2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1130

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1130
January 11, 2011
12776

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:
Notice regarding change of name & address of licensed deferred presentment service providers & money transmitters & prohibited acts & practices of licensed money transmitters, to amend relating to license requirements, retention of records, licensee transaction procedures, suspension & revocation of license, suspension & removal of agency officers & employees, definition of electronic instruments regarding deferred presentment services providers, money transmitters & provide a penalty.

Minutes:

Chairman Keiser:

Aaron Webb~Department of Finanical Institutions: (reads the attached testimony on behalf of Robert J Entringer-Commissioner).

Representative Nathe: Can you explain what a deferred presentment service provider is?

Aaron Webb: It includes pay day loans and entities that except checks that are post dated and they receive a fee for giving cash in return for that.

Representative Ruby: I noticed your amendment you made changes to add business days in those different areas, but on page 3, line 24 and page 7, line 4 you chose not to, is there a reason for that?

Aaron Webb: I believe that rules for civil procedure uses 20 days as the demarcation zone where if it's over 20 days, I believe its calendar days. We can add business or calendar days, whichever the committee recommend.

Representative Ruby: We should define it, so the public knows.

Aaron Webb: We can certainly do that.

Representative Boe: In section 4, you want to remove the language because it's duplicative of administrative rules, why do you choose to change this in statue rather than in rules?

Aaron Webb: I guess an option would be to remove the administrative rule and bring it into statue.

Chairman Keiser: We encourage you to consider putting it in statue from a policy standpoint. Also, then people who are in support or opposition have a chance to see it.

Representative N Johnson: On section 11, the prohibited act, in your testimony that it was similar as mortgage loan originators statue, this statue just provides for deferred presentment service providers?

Aaron Webb: Yes.

Representative Frantsvog: (didn't turn on mike).

Aaron Webb: It was from a previous hearing that we were instructed to either include business or calendar days, so that's why we put that in there. We changed it from 10 days to 20 business days. Why the lengthening of time, that seem to be what the committee was asking the department to do.

Chairman Keiser: 20 business days is a reasonable amount of time.

Representative M Nelson: On page 7, line 1 & 2, the licensee has failed to maintain registration with the Secretary of State if so required, are there two classes of licensees.

Aaron Webb: there could be where someone doesn't have to be licensed; it covers all bases if they don't have to be.

Chairman Keiser: It might be that there are companies licensed and operating solely in North Dakota, they should be registered with our Secretary of State. If you are registered in Delaware and you are doing a transaction in here, are they required to get a license just because they have a client here?

Aaron Webb: I'm not 100% sure.

Bob Entringer~Department of Financial Institutions: The situation where you are not required to be registered, doing in business in my name.

Chairman Keiser: Anyone else here to testify to HB 1130 in support, in opposition, neutral to HB 1130. Close the hearing on HB 1130, are there any amendments?

Representative Nathe: Representative Ruby's suggestions to amend to adding 20 business days, page 3, line 24 and also page 7 line 4.

Representative Nathe: Proposed amendment from Robert Entringer. Motion to adopt the amendments.

Representative Clark: Second.

Representative Kreun: You made the request for information required by the department by rule, is that going to be part of the amendment?

Representative Vigesaa: Motion to adopt on page 4, line 22, the insertion of business days prior to following 20 business days

Representative Ruby: Second.

2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1130
January 18, 2011
13012

☐ Conference Committee

Committee Clerk Signature Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Notice regarding change of name & address of licensed deferred presentment service providers & money transmitters & prohibited acts & practices of licensed money transmitters, to amend relating to license requirements, retention of records, licensee transaction procedures, suspension & revocation of license, suspension & removal of agency officers & employees, definition of electronic instruments regarding deferred presentment services providers, money transmitters & provide a penalty.

Committee Work Minutes:

Chairman Keiser: Opens the work session on HB 1130.

Representative Nathe: (See attached amendments). Moves to adopt the amendments on HB 1130.

Vice Chairman Kasper: Second.

Voice roll call taken, motion carried.

Representative N Johnson: I was reading the amendment and it talks about 15 days, page 2, line 22, should we put business or should we let it go?

Representative Nathe: Further amend to business days.

Representative N Johnson: Second.

Voice roll call taken, motion carried.

