

**HOUSE BILL NO. 1372**

Introduced by

Representative Klemin

Senator Larson

1 A BILL for an Act to create and enact a new chapter to title 13 of the North Dakota Century  
2 Code, relating to litigation financing; to provide a penalty; and to provide for application.

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

4 **SECTION 1.** A new chapter to title 13 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **Definitions.**

7 As used in this chapter:

8 1. "Commissioner" means the commissioner of financial institutions.

9 2. "Consumer" means any individual who resides, is present, or is domiciled in this state  
10 or who is or may become a plaintiff, claimant, or complainant in a civil action or in  
11 pursuit of any claim or cause of action in this state.

12 3. "Entity" means any domestic or foreign corporation, partnership, limited partnership,  
13 limited liability company, trust, fund, plan, or any other business, enterprise,  
14 association, or organization of any kind or nature.

15 4. "Foreign country or person of concern" includes the following:

16 a. A foreign government or person listed in 15 CFR 791.4.

17 b. A country prohibited from purchasing or otherwise acquiring title to real property  
18 in this state under section 47-01-09.

19 5. "Foreign entity of concern" means a partnership, association, corporation,  
20 organization, or other combination of persons:

21 a. Organized or incorporated in a foreign country of concern;

22 b. Owned or controlled by the government, a political subdivision, or a political party  
23 of a foreign country of concern;

24 c. That has a principal place of business in a foreign country of concern; or

- 1           d. That is owned, organized, or controlled by or affiliated with a foreign organization  
2           that has been:
- 3           (a) Placed on the federal office of foreign assets control specially designated  
4           nationals and blocked persons list (SDN list); or
- 5           (b) Designated by the United States secretary of state as a foreign terrorist  
6           organization.
- 7       6. "Legal representative" means an attorney, group of attorneys, or law firm duly licensed  
8       and authorized to practice law and to represent a consumer in a civil action or claim to  
9       recover damages in this state.
- 10      7. "Litigation financier" means any individual or entity engaged in, formed, created, or  
11      established for the purpose of engaging in the business of litigation financing or any  
12      other business or economic activity in which the individual or entity receives a  
13      percentage of an anticipated recovery in a civil legal action brought by a consumer,  
14      lawyer, or law firm asserting legal claims on behalf of a consumer, in exchange for  
15      providing litigation financing.
- 16      8. "Litigation financing" means the financing, funding, or advancing of money to pay for  
17      expenses or any other sums arising from a civil action, claim, or cause of action, if the  
18      financing, funding, or advancing of money is provided by any person other than a  
19      person that is:
- 20      a. A party to the civil action, claim, or cause of action;
- 21      b. A legal representative engaged, directly or indirectly, through another legal  
22      representative, to represent a party in the civil action, claim, or cause of action; or
- 23      c. An entity or insurer with a pre-existing contractual obligation to indemnify or  
24      defend a party to the civil action, claim, or cause of action.
- 25      9. a. "Litigation financing contract" means a written contract in which a person agrees  
26      to provide litigation financing to any person in conjunction with a civil action or in  
27      pursuit of any claim or cause of action in this state in consideration for:
- 28      (1) The payment of fees or other consideration to the person providing the  
29      litigation financing; or
- 30      (2) Granting or assigning to the person providing the litigation financing a right  
31      to receive payment from the value of any proceeds or other consideration

1 realized from any judgment, award, settlement, verdict, or other form of  
2 monetary relief any consumer or other person may receive or recover in  
3 relation to the civil action, claim, or cause of action.

4 b. The term does not include an agreement, contract, or engagement of a legal  
5 representative to render legal services to a consumer on a contingency fee basis,  
6 including the advancement of legal costs by the legal representative, in which the  
7 services or costs are provided to or on behalf of a consumer by the legal  
8 representative representing the consumer in the civil action, claim, or cause of  
9 action.

