

February 12, 2025

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

HOUSE BILL NO. 1127

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact chapter 13-01.2 of the North Dakota Century Code,
2 relating to the financial institution data security program; and to amend and reenact sections
3 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,
4 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
5 13-09.1-38 and 13-10-05, subsection 1 of section 13-11-10, section 13-12-19, subsections 6,
6 21, and 22 of section 13-13-01, and sections 13-13-04 and 13-13-18 of the North Dakota
7 Century Code, relating to the department of financial institutions, financial institutions, response
8 to department requests, renewal of licenses, orders to cease and desist, issuance of licenses,
9 revocation of licenses, and exemptions from licenses.

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

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

13 **6-01-04.1. Removal of officers, directors, and employees of financial corporations or** 14 **institutions.**

- 15 1. The department of financial institutions or the board may issue, upon any current or
16 former officer, director, or employee of a financial corporation, financial institution, or
17 credit union subject to its jurisdiction and upon a financial corporation, financial
18 institution, or credit union involved, an order stating:
- 19 a. That the current or former officer, director, or employee is engaging, or has
20 engaged, in any of the following conduct:

1 is charged with a felony in state or federal court, involving dishonesty or breach of
2 trust, the commissioner may immediately suspend the person from office or prohibit
3 the person from any further participation in a financial corporation's, financial
4 institution's, or credit union's affairs. The order is effective immediately upon issuance
5 of the order on a financial corporation, financial institution, or credit union and the
6 person charged, and remains in effect until the criminal charge is finally disposed of or
7 until modified by the board. If a judgment of conviction, a federal pretrial diversion,
8 conviction or agreement to plea to lesser charges, or similar state order or judgment is
9 entered, the board or commissioner may order that the suspension or prohibition be
10 made permanent. A finding of not guilty or other disposition of the charge does not
11 preclude the commissioner or the board from pursuing administrative or civil remedies.

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

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

22 **6-01-04.2. Cease and desist orders.**

23 1. The department of financial institutions or the board may issue and serve upon a
24 financial corporation, financial institution, or credit union subject to its jurisdiction a
25 complaint stating the factual basis for the department's or board's belief that the
26 financial corporation, financial institution, or credit union is engaging in any of the
27 following conduct:

28 a. An unsafe or unsound practice.

29 b. A violation in the past or on a continuing basis of any law, regulation, ~~board~~ order,
30 or written agreement entered into with the board or department of financial
31 institutions.

1 evidences of debt; receiving deposits; buying and selling exchange, coin, and bullion;
2 loaning money upon real or personal security, or both; soliciting and receiving deposits
3 in the nature of custodial accounts for the purpose of health savings or similar health
4 care cost funding accounts, retirement fund contracts, or pension programs, and such
5 custodial accounts are exempt from chapter 6-05; and providing services to its
6 customers involving electronic transfer of funds to the same extent that other financial
7 institutions chartered and regulated by an agency of the federal government are
8 permitted to provide those services within this state. A bank that provides electronic
9 funds transfer equipment and service to its customers, at premises separate from its
10 main banking house or duly authorized facility approved by the state banking board,
11 must make the equipment and service available for use by customers of any other
12 bank upon the request of the other bank to share its use and the agreement of the
13 other bank to share pro rata all costs incurred in connection with its installation and
14 operation, and the electronic operations are not deemed to be the establishment of a
15 branch, nor of a separate facility. The electronic operations at premises separate from
16 its banking house or duly authorized facility must be considered a customer electronic
17 funds transfer center and may be established subject to rules that the state banking
18 board adopts.

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

21 **13-01.2-01. Definitions.**

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

- 23 1. "Authorized user" means any employee, contractor, agent, or other person who:
24 a. Participates in a financial corporation's business operations; and
25 b. Is authorized to access and use any of the financial corporation's information
26 systems and data.
- 27 2. "Commissioner" means the commissioner of the department of financial institutions.
- 28 3. "Consumer":
29 a. Means an individual, or that individual's legal representative, who applies for or
30 has obtained a financial product or service from a financial corporation which is to

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- 1 (3) Purchases an insurance product from a financial corporation;
- 2 (4) Holds an investment product through a financial corporation, including when
- 3 a financial corporation acts as a custodian for securities or for assets in an
- 4 individual retirement arrangement;
- 5 (5) Enters into an agreement or understanding with a financial corporation in
- 6 which the financial corporation undertakes to arrange or broker a home
- 7 mortgage loan, or credit to purchase a vehicle, for the consumer;
- 8 (6) Enters into a lease of personal property on a nonoperating basis with a
- 9 financial corporation;
- 10 (7) Obtains financial, investment, or economic advisory services from a
- 11 financial corporation for a fee;
- 12 (8) Becomes a financial corporation's client for the purpose of obtaining tax
- 13 preparation or credit counseling services from the financial corporation;
- 14 (9) Obtains career counseling while:
- 15 (a) Seeking employment with a financial corporation or the finance,
- 16 accounting, or audit department of any company; or
- 17 (b) Employed by a financial corporation or department of any company;
- 18 (10) Is obligated on an account that a financial corporation purchases from
- 19 another financial corporation, regardless of whether the account is in default
- 20 when purchased, unless the financial corporation does not locate the
- 21 consumer or attempt to collect any amount from the consumer on the
- 22 account;
- 23 (11) Obtains real estate settlement services from a financial corporation; or
- 24 (12) Has a loan for which a financial corporation owns the servicing rights.
- 25 b. Does not include a situation in which:
- 26 (1) The consumer obtains a financial product or service from a financial
- 27 corporation only in isolated transactions, including:
- 28 (a) A financial corporation's automated teller machine to withdraw cash
- 29 from an account at another financial institution;
- 30 (b) Purchasing a money order from a financial corporation;
- 31 (c) Cashing a check with a financial corporation; or