Chairman Keiser: This is so much better than what we had because prior to doing this, it would have been just by rule, we would have left and they would have implemented this rule and the public would not have had an opportunity to know what it is in advance and testify. We are providing an opportunity on the Senate side for the businesses impacted by this to look at it. It's overwhelming, all of these things. Nothing wrong with asking them to put down what they mean. I support the hard work of Representative Nathe and the commissioner.

Voice vote, motion carried for all those in favor of adopting the further adopted amendment.

Chairman Keiser: What are the wishes of the committee?

Representative Nathe: Moves for a Do Pass as amended for HB 1130.

Representative Vigesaa: Second.

Chairman Keiser: Further discussion?

Chairman Keiser: What does this bill do?

Representative Nathe: It deals with the presentment service providers of pay day loans so. It cleans up some language.

Chairman Keiser: This gives the commissioner a lot more authority in regulating the pay day loan. Further discussion?

Roll call was taken on HB 1130 for a Do Pass as Amended with 13 yeas, 0 nays, 1 absent and Representative Nathe is the carrier.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1130

Page 1, line 22, replace "ten" with "twenty business"

Page 2, line 12, after "ten" insert "business"

Page 6, line 4, after "ten" insert "business"

Page 7, line 16, replace "ten" with "twenty business"

Renumber accordingly

Date: Jan 11-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1130

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep. Nathe Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

20 business days.
p. 3 - line 24
p. 7 - line 4

Date: Jan 11-2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1130

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Nathe Seconded By Rep Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: Jan 11-2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1130

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Vigesaa Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

p. 4, line 22, insertion of business days prior to following 20 business days

Date: Jan 19 - 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1130

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

Motion Made By Rep Nathe Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: Jan 18 - 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1130

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
~~further amend~~

Motion Made By Rep Nathe Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

change days to bus. days.

Prepared by the House Industry, Business and Labor Committee – Rep. Nathe
January 18, 2011

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1130

Page 1, line 22, replace "ten" with "twenty business"

Page 2, line 12, after "ten" insert "business"

Page 2, line 19, after "The" insert "original"

Page 2, line 19, remove the overstrike over "~~name of the licensee; the transaction date; the~~"

Page 2, line 20, remove the overstrike over "~~amount of the obligation;~~"

Page 2, line 20, remove the overstrike over "~~a statement of the total amount of fees charged;~~"

Page 2, line 21, remove the overstrike over "~~expressed as a dollar amount and as an annual percentage rate~~"

Page 2, line 21, replace "information required" with an underscored semicolon

Page 2, line 22, replace "by the department by rule" with "the name and signature of the person who signs the agreement on behalf of the licensee; the name and address of the check maker; the transaction number assigned by the database; the date of negotiation of the check; the signature of the check maker; a statement that a licensee may not renew a transaction more than once; a statement that the renewal fee cannot exceed twenty percent of the amount being renewed; the maximum term of the transaction including the renewal may not exceed sixty days; the term of the renewal period may not be less than fifteen days; and a statement containing the right of rescission printed immediately above the signature line of the written agreement in a minimum of ten point font and providing a space for the check maker to initial that the notice to the right of rescission was received. The original agreement may not include a hold harmless clause; a confession of judgment clause; any assignment of or order for payment of wages or other compensation for services; a provision in which the check maker agrees not to assert any claim or defense arising out of the agreement; a waiver of any provision of this Chapter; any representation from the check maker as to the sufficiency of funds regarding any past deferred presentment service transactions; or any statement regarding criminal prosecution with respect to the agreement. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the original transaction date, the renewal transaction date, the amount of the check paid to the check maker, the fee charged in dollars, and the maturity date"

Page 3, line 24, after "twenty" insert "business"

Page 4, line 22, after "twenty" insert "business"

Page 6, line 4, after "ten" insert "business"

Page 7, line 4, after "twenty" insert "business"

Page 7, line 16, replace "ten" with "twenty business"

Renumber accordingly

Date: Jan 18 - 2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1130

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Nathe Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

voice vote - motion carried

Total Yes _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

11.8085.01001
Title.02000

Adopted by the Industry, Business and Labor Committee

January 19, 2011

VR 1/19/11

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1130

Page 1, line 22, replace "ten" with "twenty business"

Page 2, line 12, after "ten" insert "business"

Page 2, line 19, after "The" insert "original"

Page 2, line 19, remove the overstrike over "~~name of the licensee; the transaction date; the~~"