10 10. "Nationwide multistate licensing system" means the registry developed by the  
11 conference of state bank supervisors and the American association of residential  
12 mortgage regulators and owned and operated by the state regulatory register or any  
13 successor or affiliated entity, for the licensing and registration of persons in financial  
14 services industries.

15 11. "Regulated lender" means:

16 a. A bank, building and loan association, savings and loan association, trust  
17 company, credit union, credit association, consumer loan licensee, money broker,  
18 deferred presentment service provider, residential mortgage lender licensee,  
19 development corporation, bank holding company, or mutual or stock insurance  
20 company organized pursuant to state or federal statutory authority and subject to  
21 supervision, control, or regulation by:

22 (1) An agency of the state; or

23 (2) An agency of the federal government;

24 b. A subsidiary of an entity described in subdivision a;

25 c. A state agency or a federal agency that is authorized to lend money; and

26 d. A corporation or other entity established by congress or the state which is owned,  
27 in whole or in part, by the United States or the state and is authorized to lend  
28 money.

29 **License.**

30 1. A person may not engage in litigation financing in this state unless the litigation  
31 financer has received a license from the commissioner.

- 1       2. If the licensed litigation financier is an entity, the entity must be active and in good  
2       standing with the secretary of state.
- 3       3. The application for a license as a litigation financier must be in writing, under oath, and  
4       in the form prescribed by the commissioner. The application must include the following  
5       information:
  - 6       a. The legal name of the litigation financier;
  - 7       b. The physical street address and mailing address of the litigation financier;
  - 8       c. A telephone number or electronic mail address at which the litigation financier  
9       may be contacted;
  - 10      d. The physical street address and mailing address of the licensed financier's  
11      licensed office and the name of the registered agent at the licensed office who is  
12      authorized to accept service of process on behalf of the licensed financier; and
  - 13      e. Any other information the commissioner considers necessary.
- 14      4. A litigation financier subject to licensure shall file an amended application within twenty  
15      business days whenever the information contained in the most recently filed  
16      application changes, becomes inaccurate, or incomplete in any respect.
- 17      5. The commissioner may prescribe forms to carry out this chapter, including the use of  
18      the nationwide multistate system.
- 19      6. At the time of making an application, the applicant shall include payment of four  
20      hundred dollars, which is not subject to refund, as a fee for investigating the  
21      application, and four hundred dollars for the annual license fee. Fees must be  
22      deposited in the financial institution's regulatory fund.
- 23      7. All documents and information filed with the commissioner are public records.
- 24      8. The commissioner's duty to file documents under this section is ministerial. The  
25      commissioner's filing or refusing to file a document does not create a presumption  
26      that:
  - 27      a. The document does or does not conform to the requirements of this chapter; or
  - 28      b. The information contained in the document is correct or incorrect.
- 29      9. Additional fees may be assessed to cover costs associated with the use of the  
30      nationwide multistate licensing system.

1       **Surety bond required.**

- 2       1. Each licensee shall maintain a surety bond in an amount not less than fifty thousand  
3       dollars. The surety bond must be in a form prescribed by the commissioner.  
4       2. When an action is commenced on a licensee's bond, the commissioner may require  
5       the filing of a new bond.  
6       3. Immediately upon recovery upon any action on the bond, the licensee shall file a new  
7       bond.

8       **Minimum net worth required.**

- 9       1. A minimum net worth must be maintained continuously by every licensee in  
10       accordance with this section.  
11       2. Minimum net worth must be maintained in the amount of twenty-five thousand dollars.  
12       3. If the net worth of a licensee falls below the minimum net worth set forth in  
13       subsection 1, the licensee shall provide a plan, subject to the approval of the  
14       commissioner, to increase the licensee's net worth to an amount in conformance with  
15       this section. Submission of a plan under this section must be made within twenty  
16       business days of a notice from the commissioner which states the licensee is not in  
17       compliance with subsection 1. If the licensee does not submit a plan under this  
18       section, fails to comply with an approved plan, or has repeated violations of  
19       subsection 1, the commissioner may revoke the license.

