

Sixty-first
Legislative Assembly
of North Dakota

Introduced by

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century
2 Code, relating to licensing of residential mortgage brokers; to create and enact two new
3 sections to chapter 13-04.1, relating to regulation of loans not in excess of one thousand dollars
4 and automatic extension of money broker license; to amend and reenact subsection 1 of
5 section 6-01-01.1, 13-04.1-02.1, 13-04.1-05, subsection 2 of section 41-09-11 and 51-14-03.2
6 of the North Dakota Century Code, relating to changes necessitated by the repeal of chapter
7 13-03.1, exemptions from licensing requirements under the North Dakota money broker statute,
8 and licensure renewal dates; to repeal chapter 13-03.1 of the North Dakota Century Code,
9 relating to regulation of lending activities; and to provide for an effective date.

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

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

13 **13-XX-01. Title.** This Act may be cited as the "North Dakota Mortgage Licensing Act".

14 **13-XX-02. Purpose of this Act.** The purpose of this Act is to protect consumers
15 seeking mortgage loans and to ensure that the mortgage lending industry is operating without
16 unfair, deceptive, and fraudulent practices on the part of mortgage loan originators.

17 **13-XX-03. Definitions.** For purposes of this Act, the following definitions shall apply:

- 18 1. Depository institution. The term "depository institution" has the same meaning as
19 is currently defined under section 3 of the Federal Deposit Insurance Act and
20 includes any credit union.
- 21 2. Federal banking agencies. The term "federal banking agencies" means the board
22 of governors of the federal reserve system, the comptroller of the currency, the
23 director of the office of thrift supervision, the national credit union administration
24 and the federal deposit insurance corporation.

- 1 3. Immediate family member. The term "immediate family member" means a spouse,
2 child, sibling, parent, grandparent, or grandchild. This includes stepparents,
3 stepchildren, stepsiblings, and adoptive relations.
- 4 4. Individual. The term "individual" means a natural person.
- 5 5. Loan processor or underwriter:
- 6 a. In general. The term "loan processor or underwriter" means an individual who
7 performs clerical or support duties as an employee at the direction of and
8 subject to the supervision and instruction of a person licensed, or exempt from
9 licensing under the North Dakota Mortgage Licensing Act.
- 10 b. Clerical or support duties. For purposes of subsection (a), the term "clerical
11 or support duties" may include subsequent to the receipt of an application:
- 12 (1) The receipt, collection, distribution, and analysis of information common
13 for the processing or underwriting of a residential mortgage loan; and
- 14 (2) Communicating with a consumer to obtain the information necessary for
15 the processing or underwriting of a loan, to the extent that such
16 communication does not include offering or negotiating loan rates or
17 terms, or counseling consumers about residential mortgage loan rates
18 or terms.
- 19 c. Representations to the public. An individual engaging solely in loan
20 processor or underwriter activities, shall not represent to the public, through
21 advertising or other means of communicating or providing information
22 including the use of business cards, stationery, brochures, signs, rate lists, or
23 other promotional items, that such individual can or will perform any of the
24 activities of a mortgage loan originator.
- 25 6. Mortgage loan originator:
- 26 a. In general. The term "mortgage loan originator:
- 27 (1) Means an individual who for compensation or gain or in the expectation
28 of compensation or gain:
- 29 (a) Takes a residential mortgage loan application; or
- 30 (b) Offers or negotiates terms of a residential mortgage loan;

- 1 (2) Does not include an individual engaged solely as a loan processor or
2 underwriter except as otherwise provided in section 13-XX-04(4);
- 3 (3) Negotiating, on behalf of any party, any portion of a contract relating to
4 the sale, purchase, lease, rental, or exchange of real property (other
5 than in connection with providing financing with respect to any such
6 transaction);
- 7 (4) Engaging in any activity for which a person engaged in the activity is
8 required to be registered or licensed as a real estate agent or real
9 estate broker under any applicable law; and
- 10 (5) Offering to engage in any activity, or act in any capacity, described in
11 subsections (1), (2), (3), or (4) of this section.
- 12 7. Nationwide mortgage licensing system and registry. The term "nationwide
13 mortgage licensing system and registry" means a mortgage licensing system
14 developed and maintained by the conference of state bank supervisors and the
15 American association of residential mortgage regulators for the licensing and
16 registration of licensed mortgage loan originators.
- 17 8. Nontraditional mortgage product. The term "nontraditional mortgage product"
18 means any mortgage product other than a thirty-year fixed rate mortgage.
- 19 9. Person. The term "person" means a natural person, corporation, company, limited
20 liability company, partnership, or association.
- 21 10. Registered mortgage loan originator. The term "registered mortgage loan
22 originator" means any individual who:
- 23 a. Meets the definition of mortgage loan originator and is an employee of:
- 24 (1) A depository institution;
- 25 (2) A subsidiary that is:
- 26 (a) Owned and controlled by a depository institution; and
- 27 (b) Regulated by a federal banking agency; or
- 28 (3) An institution regulated by the farm credit administration; and
- 29 b. Is registered with, and maintains a unique identifier through the nationwide
30 mortgage licensing system and registry.

