

SENATE BILL NO. 2124

Introduced by

Judiciary Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact sections 13-04.1-04.1 and 13-04.1-04.2 and four new
2 sections to chapter 13-04.1 of the North Dakota Century Code, relating to surety bond
3 requirements, minimum net worth requirements, confidentiality, notice regarding change of
4 name and address, call reports, and commissioner reporting to nationwide mortgage licensing
5 system and registry with regard to money brokers; to amend and reenact sections 13-04.1-03,
6 13-04.1-04, 13-04.1-07, 13-04.1-08, 13-04.1-08.1, 13-04.1-09, 13-04.1-11, and 13-10-03 of the
7 North Dakota Century Code, relating to application for branch offices, maintenance of records,
8 revocation of license, suspension and removal of agency officers and employees, prohibited
9 acts and practices, investigation and examination authority of money brokers, and licensing and
10 registration of mortgage loan originators; and to provide a penalty.

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

12 **SECTION 1. AMENDMENT.** Section 13-04.1-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **13-04.1-03. Application for money broker license.**

15 Every application for a money broker license or branch registration, or for a renewal thereof,
16 must be made upon forms designed and furnished by the department of financial institutions
17 and must contain any information which the department shall deem necessary and proper. A
18 branch registration that constitutes a net branch or net branching arrangement is prohibited.
19 The department may adopt rules defining the meaning of a net branch or net branching
20 arrangement. The department may further require any application to provide additional
21 information which is not requested on the application form. The applicant must register with the
22 North Dakota secretary of state if so required.

23 **SECTION 2. AMENDMENT.** Section 13-04.1-04 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **13-04.1-04. Fee and bond to accompany application for money broker license.**

2 The application for license must be in writing, under oath, and in the form prescribed by the
3 commissioner. The application must give the location where the business is to be conducted
4 and must contain any further information the commissioner requires, including the names and
5 addresses of the partners, officers, directors, trustees, and the principal owners or members, as
6 will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At
7 the time of making such application, the applicant shall include payment in the sum of four
8 hundred dollars, which is not subject to refund, as a fee for investigating the application, and the
9 sum of four hundred dollars for the annual license fee, ~~and provide a surety bond in the sum of~~
10 ~~twenty-five thousand dollars~~. In addition, the applicant must pay a fifty dollar annual fee for each
11 branch location within the state. Fees must be deposited in the financial institutions regulatory
12 fund.

13 **SECTION 3.** Section 13-04.1-04.1 of the North Dakota Century Code is created and
14 enacted as follows:

15 **13-04.1-04.1. Surety bond required.**

- 16 1. Each licensee shall maintain a surety bond in an amount not less than twenty-five
17 thousand dollars or such other amount determined by the commissioner by rule. The
18 amount must be reflective of the dollar amount of loans originated as of the previous
19 yearend. However, the commissioner may increase the amount of the surety bond if
20 the commissioner determines that such an increase is necessary to protect the public
21 interest. The surety bond must be in a form prescribed by the commissioner.
22 2. When an action is commenced on a licensee's bond, the commissioner may require
23 the filing of a new bond.
24 3. Immediately upon recovery upon any action on the bond, the licensee shall file a new
25 bond.

26 **SECTION 4.** Section 13-04.1-04.2 of the North Dakota Century Code is created and
27 enacted as follows:

28 **13-04.1-04.2. Minimum net worth required.**

29 A minimum net worth must be continuously maintained by every licensee in accordance
30 with this section.

- 1 1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.
- 2 However, the commissioner may increase the amount of minimum net worth if the
- 3 commissioner determines that such an increase is necessary to protect the public
- 4 interest.
- 5 2. The commissioner may adopt rules with respect to the requirements for minimum net
- 6 worth as are necessary to accomplish the purposes of this chapter.

7 **SECTION 5. AMENDMENT.** Section 13-04.1-07 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **13-04.1-07. Manner in which records to be kept.**

10 Every money broker licensed under this chapter shall keep a record of all sums collected by
11 them and of all loans and leases completed as a result of their efforts for a period of six years
12 from the date of last entry thereon. The records of a licensee may be maintained electronically
13 provided they can be reproduced upon request by the department of financial institutions and
14 within the required statutory time period provided in this section. When a licensee ceases
15 operations for any reason, the licensee shall inform the department of the location of the
16 records. In addition, the licensee shall provide the name of the individual responsible for
17 maintenance of the records. The licensee shall notify the department within ten days of the
18 change of the location of the records or the change of the individual responsible for
19 maintenance of the records.