Page 2, line 20, remove the overstrike over "~~amount of the obligation;~~"

Page 2, line 20, remove the overstrike over "~~a statement of the total amount of fees charged;~~"

Page 2, line 21, remove the overstrike over "~~expressed as a dollar amount and as an annual percentage rate~~"

Page 2, line 21, remove "information required"

Page 2, replace "by the department by rule" with "; the name and signature of the individual who signs the agreement on behalf of the licensee; the name and address of the check maker; the transaction number assigned by the database; the date of negotiation of the check; the signature of the check maker; a statement that a licensee may not renew a transaction more than once; a statement that the renewal fee may not exceed twenty percent of the amount being renewed; the maximum term of the transaction, including a statement that the renewal may not exceed sixty business days; a statement that the term of the renewal period may not be less than fifteen business days; and a statement containing the right of rescission printed immediately above the signature line of the written agreement in a minimum of ten-point font and providing a space for the check maker to initial that the notice to the right of rescission was received. The original agreement may not include a hold harmless clause; a confession of judgment clause; any assignment of or order for payment of wages or other compensation for services; a provision in which the check maker agrees not to assert any claim or defense arising out of the agreement; a waiver of any provision of this chapter; any representation from the check maker as to the sufficiency of funds regarding any past deferred presentment service transactions; or any statement regarding criminal prosecution with respect to the agreement. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the original transaction date, the renewal transaction date, the amount of the check paid to the check maker, the fee charged in dollars, and the maturity date"

Page 3, line 24, after "twenty" insert "business"

Page 4, line 22, after "twenty" insert "business"

Page 6, line 4, after "ten" insert "business"

Page 7, line 4, after "twenty" insert "business"

Page 7, line 16, replace "ten" with "twenty business"

Renumber accordingly

Date: Jan 18-2011

Roll Call Vote # 4

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1130

House **House Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

Motion Made By Rep Nathe Seconded By Rep Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	AB	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Nathe

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1130: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1130 was placed on the Sixth order on the calendar.

Page 1, line 22, replace "ten" with "twenty business"

Page 2, line 12, after "ten" insert "business"

Page 2, line 19, after "The" insert "original"

Page 2, line 19, remove the overstrike over "~~name of the licensee; the transaction date; the~~"

Page 2, line 20, remove the overstrike over "~~amount of the obligation;~~"

Page 2, line 20, remove the overstrike over "~~a statement of the total amount of fees charged,~~"

Page 2, line 21, remove the overstrike over "~~expressed as a dollar amount and as an annual percentage rate~~"

Page 2, line 21, remove "information required"

Page 2, replace "by the department by rule" with "; the name and signature of the individual who signs the agreement on behalf of the licensee; the name and address of the check maker; the transaction number assigned by the database; the date of negotiation of the check; the signature of the check maker; a statement that a licensee may not renew a transaction more than once; a statement that the renewal fee may not exceed twenty percent of the amount being renewed; the maximum term of the transaction, including a statement that the renewal may not exceed sixty business days; a statement that the term of the renewal period may not be less than fifteen business days; and a statement containing the right of rescission printed immediately above the signature line of the written agreement in a minimum of ten-point font and providing a space for the check maker to initial that the notice to the right of rescission was received. The original agreement may not include a hold harmless clause; a confession of judgment clause; any assignment of or order for payment of wages or other compensation for services; a provision in which the check maker agrees not to assert any claim or defense arising out of the agreement; a waiver of any provision of this chapter; any representation from the check maker as to the sufficiency of funds regarding any past deferred presentment service transactions; or any statement regarding criminal prosecution with respect to the agreement. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the original transaction date, the renewal transaction date, the amount of the check paid to the check maker, the fee charged in dollars, and the maturity date"

Page 3, line 24, after "twenty" insert "business"

Page 4, line 22, after "twenty" insert "business"

Page 6, line 4, after "ten" insert "business"

Page 7, line 4, after "twenty" insert "business"

Page 7, line 16, replace "ten" with "twenty business"

Renumber accordingly

2011 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1130

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1130
March 8, 2011
Job Number 15105

☐ Conference Committee

Committee Clerk Signature Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to notice regarding change of name and address of licensed deferred presentment service providers and money transmitters

Minutes: Testimony attached

Chairman Klein: Opened the hearing on House Bill 1130.

Robert J. Entringer, Commissioner of the Department of Financial Institutions: In support of the bill. Testimony Attached.

