

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1117
(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact three new sections to chapter 13-03.1 and sections 13-04.1-01.1, 13-04.1-02.1, 13-05-01.1, and 13-05-02.3 of the North Dakota Century Code, relating to fraudulent financial practices, prohibition of advance fees, orders and injunctions of the department of financial institutions, definitions, and exemptions; and to amend and reenact sections 13-04.1-02 and 13-05-02 and subsection 1 of section 13-05-02.2 of the North Dakota Century Code, relating to money broker and collection agency licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

Fraudulent practices. It is a fraudulent practice and it is unlawful:

1. For a person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in an application or other document or statement required to be filed under a provision of this chapter, or to omit to state a material statement or fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.
2. For a person, in connection with the procurement or promise of procurement of a lender or loan funds, directly or indirectly, to employ a device, scheme, or artifice to defraud.
3. For a person, in connection with the procurement or promise of procurement of a lender or loan funds, directly or indirectly, to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statement made, in the light of the circumstances under which it is made, not misleading.

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

Advance fees prohibited - Exception. A person may not take any type of fee in advance before the funding of the loan or lease, unless the person is licensed under this chapter.

SECTION 3. A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

Orders and injunctions. Whenever it appears to the department of financial institutions either upon complaint or otherwise that a person has engaged in, is engaging in, or is about to engage in an act or practice or transaction that is prohibited by this chapter, or by an order of the department issued pursuant to a section of this chapter or which is declared to be illegal in this chapter, the department may:

1. Issue an order, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public. However, a person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if the request is made within ten days after receipt of the order. The hearing must be held in accordance with chapter 28-32 as must an appeal therefrom.

2. Apply to the district court of any county in this state for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In a proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

SECTION 4. Section 13-04.1-01.1 of the North Dakota Century Code is created and enacted as follows:

13-04.1-01.1. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Borrower" means a person or entity that seeks out, or is solicited by a money broker for the purpose of money brokering.
2. "Commissioner" means the commissioner of financial institutions.
3. "Money broker" means a person or entity who, in the ordinary course of business, engages in money brokering.
4. "Money brokering" means the act of arranging or providing loans or leases as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes.

SECTION 5. AMENDMENT. Section 13-04.1-02 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02. Money broker license required. ~~Except as otherwise herein provided, a person other than a money broker licensed and authorized under this chapter may not provide loans or leases as a form of financing, or advertise or solicit either in print, by letter, in person, or otherwise in engage in money brokering in the state of North Dakota, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes. As used in this chapter, the term "money broker" does not include banks, credit unions, savings and loan associations, insurance companies, small loan companies, consumer finance companies, state or federal agencies and their employees, institutions chartered by the farm credit administration, trust companies, or any other person or business regulated and licensed by the state of North Dakota. The term "money broker" also does not include a real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson. The term "money broker" also does not include any persons, retail sellers, or manufacturers providing lease financing for their own property or inventory held as a normal course of business, or to leases on any real property without a money broker license issued by the commissioner. A person engages in money brokering in North Dakota if the borrower resides in North Dakota.~~

SECTION 6. Section 13-04.1-02.1 of the North Dakota Century Code is created and enacted 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;
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 7. Section 13-05-01.1 of the North Dakota Century Code is created and enacted as follows:

13-05-01.1. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Collection agency" means a person or entity who, in the ordinary course of business, engages in debt collection.
2. "Commissioner" means the commissioner of financial institutions.
3. "Communication" means the conveyance or receipt of information regarding or facilitating the collection of a debt, directly or indirectly, to or from any person through any medium.
4. "Creditor" means a person who offers or extends credit creating a debt or to whom a debt is owed, but that term does not include a person to the extent that that person receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of that debt for another.
5. "Debt" means an obligation or alleged obligation to pay money arising out of a transaction, whether or not the obligation has been reduced to a judgment.
6. "Debt collection" means the act of collecting or attempting to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. As used in this chapter, this term also includes solicitation of debts for the purpose of collection and accepting assignment of debts for the purpose of collection.
7. "Mortgage servicing company" means a company performing the required duties of a mortgage seller, such as collecting payments, releasing the lien on full payment, and confirming that taxes are paid and insurance is in force.

SECTION 8. AMENDMENT. Section 13-05-02 of the North Dakota Century Code is amended and reenacted as follows:

13-05-02. Collection agency license required to collect claims. Except as otherwise herein provided in this chapter, no person, other than a collection agency licensed and authorized under this chapter, may advertise or solicit either in print, by letter, in person, or otherwise, the right to collect or

~~receive payment of any claim for another or sell or give away collection letters as demand forms engage in debt collection in the state of North Dakota without a collection agency license issued by the commissioner. A person engages in debt collection in North Dakota if the debtor resides in North Dakota. As used in this chapter, the term "collection agency" does not include attorneys at law who are licensed to practice in the state of North Dakota, licensed real estate brokers, banks, trust companies, building and loan associations, credit unions, agencies of a state or of the federal government, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of creditman upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court. A person may not be considered to be engaged in collection activity within this state if that person's activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and the state has enacted similar legislation.~~

SECTION 9. AMENDMENT. Subsection 1 of section 13-05-02.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding ~~section~~ sections 13-05-02 and 13-05-02.3, a collection agency attempting in any manner to collect child support as defined in section 14-09-09.10 must be licensed under this chapter if either the child support debtor or creditor reside within this state, if the child support debt arises under an order issued by a court of this state, or if a record of the child support debt is being maintained on the statewide automated data processing system under section 50-09-02.1.

SECTION 10. Section 13-05-02.3 of the North Dakota Century Code is created and enacted as follows:

13-05-02.3. Entities exempt from licensing requirements. This chapter does not apply to:

1. Attorneys at law who are licensed to practice in the state of North Dakota. This exemption is limited to the actions of the licensed attorney and does not extend to persons either employed by the attorney or acting on behalf of the attorney;
2. Licensed real estate brokers;
3. Banks;
4. Trust companies;
5. Building and loan associations;
6. Credit unions;
7. Agencies of a state or of the federal government;
8. Abstract companies doing an escrow business;
9. Creditors collecting their own debts;
10. Mortgage servicing company;
11. Individuals or firms who purchase or take accounts receivable for collateral purposes;
12. Individuals employed in the capacity of creditmen upon the staff of an employer not engaged in the business of a collection agency;
13. A public officer, receiver, or trustee acting under the order of a court; or

14. A person whose activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and that state has enacted similar legislation.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1117.

House Vote: Yeas 94 Nays 0 Absent 0

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State