

SENATE BILL NO. 2158

Introduced by

Finance and Taxation Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact two new sections to chapter 13-03.1, two new sections to
2 chapter 13-04.1, a new section to chapter 13-05, and two new sections to chapter 13-08 of the
3 North Dakota Century Code, relating to authority to remove officers and employees from
4 consumer finance, money broker, and deferred presentment service provider licensees and
5 responses to department of financial institutions information requests; to amend and reenact
6 sections 13-03.1-06, 13-03.1-10, 13-03.1-18, 13-04.1-06, 13-04.1-07, 13-04.1-13, 13-05-06,
7 13-05-07, 13-05-10, 13-08-11, and 13-08-15 of the North Dakota Century Code, relating to
8 consumer finance company, money broker, and collection agency applicant qualifications,
9 penalties for violating the consumer finance, money broker, collection agency, and deferred
10 presentment service provider acts, and electronic record retention; and to provide a penalty.

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

12 **SECTION 1. AMENDMENT.** Section 13-03.1-06 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **13-03.1-06. Investigation of application - Requirements for issuance of license -**
15 **Denial of license - Public record.**

- 16 1. Upon the filing of an application and the payment of the fees therefor the
17 administrator shall investigate the facts concerning the application.
- 18 2. The administrator shall issue a license to operate a consumer finance loan
19 business if the administrator finds:
- 20 a. That the financial responsibility, financial condition, business experience,
21 character, and general fitness of the applicant ~~are such as to~~ must reasonably
22 warrant the belief that the business will be operated conducted lawfully and
23 fairly. In determining whether this qualification is met, and for the purpose of
24 investigating compliance with this chapter, the administrator may review and

1 consider the relevant business records and the capital adequacy of the
2 applicant and the competence, experience, integrity, and financial ability of
3 any person who is a member, partner, director, officer, or twenty-five percent
4 or more shareholder of the applicant; and

5 b. That the applicant has assets of at least twenty-five thousand dollars for the
6 operation of the business.

7 3. The administrator shall approve or deny every application for a license hereunder
8 within sixty days from the filing thereof with the fee.

9 4. No application may be denied until the applicant has had a notice of a hearing on
10 the application and an opportunity to be heard thereon. Whenever an application
11 is denied, the administrator shall, within twenty days thereafter, prepare and keep
12 on file in the administrator's office a written order of denial thereof. The order must
13 contain its findings with respect thereto and the reasons supporting the denial, and
14 the administrator shall send a copy thereof by registered mail to the applicant at
15 the address set forth in the application within five days after the filing of the order.
16 If the administrator finds the applicant is not qualified to be issued a license, the
17 administrator shall return the license fee but may retain the investigation fee.

18 5. The administrator shall, upon request and payment of the annual license fee,
19 deliver evidence of licensing under this chapter to the persons so previously
20 licensed or authorized.

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

23 **Suspension and removal of consumer finance officers or employees.**

24 1. The commissioner of financial institutions may issue and serve upon a consumer
25 finance officer or employee and upon the consumer finance company involved a
26 complaint stating the basis for the commissioner's belief that the officer or
27 employee is willfully engaging or has willfully engaged in any of the following
28 conduct:

29 a. Violating a law, rule, order, or written agreement with the commissioner;

30 b. Engaging in harassment or abuse, the making of false or misleading
31 representations, or engaging in unfair practices involving lending activity; or

- 1 c. Performing an act of commission or omission or practice which is a breach of
2 trust or a breach of fiduciary duty.
- 3 2. The complaint must contain a notice of opportunity for hearing pursuant to chapter
4 28-32.
- 5 3. If a hearing is not requested within twenty days of the date the complaint is served
6 upon the officer or employee, or if a hearing is held and the commissioner finds
7 that the record so warrants, the commissioner may enter an order suspending or
8 temporarily removing the employee or officer from office for a period not exceeding
9 three years from the effective date of the suspension or temporary removal.
- 10 4. A contested or default suspension or temporary removal order is effective
11 immediately upon service of the order on the officer or employee and upon the
12 consumer finance company. A consent order is effective as agreed. An officer or
13 employee suspended or temporarily removed from office pursuant to this section is
14 not eligible, while under suspension, for reinstatement to a position within a
15 licensed consumer finance company.
- 16 5. When an officer or employee, or other person participating in the conduct of the
17 affairs of a consumer finance company is charged with a felony in state or federal
18 court which involves dishonesty or breach of trust, the commissioner may
19 immediately suspend the person from office or prohibit the person from any further
20 participation in the consumer finance affairs, or both. The order is effective
21 immediately upon service of the order on the consumer finance company and the
22 person charged and remains in effect until the criminal charge is finally disposed of
23 or until modified by the commissioner. If a judgment of conviction, federal pretrial
24 diversion, or similar state order or judgment is entered, the commissioner may
25 order that the suspension or prohibition be made permanent. A finding of not guilty
26 or other disposition of the charge does not preclude the commissioner from
27 pursuing administrative or civil remedies.
- 28 6. Under this section, a person engages in conduct "willfully" if the person acted
29 intentionally in the sense that the person was aware of what the person was doing.