20       **Expiration of licensure - Renewal.**

- 21       1. Licensure under this chapter expires December thirty-first of each year.  
22       2. Licensure may be renewed for the ensuing twelve-month period upon application and  
23       the payment to the commissioner of the annual license fee, which is not subject to  
24       refund, before December first of each year.  
25       3. The form and content of renewal applications must be determined by the department  
26       of financial institutions and a renewal application may be denied on the same grounds  
27       as would justify denial of an initial application.  
28       4. If a licensee has been delinquent in renewing the licensee's license, the department  
29       may charge an additional fee of fifty dollars for the renewal of the license.  
30       5. The commissioner may deny an application to renew a license if the licensee no  
31       longer meets the criteria for licensure or otherwise fails to comply with this chapter.

1        **Response to department requests.**

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

8        **Revocation of license - Suspension of license - Surrender of license.**

- 9        1. The commissioner may issue upon any licensee an order suspending or revoking a  
10 licensee's license if the commissioner finds:
- 11        a. The licensee has failed to pay the annual license fee under this chapter or any  
12 examination fee imposed by the commissioner under the authority of this chapter.
- 13        b. The licensee, either knowingly or without the exercise of due care to prevent the  
14 same, has violated any provision of this chapter or any rule or order lawfully  
15 made under the authority of this chapter.
- 16        c. Any fact or condition existing at the time of the original application for the license  
17 which clearly would have warranted the department of financial institutions in  
18 refusing originally to issue the license.
- 19        d. The licensee has failed to maintain the required bond.
- 20        e. The licensee has failed to maintain registration with the secretary of state if so  
21 required.
- 22        2. The order must contain a notice of opportunity for hearing under chapter 28-32.
- 23        3. If no hearing is requested within twenty days of the date the order is served upon the  
24 licensee, the order is final. If a hearing is held and the commissioner finds that the  
25 record so warrants, the commissioner may enter a final order. The final order is final  
26 suspending or revoking the license.
- 27        4. If the commissioner finds that probable cause for revocation of any license exists and  
28 that enforcement of the chapter requires immediate suspension of the license pending  
29 investigation, the commissioner may enter an order suspending the license for a  
30 period not exceeding the time required to serve upon the licensee written notice plus  
31 sixty days, pending the holding of a hearing as prescribed in this chapter.

1       5. Any licensee may surrender the licensee's license by providing the department of  
2       financial institutions with written notice of its surrender, but the surrender does not  
3       affect the licensee's civil or criminal liability for acts committed before the surrender of  
4       the license.

5       **Suspension and removal of money broker officers and employees.**

6       1. The commissioner of financial institutions may issue upon a current or former litigation  
7       financing officer or employee and upon the licensee involved an order stating:

8       a. That the current or former officer or employee is engaging or has engaged in any  
9       of the following conduct:

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

11       (2) Engaging in harassment or abuse, the making of false or misleading  
12       representations, or engaging in unfair practices involving litigation financing  
13       activity.

14       (3) Performing an act of commission or omission or practice that is a breach of  
15       trust or a breach of fiduciary duty.

16       b. The term of the suspension or removal from employment and participation within  
17       the conduct or the affairs of a financial corporation, financial institution, credit  
18       union, or any other entity licensed by the department of financial institutions.

19       2. The order must contain a notice of opportunity for hearing under chapter 28-32.

20       3. If a hearing is not requested within twenty days of the date the order is served, the  
21       order is final. If a hearing is held and the commissioner finds that the record so  
22       warrants, the commissioner may enter a final order.

23       4. A contested or default suspension or removal order is effective immediately upon  
24       issuance on the current or former officer or employee and upon the licensee. A  
25       consent order is effective as agreed. Any current or former officer or employee  
26       suspended or removed from employment and participation within the conduct or the  
27       affairs of a licensee under this section is not eligible, while under suspension or  
28       removal, to be employed or otherwise participate in the affairs of any financial  
29       corporation, financial institution, credit union, or any other entity licensed by the  
30       department of financial institutions.