1 11. Residential mortgage loan. The term "residential mortgage loan" means any loan
2 primarily for personal, family, or household use that is secured by a mortgage,
3 deed of trust, or other equivalent consensual security interest on a dwelling (as
4 defined in section 103(v) of the Truth in Lending Act) or residential real estate upon
5 which is constructed or intended to be constructed a dwelling (as so defined).

6 12. Residential real estate. The term "residential real estate" means any real property
7 located in North Dakota, upon which is constructed or intended to be constructed a
8 dwelling.

9 13. Unique identifier. The term "unique identifier" means a number or other identifier
10 assigned by protocols established by the nationwide mortgage licensing system
11 and registry.

12 **13-XX-04. License and registration required.**

13 1. In general. An individual, unless specifically exempted from this Act under
14 subsection (3) of this section, shall not engage in the business of a mortgage loan
15 originator with respect to any dwelling located in this state without first obtaining
16 and maintaining annually a license under this Act. Each licensed mortgage loan
17 originator must register with and maintain a valid unique identifier issued by the
18 nationwide mortgage licensing system and registry.

19 2. Effective date. In order to facilitate an orderly transition to licensing and minimize
20 disruption in the mortgage marketplace, the effective date for subsection (1) of this
21 section shall be August 1, 2009, or such later date approved by the secretary of the
22 United States department of housing and urban development, pursuant to the
23 authority granted under public Law 110-289, section 1508(a). All persons subject
24 to licensing under this section, who are currently licensed under chapter 13-04.1,
25 shall continue to be subject to licensure under chapter 13-04.1 until January 1,
26 2010, a person subject to licensing under this section fails to be licensed under
27 chapter 13-04.1, that person shall be required to be licensed under this Act.

28 3. Exemption from this Act. The following are exempt from this Act:

29 a. Registered mortgage loan originators, when acting for an entity described in
30 13-XX-03(10)(a)(i)(ii) or (iii) are exempt from this Act.

- 1 b. Any individual who offers or negotiates terms of a residential mortgage loan
2 with or on behalf of an immediate family member of the individual.
- 3 c. Any individual who offers or negotiates terms of a residential mortgage loan
4 secured by a dwelling that served as the individual's residence.
- 5 d. A licensed attorney who negotiates the terms of a residential mortgage loan
6 on behalf of a client as an ancillary matter to the attorney's representation of
7 the client, unless the attorney is compensated by a lender, a mortgage broker,
8 or other mortgage loan originator or by any agent of such lender, mortgage
9 broker, or other mortgage loan originator.

10 4. Independent contractor loan processors or underwriters. A loan processor or
11 underwriter who is an independent contractor may not engage in the activities of a
12 loan processor or underwriter unless such independent contractor loan processor
13 or underwriter obtains and maintains a license under 13-XX-04(1). Each
14 independent contractor loan processor or underwriter licensed as a mortgage loan
15 originator must have and maintain a valid unique identifier issued by the nationwide
16 mortgage licensing system and registry.

17 5. Commissioner authority to establish licensing rules, regulations or interim
18 procedures and accept early applications. For the purposes of implementing an
19 orderly and efficient licensing process the commissioner may establish licensing
20 rules or regulations and interim procedures for licensing and acceptance of
21 applications. For previously registered or licensed individuals the commissioner
22 may establish expedited review and licensing procedures.

23 **13-XX-05. State license and registration application and issuance.**

- 24 1. Application form. Applicants for a license shall apply in a form as prescribed by the
25 commissioner. Each such form shall contain content as set forth by rule,
26 regulation, instruction or procedure of the commissioner and may be changed or
27 updated as necessary by the commissioner in order to carry out the purposes of
28 this Act.
- 29 2. Commissioner may establish relationships or contracts. In order to fulfill the
30 purposes of this Act, the commissioner is authorized to establish relationships or
31 contracts with the nationwide mortgage licensing system and registry or other

1 entities designated by the nationwide mortgage licensing system and registry to
2 collect and maintain records and process transaction fees or other fees related to
3 licensees or other persons subject to this Act.

