Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1127

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

A BILL for an Act to create and enact chapter 13-01.2 of the North Dakota Century Code, relating to the financial institution data security program; and to amend and reenact sections 6-01-04.1 and 6-01-04.2, subsection 7 of section 6-03-02, sections 13-04.1-01.1, 13-04.1-11.1, 13-05-07.1, 13-08-10, 13-08-11.1, and 13-09.1-14, subsection 3 of section 13-09.1-17, sections 13-09.1-38 and 13-10-05, subsection 1 of section 13-11-10, section 13-12-19, subsections 6, 21, and 22 of section 13-13-01, and sections 13-13-04 and 13-13-18 of the North Dakota Century Code, relating to the department of financial institutions, financial institutions, response to department requests, renewal of licenses, orders to cease and desist, issuance of licenses, revocation of licenses, and exemptions from licenses.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 6-01-04.1 of the North Dakota Century Code is amended and reenacted as follows:

6-01-04.1. Removal of officers, directors, and employees of financial corporations or institutions.

1. The department of financial institutions or the board may issue, upon any current or former officer, director, or employee of a financial corporation, financial institution, or credit union subject to its jurisdiction and upon a financial corporation, financial institution, or credit union involved, an order stating:
   a. That the current or former officer, director, or employee is engaging, or has engaged, in any of the following conduct:
      (1) Violating any law, regulation, board order, or written agreement with the board.

(2) Engaging or participating in any unsafe or unsound practice.

(3) Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

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

2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the complaint is served upon the current or former officer, director, or employee of a financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions. The current or former officer, director, or employee may waive the thirty-day notice requirement.

3. If no hearing is requested within twenty days of the date the order is served upon the current or former officer, director, or employee, the order is final. If a hearing is held and the board finds that the record so warrants, it may enter a final order. The final order suspending or removing the current or former officer, director, or employee is final. The current or former officer or employee may request a termination of the final order after a period of no less than three years.

4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer, director, or employee and upon a financial corporation, financial institution, or credit union. A consent order is effective as agreed.

5. Any current or former officer, director, or employee suspended or removed from any position pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, or credit union or any other entity licensed by the department of financial institutions until the suspension or removal is terminated by the department of financial institutions or board.

6. When any current or former officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation, financial institution, or credit union is charged with a felony in state or federal court, involving dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit

the person from any further participation in a financial corporation's, financial institution's, or credit union's affairs. The order is effective immediately upon issuance of the order on a financial corporation, financial institution, or credit union and the person charged, and remains in effect until the criminal charge is finally disposed of or until modified by the board. If a judgment of conviction, a federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the board or commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner or the board from pursuing administrative or civil remedies.

7. The commissioner or board may issue upon a current or former officer, director, employee, or other person participating in the conduct of the affairs of a financial corporation, financial institution, or credit union an order permanently suspending and prohibiting the person from participation in a financial corporation's, financial institution's, or credit union's affairs if convicted of any charge involving dishonesty or breach of trust in state or federal court. The suspension or removal order is effective immediately upon issuance on the current or former officer, director, or employee and upon a financial corporation, financial institution, or credit union.

SECTION 2. AMENDMENT. Section 6-01-04.2 of the North Dakota Century Code is amended and reenacted as follows:

6-01-04.2. Cease and desist orders.

1. The department of financial institutions or the board may issue and serve upon a financial corporation, financial institution, or credit union subject to its jurisdiction a complaint stating the factual basis for the department's or board's belief that the financial corporation, financial institution, or credit union is engaging in any of the following conduct:
   a. An unsafe or unsound practice.
   b. A violation in the past or on a continuing basis of any law, regulation, ~~board~~ order, or written agreement entered into with the board or department of financial institutions.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32. The date for the hearing must be set not less than thirty days after the date the

complaint is served upon the financial corporation, financial institution, or credit union. The financial corporation, financial institution, or credit union may waive the thirty-day notice requirement.

3. If the financial corporation, financial institution, or credit union fails to respond to the complaint within twenty days of its service, or if a hearing is held and the board concludes that the record so warrants, the board may enter an order directing the financial corporation, financial institution, or credit union to cease and desist from engaging in the conduct which was the subject of the complaint and hearing and to take corrective action.