30 **SECTION 3. AMENDMENT.** Section 13-03.1-10 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **13-03.1-10. Records - Annual reports - Biennial report.**

- 2 1. Every licensee shall maintain records in conformity with generally accepted
3 accounting principles and practices in a manner that will enable the administrator
4 to determine whether the licensee is complying with this chapter. The
5 ~~recordkeeping system records~~ of a licensee ~~is sufficient if the licensee makes the~~
6 ~~required information reasonably available~~ may be maintained electronically
7 provided all records can be reproduced upon request of the department of financial
8 institutions and within the required statutory timeframe outlined in this section. The
9 records pertaining to any loan need not be preserved for more than two years after
10 making the final entry relating to the loan, but in the case of a revolving loan
11 account the two years is measured from the date of each entry.
- 12 2. On or before July thirty-first each year the parent company of each licensee shall
13 file with the administrator a composite annual report in the form prescribed by the
14 administrator relating to all loans made by its licensees. The administrator shall
15 consult with comparable officials in other states for the purpose of making the kinds
16 of information required in annual reports uniform among the states. The
17 administrator may make and publish annually an analysis and recapitulation of
18 such reports.
- 19 3. The administrator shall submit a biennial report to the governor and the secretary
20 of state in accordance with section 54-06-04. In addition to any requirements
21 established pursuant to section 54-06-04, the administrator's report must include a
22 summary or abstract of the annual reports filed with the administrator.

23 **SECTION 4.** A new section to chapter 13-03.1 of the North Dakota Century Code is
24 created and enacted as follows:

25 **Response to department requests.** An applicant, licensee, or other person subject to
26 the provisions of this chapter shall comply with requests for information, documents, or other
27 requests from the department of financial institutions within the time specified in the request,
28 which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing
29 of the request by the department of financial institutions. If the request for information is in
30 regard to a new application or renewal of an existing application and is not received within the

1 time specified in the request, or within thirty days of the mailing of the request, the department
2 may deny the application.

3 **SECTION 5. AMENDMENT.** Section 13-03.1-18 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **13-03.1-18. Penalty.** A person who violates any of the provisions of this chapter or
6 rules adopted ~~thereunder~~ hereunder is guilty of a class ~~A misdemeanor~~ C felony. The
7 commissioner may impose a civil money penalty not to exceed five thousand dollars per
8 violation upon a person or agency who willfully violates a law, rule, or order under this chapter.
9 An interested party may appeal the assessment of a civil money penalty under the provisions of
10 chapter 28-32 by filing a written notice of appeal within twenty days after service of the
11 assessment of civil money penalties. A civil money penalty collected under this section must be
12 paid to the state treasurer and deposited in the financial institutions regulatory fund. If a
13 contract of loan in an amount exceeding one thousand dollars or any act in its making or
14 collection violates the provisions of this chapter, the lender has no right to collect, receive, or
15 retain any interest or charges whatsoever. If a contract of loan in an amount of one thousand
16 dollars or less, or any willful act in its making or collection violates the provisions of this chapter,
17 the lender has no right to collect, receive, or retain any interest or charges on that loan.

18 **SECTION 6. AMENDMENT.** Section 13-04.1-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **13-04.1-06. Powers of the department of financial institutions.** Insofar as
21 consistent with the provisions of law, the department of financial institutions has the power to:

- 22 1. Determine the qualifications of all applicants based on financial responsibility,
23 financial condition, business experience, character, and general fitness, and issue
24 license if approved which must reasonably warrant the belief that the applicant's
25 business will be conducted lawfully and fairly. In determining whether this
26 qualification is met, and for the purpose of investigating compliance with the
27 chapter, the commissioner may review and consider the relevant business records
28 and capital adequacy of the applicant and the competence, experience, integrity,
29 and financial ability of a person who is a member, partner, director, officer, or
30 twenty-five percent or more shareholder of the applicant.
- 31 2. Establish codes of ethical conduct for licensees.