1       5. When any current or former officer or employee, or other person participating in the  
2       conduct of the affairs of a licensee is charged with a felony in state or federal court  
3       which involves dishonesty or breach of trust, the commissioner may immediately  
4       suspend the individual from office or prohibit the individual from further participation in  
5       the affairs of the licensee, or both. The order is effective immediately upon issuance of  
6       the order on the licensee and the individual charged, and remains in effect until the  
7       criminal charge is finally disposed of or until modified by the commissioner. If a  
8       judgment of conviction, federal pretrial diversion, conviction or agreement to plea to  
9       lesser charges, or similar state order or judgment is entered, the commissioner may  
10      order the suspension or prohibition be made permanent. A finding of not guilty or other  
11      disposition of the charge does not preclude the commissioner from pursuing  
12      administrative or civil remedies.

13      **Litigation financing protections.**

- 14      1. A litigation financier may not:
- 15          a. Accept any commissions, referral fees, rebates, or other forms of consideration  
16          from any person rendering any services to the consumer;
- 17          b. Receive or recover any payment that exceeds thirty-six percent of the amount of  
18          any judgment, award, settlement, verdict, or other form of monetary relief  
19          obtained in the civil action, claim, or cause of action that is the subject of the  
20          litigation contract;
- 21          c. Advertise false or misleading information regarding its products or services;
- 22          d. Refer or require any consumer to hire or engage any person providing any goods  
23          or rendering any services to the consumer;
- 24          e. Fail to promptly deliver a fully completed and signed litigation financing contract  
25          to the consumer and the consumer's legal representative;
- 26          f. Attempt to secure a remedy or obtain a waiver of any remedy, including  
27          compensatory, statutory, or exemplary damages, which the consumer may or  
28          may not be entitled to pursue or recover otherwise;
- 29          g. Offer or provide legal advice to the consumer;
- 30          h. Assign a litigation financing contract in whole or in part;



- 1           i. Report a consumer to a credit reporting agency if insufficient funds remain to  
2           repay the litigation financier in full from the proceeds received from any judgment,  
3           award, settlement, verdict, or other form of monetary relief obtained in the civil  
4           action, claim, or cause of action that is the subject of the litigation financing  
5           contract; and
- 6           j. Demand, request, receive, or exercise any right to influence, affect, or otherwise  
7           make any decision in the handling, conduct, administration, litigation, settlement,  
8           or resolution of any civil action, claim, or cause of action in which the litigation  
9           financier has provided litigation financing. All rights remain solely with the  
10          consumer and the consumer's legal representative.
- 11          k. Knowingly enter an agreement creating a right for anyone, other than the named  
12          parties, counsel of record, or law firm of record, to receive or make any payment  
13          that is contingent on the outcome of a claim, or cause of action, the terms of  
14          which are to be satisfied by funds directly sourced, in whole or in part, from a  
15          foreign entity of concern.
- 16          l. A litigation financier may not enter a commercial litigation financing contract  
17          directly or indirectly with a foreign entity of concern or a foreign country or person  
18          of concern.
- 19          2. A legal representative who renders any services to the consumer may not have a  
20          financial interest in litigation financing and may not receive any commissions, referral  
21          fees, rebates, or other forms of consideration from any litigation financier or the  
22          litigation financier's employees, owners, or affiliates.

23          **Litigation financing contract - Disclosures.**

- 24          1. The terms and conditions of a litigation financing contract must be set forth in a fully  
25          completed written contract with no terms or conditions omitted.
- 26          2. The litigation financing contract must identify who is responsible for paying the  
27          litigation financier, the source the funds, and when the funds are to be paid to the  
28          litigation financier.
- 29          3. The litigation financing contract must state the amount of funding to be provided to the  
30          consumer and the future amounts owed to the litigation financier or the method of  
31          calculating the amounts owed to the litigation financier.