4. The commissioner or the board may enter an emergency, temporary cease and desist order if the commissioner or the board finds the conduct described in the complaint is likely to cause insolvency, substantial dissipation of assets, earnings, or capital of the financial corporation, financial institution, or credit union, or substantial prejudice to the depositors, shareholders, members, or creditors of the financial corporation, financial institution, or credit union. An emergency, temporary cease and desist order is effective immediately upon service on the financial corporation, financial institution, or credit union and remains in effect for no longer than sixty days or until the conclusion of permanent cease and desist proceedings pursuant to this section, whichever is sooner. An emergency, temporary cease and desist order may be issued without an opportunity for hearing. A bank or credit union may request a hearing before the state banking board or state credit union board within ten days of the order to review the factual basis used to issue the emergency, temporary cease and desist order. The decision made by the board during this hearing will be final. If a hearing is not requested, the initial decision of the commissioner or board will be final.

SECTION 3. AMENDMENT. Subsection 7 of section 6-03-02 of the North Dakota Century Code is amended and reenacted as follows:

7. Exercise, as determined by the board <u>or commissioner</u> by order or rule, all the incidental powers as are necessary to carry on the business of banking, including discounting and negotiating promissory notes, bills of exchange, drafts, and other evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion; loaning money upon real or personal security, or both; soliciting and receiving deposits

in the nature of custodial accounts for the purpose of health savings or similar health care cost funding accounts, retirement fund contracts, or pension programs, and such custodial accounts are exempt from chapter 6-05; and providing services to its customers involving electronic transfer of funds to the same extent that other financial institutions chartered and regulated by an agency of the federal government are permitted to provide those services within this state. A bank that provides electronic funds transfer equipment and service to its customers, at premises separate from its main banking house or duly authorized facility approved by the state banking board, must make the equipment and service available for use by customers of any other bank upon the request of the other bank to share its use and the agreement of the other bank to share pro rata all costs incurred in connection with its installation and operation, and the electronic operations are not deemed to be the establishment of a branch, nor of a separate facility. The electronic operations at premises separate from its banking house or duly authorized facility must be considered a customer electronic funds transfer center and may be established subject to rules that the state banking board adopts.

SECTION 4. Chapter 13-01.2 of the North Dakota Century Code is created and enacted as follows:

13-01.2-01. Definitions.

For purposes of this chapter, the following definitions shall apply:

1. "Authorized user" means any employee, contractor, agent, or other person who:
   a. Participates in a financial corporation's business operations; and
   b. Is authorized to access and use any of the financial corporation's information systems and data.
2. "Commissioner" means the commissioner of the department of financial institutions.
3. "Consumer":
   a. Means an individual, or that individual's legal representative, who applies for or has obtained a financial product or service from a financial corporation which is to be used primarily for personal, family, or household purposes. A consumer includes an individual who:

(1) Applies to a financial corporation for credit for personal, family, or household purposes, regardless of whether the credit is extended.

(2) Provides nonpublic personal information to a financial corporation to obtain a determination about whether the applicant may qualify for a loan to be used primarily for personal, family, or household purposes, regardless of whether the loan is extended.

(3) Provides nonpublic personal information to a financial corporation in connection with obtaining or seeking to obtain financial, investment, or economic advisory services, regardless of whether the financial corporation establishes a continuing advisory relationship.

(4) Has a loan for personal, family, or household purposes in which the financial corporation has ownership or servicing rights, even if the financial corporation or one or more other corporations that hold ownership or servicing rights in conjunction with the financial corporation hires an agent to collect on the loan.

b. Does not include an individual who:

(1) Uses a different financial corporation or financial institution to act solely as an agent for, or provide processing or other services to, the individual financial corporation or financial institution.

(2) Designates a financial corporation solely for the purposes to act as trustee for a trust.

(3) Is a beneficiary of a trust for which the financial corporation is a trustee.

(4) Is a participant or a beneficiary of an employee benefit plan that the financial corporation sponsors or for which the financial corporation acts as a trustee or fiduciary.