Chairman Klein: Asked if there are a lot of problems with either one of these groups, the pay day loan folks.

Bob: They get a lot of complaints on pay day lenders but it is the internet pay day lenders that are not licensed.

Chairman Klein: Asked if the ones in our state are rebuttable.

Bob: He said that was correct and they have sixty five companies licensed in state, as well as out of state.

Chairman Klein: Asked if the number has come down.

Bob: Answered yes, they had eighty five.

Senator Larsen: Asked if there wasn't a bill or legislation done on the bond for the pay day loan people and if someone comes in with a check are they giving them a visa debit card.

Bob: He answered that the bond had not been amended and it is a tiered level depending on the highest level of outstanding receivables. They can go up to a seventy five thousand dollar bond for a pay day lender. In answer to the second question, they have not allowed a pay day lender to issue the proceeds of a pay day loan in a gift or prepaid card. They won't let them do that because it would result in additional fees to the consumer.

Chairman Klein: Commented that what they have done was rewritten, cleaned up and tried to address issues that may come along in relation to the out of state brokers. Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1130
March 9, 2011
Job Number 15174

☐ Conference Committee

Committee Clerk Signature Eva Luttell

Explanation or reason for introduction of bill/resolution:

Relating to notice regarding change of name and address of licensed deferred presentment service provider and money transmitters

Minutes: Vote

Chairman Klein: Said to look at 1130. It deals with pay day lenders.

Senator Laffen: Moved a do pass on Engrossed House Bill 1130.

Senator Larsen: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Klein to carry the bill

Date: 3/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1130

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Laffen Seconded By Senator Larsen

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1130, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1130 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

HB 1130

State of North Dakota
DEPARTMENT of FINANCIAL INSTITUTIONS

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: January 11, 2011

TO: House Industry, Business and Labor Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Testimony in Support of House Bill No. 1130

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of House Bill No. 1130.

Chairman Keiser and members of the Committee, House Bill No. 1130 relates to amendments by the Department to Chapter 13-08 relating to deferred presentment service provider, as well as Chapter 13-09 which relates to money transmission.

Section 1 of the Bill clarifies that a deferred presentment service provider is doing business in the State of North Dakota if the customer is located in North Dakota. This provision is consistent with other Sections of our statutes clarifying that if the customer is a resident of North Dakota they

2000 Schafer Street, Suite G Bismarck, ND 58501-1204
701-328-9933 dfi@nd.gov
fax 701-328-0290 www.nd.gov/dfi

are doing business in the State of North Dakota. This particular provision is somewhat critical in that many times an internet deferred presentment service provider claims that they are doing business in the State that they are located in, because the documentation, which usually "signed" through an internet transaction, indicates that they are doing business under the laws of the State in which the company resides. This section clarifies that if they are engaging in a transaction with a customer in North Dakota they are doing business in North Dakota and subject to licensing.

Section 2 simply requires that a licensee provide a notice of change of address or name, and must be on the forms prescribed by the Commissioner. We are proposing amendments to extend the time frame to 20 business days.

Section 3 requires that when a licensee ceases business they have to inform the Department of the location of the records, as well as providing the name of the individual who is responsible for maintaining those records; if the location should change they need to also notify the Department as well as the new individual who is responsible for those records. We are proposing amendments to extend the time frame to 20 business days.

Section 4 removes language that specifies what a deferred presentment service agreement must contain as it is duplicative of the

existing requirements that are already set forth in the Department's administrative rules.

Section 5 clarifies the Commissioner's process associated with suspension and revocation of a license. This amendment would make this Section similar to other chapters regulated by the department. Under page 3, lines 19 and 20, the amendment adds two scenarios where the Commissioner would have the authority to suspend or revoke a license, specifically, they include: failure to maintain a bond in conformance with the chapter and a failure to maintain required registration with the North Dakota Secretary of State. The amendment of this Section also addresses due process under Chapter 28-32 of the North Dakota Century Code. Further, if a hearing is not requested by a licensee after proper notice, then a Final Order suspending or revoking the license may be issued. Finally, the amendment provides the Commissioner with the authority to immediately suspend a license if probable cause for revocation exists. This immediate suspension, not to exceed 60 days, would allow the Commissioner to temporarily freeze a situation where the actions of a licensee could have a continuing negative impact on North Dakota consumers. During this period of temporary suspension, the Commissioner would follow the notice and hearing process for suspension or removal under this section. One

example where this immediate temporary suspension would have been appropriate occurred a few months ago when a deferred presentment service provider failed to maintain a bond and we were unable to immediately suspend or revoke their license without first providing notice and going through the hearing process. Based on the foregoing, the licensee continued to conduct business as usual without a bond in place.