- 1       4. The litigation financing contract must reflect all costs and fees and must show the  
2           maximum amount a litigation financier may own of the consumer's recovery.
- 3       5. On execution of a litigation financing contract, a litigation financier may not amend the  
4           terms or conditions of the litigation financing contract without full disclosure to and the  
5           prior written consent of all parties to the litigation financing contract.
- 6       6. A litigation financing contract must set forth the name, physical street address, and  
7           mailing address of the litigation financier in the litigation financing contract.
- 8       7. A litigation financing contract must contain the following disclosures that constitute  
9           material terms and conditions of the litigation financing contract and must be typed in  
10          at least fourteen-point boldface type and be placed clearly and conspicuously  
11          immediately above the consumer's signature line in the litigation financing contract:

IMPORTANT DISCLOSURES -- PLEASE READ CAREFULLY

- 13       1. Right to Cancellation: You may cancel this litigation financing contract without  
14           penalty or further obligation within five (5) business days from the date you sign  
15           this contract or the date you receive financing from the litigation financier,  
16           whichever date is later. You may cancel by sending a notice of cancellation to the  
17           litigation financier and returning to the litigation financier any funds received from  
18           the litigation financier at the litigation financier's address set forth in this contract.
- 19       2. The maximum amount the litigation financier may receive or recover from any  
20           contingent payment may not exceed twenty-five percent (25%) of the amount of  
21           any judgment, award, settlement, verdict, or other form of monetary relief  
22           obtained in the civil action, claim, or cause of action that is the subject of this  
23           litigation contract.
- 24       3. The litigation financier agrees that it has no right to, and will not demand, request,  
25           receive, or exercise any right to, influence, affect, or otherwise make any decision  
26           in the handling, conduct, administration, litigation, settlement, or resolution of  
27           your civil action, claim, or cause of action. All of these rights remain solely with  
28           you and your legal representative.
- 29       4. If there is no recovery of any money from your civil action, claim, or cause of  
30           action, or if there is not enough money to satisfy in full the portion assigned to the  
31           litigation financier, you will not owe anything to the litigation financier.

1           5. You are entitled to a fully completed contract with no terms or conditions omitted  
2                   prior to signing. Before signing this contract, you should read the contract  
3                   completely and consult an attorney.

4           8. If the consumer is represented by a legal representative in the civil action, claim, or  
5                   cause of action that is the subject of the litigation financing contract, the consumer  
6                   must provide the litigation funding contract to the consumer's legal representative.  
7                   Upon receipt, the legal representative shall acknowledge in the contract that the legal  
8                   representative and the legal representative's employer and employees have not  
9                   received or paid a referral fee or any other consideration from or to the litigation  
10                  financer and have no obligation to do so in the future.

11           **Litigation financing contracts - Service.**

12           1. If a party or party's attorney initiates a civil action and is a party to a litigation financing  
13                   agreement, the party or party's attorney shall serve a copy of the litigation financing  
14                   contract with the complaint.

15           2. If a party or party's attorney is served with a litigating financing contract, the person  
16                   shall serve a copy of any insurance policy relevant to the civil action to the other party  
17                   within fourteen days.

18           3. If either party in a civil action enters a litigation financing agreement after the  
19                   commencement of the civil action, the party shall serve a copy of the agreement on  
20                   the other party within fourteen days.

21           **Exemptions.**

22           This chapter does not apply to the following:

23           1. A nonprofit entity that provides litigation financing, directly or indirectly, for the benefit  
24                   of the nonprofit or one or more of its members without receiving, in consideration for  
25                   the litigation financing:

26           a. The payment of interest, fees, or other consideration; or

27           b. Except for in-house counsel of the nonprofit, any right to recovery or payment  
28                   from the amount of a judgment, award, settlement, verdict, or other form of  
29                   monetary relief obtained in the civil action, claim, or cause of action;

30           2. A regulated lender that does not receive, in consideration for loaning money to any  
31                   person, a right to receive payment from the value of any proceeds or other

1 consideration realized from a judgment, award, settlement, verdict, or other form of  
2 monetary relief a person may receive or recover in relation to a civil action, claim, or  
3 cause of action.