1 **SECTION 7.** A new section to chapter 13-04.1 of the North Dakota Century Code is
2 created and enacted as follows:

3 **Suspension and removal of money broker officers and employees.**

- 4 1. The commissioner of financial institutions may issue and serve upon a money
5 broker officer or employee and upon the licensee involved a complaint stating the
6 basis for the commissioner's belief that the officer or employee is willfully engaging
7 or has willfully engaged in any of the following conduct:
- 8 a. Violating a law, rule, order, or written agreement with the commissioner;
9 b. Engaging in harassment or abuse, the making of false or misleading
10 representations, or engaging in unfair practices involving lending activity; or
11 c. Performing an act of commission or omission or practice which is a breach of
12 trust or a breach of fiduciary duty.
- 13 2. The complaint must contain a notice of opportunity for hearing pursuant to chapter
14 28-32.
- 15 3. If a hearing is not requested within twenty days of the date the complaint is served
16 upon the officer or employee, or if a hearing is held and the commissioner finds
17 that the record so warrants, the commissioner may enter an order suspending or
18 temporarily removing the employee or officer from office for a period not exceeding
19 three years from the effective date of the suspension or temporary removal.
- 20 4. A contested or default suspension or temporary removal order is effective
21 immediately upon service of the order on the officer or employee and upon the
22 licensee. A consent order is effective as agreed. An officer or employee
23 suspended or temporarily removed from office pursuant to this section is not
24 eligible, while under suspension, for reinstatement to a position within a licensed
25 money broker.
- 26 5. When an officer or employee, or other person participating in the conduct of the
27 affairs of a licensee is charged with a felony in state or federal court which involves
28 dishonesty or breach of trust, the commissioner may immediately suspend the
29 person from office or prohibit the person from further participation in the affairs of
30 the money broker, or both. The order is effective immediately upon service of the
31 order on the licensee and the person charged and remains in effect until the

1 criminal charge is finally disposed of or until modified by the commissioner. If a
2 judgment of conviction, federal pretrial diversion, or similar state order or judgment
3 is entered, the commissioner may order that the suspension or prohibition be made
4 permanent. A finding of not guilty or other disposition of the charge does not
5 preclude the commissioner from pursuing administrative or civil remedies.

6 6. Under this section, a person engages in conduct "willfully" if the person acted
7 intentionally in the sense that the person was aware of what the person was doing.

8 **SECTION 8. AMENDMENT.** Section 13-04.1-07 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **13-04.1-07. Manner in which records to be kept.** Every money broker licensed under
11 this chapter shall keep a record of all sums collected by them and of all loans and leases
12 completed as a result of their efforts for a period of six years from the date of last entry thereon.
13 The records of a licensee may be maintained electronically provided they can be reproduced
14 upon request by the department of financial institutions and within the required statutory time
15 period provided in this section.

16 **SECTION 9.** A new section to chapter 13-04.1 of the North Dakota Century Code is
17 created and enacted as follows:

18 **Response to department requests.** An applicant, licensee, or other person subject to
19 the provisions of this chapter shall comply with requests for information, documents, or other
20 requests from the department of financial institutions within the time specified in the request,
21 which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing
22 of the request by the department of financial institutions. If the request for information is in
23 regard to a new application or renewal of an existing application and is not received within the
24 time specified in the request, or within thirty days of the mailing of the request, the department
25 may deny the application.

26 **SECTION 10. AMENDMENT.** Section 13-04.1-13 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **13-04.1-13. Penalty.** Any person violating any of the provisions of this chapter or any
29 rule or order of the department of financial institutions made pursuant to the provisions of this
30 chapter or who engages in any act, practice, or transaction declared by any provision of this
31 chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil

1 money penalty not to exceed five thousand dollars per violation upon a person or agency who
2 willfully violates a law, rule, or order under this chapter. An interested party may appeal the
3 assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written
4 notice of appeal within twenty days after service of the assessment of civil money penalties. A
5 civil money penalty collected under this section must be paid to the state treasurer and
6 deposited in the financial institutions regulatory fund.

