

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED SENATE BILL NO. 2135

Introduced by

Industry, Business and Labor Committee

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

1 A BILL for an Act to create and enact a new section to chapter 13-05 of the North Dakota
2 Century Code, relating to removal from office of collection agency officers or employees by the
3 department of banking and financial institutions.

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

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

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

- 8 1. The commissioner of banking and financial institutions may issue and serve upon
9 any collection agency officer or employee and upon the collection agency involved,
10 a complaint stating the basis for the commissioner's belief that the officer or
11 employee is willfully engaging or has willfully engaged in any of the following
12 conduct:
- 13 a. Violating any law, rule, order, or written agreement with the commissioner;
 - 14 b. Engaging in any harassment or abuse, the making of false or misleading
15 representations, or engaging in unfair practices involving collection activity; or
 - 16 c. Performing any act of commission or omission or practice which is a breach
17 of trust or a breach of fiduciary duty.
- 18 2. The complaint must contain a notice of opportunity for hearing pursuant to chapter
19 28-32.
- 20 3. If no hearing is requested within twenty days of the date the complaint is served
21 upon the officer or employee, or if a hearing is held and the commissioner finds
22 that the record so warrants, the commissioner may enter an order suspending or
23 temporarily removing the employee or officer from office for a period not exceeding
24 three years from the effective date of the suspension or temporary removal.

- 1 4. A contested or default suspension or temporary removal order is effective
2 immediately upon service of the order on the officer or employee and upon the
3 collection agency. A consent order is effective as agreed. An officer or employee
4 suspended or temporarily removed from office pursuant to this section is not
5 eligible, while under suspension, for reinstatement to any position within a licensed
6 collection agency.
- 7 5. When an officer or employee, or other person participating in the conduct of the
8 affairs of a collection agency is charged with a felony in state or federal court which
9 involves dishonesty or breach of trust, the commissioner may immediately
10 suspend the person from office or prohibit the person from any further participation
11 in the collection affairs, or both. The order is effective immediately upon service of
12 the order on the collection agency and the person charged, and remains in effect
13 until the criminal charge is finally disposed of or until modified by the
14 commissioner. If a judgment of conviction, federal pretrial diversion, or similar
15 state order or judgment is entered, the commissioner may order that the
16 suspension or prohibition be made permanent. A finding of not guilty or other
17 disposition of the charge does not preclude the commissioner from pursuing
18 administrative or civil remedies.
- 19 6. Under this section, a person engages in conduct "willfully" if the person acted
20 intentionally in the sense that the person was aware of what the person was doing.