4 **Class actions.**

- 5 1. This chapter applies to any civil action filed or certified as a class action in which  
6 litigation financing is provided.
- 7 2. In addition to the disclosure requirements set forth in this chapter, the legal  
8 representative of the putative class shall disclose to all putative class members, any  
9 relationship between the legal representative and the litigation financier.
- 10 3. A class member is entitled to receive from the class counsel a true and correct copy of  
11 the litigation financing contract on request.

12 **Regulatory oversight - Rulemaking - Records.**

- 13 1. The department of financial institutions shall administer and enforce this chapter. The  
14 department may adopt rules reasonably necessary to carry out this chapter, in  
15 accordance with chapter 28-32. Any hearing held and any orders issued under this  
16 chapter must be in accordance with chapter 28-32. In addition to those powers set  
17 forth in chapter 28-32, the department has additional powers as set forth in this  
18 chapter.
- 19 2. Insofar as consistent with the provisions of law, the department of financial institutions  
20 may:
- 21 a. Determine the qualifications of all applicants based on financial responsibility,  
22 financial condition, business experience, character, and general fitness which  
23 must reasonably warrant the belief that the applicant's business will be conducted  
24 lawfully and fairly. In determining whether this qualification is met, and for the  
25 purpose of investigating compliance with the chapter, the commissioner may  
26 review and consider the relevant business records and capital adequacy of the  
27 applicant and the competence, experience, integrity, and financial ability of an  
28 individual who is a member, partner, director, officer, or twenty-five percent or  
29 more shareholder of the applicant.
- 30 b. Establish codes of ethical conduct for licensees.

1       3 Every licensee licensed under this chapter shall keep a record of all sums collected by  
2 the licensee and of litigation financing completed as a result of the licensee's efforts  
3 for six years from the date of last entry. The records of a licensee may be maintained  
4 electronically if the records can be reproduced upon request by the department of  
5 financial institutions and within the required statutory time period provided in this  
6 section. When a licensee ceases operations for any reason, the licensee shall inform  
7 the department of the location of the records. In addition, the licensee shall provide the  
8 name of the individual responsible for maintenance of the records.

9       4 When it appears to the department of financial institutions either upon complaint or  
10 otherwise, that any person has engaged in, is engaging in, or is about to engage in  
11 any act or practice or transaction prohibited by this chapter, or by any order of the  
12 department issued under this chapter or which is declared to be illegal in this chapter,  
13 the department may:

14       a. Issue any order that is effective upon issuance, including cease and desist, stop,  
15 and suspension orders, which the department deems necessary or appropriate in  
16 the public interest or for the protection of the public; provided, however, that any  
17 person aggrieved by an order issued under this subsection may request a  
18 hearing before the department if the request is made within ten days after receipt  
19 of the order. The hearing and any appeal of the hearing must be held in  
20 accordance with chapter 28-32.

21       b. Apply to the district court of Burleigh County, for an injunction restraining the  
22 person and the agents, employees, partners, officers, and directors of the person  
23 from continuing the act, practice, or transaction and for the other relief the facts  
24 may warrant. In any proceeding for an injunction, the department may apply for  
25 and on due showing be entitled to have issued the court's subpoena requiring the  
26 appearance of any defendants and their agents, employees, partners, officers, or  
27 directors, and the production of the documents, books, and records as may  
28 appear necessary for the hearing upon the petition for an injunction. Upon proof  
29 of any of the offenses described in this section, the court may grant the injunction  
30 as the facts may warrant. The court may not require the department to post a  
31 bond.

