

MEMORANDUM

DATE: March 1, 2023
TO: House Industry, Business and Labor Committee
FROM: Lise Kruse, Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2090

Chairman Louser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Senate Bill No. 2090.

Mr. Chairman and members of the Committee, Senate Bill No. 2090 includes the creation of chapter 13-12 relating to residential mortgage lenders, and amendments to several sections in chapter 13-04.1, and the repeal of one section 13-04.1-16 related to money brokers. The purpose of this bill is to remove residential mortgage lending from the money broker chapter, to be addressed in a stand-alone chapter. Residential mortgage lending differs from other types of lending and grouping all lenders together created confusion and difficulties for the industries to figure out which

sections of the chapter applied to their entity. Separating into two chapters should make it easier for all parties. This Bill is also modernizing language and parts of this bill address the Governor's red tape reduction initiative.

Section 1 of the Bill amends section 13-04.1-01 which addresses the administration of the chapter. We removed the sentence about financial interest since this is duplicative of section 6-01-15, which covers the Department of Financial Institutions, and specifically the requirement of disinterest. In addition, the Department maintains a robust conflict of interest policy to ensure impartiality for all employees when working with the industries we oversee.

Section 2 of the Bill amends section 13-04.1-02.1 related to exemptions of licensing. Residential mortgage lender licensing requirements are moved to a new chapter, 13-12, and should only be licensed under that chapter. We are also exempting bona fide pawnbrokering transactions made by pawnbrokers licensed by a North Dakota county or municipality, to make clear this chapter does not apply to that industry.

Section 3 of the Bill amends section 13-04.1-03 to correct a spelling error using the word "application" rather than "applicant."

Section 4 of the Bill amends section 13-04.1-08 related to revocation and suspension of licenses to make an order effective upon issuance rather than when served. When a license must be suspended or revoked based on the factual findings as outlined in this section, the Department can issue an order against the perpetrator; however, it goes into effect upon service. Since law enforcement may not immediately be able to locate the licensee, especially if the individual is outside of North Dakota, the individual can effectively avoid action against them simply by evading service. The individual or entity must still be served, and the appeals process will not start until service. In this way, the individual is afforded their due process rights under North Dakota Century Code 28-32. This section also clarifies when an order becomes final.

Section 5 of the Bill amends section 13-04.1-08.1 related to the suspension and removal of officers and employees. Again, these orders are effective upon issuance, and when the order is final is clarified. It also clarifies that an order can be final if a person is convicted of or pleading to a lesser charge. This section removes the words of intent such as “willful”. An individual should not be able to continue committing fraud, stealing money from our citizens, or be allowed to violate the law even if the act is not willful, rather the result of incompetence, error, or other factors. Also, consistent

with the removal authority under section 6-01-04.1 any individual that has been removed from a money broker entity should not continue employment in a different financial institution under the oversight of our Department.

Section 6 of the Bill amends section 13-04.1-09 related to prohibited acts and practices. As mentioned above, words of intent have been struck. Also, residential mortgage lenders are covered by the new chapter.

Section 7 of the Bill amends section 13-04.1-09.3 splitting out a sentence to a new bullet point.

Section 8 of the Bill amends section 13-04.1-10 related to orders and injunctions. This clarifies that any order is effective upon issuance. It also clarifies the court of jurisdiction.

Section 9 of the Bill amends section 13-04.1-13 related to penalty. When similar sections of chapter 6 were modernized during the 2021 legislative session, amounts were set based upon analysis and review of similar provisions in surrounding states. The amount is changed to provide consistency between all the non-depository and depository entities. Similarly, some chapters used the treasurer as recipient while other chapters used department of financial institutions. Since the amount would go into the regulatory fund, we changed the recipient for consistency.

Sections 10 and 11 of the Bill amend sections 13-04.1-14 and 13-04.1-17 to update the name of the licensing system.

Section 12 of the Bill creates and enacts a new chapter, 13-12, to cover residential real estate mortgage lenders. These entities were already licensed under chapter 13-04.1 but are now covered by this new chapter. It provides for greater clarity for the industries to have a separate chapter since residential mortgage lending is different than other consumer loans. Applicable sections were moved or copied from chapter 13-04.1 with the only updates the same as what we have talked about for money brokers to ensure consistency. Licensing fees and requirements are unchanged; everything related to residential mortgage lenders have just been moved to a dedicated section of law to make applicability more clear.

Section 13 of the Bill repeals section 13-04.1-16 related to money broker reporting requirements.

Section 14 of the Bill is the application, which guides the transition for our regulated entities.

Mr. Chairman, thank you for the opportunity to provide this testimony. I would be happy to answer any questions the Committee may have.