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

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

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

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

14 a. Knowledge factors, including a password;

15 b. Possession factors, including a token; or

16 c. Inherence factors, including biometric characteristics.

17 15. "Nonpublic personal information":

18 a. Means:

19 (1) Personally identifiable financial information; and

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

24 b. Does not include:

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

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

- 1 (4) Any information about a financial corporation's consumer if it is disclosed in
2 a manner that indicates the individual is or has been a financial
3 corporation's consumer;
- 4 (5) Any information a consumer provides to a financial corporation or which a
5 financial corporation or a financial corporation's agent otherwise obtains in
6 connection with collecting on, or servicing, a credit account;
- 7 (6) Any information a financial corporation collects through an information
8 collecting device from a web server; and
- 9 (7) Information from a consumer report.
- 10 c. Does not include:
- 11 (1) A list of names and addresses of customers of an entity that is not a
12 financial corporation; and
- 13 (2) Information that does not identify a consumer, such as aggregate
14 information or blind data that does not contain personal identifiers such as
15 account numbers, names, or addresses.
- 16 19. a. "Publicly available information":
- 17 (1) Means any information that a financial corporation has a reasonable basis
18 to believe is lawfully made available to the general public from:
- 19 (a) Federal, state, or local government records;
- 20 (b) Widely distributed media; or
- 21 (c) Disclosures to the general public which are required under federal,
22 state, or local law.
- 23 (2) Includes information:
- 24 (a) In government real estate records and security interest filings; or
- 25 (b) From widely distributed media, a telephone book, a television or radio
26 program, a newspaper, or a website that is available to the general
27 public on an unrestricted basis. A website is not restricted because an
28 internet service provider or a site operator requires a fee or a
29 password, provided access is available to the general public.

- 1 b. Maintain administrative, technical, and physical safeguards that are appropriate
2 to the financial corporation's size and complexity, the nature and scope of the
3 financial corporation's activities, and the sensitivity of any customer information at
4 issue.
- 5 3. The financial corporation shall develop a security program that:
- 6 a. Ensures the security and confidentiality of customer information;
7 b. Protects against any anticipated threats or hazards to the security or integrity of
8 such information; and
9 c. Protects against unauthorized access to or use of such information that could
10 result in substantial harm or inconvenience to any customer.

11 **13-01.2-03. Elements of a security program.**

- 12 1. A financial corporation's information security program must denote a designation of a
13 qualified individual responsible for overseeing and implementing the financial
14 corporation's information security program and enforcing the financial corporation's
15 information security program. The qualified individual may be employed by the
16 financial corporation, an affiliate, or a service provider.
- 17 2. If a financial corporation designates an individual employed by an affiliate or service
18 provider as the qualified individual, the financial corporation shall:
- 19 a. Retain responsibility for compliance with this chapter;
20 b. Designate a senior member of the financial corporation's personnel to be
21 responsible for directing and overseeing the qualified individual; and
22 c. Require the service provider or affiliate to maintain an information security
23 program that protects the financial corporation in accordance with the
24 requirements of this chapter.
- 25 3. A financial corporation shall base the financial corporation's information security
26 program on a risk assessment that:
- 27 a. Identifies reasonably foreseeable internal and external risks to the security,
28 confidentiality, and integrity of customer information that could result in the
29 unauthorized disclosure, misuse, alteration, destruction or other compromise of
30 customer information;

- 1 the business purpose's relative importance to business objectives and the
2 financial corporation's risk strategy.
- 3 c. Protecting by encryption all customer information held or transmitted by the
4 financial corporation both in transit over external networks and at rest. To the
5 extent a financial corporation determines that encryption of customer information,
6 either in transit over external networks or at rest, is infeasible, the financial
7 corporation may secure customer information using effective alternative
8 compensating controls reviewed and approved by the financial corporation's
9 qualified individual.
- 10 d. Adopting secure development practices for in-house developed applications
11 utilized by the financial corporation for transmitting, accessing, or storing
12 customer information and procedures for evaluating, assessing, or testing the
13 security of externally developed applications the financial corporation utilizes to
14 transmit, access, or store customer information.
- 15 e. Implementing multifactor authentication for any individual accessing any
16 information system, unless the financial corporation's qualified individual has
17 approved in writing the use of a reasonably equivalent or more secure access
18 control.
- 19 f. Developing, implementing, and maintaining procedures to securely dispose of
20 customer information, in any format, no later than two years after the last date the
21 information is used in connection with providing a product or service to the
22 customer which it relates, unless:
- 23 (1) The information is necessary for business operations or for other legitimate
24 business purposes;
- 25 (2) Is otherwise required to be retained by law or regulation; or
- 26 (3) Where targeted disposal is not reasonably feasible due to the manner in
27 which the information is maintained.
- 28 g. Periodically reviewing the financial corporation's data retention policy to minimize
29 unnecessary retention of data.
- 30 h. Adopting procedures for change management.
- 31 i. Implementing policies, procedures and controls designed to:

- 1 corporation's information security risks and to perform or oversee the information
2 security program;
- 3 c. Providing information security personnel with security updates and training
4 sufficient to address relevant security risks; and
- 5 d. Verifying that key information security personnel take steps to maintain current
6 knowledge of changing information security threats and countermeasures.
- 7 8. A financial corporation shall oversee service providers by:
- 8 a. Taking reasonable steps to select and retain service providers capable of
9 maintaining appropriate safeguards for customer information;
- 10 b. Requiring, by contract, the financial corporation's service providers implement
11 and maintain appropriate safeguards; and
- 12 c. Periodically assessing the financial corporation's service providers based on the
13 risk they present, and the continued adequacy of the service providers'
14 safeguards.
- 15 9. A financial corporation shall evaluate and adjust the financial corporation's information
16 security program by incorporating:
- 17 a. The results of the testing and monitoring required under subsection 5;
- 18 b. Any material changes to the financial corporation's operations or business
19 arrangements;
- 20 c. The results of risk assessments performed under subsection 3; or
- 21 d. Any other circumstances that the financial corporation knows or has reason to
22 know may have a material impact on the financial corporation's information
23 security program.
- 24 10. A financial corporation shall establish a written incident response plan designed to
25 promptly respond to, and recover from, any security event materially affecting the
26 confidentiality, integrity, or availability of customer information the financial corporation
27 controls. The plan must address:
- 28 a. The goals of the incident response plan;
- 29 b. The internal processes for responding to a security event;
- 30 c. Clear roles, responsibilities, and levels of decisionmaking authority;
- 31 d. External and internal communications and information sharing;

- 1 (6) A statement whether any law enforcement official has provided the financial
2 corporation with a written determination that notifying the public of the
3 breach would impede a criminal investigation or cause damage to national
4 security, and a means for the commissioner to contact the law enforcement
5 official. A law enforcement official may request an initial delay of up to
6 forty-five days following the date when notice was provided to the
7 commissioner. The delay may be extended for an additional period of up to
8 sixty days if the law enforcement official seeks an extension in writing.
- 9 c. A notification event must be treated as discovered on the first day when the event
10 is known to the financial corporation. A financial corporation is deemed to have
11 knowledge of a notification event if the event is known to any employee, officer,
12 or other agent of the financial corporation, other than the person committing the
13 breach.
- 14 13. A financial corporation shall establish a written plan addressing business continuity
15 and disaster recovery.
- 16 **13-01.2-04. Exemptions.**
- 17 Subsection 4, subdivision b of subsection 6, and subsections 10 and 11 of section
18 13-01.2-03 do not apply to financial institutions that maintain customer information concerning
19 fewer than five thousand consumers.
- 20 **SECTION 5. AMENDMENT.** Section 13-04.1-01.1 of the North Dakota Century Code is
21 amended and reenacted as follows:
- 22 **13-04.1-01.1. Definitions.**
- 23 As used in this chapter, unless the context or subject matter otherwise requires:
- 24 1. "Borrower" means a person or entity that seeks out, or is solicited by a money broker
25 for the purpose of money brokering.
- 26 2. "Commissioner" means the commissioner of financial institutions.
- 27 3. "Loan" means a contract by which one delivers a sum of money to another and the
28 latter agrees to return at a future time a sum equivalent to that which the person
29 borrowed. This includes alternative financing products as identified by the
30 commissioner through the issuance of an order.

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

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

5 **13-05-07.1. Response to department requests.**

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

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

15 **13-08-10. Regulations - Examinations.**

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

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

26 **13-08-11.1. Response to department requests.**

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

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

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

7 **13-09.1-38. Orders to cease and desist.**

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

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

29 **13-10-05. Issuance of license.**

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

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

3 1. If the commissioner has reason to believe that grounds for revocation of a license
4 exist, the commissioner may ~~send by certified mail to~~notify the licensee with a notice
5 of hearing stating the contemplated action and in general the grounds thereof and
6 setting the time and place for a hearing thereon. Grounds for revocation of a license
7 include:

- 8 a. Any debt-settlement provider has failed to pay the annual license fee or to
9 maintain in effect the bond required under this chapter;
- 10 b. The debt-settlement provider has violated this chapter or any rule lawfully made
11 by the commissioner implementing this chapter;
- 12 c. Any fact or condition exists that, if it had existed at the time of the original
13 application for a license, would have warranted the commissioner in refusing its
14 issuance; or
- 15 d. Any applicant has made any false statement or representation to the
16 commissioner in applying for a license under this chapter.

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

19 **13-12-19. Response to department requests.**

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

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

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

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