4. "Continuing relationship":

a. Means a situation in which a consumer:

(1) Has a credit or investment account with a financial corporation;

(2) Obtains a loan from a financial corporation;

(3) Purchases an insurance product from a financial corporation;

(4) Holds an investment product through a financial corporation, including when a financial corporation acts as a custodian for securities or for assets in an individual retirement arrangement;

(5) Enters into an agreement or understanding with a financial corporation in which the financial corporation undertakes to arrange or broker a home mortgage loan, or credit to purchase a vehicle, for the consumer;

(6) Enters into a lease of personal property on a nonoperating basis with a financial corporation;

(7) Obtains financial, investment, or economic advisory services from a financial corporation for a fee;

(8) Becomes a financial corporation's client for the purpose of obtaining tax preparation or credit counseling services from the financial corporation;

(9) Obtains career counseling while:

(a) Seeking employment with a financial corporation or the finance, accounting, or audit department of any company; or

(b) Employed by a financial corporation or department of any company;

(10) Is obligated on an account that a financial corporation purchases from another financial corporation, regardless of whether the account is in default when purchased, unless the financial corporation does not locate the consumer or attempt to collect any amount from the consumer on the account;

(11) Obtains real estate settlement services from a financial corporation; or

(12) Has a loan for which a financial corporation owns the servicing rights.

b. Does not include a situation in which:

(1) The consumer obtains a financial product or service from a financial corporation only in isolated transactions, including:

(a) A financial corporation's automated teller machine to withdraw cash from an account at another financial institution;

(b) Purchasing a money order from a financial corporation;

(c) Cashing a check with a financial corporation; or

(d) Making a wire transfer through a financial corporation;

(2) A financial corporation sells the consumer's loan and does not retain the rights to service that loan;

(3) A financial corporation sells the consumer an airline ticket, travel insurance, or a traveler's check in isolated transactions;

(4) The consumer obtains one-time personal or real property appraisal services from a financial corporation; or

(5) The consumer purchases checks for a personal checking account from a financial corporation.

5. "Customer" means a consumer who has a customer relationship with a financial corporation.

6. "Customer information" means any record containing nonpublic personal information about a customer of a financial corporation, whether in paper, electronic, or other form, which is handled or maintained by or on behalf of the financial corporation or the financial corporation's affiliates.

7. "Customer relationship" means a continuing relationship between a consumer and a financial corporation under which the financial corporation provides one or more financial products or services to the consumer that are used primarily for personal, family, or household purposes.

8. "Encryption" means the transformation of data into a form that results in a low probability of assigning meaning without the use of a protective process or key, consistent with current cryptographic standards and accompanied by appropriate safeguards for cryptographic key material.

9. "Financial corporation" means all entities regulated by the department of financial institutions, excluding financial institutions and credit unions.

10. "Financial institution" means any bank, industrial loan company, or savings and loan association organized under the laws of this state or of the United States.

11. "Financial product or service" means any product or service that a financial holding company could offer by engaging in a financial activity under the federal Bank Holding Company Act of 1956 [12 U.S.C. 1843 section 4(k)]. The term includes a financial corporation's evaluation or brokerage of information that a financial corporation

collects in connection with a request or an application from a consumer for a financial product or service.

12. "Information security program" means the administrative, technical, or physical safeguards a financial corporation uses to access, collect, distribute, process, protect, store, use, transmit, dispose of, or otherwise handle customer information.

13. "Information system" means a discrete set of electronic information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of electronic information, as well as any specialized system, including industrial process controls systems, telephone switching and private branch exchange systems, and environmental controls systems that contain customer information or that is connected to a system that contains customer information.

14. "Multifactor authentication" means authentication through verification of at least two of the following types of authentication factors:

a. Knowledge factors, including a password;

b. Possession factors, including a token; or

c. Inherence factors, including biometric characteristics.

15. "Nonpublic personal information":

a. Means:

(1) Personally identifiable financial information; and

(2) Any list, description, or other grouping of consumers, including publicly available information pertaining to the consumers that is derived using personally identifiable financial information that is not publicly available, including account numbers.

b. Does not include:

(1) Publicly available information, except as included on a list described in paragraph 2 of subdivision a;

(2) Any list, description, or other grouping of consumers, including publicly available information pertaining to the consumers that is derived without using any personally identifiable financial information that is not publicly available; or

(3) Any list of individuals' names and addresses that contains only publicly available information, is not derived, in whole or in part, using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any individual on the list is the financial corporation's consumer.