20 **SECTION 6. AMENDMENT.** Section 13-04.1-08 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **13-04.1-08. Revocation of license - Suspension of license - Surrender of license.**

- 23 1. ~~The department of financial institutions~~commissioner may, if it has reason to believe
24 ~~that grounds for revocation of a license exist, send by registered or certified mail to the~~
25 ~~licensee, a notice of hearing stating the contemplated action and in general the~~
26 ~~grounds thereof and setting the time and place for a hearing thereon. Such hearing~~
27 ~~must be held in accordance with chapter 28-32 as must any appeal therefrom. issue~~
28 ~~and serve upon any licensee an order suspending or revoking a licensee's license if~~
29 ~~the commissioner finds that:~~
 - 30 a. The licensee has failed to pay the annual license fee under this chapter or any
 - 31 examination fee imposed by the commissioner under the authority of this chapter.

- 1 **b.** The licensee, either knowingly or without the exercise of due care to prevent the
2 same, has violated any provision of this chapter or any regulation or order
3 lawfully made pursuant to and within the authority of this chapter.
4 **c.** Any fact or condition existing at the time of the original application for such
5 license which clearly would have warranted the department of financial
6 institutions in refusing originally to issue such license.
7 **d.** The licensee has failed to maintain the required bond.
8 **e.** The licensee has failed to maintain registration with the secretary of state if so
9 required.

10 **2.** The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.

11 **3.** If no hearing is requested within twenty days of the date the order is served upon the
12 licensee, or if a hearing is held and the commissioner finds that the record so
13 warrants, the commissioner may enter a final order suspending or revoking the
14 license.

15 ~~2.4.~~ If the department of financial institutions commissioner finds that probable cause for
16 revocation of any license exists and that enforcement of the chapter requires
17 immediate suspension of such license pending investigation, it may, upon written
18 notice, enter an order suspending such license for a period not exceeding ~~thirty~~sixty
19 days, pending the holding of a hearing as prescribed in this chapter.

20 ~~3.5.~~ Any licensee may surrender the licensee's license by delivering it to the department of
21 financial institutions with written notice of its surrender, but such surrender does not
22 affect the licensee's civil or criminal liability for acts committed prior thereto.

23 **SECTION 7. AMENDMENT.** Section 13-04.1-08.1 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **13-04.1-08.1. Suspension and removal of money broker officers and employees.**

26 1. The commissioner of financial institutions may issue and serve upon a current or
27 former money broker officer or employee and upon the licensee involved a
28 complaintan order stating the basis for the commissioner's belief that the:

29 **a.** That the current or former officer or employee is willfully engaging or has willfully
30 engaged in any of the following conduct:

31 **a.** (1) Violating a law, rule, order, or written agreement with the commissioner;.

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

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

7 **SECTION 8. AMENDMENT.** Section 13-04.1-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **13-04.1-09. ~~Fraudulent~~Prohibited acts and practices.**

10 It is a ~~fraudulent practice and it is unlawful~~violation of this chapter for a person subject to
11 this chapter to knowingly:

- 12 1. ~~For any person knowingly to subscribe to, or make~~Make or cause to be made, any
13 material false statement or representation in any application or other document or
14 statement required to be filed under any provision of this chapter, or to omit to state
15 any material statement or fact necessary in order to make the statements made, in
16 light of the circumstances under which they are made, not misleading.
- 17 2. ~~For any person, in connection with the procurement or promise of procurement of any~~
18 ~~lender or loan funds, directly~~Directly or indirectly, ~~to~~ employ any device, scheme, or
19 artifice to defraud or mislead borrowers or lenders to defraud any person.
- 20 3. ~~For any person, in connection with the procurement or promise of procurement of any~~
21 ~~lender or loan funds, directly~~Directly or indirectly, ~~to~~ make any untrue statement of a
22 material fact or to omit to state a material fact necessary in order to make the
23 statements made, in the light of the circumstances under which they are made, not
24 misleading in connection with the procurement or promise of procurement of any
25 lender or loan funds.
- 26 4. Engage in any unfair or deceptive practice toward any person.
- 27 5. Obtain property by fraud or misrepresentation.
- 28 6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other
29 financing terms unless the terms are actually available at the time of soliciting,
30 advertising, or contracting.