4 3. Background checks. In connection with an application for licensing as a
5 mortgage loan originator, the applicant shall, at a minimum, furnish to the
6 nationwide mortgage licensing system and registry information concerning the
7 applicant's identity, including:

8 a. Fingerprints for submission to the federal bureau of investigation, and any
9 governmental agency or entity authorized to receive such information for a
10 state, national and international criminal history background check; and

11 b. Personal history and experience in a form prescribed by the nationwide
12 mortgage licensing system and registry, including the submission of
13 authorization for the nationwide mortgage licensing system and registry and
14 the commissioner to obtain:

15 (1) An independent credit report obtained from a consumer reporting
16 agency described in section 603(p) of the Fair Credit Reporting Act; and

17 (2) Information related to any administrative, civil or criminal findings by
18 any governmental jurisdiction.

19 4. Agent for purposes of requesting and distributing criminal information. For the
20 purposes of this section and in order to reduce the points of contact which the
21 federal bureau of investigation may have to maintain for purposes of subsection
22 (4)(a) and (b) (ii) of this section the commissioner may use the nationwide
23 mortgage licensing system and registry as a channeling agent for requesting
24 information from and distributing information to the department of justice or any
25 governmental agency.

26 5. Agent for purposes of requesting and distributing noncriminal information. For the
27 purposes of this section and in order to reduce the points of contact which the
28 commissioner may have to maintain for purposes of subsection (4)(b)(i) and (ii) of
29 this section the commissioner may use the nationwide mortgage licensing system
30 and registry as a channeling agent for requesting and distributing information to
31 and from any source so directed by the commissioner.

1 **13-XX-06. Issuance of license.** The commissioner shall not issue a mortgage loan
2 originator license unless the commissioner makes at a minimum the following findings:

3 1. No license revocation. The applicant has never had a mortgage loan originator
4 license revoked in any governmental jurisdiction, except that a subsequent formal
5 vacation of such revocation shall not be deemed a revocation.

6 2. No felony conviction. The applicant has not been convicted of, or pled guilty or
7 nolo contendere to, a felony in a domestic, foreign, or military court:

8 a. During the seven-year period preceding the date of the application for
9 licensing and registration; or

10 b. At any time preceding such date of application, if such felony involved an act
11 of fraud, dishonesty, or a breach of trust, or money laundering;

12 c. Provided that any pardon of a conviction shall not be a conviction for
13 purposes of this subsection.

14 3. Character and fitness. The applicant has demonstrated financial responsibility,
15 character, and general fitness such as to command the confidence of the
16 community and to warrant a determination that the mortgage loan originator will
17 operate honestly, fairly, and efficiently within the purposes of this Act.

18 a. For purposes of this subsection a person has shown that he or she is not
19 financially responsible when he or she has shown a disregard in the
20 management of his or her own financial condition. A determination that an
21 individual has not shown financial responsibility may include, but not be
22 limited to:

23 (1) Current outstanding judgments, except judgments solely as a result of
24 medical expenses;

25 (2) Current outstanding tax liens or other government liens and filings;

26 (3) Foreclosures within the past three years;

27 (4) A pattern of seriously delinquent accounts within the past three years.

28 4. Prelicensing education. The applicant has completed the prelicensing education
29 requirement described in subsection 13-XX-07.

30 5. Written test. The applicant has passed a written test that meets the test
31 requirement described in subsection 13-XX-08.

6. Net worth, surety bond or state fund requirement. The applicant has met the net worth and surety bond requirements as required pursuant to subsection 13-XX-14.

13-XX-07. Prelicensing and relicensing education of loan originators.

1. Minimum educational requirements. In order to meet the prelicensing education requirement referred to in subsection 13-XX-06(4) a person shall complete at least 20 hours of education approved in accordance with subsection 2 of this section, which shall include at least:

- a. Three hours of federal law and regulations;
- b. Three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
- c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.

2. Approved educational courses. For purposes of subsection 1 of this section, prelicensing education courses shall be reviewed, and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a prelicensing education course shall include review and approval of the course provider.

3. Approval of employer and affiliate educational courses. Nothing in this section shall preclude any prelicensing education course, as approved by the nationwide mortgage licensing system and registry that is provided by the employer of the applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such employer or entity.

4. Venue of education. Prelicensing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

5. Reciprocity of education. The prelicensing education requirements approved by the nationwide mortgage licensing system and registry in subsections 1a, b, and c of this section for any state shall be accepted as credit towards completion of prelicensing education requirements in North Dakota.

6. Relicensing education requirements. A person previously licensed under this Act subsequent to the effective date of this Act applying to be licensed again must

1 prove that they have completed all of the continuing education requirements for the
2 year in which the license was last held.