16. "Notification event" means the acquisition of unencrypted customer information without the authorization of the individual to which the information pertains. Customer information is considered unencrypted for purposes of this subsection if the encryption key was accessed by an unauthorized person. Unauthorized acquisition is presumed to include unauthorized access to unencrypted customer information unless the financial corporation has reliable evidence showing there has not been, or could not reasonably have been, unauthorized acquisition of customer information.

17. "Penetration testing" means a test methodology in which assessors attempt to circumvent or defeat the security features of an information system by attempting to penetrate databases or controls from outside or inside a financial corporation's information systems.

18. "Personally identifiable financial information":

a. Means any information:

(1) A consumer provides to a financial corporation to obtain a financial product or service;

(2) About a consumer resulting from any transaction involving a financial product or service between a financial corporation and a consumer; or

(3) A financial corporation otherwise obtains about a consumer in connection with providing a financial product or service to that consumer.

b. Includes:

(1) Information a consumer provides to a financial corporation on an application to obtain a loan, credit card, or other financial product or service;

(2) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(3) An individual that is or has been a financial corporation's customer or has obtained a financial product or service from the financial corporation;

(4) Any information about a financial corporation's consumer if it is disclosed in a manner that indicates the individual is or has been a financial corporation's consumer;

(5) Any information a consumer provides to a financial corporation or which a financial corporation or a financial corporation's agent otherwise obtains in connection with collecting on, or servicing, a credit account;

(6) Any information a financial corporation collects through an information collecting device from a web server; and

(7) Information from a consumer report.

c. Does not include:

(1) A list of names and addresses of customers of an entity that is not a financial corporation; and

(2) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

19. a. "Publicly available information":

(1) Means any information that a financial corporation has a reasonable basis to believe is lawfully made available to the general public from:

(a) Federal, state, or local government records;

(b) Widely distributed media; or

(c) Disclosures to the general public which are required under federal, state, or local law.

(2) Includes information:

(a) In government real estate records and security interest filings; or

(b) From widely distributed media, a telephone book, a television or radio program, a newspaper, or a website that is available to the general public on an unrestricted basis. A website is not restricted because an internet service provider or a site operator requires a fee or a password, provided access is available to the general public.

b. For purposes of this subsection, a financial corporation has a reasonable basis to believe information is lawfully made available to the general public if the financial corporation has taken steps to determine:

(1) The information is of the type available to the general public; and

(2) Whether an individual can direct that the information not be made available to the general public and, if so, that the financial corporation's consumer has not done so. A financial corporation has a reasonable basis to believe mortgage information is lawfully made available to the general public if the financial corporation determines the information is of the type included on the public record in the jurisdiction where the mortgage is recorded. A financial corporation has a reasonable basis to believe an individual's telephone number is lawfully made available to the general public if the financial corporation has located the telephone number in the telephone book or the consumer has informed the financial corporation the telephone number is not unlisted.

20. "Qualified individual" means the individual designated by a financial institution to oversee, implement, and enforce the financial institution's information security program.

21. "Security event" means an event resulting in unauthorized access to, or disruption or misuse of:

a. An information system or information stored on an information system; or

b. Customer information held in physical form.

22. "Service provider" means any person or entity that receives, maintains, processes, or otherwise is permitted access to customer information through its provision of services directly to a financial corporation that is subject to this chapter.

13-01.2-02. Standards for safeguarding customer information.

1. A financial corporation shall develop, implement, and maintain a comprehensive information security program.

2. The information security program must:

a. Be written in one or more readily accessible parts; and

b. Maintain administrative, technical, and physical safeguards that are appropriate to the financial corporation's size and complexity, the nature and scope of the financial corporation's activities, and the sensitivity of any customer information at issue.

3. The financial corporation shall develop a security program that:

a. Ensures the security and confidentiality of customer information;

b. Protects against any anticipated threats or hazards to the security or integrity of such information; and

c. Protects against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.

13-01.2-03. Elements of a security program.

