

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1101

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact sections 13-04.1-18, 13-08-16, and 13-11-31 of the North
2 Dakota Century Code, relating to the customer information of money brokers, deferred
3 presentment service providers, and debt-settlement providers; ~~and~~ to amend and reenact
4 sections 13-04.1-01.1, 13-04.1-02.1, 13-04.1-04, 13-04.1-09, 13-04.1-15, 13-05-04, 13-05-05.1,
5 subsection 13 of section 13-09-02, sections 13-09-03, ~~and~~ 13-09-07.1, and ~~subsection 1 of~~
6 ~~section~~ 13-10-03 of the North Dakota Century Code, relating to money ~~broker licensing-~~
7 ~~requirements and fees~~ brokers, collection ~~agency licensing requirements and fees~~ agencies,
8 money ~~transmitter licensing requirements~~ transmitters, and mortgage loan ~~originator license-~~
9 ~~exemptions~~ originators; and to declare an emergency.

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

11 **SECTION 1. AMENDMENT.** Section 13-04.1-01.1 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **13-04.1-01.1. Definitions.**

14 As used in this chapter, unless the context or subject matter otherwise requires:

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

- 1 5. "Net branch" means an office at which a licensed money broker allows a separate
2 person that does not hold a valid North Dakota money brokers license to originate
3 loans under the license of the money broker.
- 4 6. "Net branch arrangement" means an arrangement under which a licensed money
5 broker enters an agreement whereby its designated branch manager has the
6 appearance of ownership of the licensee by, among other things, sharing in the profits
7 or losses, establishing, leasing, or renting the branch premises, entering other
8 contractual relationships with vendors such as for telephones, utilities, and advertising,
9 having control of a corporate checkbook, or exercising control of personnel through
10 the power to hire or fire such individuals. A person may be considered to be utilizing a
11 net branch if the net branch agreement requires the branch manager to indemnify the
12 licensee for damages from any apparent, express, or implied agency representation
13 by or through the branch's actions or if the agreement requires the branch manager to
14 issue a personal check to cover operating expenses whether or not funds are
15 available from an operating account of the licensee.
- 16 7. "Precomputed loan" means a loan which is expressed as a sum comprising the
17 principal and the amount of the loan finance charge computed in advance.

18 **SECTION 2. AMENDMENT.** Section 13-04.1-02.1 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **13-04.1-02.1. Entities exempted from licensing requirements.**

21 This chapter does not apply to:

- 22 1. Banks;
- 23 2. Credit unions;
- 24 3. Savings and loan associations;
- 25 4. Insurance companies;
- 26 5. Individuals licensed under chapter 13-10;
- 27 6. State or federal agencies and their employees;
- 28 7. Institutions chartered by the farm credit administration;
- 29 8. Trust companies;
- 30 9. Any other person or business regulated and licensed to lend money by the state of
31 North Dakota;

- 1 10. A real estate broker, broker, or a real estate salesperson as defined in section
2 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real
3 estate sold by the real estate broker, broker, or real estate salesperson; or
4 11. Any person, retail seller, or manufacturer providing lease financing for its own property
5 or inventory held as a normal course of business, or to leases on any real property.

6 **SECTION 3. AMENDMENT.** Section 13-04.1-04 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **13-04.1-04. Fee to accompany application for money broker license.**

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

19 **SECTION 4. AMENDMENT.** Section 13-04.1-09 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **13-04.1-09. Prohibited acts and practices.**

22 It is a violation of this chapter for a person subject to this chapter to knowingly:

- 23 1. Make or cause to be made any material false statement or representation in any
24 application or other document or statement required to be filed under any provision of
25 this chapter, or to omit to state any material statement or fact necessary in order to
26 make the statements made, in light of the circumstances under which they are made,
27 not misleading.
28 2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead
29 borrowers or lenders to defraud any person.
30 3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a
31 material fact necessary in order to make the statements made, in the light of the