3 **13-XX-08. Testing of loan originators.**

4 1. In general. In order to meet the written test requirement referred to in 13-XX-06(5),
5 an individual shall pass, in accordance with the standards established under this
6 subsection, a qualified written test developed by the nationwide mortgage licensing
7 system and registry and administered by a test provider approved by the
8 nationwide mortgage licensing system and registry based upon reasonable
9 standards.

10 2. Qualified test. A written test shall not be treated as a qualified written test for
11 purposes of subsection 1 of this section unless the test adequately measures the
12 applicant's knowledge and comprehension in appropriate subject areas, including:
13 a. Ethics;
14 b. Federal law and regulation pertaining to mortgage ordination;
15 c. State law and regulation pertaining to mortgage origination;
16 d. Federal and state law and regulation, including instruction on fraud, consumer
17 protection, the nontraditional mortgage marketplace, and fair lending issues.

18 3. Testing location. Nothing in this section shall prohibit a test provider approved by
19 the nationwide mortgage licensing system and registry from providing a test at the
20 location of the employer of the applicant or the location of any subsidiary or affiliate
21 of the employer of the applicant, of the location of any entity with which the
22 applicant holds an exclusive arrangement to conduct the business of a mortgage
23 loan originator.

24 4. Minimum competence.
25 a. Passing score. An individual shall not be considered to have passed a
26 qualified written test unless the individual achieves a test score of not less
27 than seventy-five percent correct answers to questions.
28 b. Initial retests. An individual may retake a test three consecutive times with
29 each consecutive taking occurring at least thirty days after the preceding test.
30 c. Subsequent retests. After failing three consecutive tests, an individual shall
31 wait at least six months before taking the test again.

- 1 d. Retest after lapse of license. A licensed mortgage loan originator who fails to
2 maintain a valid license for a period of five years or longer shall retake the
3 test, not taking into account any time during which such individual is a
4 registered mortgage loan originator.

5 **13-XX-09. Standards for license renewal.**

- 6 1. In general. The minimum standards for license renewal for mortgage loan
7 originators shall include the following:
- 8 a. The mortgage loan originator continues to meet the minimum standards for
9 license issuance under 13-XX-06(1)-(6).
- 10 b. The mortgage loan originator has satisfied the annual continuing education
11 requirements described in 13-XX-10.
- 12 c. The mortgage loan originator has paid all required fees for renewal of the
13 license.
- 14 2. Failure to satisfy minimum standards of license renewal. The license of a
15 mortgage loan originator failing to satisfy the minimum standards for license
16 renewal shall expire. The commissioner may adopt procedures for the
17 reinstatement of expired licenses consistent with the standards established by the
18 nationwide mortgage licensing system and registry.

19 **13-XX-10. Continuing education for mortgage loan originators.**

- 20 1. In general. In order to meet the annual continuing education requirements referred
21 to in section 13-XX-09(1)(b), a licensed mortgage loan originator shall complete at
22 least eight hours of education approved in accordance with subsection 2 of this
23 section, which shall include at least:
- 24 a. Three hours of federal law and regulations;
- 25 b. Two hours of ethics, which shall include instruction on fraud, consumer
26 protection, and fair lending issues; and
- 27 c. Two hours of training related to lending standards for the nontraditional
28 mortgage product marketplace.
- 29 2. Approved educational courses. For purposes of subsection 1 of this section,
30 continuing education courses shall be reviewed, and approved by the nationwide
31 mortgage licensing system and registry based upon reasonable standards.

Review and approval of a continuing education course shall include review and approval of the course provider.

3. Approval of employer and affiliate educational courses. Nothing in this section shall preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity.

4. Venue of education. Continuing education may be offered either in a classroom, online or by any other means approved by the nationwide mortgage licensing system and registry.

5. Calculation of continuing education credits. A licensed mortgage loan originator.

a. Except for 13-XX-09(2) and subsection 9 of this section may only receive credit for a continuing education course in the year in which the course is taken; and

b. May not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

6. Instructor credit. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

7. Reciprocity of education. A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry in subsections 1a, b, and c of this section for any state shall be accepted as credit towards completion of continuing education requirements in North Dakota.

8. Lapse in license. A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.

9. Make up of continuing education. A person meeting the requirements of 13-XX-09(1)(a) and (c) may make up any deficiency in continuing education as established by rule or regulation of the commissioner.