1. A financial corporation's information security program must denote a designation of a qualified individual responsible for overseeing and implementing the financial corporation's information security program and enforcing the financial corporation's information security program. The qualified individual may be employed by the financial corporation, an affiliate, or a service provider.

2. If a financial corporation designates an individual employed by an affiliate or service provider as the qualified individual, the financial corporation shall:

a. Retain responsibility for compliance with this chapter;

b. Designate a senior member of the financial corporation's personnel to be responsible for directing and overseeing the qualified individual; and

c. Require the service provider or affiliate to maintain an information security program that protects the financial corporation in accordance with the requirements of this chapter.

3. A financial corporation shall base the financial corporation's information security program on a risk assessment that:

a. Identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of customer information;

b. Assesses the sufficiency of any safeguards in place to control the risks in subdivision a; and

c. Includes additional periodic risk assessments that:

(1) Re-examine the reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information; and

(2) Reassess the sufficiency of any safeguards in place to control these risks.

4. The risk assessment must be in writing and include:

a. Criteria to evaluate and categorize identified security risks or threats the financial corporation faces;

b. Criteria for the assessment of the confidentiality, integrity, and availability of the financial corporation's information systems and customer information, including the adequacy of the existing controls in the context of the identified risks or threats the financial corporation faces; and

c. Requirements describing how:

(1) Identified risks will be mitigated or accepted based on the risk assessment; and

(2) The information security program will address the risks.

5. A financial corporation shall design and implement safeguards to control the risks the financial corporation identifies through the risk assessment in subsection 4, which include:

a. Implementing and periodically reviewing access controls, including technical and as appropriate, physical controls to:

(1) Authenticate and permit access only to authorized users to protect against the unauthorized acquisition of customer information; and

(2) Limit an authorized user's access to only customer information the authorized user needs to perform the authorized user's duties and functions, or in the case of a customer, to access the customer's own information.

b. Identifying and managing data, personnel, devices, systems, and facilities that enable the financial corporation to achieve business purposes in accordance with

the business purpose's relative importance to business objectives and the financial corporation's risk strategy.

c. Protecting by encryption all customer information held or transmitted by the financial corporation both in transit over external networks and at rest. To the extent a financial corporation determines that encryption of customer information, either in transit over external networks or at rest, is infeasible, the financial corporation may secure customer information using effective alternative compensating controls reviewed and approved by the financial corporation's qualified individual.

d. Adopting secure development practices for in-house developed applications utilized by the financial corporation for transmitting, accessing, or storing customer information and procedures for evaluating, assessing, or testing the security of externally developed applications the financial corporation utilizes to transmit, access, or store customer information.

e. Implementing multifactor authentication for any individual accessing any information system, unless the financial corporation's qualified individual has approved in writing the use of a reasonably equivalent or more secure access control.

f. Developing, implementing, and maintaining procedures to securely dispose of customer information, in any format, no later than two years after the last date the information is used in connection with providing a product or service to the customer which it relates, unless:

(1) The information is necessary for business operations or for other legitimate business purposes;

(2) Is otherwise required to be retained by law or regulation; or

(3) Where targeted disposal is not reasonably feasible due to the manner in which the information is maintained.

g. Periodically reviewing the financial corporation's data retention policy to minimize unnecessary retention of data.

h. Adopting procedures for change management.

i. Implementing policies, procedures and controls designed to:

(1) Monitor and log the activity of authorized users; and

(2) Detect unauthorized access to, use of, or tampering with customer information by authorized users.

6. a. A financial corporation shall regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures, including the controls, systems, and procedures to detect actual and attempted attacks on, or intrusions into, information systems.

b. Information systems monitoring and testing must include continuous monitoring or periodic penetration testing, and vulnerability assessments. Without effective continuous monitoring or other systems to detect, on an ongoing basis, changes in information systems that may create vulnerabilities, a financial corporation shall conduct:

(1) Annual penetration testing of the financial corporation's information systems based on relevant identified risks in accordance with the risk assessment; and

(2) Vulnerability assessments, including systemic scans or information systems reviews that are reasonably designed to identify publicly known security vulnerabilities in the financial corporation's information systems based on the risk assessment, at least every six months; whenever there are material changes to the financial corporation's operations or business arrangements; and whenever there are circumstances the financial corporation knows or has reason to know may have a material impact on the financial corporation's information security program.