- 1 7. Conduct any business covered by this chapter without holding a valid license as
- 2 required under this chapter, or assist or aid and abet any person in the conduct of
- 3 business under this chapter without a valid license as required under this chapter.
- 4 8. Fail to make disclosures as required by this chapter and any other applicable state or
- 5 federal law and regulations.
- 6 9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply
- 7 with any other state or federal law, including the rules and regulations thereunder,
- 8 applicable to any business authorized or conducted under this chapter.
- 9 10. Make, in any manner, any false or deceptive statement or representation, including,
- 10 with regard to the rates, points, or other financing terms or conditions for a residential
- 11 mortgage loan or engage in bait and switch advertising.
- 12 11. Negligently make any false statement or knowingly and willfully make any omission of
- 13 material fact in connection with any information or reports filed with a governmental
- 14 agency or the nationwide mortgage licensing system and registry or in connection with
- 15 any investigation conducted by the commissioner or another governmental agency.
- 16 12. Make any payment, threat, or promise, directly or indirectly, to any person for the
- 17 purposes of influencing the independent judgment of the person in connection with a
- 18 loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of
- 19 a property, for the purposes of influencing the independent judgment of the appraiser
- 20 with respect to the value of the property.
- 21 13. Collect, charge, attempt to collect or charge, or use or propose any agreement
- 22 purporting to collect or charge any fee prohibited by this chapter.
- 23 14. Cause or require a borrower to obtain property insurance coverage in an amount that
- 24 exceeds the replacement cost of the improvements as established by the property
- 25 insurer.
- 26 15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
- 27 16. Conduct another business within the same office, suite, room, or place of business at
- 28 which the licensee engages in money broker business unless the commissioner
- 29 provides written authorization after a determination the other business is not contrary
- 30 to the best interests of any borrower or potential borrower.

1 **SECTION 9. AMENDMENT.** Section 13-04.1-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **13-04.1-11. Investigations and, subpoenas, and examination authority.**

4 In addition to any authority allowed under this chapter, the commissioner may conduct
5 investigation and examinations as follows:

6 1. The department of financial institutions in its discretion:

7 a. May make such public or private investigation or examination within or outside
8 this state as it deems necessary to determine whether any person has violated or
9 is about to violate any provision of this chapter or any rule or order hereunder, or
10 to aid in the enforcement of this chapter or in the prescribing of rules and forms
11 hereunder. The licensee shall pay an investigation or examination fee and must
12 be charged by the department of financial institutions at an hourly rate to be set
13 by the commissioner, sufficient to cover all reasonable expenses of the
14 department associated with the visitation provided for by this section. Fees must
15 be paid to the state treasurer and deposited in the financial institutions regulatory
16 fund.

17 b. May require or permit any person to file a statement in writing, under oath or
18 otherwise as the department determines, as to all the facts and circumstances
19 concerning the matter to be investigated or examined.

20 c. May publish information concerning any violation of this chapter or any rule or
21 order hereunder.

22 2. For the purpose of any investigation, examination, or proceeding under this chapter,
23 the department of financial institutions may administer oaths and affirmations,
24 subpoena witnesses, compel their attendance, take evidence, and require the
25 production of any books, papers, correspondence, memoranda, agreements, or other
26 documents or records which the department deems relevant or material to the inquiry.

27 3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the
28 district court, upon application by the department of financial institutions, may issue to
29 the person an order requiring such person to appear before the department, there to
30 produce documentary evidence if so ordered or to give evidence touching the matter

1 in question under investigation or ~~in question~~examination. Failure to obey the order of
2 the court may be punished by the court as a contempt of court.