- 1 circumstances under which they are made, not misleading in connection with the
- 2 procurement or promise of procurement of any lender or loan funds.
- 3 4. Engage in any unfair or deceptive practice toward any person.
- 4 5. Obtain property by fraud or misrepresentation.
- 5 6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other
- 6 financing terms unless the terms are actually available at the time of soliciting,
- 7 advertising, or contracting.
- 8 7. Conduct any business covered by this chapter without holding a valid license as
- 9 required under this chapter, or assist or aid and abet any person in the conduct of
- 10 business under this chapter without a valid license as required under this chapter.
- 11 8. Fail to make disclosures as required by this chapter and any other applicable state or
- 12 federal law and regulations.
- 13 9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply
- 14 with any other state or federal law, including the rules and regulations thereunder,
- 15 applicable to any business authorized or conducted under this chapter.
- 16 10. Make, in any manner, any false or deceptive statement or representation, including,
- 17 with regard to the rates, points, or other financing terms or conditions for a residential
- 18 mortgage loan or engage in bait and switch advertising.
- 19 11. Negligently make any false statement or knowingly and willfully make any omission of
- 20 material fact in connection with any information or reports filed with a governmental
- 21 agency or the nationwide mortgage licensing system and registry or in connection with
- 22 any investigation conducted by the commissioner or another governmental agency.
- 23 12. Make any payment, threat, or promise, directly or indirectly, to any person for the
- 24 purposes of influencing the independent judgment of the person in connection with a
- 25 loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of
- 26 a property, for the purposes of influencing the independent judgment of the appraiser
- 27 with respect to the value of the property.
- 28 13. Collect, charge, attempt to collect or charge, or use or propose any agreement
- 29 purporting to collect or charge any fee prohibited by this chapter.

- 1 14. Cause or require a borrower to obtain property insurance coverage in an amount that
- 2 exceeds the replacement cost of the improvements as established by the property
- 3 insurer.
- 4 15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
- 5 16. Conduct another business within the same office, suite, room, or place of business at
- 6 which the licensee engages in money broker business unless the commissioner
- 7 provides written authorization after a determination the other business is not contrary
- 8 to the best interests of any borrower or potential borrower.
- 9 17. Enter any agreement that constitutes a precomputed loan.

10 **SECTION 5. AMENDMENT.** Section 13-04.1-15 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **13-04.1-15. Change of name or address.**

13 A licensee is required to submit within twenty business days of the date of change
14 notification of a change of name or change of address. The notification must be in the form
15 prescribed by the commissioner. ~~In addition, the licensee shall submit the original license-~~
16 ~~certificate for reissue.~~

17 **SECTION 6.** Section 13-04.1-18 of the North Dakota Century Code is created and enacted
18 as follows:

19 **13-04.1-18. Disclosure of customer information.**

20 Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter
21 6-08.1 applies to all money brokers licensed under this chapter.

22 **SECTION 7. AMENDMENT.** Section 13-05-04 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **13-05-04. Application requirements - Fee to accompany application for collection**
25 **agency license.**

26 The application for a collection agency license must be in writing, under oath, and in the
27 form prescribed by the commissioner. The application must give the location where the
28 business is to be conducted and must contain any further information the commissioner
29 requires, including the names and addresses of the partners, officers, directors, trustees, and
30 the principal owners or members as will provide the basis for the investigation and findings
31 contemplated by section 13-05-03. At the time of making such application, the applicant shall

1 include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for
2 investigating the application, and the sum of ~~three~~four hundred dollars for the annual license. In
3 addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be
4 deposited in the financial institutions regulatory fund.

5 **SECTION 8. AMENDMENT.** Section 13-05-05.1 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **13-05-05.1. Change of name or address.**

8 A licensee is required to submit within twenty business days of the date of change,
9 notification of a change of name or change of address. The notification must be in the form
10 prescribed by the commissioner. ~~In addition, the licensee shall submit the original license-~~
11 ~~certificate for reissue.~~

12 **SECTION 9.** Section 13-08-16 of the North Dakota Century Code is created and enacted as
13 follows:

14 **13-08-16. Disclosure of customer information.**

15 Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter
16 6-08.1 applies to all persons licensed under this chapter.