7. A financial corporation shall implement policies and procedures to ensure the financial corporation's personnel are able to enact the financial corporation's information security program by:

a. Providing the financial corporation's personnel with security awareness training that is updated as necessary to reflect risks identified by the risk assessment;

b. Utilizing qualified information security personnel employed by the financial corporation or an affiliate or service provider sufficient to manage the financial

corporation's information security risks and to perform or oversee the information security program;

c. Providing information security personnel with security updates and training sufficient to address relevant security risks; and

d. Verifying that key information security personnel take steps to maintain current knowledge of changing information security threats and countermeasures.

8. A financial corporation shall oversee service providers by:

a. Taking reasonable steps to select and retain service providers capable of maintaining appropriate safeguards for customer information;

b. Requiring, by contract, the financial corporation's service providers implement and maintain appropriate safeguards; and

c. Periodically assessing the financial corporation's service providers based on the risk they present, and the continued adequacy of the service providers' safeguards.

9. A financial corporation shall evaluate and adjust the financial corporation's information security program by incorporating:

a. The results of the testing and monitoring required under subsection 5;

b. Any material changes to the financial corporation's operations or business arrangements;

c. The results of risk assessments performed under subsection 3; or

d. Any other circumstances that the financial corporation knows or has reason to know may have a material impact on the financial corporation's information security program.

10. A financial corporation shall establish a written incident response plan designed to promptly respond to, and recover from, any security event materially affecting the confidentiality, integrity, or availability of customer information the financial corporation controls. The plan must address:

a. The goals of the incident response plan;

b. The internal processes for responding to a security event;

c. Clear roles, responsibilities, and levels of decisionmaking authority;

d. External and internal communications and information sharing;

e. Requirements for the remediation of any identified weaknesses in information systems and associated controls;

f. Documentation and reporting regarding security events and related incident response activities; and

g. The evaluation and revision of the incident response plan, as necessary, after a security event.

11. A financial corporation shall require the financial corporation's qualified individual to report in writing, at least annually, to the financial corporation's board of directors or equivalent governing body. If no board of directors or equivalent governing body exists, the report shall be timely presented to a senior officer responsible for the financial corporation's information security program. The report must include:

a. The overall status of the information security program, and the financial corporation's compliance with this chapter and associated rules; and

b. Material matters related to the information security program, addressing issues including risk assessment, risk management and control decisions, service provider arrangements, results of testing, security events or violations and management's responses thereto, and recommendations for changes in the information security program.

12. a. A financial corporation shall notify the commissioner about notification events.

b. After discovery of a notification event described in subdivision c, if the notification event involves the information of at least five hundred consumers, the financial corporation shall notify the commissioner as soon as possible, and no later than forty-five days after the event is discovered. The notice must be made in a format specified by the commissioner and include:

(1) The name and contact information of the reporting financial corporation;

(2) A description of the types of information involved in the notification event;

(3) The date or date range of the notification event, if the information is possible to determine;

(4) The number of consumers affected or potentially affected by the notification event;

(5) A general description of the notification event; and

(6) A statement whether any law enforcement official has provided the financial corporation with a written determination that notifying the public of the breach would impede a criminal investigation or cause damage to national security, and a means for the commissioner to contact the law enforcement official. A law enforcement official may request an initial delay of up to forty-five days following the date when notice was provided to the commissioner. The delay may be extended for an additional period of up to sixty days if the law enforcement official seeks an extension in writing.

c. A notification event must be treated as discovered on the first day when the event is known to the financial corporation. A financial corporation is deemed to have knowledge of a notification event if the event is known to any employee, officer, or other agent of the financial corporation, other than the person committing the breach.

13. A financial corporation shall establish a written plan addressing business continuity and disaster recovery.

13-01.2-04. Exemptions.

Subsection 4, subdivision b of subsection 6, and subsections 10 and 11 of section 13-01.2-03 do not apply to financial institutions that maintain customer information concerning fewer than five thousand consumers.

SECTION 5. AMENDMENT. Section 13-04.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-01.1. Definitions.