1 **13-XX-11. Authority to require license.** In any other duties imposed upon the
2 commissioner by law, the commissioner shall require mortgage loan originators to be licensed
3 and registered through the nationwide mortgage licensing system and registry. In order to carry
4 out this requirement the commissioner is authorized to participate in the nationwide mortgage
5 licensing system and registry. For this purpose, the commissioner may establish by rule,
6 requirements as necessary, including but not limited to:

- 7 1. Background checks. Background checks for:
8 a. Criminal history through fingerprint or other databases;
9 b. Civil or administrative records;
10 c. Credit history; or
11 d. Any other information as deemed necessary by the nationwide mortgage
12 licensing system and registry.
13 2. Fees. The payment of fees to apply for or renew licenses through the nationwide
14 mortgage licensing system and registry;
15 3. Setting dates. The setting or resetting as necessary of renewal or reporting dates;
16 and
17 4. Other. Requirements for amending or surrendering a license or any other such
18 activities as the commissioner deems necessary for participation in the nationwide
19 mortgage licensing system and registry.

20 **13-XX-12. Nationwide mortgage licensing system and registry information**
21 **challenge process.** The commissioner shall establish a process whereby mortgage loan
22 originators may challenge information entered into the nationwide mortgage licensing system
23 and registry by the commissioner.

24 **13-XX-13. Enforcement authorities, violations and penalties.**

- 25 1. In order to ensure the effective supervision and enforcement of this Act the
26 commissioner may:
27 a. Deny, suspend, revoke, condition or decline to renew a license for a violation
28 of this Act, rules or regulations issued under this Act or order or directive
29 entered under this Act.
30 b. Deny, suspend, revoke, condition or decline to renew a license if an applicant
31 or licensee fails at any time to meet the requirements of section 13-XX-06, or

1 13-XX-09, or withholds information or makes a material misstatement in an
2 application for a license or renewal of a license.

3 c. Order restitution against persons subject to this Act for violations of this Act.

4 d. Impose fines on persons subject to this Act pursuant to subsections 2, 3, and
5 4 of this section.

6 e. Issue orders or directives under this Act as follows:

7 (1) Order or direct persons subject to this Act to cease and desist from
8 conducting business, including immediate temporary orders to cease
9 and desist.

10 (2) Order or direct persons subject to this Act to cease any harmful
11 activities or violations of this Act, including immediate temporary orders
12 to cease and desist.

13 (3) Enter immediate temporary orders to cease business under a license or
14 interim license issued pursuant to the authority granted under
15 13-XX-04(5) if the commissioner determines that such license was
16 erroneously granted or the licensee is currently in violation of this Act;

17 (4) Order or direct such other affirmative action as the commissioner
18 deems necessary.

19 2. The commissioner may impose a civil penalty on a mortgage loan originator or
20 person subject to this Act, if the commissioner finds, on the record after notice and
21 opportunity for hearing, that such mortgage loan originator or person subject to this
22 Act has violated or failed to comply with any requirement of this Act or any
23 regulation prescribed by the commissioner under this Act or order issued under
24 authority of this Act.

25 3. The maximum amount of penalty for each act or omission described in
26 subsection 2 of this section shall be twenty-five thousand dollars.

27 4. Each violation or failure to comply with any directive or order of the commissioner
28 is a separate and distinct violation or failure.

29 **13-XX-14. Surety bond and minimum net worth requirements: surety bond**
30 **required.**

1 1. Coverage form and regulations. Each mortgage loan originator shall be covered
2 by a surety bond in accordance with this section. In the event that the mortgage
3 loan originator is an employee or exclusive agent of a person subject to this Act,
4 the surety bond of such person subject to this Act can be used in lieu of the
5 mortgage loan originator's surety bond requirement.

6 a. The surety bond shall provide coverage for each mortgage loan originator in
7 an amount as prescribed in subsection 2 of this section.

8 b. The surety bond shall be in a form as prescribed by the commissioner.

9 c. The commissioner may promulgate rules or regulations with respect to the
10 requirements for such surety bonds as are necessary to accomplish the
11 purposes of this Act.

12 2. Amount of surety bond. The licensee shall maintain a surety bond in the amount of
13 fifty thousand dollars, however, the commissioner shall have discretion to increase
14 the amount of the surety bond if the commissioner determines that such an
15 increase is necessary to protect the public interests.

16 3. Action on bond. When an action is commenced on a licensee's bond the
17 commissioner may require the filing of a new bond.

18 4. New bond. Immediately upon recovery upon any action on the bond the licensee
19 shall file a new bond.

20 **Minimum net worth required.**

21 1. Minimum net worth. A minimum net worth shall be continuously maintained for
22 mortgage loan originators in accordance with this section. In the event that the
23 mortgage loan originator is an employee or exclusive agent of a person subject to
24 this Act, the net worth of such person subject to this Act can be used in lieu of the
25 mortgage loan originator's minimum net worth requirement.