1        **Investigations, subpoenas, and examination authority.**

2        In addition to any authority allowed under this chapter, the commissioner may conduct  
3 investigations and examinations as follows:

4        1. The department of financial institutions:

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

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

17            c. May publish information concerning any violation of this chapter or any rule or  
18 order under the chapter.

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

24        3. In the case of a failure or refusal to obey a subpoena issued to any person, the district  
25 court, upon application by the department of financial institutions, may issue to the  
26 person an order requiring the person to appear before the department, to produce  
27 documentary evidence if so ordered, or to give evidence touching the matter in  
28 question under investigation or examination. Failure to obey the order of the court may  
29 be punished by the court as a contempt of court.

30        4. An individual is not excused from attending and testifying or from producing any  
31 document or record before the department of financial institutions, or in obedience to

1 the subpoena of the department, or in any proceeding instituted by the department, on  
2 the grounds that the testimony or evidence, documentary or otherwise, required of the  
3 individual may tend to incriminate the individual or subject the individual to a penalty  
4 forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture  
5 for or on account of any transaction, matter, or thing concerning which the individual is  
6 compelled, after claiming the privilege against self-incrimination, to testify or produce  
7 evidence, documentary or otherwise, except that the individual testifying is not exempt  
8 from prosecution and punishment for perjury or contempt committed in testifying.

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

- 14 a. Criminal, civil, and administrative history information, including nonconviction  
15 data;  
16 b. Personal history and experience information, including independent credit reports  
17 obtained from a consumer reporting agency described under the Fair Credit  
18 Reporting Act [15 U.S.C. 1681a]; and  
19 c. Any other documents, information, or evidence the commissioner deems relevant  
20 to the inquiry or investigation regardless of the location, possession, control, or  
21 custody of the documents, information, or evidence.

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

26 7. Each licensee or person subject to this chapter shall make available to the  
27 commissioner upon request the books and records relating to the operations of the  
28 licensee or person subject to this chapter. The commissioner shall have access to the  
29 books and records and interview the officers, principals, mortgage loan originators,  
30 employees, independent contractors, agents, and customers of the licensee or person  
31 subject to this chapter concerning their business.

- 1       8. Each licensee or person subject to this chapter shall make or compile reports or  
2       prepare other information as directed by the commissioner to carry out the purposes of  
3       this section, including:
- 4       a. Accounting compilations;  
5       b. Information lists and data concerning litigation financing transactions in a format  
6       prescribed by the commissioner; or  
7       c. Any other information deemed necessary to carry out the purposes of this  
8       section.
- 9       9. In making any investigation or examination authorized by this chapter, the  
10      commissioner may control access to any documents and records of the licensee or  
11      person under investigation or examination. The commissioner may take possession of  
12      the documents and records or place a person in exclusive charge of the documents  
13      and records in the place in which the records are usually kept. During the period of  
14      control, an individual may not remove or attempt to remove any of the documents and  
15      records except pursuant to a court order or with the consent of the commissioner.  
16      Unless the commissioner has reasonable grounds to believe the documents or  
17      records of the licensee have been, or are at risk of being altered or destroyed for  
18      purposes of concealing a violation of this chapter, the licensee or owner of the  
19      documents and records may have access to the documents or records as necessary  
20      to conduct its ordinary business affairs.
- 21      10. To carry out the purposes of this section, the commissioner may:
- 22      a. Retain accountants or other professionals and specialists as examiners, auditors,  
23      or investigators to conduct or assist in the conduct of examinations or  
24      investigations;
- 25      b. Enter agreements or relationships with other government officials or regulatory  
26      associations to improve efficiencies and reduce regulatory burden by sharing  
27      resources, standardized or uniform methods or procedures, and documents,  
28      records, information, or evidence obtained under this section;
- 29      c. Use, hire, contract, or employ publicly or privately available analytical systems,  
30      methods, or software to examine or investigate the licensee, individual, or person  
31      subject to this chapter;