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

1. "Borrower" means a person or entity that seeks out, or is solicited by a money broker for the purpose of money brokering.
2. "Commissioner" means the commissioner of financial institutions.
3. "Loan" means a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which the person borrowed. This includes alternative financing products as identified by the commissioner through the issuance of an order.

4. "Money broker" means a person or entity who, in the ordinary course of business, engages in money brokering.

~~4.~~5. "Money brokering" means the act of arranging or providing loans or leases as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes.

~~5.~~6. "Net branch" means an office at which a licensed money broker allows a separate person that does not hold a valid North Dakota money brokers license to originate loans under the license of the money broker.

~~6.~~7. "Net branch arrangement" means an arrangement under which a licensed money broker enters an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits or losses, establishing, leasing, or renting the branch premises, entering other contractual relationships with vendors such as for telephones, utilities, and advertising, having control of a corporate checkbook, or exercising control of personnel through the power to hire or fire such individuals. A person may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.

~~7.~~8. "Precomputed loan" means a loan that is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

SECTION 6. AMENDMENT. Section 13-04.1-11.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-11.1. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the ~~mailing of the~~ request by the department of financial institutions. If the request for information is in regard to a new application or renewal of

an existing application and is not received within the time specified in the request, ~~or within thirty days of the mailing of the request,~~ the department may deny the application.

SECTION 7. AMENDMENT. Section 13-05-07.1 of the North Dakota Century Code is amended and reenacted as follows:

13-05-07.1. Response to department requests.

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

SECTION 8. AMENDMENT. Section 13-08-10 of the North Dakota Century Code is amended and reenacted as follows:

13-08-10. Regulations - Examinations.

The commissioner may adopt rules for the implementation and enforcement of this chapter. ~~A copy of a rule adopted by the commissioner must be mailed to each licensee at least thirty days before the date the rule takes effect.~~ To assure compliance with this chapter, the commissioner may examine the relevant business, books, and records of any licensee. The licensee shall pay an examination or visitation fee, and the commissioner shall charge the licensee for the actual cost of the examination or visitation at an hourly rate set by the commissioner which is sufficient to cover all reasonable expenses associated with the examination or visitation.

SECTION 9. AMENDMENT. Section 13-08-11.1 of the North Dakota Century Code is amended and reenacted as follows:

13-08-11.1. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the ~~mailing of the~~ request by the department of financial institutions. If the request for information is in regard to a new application or renewal of

an existing application and is not received within the time specified in the request, ~~or within thirty days of the mailing of the request,~~ the department may deny the application.

SECTION 10. AMENDMENT. Section 13-09.1-14 of the North Dakota Century Code is amended and reenacted as follows:

13-09.1-14. Renewal of license.

1. A license under this chapter must be renewed annually.
   a. An annual nonrefundable renewal fee must be paid by December thirty-first. The fee must equal five hundred dollars or one-fourth of one percent of the money transmission dollar volume in North Dakota for the twelve months ending June thirtieth, whichever is greater. For the transmission of virtual currency as defined in section 13-09.1-44, the fee must equal five hundred dollars or one-fourth of one percent of the average United States dollar equivalent market value of the virtual currency transmitted in North Dakota for the twelve months ending June thirtieth, whichever is greater. The fee may not exceed two thousand five hundred dollars.
   b. The renewal term must be for a period of one year and begins on January first of each year after the initial license term and expires on December thirty-first of the year the renewal term begins.
2. A licensee shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must state or contain a description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner.
3. The commissioner for good cause may grant an extension of the renewal date.
4. The commissioner may utilize the nationwide system to process license renewals provided that such functionality is consistent with this section.
5. A licensee may renew an expired license no later than January thirty-first subject to a late fee of fifty dollars.
6. The commissioner may deny an application to renew a license if the licensee no longer meets the criteria for licensure or otherwise fails to comply with this chapter.

SECTION 11. AMENDMENT. Subsection 3 of section 13-09.1-17 of the North Dakota Century Code is amended and reenacted as follows:

3. A notice of disapproval must contain a statement of the basis for disapproval and must be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval by requesting a hearing before the commissioner within ~~thirty~~twenty days after receipt of notice of disapproval in accordance with chapter 28-32.