3 4. No person is excused from attending and testifying or from producing any document or
4 record before the department of financial institutions, or in obedience to the subpoena
5 of the department, or in any proceeding instituted by the department, on the grounds
6 that the testimony or evidence, documentary or otherwise, required of such person
7 may tend to incriminate such person or subject such person to a penalty forfeiture; but
8 no individual may be prosecuted or subjected to any penalty or forfeiture for or on
9 account of any transaction, matter, or thing concerning which such person is
10 compelled, after claiming the privilege against self-incrimination, to testify or produce
11 evidence, documentary or otherwise, except that the individual testifying is not exempt
12 from prosecution and punishment for perjury or contempt committed in testifying.

13 5. For purposes of initial licensing, license renewal, license suspension, license
14 conditioning, license revocation or termination, or general or specific inquiry or
15 investigation to determine compliance with this chapter, the commissioner may
16 access, receive, and use any books, accounts, records, files, documents, information,
17 or evidence, including:

- 18 a. Criminal, civil, and administrative history information, including nonconviction
19 data;
20 b. Personal history and experience information, including independent credit reports
21 obtained from a consumer reporting agency described in section 603(p) of the
22 Fair Credit Reporting Act; and
23 c. Any other documents, information, or evidence the commissioner deems relevant
24 to the inquiry or investigation regardless of the location, possession, control, or
25 custody of such documents, information, or evidence.

26 6. For purposes of investigating violations or complaints arising under this chapter, or for
27 purposes of examination, the commissioner may review, investigate, or examine any
28 licensee or person subject to this chapter, as often as necessary in order to carry out
29 the purposes of this chapter.

30 7. Each licensee or person subject to this chapter shall make available to the
31 commissioner upon request the books and records relating to the operations of such

1 licensee or person subject to this chapter. The commissioner shall have access to
2 such books and records and interview the officers, principals, mortgage loan
3 originators, employees, independent contractors, agents, and customers of the
4 licensee or person subject to this chapter concerning their business.

5 8. Each licensee or person subject to this chapter shall make or compile reports or
6 prepare other information as directed by the commissioner in order to carry out the
7 purposes of this section, including:

8 a. Accounting compilations;

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

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

13 9. In making any investigation or examination authorized by this chapter, the
14 commissioner may control access to any documents and records of the licensee or
15 person under investigation or examination. The commissioner may take possession of
16 the documents and records or place a person in exclusive charge of the documents
17 and records in the place where they are usually kept. During the period of control, a
18 person may not remove or attempt to remove any of the documents and records
19 except pursuant to a court order or with the consent of the commissioner. Unless the
20 commissioner has reasonable grounds to believe the documents or records of the
21 licensee have been, or are at risk of being altered or destroyed for purposes of
22 concealing a violation of this chapter, the licensee or owner of the documents and
23 records may have access to the documents or records as necessary to conduct its
24 ordinary business affairs.

25 10. In order to carry out the purposes of this section, the commissioner may:

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

29 b. Enter into agreements or relationships with other government officials or
30 regulatory associations in order to improve efficiencies and reduce regulatory

- 1 burden by sharing resources, standardized or uniform methods or procedures,
2 and documents, records, information, or evidence obtained under this section;
3 c. Use, hire, contract, or employ publicly or privately available analytical systems,
4 methods, or software to examine or investigate the licensee, individual, or person
5 subject to this chapter;
6 d. Accept and rely on examination or investigation reports made by other
7 government officials, within or without this state; and
8 e. Accept audit reports made by an independent certified public accountant for the
9 licensee or person subject to this chapter in the course of that part of the
10 examination covering the same general subject matter as the audit and may
11 incorporate the audit report in the report of the examination, report of
12 investigation, or other writing of the commissioner.

13 11. The authority of this section remains in effect, whether such a licensee or person
14 subject to this chapter acts or claims to act under any licensing or registration law of
15 this state or claims to act without such authority.

16 12. A licensee or person subject to investigation or examination under this section may not
17 knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records,
18 computer records, or other information.