- 1           d. Accept and rely on examination or investigation reports made by other  
2           government officials, within or without this state; and  
3           e. Accept audit reports made by an independent certified public accountant for the  
4           licensee or person subject to this chapter in the course of that part of the  
5           examination covering the same general subject matter as the audit and may  
6           incorporate the audit report in the report of the examination, report of  
7           investigation, or other writing of the commissioner.  
8        11. The authority of this section remains in effect, whether a licensee or person subject to  
9        this chapter acts or claims to act under any licensing or registration law of this state or  
10       claims to act without the authority.  
11       12. A licensee or person subject to investigation or examination under this section may not  
12       knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records,  
13       computer records, or other information.

14       **Act violation - Unenforceable contract.**

15       Any violation of this chapter by the litigation financier renders the litigation financing contract  
16       unenforceable by the litigation financier or any successor-in-interest to the litigation financing  
17       contract.

18       **Penalty.**

- 19       1. Any person violating any provision of this chapter or any rule or order of the  
20       department of financial institutions made under this chapter or who engages in any  
21       act, practice, or transaction declared by any provision of this chapter to be unlawful is  
22       guilty of a class C felony.  
23       2. The commissioner may impose a civil money penalty not to exceed one hundred  
24       thousand dollars for each occurrence and one thousand dollars per day for each day  
25       the violation continues after issuance of the order against any person who violates a  
26       law, rule, written agreement, or order under this chapter.  
27       3. An interested party may appeal the assessment of a civil money penalty under the  
28       provisions of chapter 28-32 by filing a written notice of appeal within twenty days after  
29       service of the assessment of civil money penalties.  
30       4. A civil money penalty collected under this section must be paid to the department of  
31       financial institutions and deposited in the financial institution's regulatory fund.

1       **Confidentiality.**

- 2       1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements  
3       under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or  
4       confidentiality of any information or material provided to the nationwide multistate  
5       licensing system and registry, and any privilege arising under federal or state law,  
6       including the rules of any federal or state court, with respect to the information or  
7       material, continue to apply to the information or material after the information or  
8       material has been disclosed to the nationwide multistate licensing system and registry.  
9       Any information and material may be shared with all state and federal regulatory  
10      officials with mortgage industry oversight authority without the loss of privilege or the  
11      loss of confidentiality protections provided by federal law, chapter 44-04, or section  
12      6-01-07.1.
- 13      2. For these purposes, the commissioner may enter agreements or sharing  
14      arrangements with other governmental agencies, the conference of state bank  
15      supervisors, the American association of residential mortgage regulators, or other  
16      associations representing governmental agencies.
- 17      3. Information or material that is subject to a privilege or confidentiality under  
18      subsection 1 is not subject to:
- 19          a. Disclosure under any federal or state law governing the disclosure to the public of  
20          information held by an officer or an agency of the federal government or the  
21          respective state; or
- 22          b. Subpoena or discovery, or admission into evidence, in any administrative  
23          process, unless with respect to any privilege held by the nationwide multistate  
24          licensing system and registry with respect to the information or material, the  
25          person to whom the information or material pertains waives, in whole or in part, in  
26          that privilege.
- 27      4. The commissioner shall take all necessary steps, under any applicable law or rule, to  
28      protect the disclosure of information or material subject to a privilege or confidentiality  
29      under subsection 1. Records subject to a privilege or confidentiality under  
30      subsection 1 may be required to be disclosed only pursuant to an order of the court.

1           The court ordering the disclosure shall issue a protective order to protect the  
2           confidential nature of the records.

3           5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of  
4           confidential supervisory information or any information or material described in  
5           subsection 1 which is inconsistent with subsection 1, is superseded by the  
6           requirements of this section.

7           6. Except for provisions of chapter 6-08.1 that are inconsistent with this chapter, chapter  
8           6-08.1 applies to all money brokers licensed under this chapter.

9           **SECTION 2. APPLICATION.** This Act applies to any civil action commenced after the  
10          effective date of this Act.