Section 6 allows the Commissioner to suspend or remove officers or employees, whether they are current or former officers or employees, based on the provisions set forth in Subsection 1a; this section also requires the term of the suspension or removal to be included within the Order. The Section provides due process under Chapter 28-32 and further allows the individual suspended or removed to request a termination of a Final Order after a period of not less than three years. In addition, the amendment in this Section allows the Department to prohibit an individual suspended or removed under this Chapter from participating in the affairs of any of the other entities the Department licenses or regulates.

Section 7 relates to an amendment under the money transmission chapter, specifically Chapter 13-09 of the North Dakota Century Code. This amendment changes the definition of an electronic instrument and clarifies that it does not include a card or other tangible object that is

redeemable by the issuer in goods or services provided by the issuer or its affiliates. What this does, is eliminate the argument that issuers of prepaid cards are not subject to licensing under our statute. For example, the State of North Dakota entered into a contract with a company that allowed agencies to purchase prepaid cards for employee service awards that were branded with either MasterCard or VISA logos. This entity argued that because the instrument was redeemable by the issuer in goods or services they did not meet the definition of an electronic instrument. The language found on line 27 of page 5 was suggested by Ezra Levine, an industry lobbyist for the money transmitter industry. This will clarify that, for example, a card issued by Scheels is not considered an electronic instrument because it is only redeemable at the issuer's store for goods and services.

Section 8 requires that a money transmitter licensee inform the Department of the location and holder of the records should the company cease operations or change locations of the records. We are proposing amendments to extend the time frame to 20 business days.

Section 9 adds the ability of the Commissioner to suspend or revoke a license of a money transmitter if a licensed entity fails to pay the annual licensing fee or examination fee, fails to maintain the required bond or other

security device, or fails to maintain required registration with the North Dakota Secretary of State's Office. As you can see, there is due process under Chapter 28-32 and similar to the deferred presentment provider amendment, does allow for the immediate temporary suspension, not to exceed 60 days, pending the holding of a hearing as prescribed in the Chapter.

Section 10 requires a notification of a name or address change and requires the licensee to submit the license for reissue. We are proposing amendments to extend the time frame to 20 business days.

Section 11 adds a Prohibited Acts and Practices Section which is similar to the Prohibited Acts and Practices which the Department enacted under the mortgage loan originator statute in the previous Legislative Session. This Section of the statute will enable the Department to enhance its enforcement and consumer protection capabilities.

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

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1130

Page 1, line 22, replace "ten" with "twenty business"

Page 2, line 12, after "ten" insert "business"

Page 6, line 4, after "ten" insert "business"

Page 7, line 16, replace "ten" with "twenty business"

Renumber accordingly

State of North Dakota
DEPARTMENT of FINANCIAL INSTITUTIONS

Timothy J. Karsky
Commissioner

Robert J. Entringer
Assistant Commissioner

Douglas D. Grenz
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: March 8, 2011

TO: Senate Industry, Business and Labor Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Testimony in Support of Engrossed House Bill No. 1130

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Engrossed House Bill No. 1130.

Mr. Chairman and members of the Committee, Engrossed House Bill No. 1130 relates to amendments by the Department to Chapter 13-08 relating to deferred presentment service provider (payday lenders), as well as Chapter 13-09 which relates to money transmission.

Section 1 of the Bill clarifies that a deferred presentment service provider is doing business in the State of North Dakota if the customer is located in North Dakota. This provision is consistent with other Sections of our statutes. This particular provision is somewhat critical in that many

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times an internet deferred presentment service provider claims that they are doing business in the State that they are located in, because the documentation, which usually "signed" through an internet transaction, indicates that they are doing business under the laws of the State in which the company resides. This section clarifies that if they are engaging in a transaction with a customer in North Dakota, they are doing business in North Dakota and subject to licensing.

Section 2 simply requires that a licensee provide a notice of change of address or name within 20 business days of the change, and the notice must be on the forms prescribed by the Commissioner.