19 **SECTION 10.** A new section to chapter 13-04.1 of the North Dakota Century Code is
20 created and enacted as follows:

21 **Confidentiality.**

22 To promote more effective regulation and reduce regulatory burden through supervisory
23 information sharing:

- 24 1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements
25 under any federal law or chapter 44-04 regarding the privacy or confidentiality of any
26 information or material provided to the nationwide mortgage licensing system and
27 registry, and any privilege arising under federal or state law, including the rules of any
28 federal or state court, with respect to such information or material, continue to apply to
29 such information or material after the information or material has been disclosed to the
30 nationwide mortgage licensing system and registry. Such information and material
31 may be shared with all state and federal regulatory officials with mortgage industry

1 oversight authority without the loss of privilege or the loss of confidentiality protections
2 provided by federal law or chapter 44-04.

3 2. For these purposes, the commissioner may enter agreements or sharing
4 arrangements with other governmental agencies, the conference of state bank
5 supervisors, the American association of residential mortgage regulators, or other
6 associations representing governmental agencies as established by rule or order of
7 the commissioner.

8 3. Information or material that is subject to a privilege or confidentiality under
9 subsection 1 is not subject to:

10 a. Disclosure under any federal or state law governing the disclosure to the public of
11 information held by an officer or an agency of the federal government or the
12 respective state; or

13 b. Subpoena or discovery, or admission into evidence, in any private civil action or
14 administrative process, unless with respect to any privilege held by the
15 nationwide mortgage licensing system and registry with respect to such
16 information or material, the person to whom such information or material pertains
17 waives, in whole or in part, in the discretion of such person, that privilege.

18 4. Application of chapter 44-04 relating to the disclosure of confidential supervisory
19 information or any information or material described in subsection 1 which is
20 inconsistent with subsection 1 is superseded by the requirements of this section.

21 **SECTION 11.** A new section to chapter 13-04.1 of the North Dakota Century Code is
22 created and enacted as follows:

23 **Change of name or address.**

24 A licensee is required to submit within ten days of the date of change notification of a
25 change of name or change of address. The notification must be in the form prescribed by the
26 commissioner. In addition, the licensee shall submit the original license certificate for reissue.

27 **SECTION 12.** A new section to chapter 13-04.1 of the North Dakota Century Code is
28 created and enacted as follows:

1 **Call reports.**

2 Each licensee shall submit to the nationwide mortgage licensing system and registry reports
3 of condition which must be in such form and must contain such information as the nationwide
4 mortgage licensing system and registry may require.

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

7 **Report to nationwide mortgage licensing system and registry.**

8 Notwithstanding state privacy law, the commissioner shall report regularly violations of this
9 chapter, as well as enforcement actions and other relevant information, to the nationwide
10 mortgage licensing system and registry subject to the provisions contained in section 13-10-15.

11 **SECTION 14. AMENDMENT.** Section 13-10-03 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **13-10-03. License and registration required.**

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

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

30 3. The following are exempt from this chapter:

- 1 a. Registered mortgage loan originators, when acting for an entity described in
2 subdivision a of subsection 11 of section 13-10-02 are exempt from this chapter.
- 3 b. Any individual who offers or negotiates terms of a residential mortgage loan with
4 or on behalf of an immediate family member of the individual.
- 5 c. Any individual who offers or negotiates terms of a residential mortgage loan
6 secured by a dwelling that served as the individual's residence.
- 7 d. A licensed attorney who negotiates the terms of a residential mortgage loan on
8 behalf of a client as an ancillary matter to the attorney's representation of the
9 client, unless the attorney is compensated by a lender, a mortgage broker, or
10 other mortgage loan originator or by any agent of such lender, mortgage broker,
11 or other mortgage loan originator.
- 12 4.3. A loan processor or underwriter who is an independent contractor may not engage in
13 the activities of a loan processor or underwriter unless such independent contractor
14 loan processor or underwriter obtains and maintains a license under subsection 1.
15 Each independent contractor loan processor or underwriter licensed as a mortgage
16 loan originator must have and maintain a valid unique identifier issued by the
17 nationwide mortgage licensing system and registry.
- 18 ~~5.4.~~ To implement an orderly and efficient licensing process, the commissioner may
19 establish licensing rules or regulations and interim procedures for licensing and
20 acceptance of applications. For previously registered or licensed individuals, the
21 commissioner may establish expedited review and licensing procedures.