26 a. Minimum net worth shall be maintained in the amount of twenty-five thousand
27 dollars, however, the commissioner shall have discretion to increase the
28 amount of minimum net worth if the commissioner determines that such an
29 increase is necessary to protect the public interests.

- 1 b. The commissioner may promulgate rules or regulations with respect to the
2 requirements for minimum net worth as are necessary to accomplish the
3 purposes of this Act.

4 **13-XX-15. Confidentiality.** In order to promote more effective regulation and reduce
5 regulatory burden through supervisory information sharing:

- 6 1. Protections. Except as otherwise provided in Public Law 110-289, section 1512,
7 the requirements under any federal law or chapter 44-04 regarding the privacy or
8 confidentiality of any information or material provided to the nationwide mortgage
9 licensing system and registry, and any privilege arising und federal or state law
10 (including the rules of any federal or state court) with respect to such information or
11 material, shall continue to apply to such information or material after the
12 information or material has been disclosed to the nationwide mortgage licensing
13 system and registry. Such information and material may be shared with all state
14 and federal regulatory officials with mortgage industry oversight authority without
15 the loss of privilege or the loss of confidentiality protections provided by federal law
16 or chapter 44-04.
- 17 2. Agreements and sharing arrangements. For these purposes, the commissioner is
18 authorized to enter agreements or sharing arrangements with other governmental
19 agencies, the conference of state bank supervisors, the American association of
20 residential mortgage regulations or other associations representing governmental
21 agencies as established by rule, regulation or order of the commissioner.
- 22 a. Disclosure under any federal or state law governing the disclosure to the
23 public of information held by an officer or an agency of the federal government
24 or the respective state; or
- 25 b. Subpoena or discovery, or admission into evidence, in any private civil action
26 or administrative process, unless with respect to any privilege held by the
27 nationwide mortgage licensing system and registry with respect to such
28 information or material, the person to whom such information or material
29 pertains waives, in whole or in part, in the discretion of such person that
30 privilege.

1 4. Coordination with North Dakota open records law. Application of chapter 44-04
2 relating to the disclosure of confidential supervisory information or any information
3 or material described in subsection 1 of this section that is inconsistent with
4 subsection 1 shall be superseded by the requirements of this section.

5 5. Public access to information. This section shall not apply with respect to the
6 information or material relating to the employment history of, and publicly
7 adjudicated disciplinary and enforcement actions against, mortgage loan
8 originators that is included in the nationwide mortgage licensing system and
9 registry for access by the public.

10 **13-XX-16. Investigation and examination authority.** In addition to any authority
11 allowed under this Act the commissioner shall have the authority to conduct investigations and
12 examinations as follows:

13 1. Authority to access information. For purposes of initial licensing, license renewal,
14 license suspension, license conditioning, license revocation or termination, or
15 general or specific inquiry or investigation to determine compliance with this Act,
16 the commissioner shall have the authority to access, receive and use any books,
17 accounts, records, files, documents, information or evidence including but not
18 limited to:

19 a. Criminal, civil and administrative history information, including nonconviction
20 data; and

21 b. Personal history and experience information including independent credit
22 reports obtained from a consumer reporting agency described in
23 section 603(p) of the Fair Credit Reporting Act; and

24 c. Any other documents, information or evidence the commissioner deems
25 relevant to the inquiry or investigation regardless of the location, possession,
26 control or custody of such documents, information or evidence.

27 2. Investigation, examination, and subpoena authority. For the purposes of
28 investigating violations or complaints arising under this Act, or for the purposes of
29 examination, the commissioner may review, investigate, or examine any licensee,
30 individual or person subject to this Act, as often as necessary in order to carry out
31 the purposes of this Act. The commissioner may direct, subpoena, or order the

attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.

3. Availability of books and records. Each licensee, individual or person subject to this Act shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual or person subject to this Act. The commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual or person subject to this Act concerning their business.

4. Reports and other information as directed. Each licensee, individual or person subject to this Act shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section including but not limited to:

a. Accounting compilations;

b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or

c. Such other information deemed necessary to carry out the purposes of this section.

5. Control access to records. In making any examination or investigation authorized by this Act, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this Act,

1 the licensee or owner of the documents and records shall have access to the
2 documents or records as necessary to conduct its ordinary business affairs.