Section 3 requires that when a licensee ceases business they have to inform the Department of the location of the records, as well as providing the name of the individual who is responsible for maintaining those records. If the location of the records should change, they need to notify the Department within 10 business days as well as the individual who is responsible for those records.

Section 4 amends subsection 6 of section 13-08-12 to provide an inclusive list of information that is required to be contained within an original written agreement between a licensee and a customer. This section also provides a list of information that is required to be contained in a renewal

agreement between a licensee and a customer. In essence, this section combines requirements that were previously addressed in both statute and rule.

Section 5 clarifies the process associated with suspension and revocation of a license. This amendment would make this Section similar to other chapters regulated by the department. Under page 4, lines 8 and 9, the amendment adds two scenarios where the Commissioner would have the authority to suspend or revoke a license, specifically, they include: failure to maintain a bond in conformance with the chapter and a failure to maintain required registration with the North Dakota Secretary of State if so required. The amendment of this Section also makes clear that a licensee is afforded due process under Chapter 28-32 of the North Dakota Century Code. Further, if a hearing is not requested by a licensee after receiving proper notice from the department, then a final Order suspending or revoking the license may be issued. Finally, the amendment provides the Commissioner with the authority to immediately suspend a license if probable cause for revocation exists. This immediate suspension, not to exceed 60 days, would allow the Commissioner to temporarily freeze a situation where the actions of a licensee could have a continuing negative impact on North Dakota consumers. During this period of temporary

suspension, the Commissioner would follow the notice and hearing process for suspension or removal under this section. One example where this immediate temporary suspension would have been appropriate occurred a few months ago when a deferred presentment service provider failed to maintain a bond and we were unable to immediately suspend or revoke their license without first providing notice and going through the hearing process. Based on the foregoing, the licensee continued to conduct business as usual without a bond in place.

Section 6 clarifies that the Commissioner has the authority to suspend or remove officers or employees, whether they are current or former officers or employees, based on any violations set forth in Subsection 1(a). This section also requires the term of the suspension or removal to be included within the Order, and continues to provide a licensee with due process under Chapter 28-32. If a hearing is not requested by a licensee after receiving proper notice from the department, a final Order suspending or removing the current or former officer or employee may be issued. This section grants the individual suspended or removed with the opportunity to request a termination of a final Order after a period of not less than three years (if applicable). Finally, the amendment in this Section allows the department to prohibit an individual suspended or

removed under this Chapter from participating in the conduct or affairs of any other entity licensed or regulated by the department.

Section 7 relates to an amendment under the money transmission chapter, specifically Chapter 13-09 of the North Dakota Century Code. This amendment changes the definition of an electronic instrument and clarifies that it does not include a card or other tangible object that is redeemable by the issuer in goods or services provided by the issuer or its affiliates. What this does, is eliminate the argument that issuers of prepaid cards are not subject to licensing under our statute. For example, the State of North Dakota entered into a contract with a company that allowed agencies to purchase prepaid cards for employee service awards that were branded with either MasterCard or VISA logos. This entity argued that because the instrument was redeemable by the issuer in goods or services they did not meet the definition of an electronic instrument. The language found on line 15 of page 6 was suggested by Ezra Levine, a lobbyist for the money transmitter industry. This will clarify that, for example, a card issued by Scheels is not considered an electronic instrument because it is only redeemable at the issuer's store for goods and services.

Section 8 requires that a money transmitter licensee inform the Department of the location and holder of the records should the company cease operations or change locations of the records.

Section 9 adds the ability of the Commissioner to suspend or revoke a license of a money transmitter if a licensed entity fails to pay the annual licensing fee or examination fee, fails to maintain the required bond or other security device, or fails to maintain required registration with the North Dakota Secretary of State's Office if so required. As you can see, the Bill includes due process under Chapter 28-32. Similar to the deferred presentment provider amendment under section 5 of this Bill, this section provides for an immediate temporary suspension, not to exceed 60 days, pending the holding of a hearing as prescribed in the Chapter.

Section 10 requires notification, within 20 business days, of a name or address change and requires the licensee to submit the license for reissue.

Section 11 adds a Prohibited Acts and Practices Section which is similar to the Prohibited Acts and Practices which the Department enacted under the mortgage loan originator statute in the previous Legislative Session. This Section of the statute will enable the Department to enhance its enforcement and consumer protection capabilities.

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