7 **SECTION 11. AMENDMENT.** Section 13-05-06 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **13-05-06. Powers of the department of financial institutions.** Insofar as consistent
10 with other provisions of law, the department of financial institutions has the power to:

- 11 1. Determine the qualifications of all applicants based on financial responsibility,
12 financial condition, business experience, character, and general fitness and issue
13 licenses if approved which must reasonably warrant the belief that the applicant's
14 business will be conducted lawfully and fairly. In determining whether this
15 qualification is met, and for the purpose of investigating compliance with this
16 chapter, the commissioner may review and consider the relevant business records
17 and capital adequacy of the applicant and the competence, experience, integrity,
18 and financial ability of a person who is a member, partner, director, officer, or
19 twenty-five percent or more shareholder of the applicant.
- 20 2. Conduct investigations and make an examination of any licensee or licensee's
21 place of business, including all records of such business, and to subpoena
22 witnesses any time they have reason to believe such is necessary. The licensee
23 shall pay an examination or visitation fee and must be charged by the department
24 of financial institutions at an hourly rate to be set by the commissioner, sufficient to
25 cover all reasonable expenses of the department associated with the examination
26 or visitation provided for by this section. Fees must be paid to the state treasurer
27 and deposited in the financial institutions regulatory fund.
- 28 3. Establish codes of ethical conduct for licensees.
- 29 4. Adopt any and all rules and regulations necessary to carry out the purpose of this
30 chapter.

1 5. Issue and serve upon any person or licensed collection agency, an order to cease
2 and desist to take corrective action when the department has reason to believe the
3 person or agency is violating, has violated, or is about to violate the provisions of
4 this chapter. An interested party may appeal issuance of a cease and desist order
5 under the provisions of chapter 28-32 by filing written notice of appeal within twenty
6 days after service of the order.

7 ~~6. Impose civil money penalties against persons or agencies willfully violating an~~
8 ~~order to cease and desist in an amount not to exceed five hundred dollars for each~~
9 ~~violation. An interested party may appeal the assessment of a civil money penalty~~
10 ~~under the provisions of chapter 28-32 by filing written notice of appeal within twenty~~
11 ~~days after service of the assessment of civil money penalties. Any civil money~~
12 ~~penalties collected under this section must be paid to the state treasurer and~~
13 ~~deposited in the financial institutions regulatory fund.~~

14 **SECTION 12. AMENDMENT.** Section 13-05-07 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **13-05-07. Manner in which records and funds to be kept by collection agency.**

17 Every collection agency licensed under this chapter shall keep a record of all sums collected by
18 it and of all disbursements made by it for a period of six years from the date of last entry
19 thereon. The records of a licensee may be maintained electronically provided they can be
20 reproduced upon request of the department of financial institutions and within the required
21 statutory time period provided in this section. No collection agency, or any employees thereof,
22 may intentionally make any false entry in any such collection agency record or intentionally
23 mutilate, destroy, or otherwise dispose of any such record within the time limit provided in this
24 section. No licensee under this chapter may commingle the money of collection agency
25 customers with other than collection funds and shall maintain a separate bank account for such
26 customer's funds and shall keep such funds in the bank account until disbursed to the
27 customer.

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

30 **Response to department requests.** An applicant, licensee, or other person subject to
31 the provisions of this chapter shall comply with requests for information, documents, or other

1 requests from the department of financial institutions within the time specified in the request,
2 which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing
3 of the request by the department of financial institutions. If the request for information is in
4 regard to a new application or renewal of an existing application and is not received within the
5 time specified in the request, or within thirty days of the mailing of the request, the department
6 may deny the application.

7 **SECTION 14. AMENDMENT.** Section 13-05-10 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **13-05-10. Penalty.** Any person violating any of the provisions of this chapter is guilty of
10 a class A misdemeanor or C felony. The commissioner may impose a civil money penalty not to
11 exceed five thousand dollars per violation upon a person or agency who willfully violates a law,
12 rule, or order under this chapter. An interested party may appeal the assessment of a civil
13 money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within
14 twenty days after service of the assessment of civil money penalties. A civil money penalty
15 collected under this section must be paid to the state treasurer and deposited in the financial
16 institutions regulatory fund.

17 **SECTION 15. AMENDMENT.** Section 13-08-11 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **13-08-11. Retention of records.** Each licensee shall keep and use in the licensee's
20 business any books, accounts, and records the commissioner may require to carry into effect
21 the provisions of this chapter and the rules issued under this chapter. Every licensee shall
22 preserve required books, accounts, and records for at least six years. The records of a
23 licensee may be maintained electronically provided they can be reproduced upon request by
24 the department of financial institutions and within the required statutory time period provided in
25 this section.