3 6. Additional authority. In order to carry out the purposes of this section, the
4 commissioner may:

5 a. Retain attorneys, accountants, or other professionals and specialists as
6 examiners, auditors, or investigators to conduct or assist in the conduct of
7 examinations or investigations;

8 b. Enter into agreements or relationships with other government officials or
9 regulatory associations in order to improve efficiencies and reduce regulatory
10 burden by sharing resources, standardized or uniform methods or procedures,
11 and documents, records, information or evidence obtained under this section;

12 c. Use, hire, contract or employ public or privately available analytical systems,
13 methods or software to examine or investigate the licensee, individual or
14 person subject to this Act;

15 d. Accept and rely on examination or investigation reports made by other
16 government officials, within or without this state;

17 e. Accept audit reports made by an independent certified public accountant for
18 the licensee, individual or person subject to this Act in the course of that part
19 of the examination covering the same general subject matter as the audit and
20 may incorporate the audit report in the report of the examination, report of
21 investigation or other writing of the commissioner.

22 7. Effect of authority. The authority of this section shall remain in effect whether such
23 a licensee, individual or person subject to this Act acts or claims to act under any
24 licensing or registration law of this state, or claims to act without such authority.

25 8. Withhold records. No licensee, individual or person subject to investigation or
26 examination under this section may knowingly withhold, abstract, remove, mutilate,
27 destroy, or secrete any books, records, computer records, or other information.

28 **13-XX-17. Prohibited acts and practices.** It is a violation of this Act for a person or
29 individual subject to this Act to:

30 1. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead
31 borrowers or lenders or to defraud any person;

- 1 2. Engage in any unfair or deceptive practice toward any person;
- 2 3. Obtain property by fraud or misrepresentation;
- 3 4. Solicit or enter into a contract with a borrower that provides in substance that the
4 person or individual subject to this Act may earn a fee or commission through "best
5 efforts" to obtain a loan even though no loan is actually obtained for the borrower;
- 6 5. Solicit, advertise, or enter into a contract for specific interest rates, points, or other
7 financing terms unless the terms are actually available at the time of soliciting,
8 advertising, or contracting;
- 9 6. Conduct any business covered by this Act without holding a valid license as
10 required under this Act, or assist or aide and abet any person in the conduct of
11 business under this Act without a valid license as required under this Act;
- 12 7. Fail to make disclosures as required by this Act and any other applicable state or
13 federal law including regulations thereunder;
- 14 8. Fail to comply with this Act or rules or regulations promulgated under this Act, or
15 fail to comply with any other state or federal law, including the rules and regulations
16 thereunder, applicable to any business authorized or conducted under this Act;
- 17 9. Make, in any manner, any false or deceptive statement or representation including,
18 with regard to the rates, points, or other financing terms or conditions for a
19 residential mortgage loan, or engage in bait and switch advertising;
- 20 10. Negligently make any false statement or knowingly and willfully make any omission
21 of material fact in connection with any information or reports filed with a
22 governmental agency or the nationwide mortgage licensing system and registry or
23 in connection with any investigation conducted by the commissioner or another
24 governmental agency;
- 25 11. Make any payment, threat or promise, directly or indirectly, to any person for the
26 purposes of influencing the independent judgment of the person in connection with
27 a residential mortgage loan, or make any payment threat or promise, directly or
28 indirectly, to any appraiser of a property, for the purposes of influencing the
29 independent judgment of the appraiser with respect to the value of the property;

1 12. Collect, charge, attempt to collect or change or use or propose any agreement
2 purporting to collect or charge or use or propose any agreement purporting to
3 collect or charge any fee prohibited by this Act;

4 13. Cause or require a borrower to obtain property insurance coverage in an amount
5 that exceeds the replacement cost of the improvements as established by the
6 property insurer.

7 14. Fail to truthfully account for monies belonging to a party to a residential mortgage
8 loan transaction.

9 **13-XX-18. Mortgage call reports.** Each mortgage licensee shall submit to the
10 nationwide mortgage licensing system and registry reports of condition which shall be in such
11 form and shall contain such information as the nationwide mortgage licensing system and
12 registry may require.

13 **13-XX-19. Report to nationwide mortgage licensing system and registry.**
14 Notwithstanding state privacy law the commissioner is required to report regularly violations of
15 this Act, as well as enforcement actions and other relevant information, to the nationwide
16 mortgage licensing system and registry subject to the provisions contained in section 13-XX-15.

17 **13-XX-20. Privately insured credit unions.** Nonfederally insured credit unions which
18 employ loan originators, as defined in Public Law 110-289, Title V, the S.A.F.E. Act, shall
19 register such employees with the nationwide mortgage licensing system and registry by
20 furnishing the information concerning the employees' identity set forth in section 1507(a)(2) of
21 Public Law 110-289, Title V.

22 **13-XX-21. Unique identifier shown.** The unique identifier of any person originating a
23 residential mortgage loan shall be clearly shown on all residential mortgage loan application
24 forms, solicitations or advertisements, including business cards or web sites, and any other
25 documents as established by rule, regulation or order of the commissioner.

