, the commissioner may examine the relevant business, books, and records of any licensee. The licensee shall pay an examination or visitation fee, and the commissioner shall charge the licensee for the actual cost of the examination or visitation at an hourly rate set by the commissioner which is sufficient to cover all reasonable expenses associated with the examination or visitation.

Retention of records. Each licensee shall keep and use in the licensee's business any books, accounts, and records the commissioner may require to carry into effect the provisions of this chapter and the rules issued under this chapter. Every licensee shall preserve required books, accounts, and records for at least six years.

Fees for service - Deferred presentment service transaction procedures.

1. Before disbursing funds under a deferred presentment service transaction, a licensee shall provide to the maker of the check a clear and conspicuous printed notice indicating:
 - a. That a deferred presentment service transaction is not intended to meet long-term financial needs.
 - b. That the maker of a check should use a deferred presentment service transaction only to meet short-term cash needs.
 - c. That the maker of a check will be required to pay additional fees if the deferred presentment service transaction is renewed rather than paid in full when due. If the transaction is renewed, any amount paid in excess of the fee applies to the payoff amount.
 - d. A schedule of fees charged for deferred presentment service.
 - e. Any information required under federal law.
 - f. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
2. A licensee may charge a fee for the deferred presentment service, not to exceed twenty percent of the amount paid to the maker of the check by the licensee. This fee may not be deemed interest for any purpose of law. No other fee or charge may be charged for the deferred presentment service, and no property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
3. A licensee may not disburse more than five hundred dollars to the maker of a check in a deferred presentment service transaction.
4. A licensee may not engage in a deferred presentment service transaction with a customer who has an aggregate face value of all outstanding checks from any one maker exceeding five hundred dollars which is payable to the same or any other licensee. A licensee may not enter into a new deferred presentment service transaction with a customer within three business days of that customer's completion of a previous deferred presentment service transaction. A licensee may rely on a written representation of a maker regarding the existence of any outstanding checks for deferred presentment held by a licensee other than the licensee receiving the representation. However, if a licensee

has multiple locations, that licensee may not rely on such written representation of a maker regarding the existence of any outstanding checks for deferred presentment held by that licensee, or one of the licensee's multiple locations, unless the licensee and the licensee's multiple locations use a point of sale registry or some other accounting system to attempt to prevent violations of this subsection.

5. Before a licensee may negotiate or present a check for payment, the check must be endorsed with the actual name under which the licensee is doing business.
6. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed by the maker of the check. The written agreement must contain the name of the licensee; the transaction date; the amount of the check; and a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate. The written agreement must authorize the licensee to defer presentment or negotiation of the check until a specified date. The maker of a check may redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee; however, the maker may rescind the transaction by the close of the following business day at no cost.
7. If a check is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil remedies available to collect the check. The licensee may contract for and collect a returned check charge not to exceed twenty dollars per customer, per year. No other fee or charge may be collected as a result of a returned check or as a result of default by the maker of the check in timely payment to the licensee.
8. A maker of a check who has authority to make the check and enters into a deferred presentment service agreement is not subject to a criminal penalty relating to the check or the deferred presentment service agreement unless the account on which the check was written was closed on the original date of the transaction. At the time of entering a transaction, a licensee shall verify that the account on which the check is written is open. A licensee may not pursue or threaten to pursue criminal penalties against a maker of a check for criminal penalties prohibited by this subsection.
9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business.
10. The amount paid to the maker by the licensee in a deferred presentment service transaction must be paid in the form of cash or check.
11. Each licensee must conspicuously post in the licensee's licensed location a notice of the fees imposed for the deferred presentment service.
12. A licensee may not renew a deferred presentment service transaction more than once. A licensee's renewal fee may not exceed twenty percent of the amount being renewed. The total period of deferral, including the initial deferral and one renewal, may not exceed forty-five days. An individual renewal period may not be less than fifteen days.

After forty-five days the renewed deferred presentment check must be paid off in cash, money order, or certified check by the maker or must be deposited by the licensee.

13. A licensee may not renew, repay, refinance, or consolidate a deferred presentment service transaction with the proceeds of another deferred presentment service transaction with that licensee by the same maker or customer. It is presumed that a deferred presentment service transaction initiated within three business days before completion of a deferred presentment service transaction is a violation of this subsection.
14. A licensee may not conduct another business, other than a bona fide pawnbroking business, within the same office, suite, room, or place of business at which the licensee engages in deferred presentment service transactions unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of consumers.
15. A licensee shall provide a notice in a prominent place on each deferred presentment service agreement in no less than ten-point type in substantially the following form:

State law prohibits this business from allowing customers to have outstanding at any one time, deferred presentment service transactions totaling more than five hundred dollars.

16. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor.

Denial of license - Hearing. If the commissioner determines an applicant is not qualified to receive a license, the commissioner shall notify the applicant in writing stating that the application is denied and stating the basis for denial. If the commissioner denies an application, or if the commissioner fails to act on an application within thirty days after the filing of a properly completed application, the applicant may make written demand to the commissioner for a hearing before the commissioner on the question of whether the license should be granted. The hearing must be held within thirty days after receipt of the written demand by the applicant. In the event of a hearing, the commissioner shall reconsider the application and, after hearing, issue a written order granting or denying the application. If an applicant who is denied a license requests a hearing and the commissioner's denial is upheld, the commissioner may assess the applicant for the commissioner's costs incurred for the hearing, in an amount not exceeding two thousand dollars.

Suspension - Revocation.

1. After notice and hearing, the commissioner may suspend or revoke a license if the commissioner finds that the licensee or any principal of the licensee has been convicted of a felony or that the licensee knowingly or through lack of due care:
 - a. Failed to pay the annual license fee imposed under this chapter or any examination fee imposed by the commissioner under the authority of this chapter;

- b. Committed any fraud, engaged in any dishonest activities, or made any misrepresentations;
 - c. Violated this chapter or any rule adopted under this chapter or violated any other law in the course of the licensee's business activities as a licensee;
 - d. Made false statements in the application for the license; or
 - e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business.
2. Written notice must be given at least twenty days before the date of a hearing under this chapter.

Violations - Cease and desist orders - Penalties. Except as otherwise provided in this chapter, any person who willfully provides deferred presentment services without a license is guilty of a class C felony and any person who violates any other provisions of this chapter or any rule adopted to implement this chapter is guilty of an infraction. If the commissioner finds, whether without a hearing or after a hearing if a hearing is requested within twenty days of notice of an action by the commissioner under this section, that a person violated this chapter or any rule adopted to implement this chapter, the commissioner may do any one or more of the following:

1. Order the person to cease and desist violating this chapter or the rule.
2. Require the refund of any fees collected by the person in violation of this chapter.
3. Impose a civil penalty not to exceed one thousand dollars per transaction for violation of a cease and desist order issued under this chapter or for violation of this chapter.

Approved April 19, 2001
Filed April 19, 2001