26 **SECTION 16.** A new section to chapter 13-08 of the North Dakota Century Code is
27 created and enacted as follows:

28 **Response to department requests.** An applicant, licensee, or other person subject to
29 the provisions of this chapter shall comply with requests for information, documents, or other
30 requests from the department of financial institutions within the time specified in the request,
31 which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing

1 of the request by the department of financial institutions. If the request for information is in
2 regard to a new application or renewal of an existing application and is not received within the
3 time specified in the request, or within thirty days of the mailing of the request, the department
4 may deny the application.

5 **SECTION 17.** A new section to chapter 13-08 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Suspension and removal of deferred presentment service provider officers and**
8 **employees.**

- 9 1. The commissioner of financial institutions may issue and serve upon a deferred
10 presentment service provider officer or employee and upon the licensee involved a
11 complaint stating the basis for the commissioner's belief that the officer or
12 employee is willfully engaging or has willfully engaged in any of the following
13 conduct:
- 14 a. Violating a law, rule, order, or written agreement with the commissioner;
 - 15 b. Engaging in harassment or abuse, the making of false or misleading
16 representations, or engaging in unfair practices involving lending activity; or
 - 17 c. Performing an act of commission or omission or practice, which is a breach of
18 trust or a breach of fiduciary duty.
- 19 2. The complaint must contain a notice of opportunity for hearing pursuant to chapter
20 28-32.
- 21 3. If a hearing is not requested within twenty days of the date the complaint is served
22 upon the officer or employee, or if a hearing is held and the commissioner finds
23 that the record so warrants, the commissioner may enter an order suspending or
24 temporarily removing the employee or officer from office for a period not exceeding
25 three years from the effective date of the suspension or temporary removal.
- 26 4. A contested or default suspension or temporary removal order is effective
27 immediately upon service of the order on the officer or employee and upon the
28 licensee. A consent order is effective as agreed. An officer or employee
29 suspended or temporarily removed from office pursuant to this section is not
30 eligible, while under suspension, for reinstatement to a position within a licensed
31 deferred presentment service provider.

1 5. When an officer or employee, or other person participating in the conduct of the
2 affairs of a licensee is charged with a felony in state or federal court which involves
3 dishonesty or breach of trust, the commissioner may immediately suspend the
4 person from office or prohibit the person from further participation in the deferred
5 presentment service provider affairs, or both. The order is effective immediately
6 upon service of the order on the licensee and the person charged and remains in
7 effect until the criminal charge is finally disposed of or until modified by the
8 commissioner. If a judgment of conviction, federal pretrial diversion, or similar
9 state order or judgment is entered, the commissioner may order that the
10 suspension or prohibition be made permanent. A finding of not guilty or other
11 disposition of the charge does not preclude the commissioner from pursuing
12 administrative or civil remedies.

13 6. Under this section, a person engages in conduct "willfully" if the person acted
14 intentionally in the sense that the person was aware of what the person was doing.

15 **SECTION 18. AMENDMENT.** Section 13-08-15 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **13-08-15. Violations - Cease and desist orders - Penalties.** Except as otherwise
18 provided in this chapter, any person who willfully provides deferred presentment services
19 without a license is guilty of a class C felony and any person who violates any other provisions
20 of this chapter or any rule adopted to implement this chapter is guilty of an infraction. If the
21 commissioner finds, whether without a hearing or after a hearing if a hearing is requested within
22 twenty days of notice of an action by the commissioner under this section, that a person
23 violated this chapter or any rule adopted to implement this chapter, the commissioner may do
24 any one or more of the following:

- 25 1. Order the person to cease and desist violating this chapter or the rule.
- 26 2. Require the refund of any fees collected by the person in violation of this chapter.
- 27 3. Impose a civil penalty not to exceed ~~one thousand dollars per transaction for~~
28 ~~violation of a cease and desist order issued under this chapter or for violation of~~
29 ~~this chapter~~ five thousand dollars per violation upon a person or agency who
30 willfully violates a law, rule, or order under this chapter. An interested party may
31 appeal the assessment of a civil money penalty under the provisions of chapter

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1 28-32 by filing a written notice of appeal within twenty days after service of the
2 assessment of civil money penalties. A civil money penalty collected under this
3 section must be paid to the state treasurer and deposited in the financial
4 institutions regulatory fund.