26 **13-XX-22. Severability.** If any provision of this Act or its application to any person or
27 circumstance is held invalid, the remainder of the Act or the application of the provision to other
28 persons or circumstances is not affected.

29 **SECTION 2.** A new section to chapter 13-04.1 of the North Dakota Century Code is
30 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 an 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 the deferment charge applicable to any unexpired months of the 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

1 that payment dates may be omitted to accommodate borrowers with seasonal
2 incomes. No installment contracted for may be substantially larger than any
3 preceding installment. When a loan contract provides for monthly installments, the
4 first installment may be payable at any time within forty-five days after the date of
5 the loan.

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

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

18 **SECTION 3.** A new section to chapter 13-04.1 of the North Dakota Century Code is
19 created and enacted as follows:

20 **Automatic six-month extension of license during 2009 calendar year.** All current
21 licensees who have made payment of a fees in accordance with section 13-04.1-04 or
22 13-04.1-05, for a money broker license effective after July 1, 2008, shall be granted an
23 extension of their current license until December 31, 2009. If at anytime prior to December 31,
24 2009, a licensee's license expires or other terminates under this chapter, the applicant shall be
25 required to pay licensing fees in accordance with 13-04.1-04, and that license will expire on
26 December 31, 2009.

27 **SECTION 4. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the North Dakota
28 Century Code is amended and reenacted as follows:

29 1. There is hereby created a special fund designated as the financial institutions
30 regulatory fund. The amounts received under the following chapters, and any
31 other moneys received by the department of financial institutions, must be

deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 7-05, ~~13-03.1,~~
13-04.1, 13-05, 13-08, ~~and 13-09,~~ and 13-XX.

SECTION 5. AMENDMENT. Section 13-04.1-02.1 of the North Dakota Century Code
is amended and reenacted as follows:

13-04.1-02.1. Entities exempted from licensing requirements. This chapter does
not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;
5. ~~North Dakota licensed consumer finance companies~~ Entities licensed under North Dakota Mortgage Licensing Act;
6. State or federal agencies and their employees;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. Any other person or business regulated and licensed by the state of North Dakota;
10. 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; or
11. Any person, retail seller, or manufacturer providing lease financing for its own property or inventory held as a normal course of business, or to leases on any real property.

SECTION 6. AMENDMENT. Section 13-04.1-05 of the North Dakota Century Code is
amended and reenacted as follows:

13-04.1-05. Expiration and renewal of license. All licenses required herein expire on
~~June thirtieth~~ December thirty-first of each year and may be renewed. Renewals are effective
the succeeding ~~July~~ January first. Applications for renewal must be submitted thirty days
before the expiration of the license and must be accompanied by the required annual fees,
which are not subject to refund. The form and content of renewal applications must be
determined by the department of financial institutions, and a renewal application may be denied
upon the same grounds as would justify denial of an initial application. When a licensee has

1 been delinquent in renewing the licensee's license, the department may charge an additional
2 fee of fifty dollars for the renewal of such license. A money broker license is not transferable. If
3 the commissioner determines that an ownership change has occurred in a sole proprietorship,
4 partnership, limited liability partnership, corporation, or limited liability corporation that was
5 previously granted a money broker license, the commissioner may require a new application
6 from the purchaser. The application must be filed within forty-five days from the date change of
7 ownership is consummated. The department shall act on the application within sixty days from
8 the date the application is received but may extend the review period for good cause. The
9 money broker license granted to the previous owner continues in effect to the new purchaser
10 until the application is either granted or denied.

11 **SECTION 7. AMENDMENT.** Subsection 2 of section 41-09-11 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 2. A transaction, although subject to this chapter, is also subject to section 47-19-41
14 and chapters ~~13-03.1~~ 13-04.1, 35-05, 49-09, and 51-13. In the case of conflict
15 between this chapter and any of those statutes, the provisions of those statutes
16 control. Failure to comply with any applicable statute has only the effect that is
17 specified therein.

18 **SECTION 8. AMENDMENT.** Section 51-14-03.2 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **51-14-03.2. Application of other provisions.** Credit extended by a seller or holder of
21 a revolving charge agreement to a buyer is not subject to chapter ~~13-03.1~~ 13-04.1 or 47-14.

22 **SECTION 9. REPEAL.** Chapter 13-03.1 of the North Dakota Century Code is
23 repealed.

24 **SECTION 10. EFFECTIVE DATE.** Section 3 of this Act becomes effective immediately
25 upon its filing with the secretary of state and all other sections of this Act become effective on
26 August 1, 2009.