

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2158
(Finance and Taxation Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact two new sections to chapter 13-03.1, two new sections to chapter 13-04.1, a new section to chapter 13-05, and two new sections to chapter 13-08 of the North Dakota Century Code, relating to authority to remove officers and employees from consumer finance, money broker, and deferred presentment service provider licensees and responses to department of financial institutions information requests; to amend and reenact 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, 13-05-07, 13-05-10, 13-08-11, and 13-08-15 of the North Dakota Century Code, relating to consumer finance company, money broker, and collection agency applicant qualifications, penalties for violating the consumer finance, money broker, collection agency, and deferred presentment service provider acts, and electronic record retention; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. Upon the filing of an application and the payment of the fees therefor the administrator shall investigate the facts concerning the application.
2. The administrator shall issue a license to operate a consumer finance loan business if the administrator finds:
 - a. That the financial responsibility, financial condition, business experience, character, and general fitness of the applicant are such as to must reasonably warrant the belief that the business will be operated conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the administrator 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; and
 - b. That the applicant has assets of at least twenty-five thousand dollars for the operation of the business.
3. The administrator shall approve or deny every application for a license hereunder within sixty days from the filing thereof with the fee.
4. No application may be denied until the applicant has had a notice of a hearing on the application and an opportunity to be heard thereon. Whenever an application is denied, the administrator shall, within twenty days thereafter, prepare and keep on file in the administrator's office a written order of denial thereof. The order must contain its findings with respect thereto and the reasons supporting the denial, and the administrator shall send a copy thereof by registered mail to the applicant at the address set forth in the application within five days after the filing of the order. If the administrator finds the applicant is not qualified to be issued a license, the administrator shall return the license fee but may retain the investigation fee.

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

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

Suspension and removal of consumer finance officers or employees.

1. The commissioner of financial institutions may issue and serve upon a consumer finance officer or employee and upon the consumer finance company involved a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - a. Violating a law, rule, order, or written agreement with the commissioner;
 - b. Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
 - c. Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the consumer finance company. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed consumer finance company.
5. When an officer or employee, or other person participating in the conduct of the affairs of a consumer finance company is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from any further participation in the consumer finance affairs, or both. The order is effective immediately upon service of the order on the consumer finance company and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

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

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

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with this chapter. The ~~recordkeeping system~~ records of

~~a licensee is sufficient if the licensee makes the required information reasonably available~~ may be maintained electronically provided all records can be reproduced upon request of the department of financial institutions and within the required statutory timeframe outlined in this section. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.

2. On or before July thirty-first each year the parent company of each licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all loans made by its licensees. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. The administrator may make and publish annually an analysis and recapitulation of such reports.
3. The administrator shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established pursuant to section 54-06-04, the administrator's report must include a summary or abstract of the annual reports filed with the administrator.

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

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

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

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

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

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

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness, ~~and issue license if approved~~ which 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 the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the

competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Establish codes of ethical conduct for licensees.

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

Suspension and removal of money broker officers and employees.

1. The commissioner of financial institutions may issue and serve upon a money broker officer or employee and upon the licensee involved a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - a. Violating a law, rule, order, or written agreement with the commissioner;
 - b. Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
 - c. Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the licensee. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed money broker.
5. When an officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the money broker, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

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

13-04.1-07. Manner in which records to be kept. Every money broker licensed under this chapter shall keep a record of all sums collected by them and of all loans and leases completed as a result of their efforts for a period of six years from the date of last entry thereon. The records of a

licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section.

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

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

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

13-04.1-13. Penalty. Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

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

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

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness ~~and issue licenses if approved~~ which 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 capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.
2. Conduct investigations and make an examination of any licensee or licensee's place of business, including all records of such business, and to subpoena witnesses any time they have reason to believe such is necessary. The licensee shall pay an examination or visitation fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
3. Establish codes of ethical conduct for licensees.
4. Adopt any and all rules and regulations necessary to carry out the purpose of this chapter.
5. Issue and serve upon any person or licensed collection agency, an order to cease and desist to take corrective action when the department has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An

interested party may appeal issuance of a cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.

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

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

13-05-07. Manner in which records and funds to be kept by collection agency. Every collection agency licensed under this chapter shall keep a record of all sums collected by it and of all disbursements made by it for a period of six years from the date of last entry thereon. The records of a licensee may be maintained electronically provided they can be reproduced upon request of the department of financial institutions and within the required statutory time period provided in this section. No collection agency, or any employees thereof, may intentionally make any false entry in any such collection agency record or intentionally mutilate, destroy, or otherwise dispose of any such record within the time limit provided in this section. No licensee under this chapter may commingle the money of collection agency customers with other than collection funds and shall maintain a separate bank account for such customer's funds and shall keep such funds in the bank account until disbursed to the customer.

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

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

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

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

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

13-08-11. 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. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section.

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

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

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

Suspension and removal of deferred presentment service provider officers and employees.

1. The commissioner of financial institutions may issue and serve upon a deferred presentment service provider officer or employee and upon the licensee involved a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - a. Violating a law, rule, order, or written agreement with the commissioner;
 - b. Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; or
 - c. Performing an act of commission or omission or practice, which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the licensee. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position within a licensed deferred presentment service provider.
5. When an officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the deferred presentment service provider affairs, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

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

13-08-15. 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~~ five thousand dollars per violation upon a person or agency who willfully violates a law, rule, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2158.

Senate Vote: Yeas 46 Nays 0 Absent 1

House Vote: Yeas 85 Nays 0 Absent 9

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State