17 **SECTION 10. AMENDMENT.** Subsection 13 of section 13-09-02 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 13. "Money transmission" means to engage in the business of the sale or issuance of
20 payment instruments, stored value, or of receiving money or monetary value for
21 transmission to a location within or outside the United States by any and all means,
22 including wire, facsimile, or electronic transfer. Notwithstanding any other provision of
23 law, "money transmission" also includes bill payment services not limited to the right to
24 receive payment of any claim for another, but does not include payment processing
25 activities conducted for a merchant under an agency relationship.

26 **SECTION 11. AMENDMENT.** Section 13-09-03 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **13-09-03. Exclusions.**

29 This chapter does not apply to:

- 30 1. The United States or any department, agency, or instrumentality thereof;
31 2. The United States post office;

- 1 3. The state or any political subdivisions thereof;
- 2 4. Banks, bank holding companies, credit unions, building and loan associations, savings
3 and loan associations, or savings banks or mutual banks organized under the laws of
4 any state or the United States, ~~provided that they do not issue or sell payment-~~
5 ~~instruments through authorized delegates who are not banks, bank holding-~~
6 ~~companies, credit unions, building and loan associations, savings and loan-~~
7 ~~associations, savings banks, or mutual banks~~but this exemption does not extend to
8 any other person acting on behalf of any such excluded entity;
- 9 5. The provision of electronic transfer of government benefits for any federal, state, or
10 county governmental agency as defined in federal reserve board regulation E, by a
11 contractor for and on behalf of the United States or any department, agency, or
12 instrumentality thereof, or any state or any political subdivisions thereof; and
- 13 6. Authorized delegates of a licensee, acting within the scope of authority conferred by a
14 written contract as described in section 13-09-15.

15 **SECTION 12. AMENDMENT.** Section 13-09-07.1 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **13-09-07.1. Change of name or address.**

18 A licensee is required to submit within twenty business days of the date of change
19 notification of a change of name or change of address. The notification must be in the form
20 prescribed by the commissioner. ~~In addition, the licensee shall submit the original license-~~
21 ~~certificate for reissue.~~

22 **SECTION 13. AMENDMENT.** ~~Subsection 1 of section~~Section 13-10-03 of the North Dakota
23 Century Code is amended and reenacted as follows:

- 24 1. An individual, unless specifically exempted from this chapter under subsection ~~3~~2,
25 shall not engage in the business of a mortgage loan originator with respect to any
26 dwelling located in this state without first obtaining and maintaining annually a license
27 under this chapter. Each licensed mortgage loan originator must register with and
28 maintain a valid unique identifier issued by the nationwide mortgage licensing system
29 and registry.
- 30 2. 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 e. An individual who is an employee of a federal, state, or local government agency
13 or housing finance agency and who acts as a loan originator solely pursuant to
14 that individual's official duties as an employee of the federal, state, or local
15 government agency or housing finance agency in compliance with title 12, Code
16 of Federal Regulations, part 1008, section 1008.103(e)(6).
- 17 f. An individual who is an employee of a bona fide nonprofit organization who acts
18 as a loan originator solely with respect to that individual's work duties to the
19 bona fide nonprofit organization, and who acts as a loan originator solely with
20 respect to residential mortgage loans with terms that are favorable to the
21 borrower in compliance with title 12, Code of Federal Regulations, part 1008,
22 section 1008.103(e)(7).
- 23 3. A loan processor or underwriter who is an independent contractor may not engage in
24 the activities of a loan processor or underwriter unless such independent contractor
25 loan processor or underwriter obtains and maintains a license under subsection 1.
26 Each independent contractor loan processor or underwriter licensed as a mortgage
27 loan originator must have and maintain a valid unique identifier issued by the
28 nationwide mortgage licensing system and registry.
- 29 4. To implement an orderly and efficient licensing process, the commissioner may
30 establish licensing rules or regulations and interim procedures for licensing and

1 acceptance of applications. For previously registered or licensed individuals, the
2 commissioner may establish expedited review and licensing procedures.

3 **SECTION 14.** Section 13-11-31 of the North Dakota Century Code is created and enacted
4 as follows:

5 **13-11-31. Disclosure of customer information.**

6 Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter
7 6-08.1 applies to all debt-settlement providers licensed under this chapter.

8 **SECTION 15. EMERGENCY.** Section 13 of this Act is declared to be an emergency
9 measure.