SECTION 12. AMENDMENT. Section 13-09.1-38 of the North Dakota Century Code is amended and reenacted as follows:

13-09.1-38. Orders to cease and desist.

1. If the commissioner determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon issuance.
2. The commissioner may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the commissioner.
3. An order to cease and desist ~~remains effective and enforceable pending the completion of an administrative proceeding~~must contain a notice of opportunity for a hearing pursuant to chapter 28-32.
4. ~~An order to cease and desist expires unless the commissioner commences an administrative proceeding pursuant to chapter 28-32 within ten days after it is issued~~If the company or individual subject to an order to cease and desist fails to request a hearing in writing to the commissioner within twenty days of issuance, or if a hearing is held and the commissioner concludes the record so warrants, the order to cease and desist becomes final.

SECTION 13. AMENDMENT. Section 13-10-05 of the North Dakota Century Code is amended and reenacted as follows:

13-10-05. Issuance of license.

The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

1. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.
2. The applicant has not been charged pending trial, convicted ~~of~~, ~~or~~ pled guilty, pled to lesser charges, or pled nolo contendere to, a felony in a domestic, foreign, or military court:
   a. During the seven-year period preceding the date of the application for licensing and registration; or
   b. At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
   c. Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.
3. a. The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of this chapter.
   b. For purposes of this subsection, a person has shown that that person is not financially responsible when that person has shown a disregard in the management of that person's own financial condition. A determination that an individual has not shown financial responsibility may include:
      (1) Current outstanding judgments, except judgments solely as a result of medical expenses;
      (2) Current outstanding tax liens or other government liens and filings;
      (3) Foreclosures within the past three years; and
      (4) A pattern of seriously delinquent accounts within the past three years.
4. The applicant has completed the prelicensing education requirement described in section 13-10-06.
5. The applicant has passed a written test that meets the test requirement described in section 13-10-07.
6. The applicant has met the net worth and surety bond requirements under section 13-10-13.

SECTION 14. AMENDMENT. Subsection 1 of section 13-11-10 of the North Dakota Century Code is amended and reenacted as follows:

1. If the commissioner has reason to believe that grounds for revocation of a license exist, the commissioner may ~~send by certified mail to~~notify the licensee with a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Grounds for revocation of a license include:
   a. Any debt-settlement provider has failed to pay the annual license fee or to maintain in effect the bond required under this chapter;
   b. The debt-settlement provider has violated this chapter or any rule lawfully made by the commissioner implementing this chapter;
   c. Any fact or condition exists that, if it had existed at the time of the original application for a license, would have warranted the commissioner in refusing its issuance; or
   d. Any applicant has made any false statement or representation to the commissioner in applying for a license under this chapter.

SECTION 15. AMENDMENT. Section 13-12-19 of the North Dakota Century Code is amended and reenacted as follows:

13-12-19. Response to department requests.

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

SECTION 16. AMENDMENT. Subsections 6, 21, and 22 of section 13-13-01 of the North Dakota Century Code are amended and reenacted as follows:

6. "Interim ~~serviced prior to sale~~mortgage servicing" means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the secondary market.

21. "Service or servicing a loan" means ~~on behalf of the lender or investor of a residential mortgage loan~~:
    a. Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;
    b. Collecting fees due to the servicer;
    c. Working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently;
    d. Otherwise finalizing collection through the foreclosure process; or
    e. Servicing a reverse mortgage loan.
22. "Servicer" means the entity performing the routine administration of residential mortgage ~~loans on behalf of the owner or owners of the related mortgages under the terms of a servicing contract~~.

SECTION 17. AMENDMENT. Section 13-13-04 of the North Dakota Century Code is amended and reenacted as follows:

13-13-04. Entities exempted from licensing requirements.

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. State or federal housing finance agencies;
5. Institutions chartered by the farm credit administration; ~~or~~
6. Not-for-profit mortgage servicers; or
7. Entities solely performing interim mortgage servicing.

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

13-13-18. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if

no time is specified, within thirty days of the ~~mailing of the~~ request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, ~~or within thirty days of the mailing of the request,~~ the department may deny the application.