

**Proposed Administrative Rule Amendments
North Dakota Department of Financial Institutions**

**Title 13
Department of Financial Institutions**

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**CHAPTER 13-04-02
COLLECTION AGENCIES**

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Section 13-04-02-01 is amended as follows:

13-04-02-01. Definitions.

1. ~~"Claim" means any obligation or alleged obligation out of a consumer transaction.~~
2. ~~"Debt collection" means any action, conduct, or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due a creditor by a consumer.~~

3. "Debt collector" means any collection agency, employee of a collection agency, and any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device, or scheme, intended or calculated to be used to collect claims; except attorneys at law, licensed real estate brokers, banks, trust companies, building and loan associations, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of credit person upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court debts and the person is required to be licensed under North Dakota Century Code chapter 13-05.
2. "Debtor" means any person who is subject to debt.
3. "Person" means a person as defined under North Dakota Century Code section 1-01-49.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-01, 13-05-02, ~~13-05-03, 13-05-04, 13-05-05, 13-05-06, 13-05-07, 13-05-08, 13-05-09, 13-05-10~~

Section 13-04-02-02 is amended as follows:

13-04-02-02. Prohibited advertising and communications. No collection agency or debt collector shall:

1. Publish or cause to be published any list of debtors, except for credit reporting purposes, advertise or threaten to advertise for sale any claim debt as a means of forcing payment thereof, or use similar devices or methods of intimidation.
2. Communicate with debtors in a misleading or deceptive manner by using the stationery of a lawyer, forms or instruments which only lawyers are authorized to prepare, or instruments which simulate the form and appearance of judicial process.
3. Exercise authority on behalf of a creditor to employ the services of lawyers unless the creditor has specifically authorized the agency in writing to do so, and the agency's course of conduct is always consistent with a true relationship of attorney and client between the lawyer and the creditor.
4. Refuse to return any ~~claim or claims~~ debt and all valuable papers deposited with a ~~claim or claims~~ debt upon written request of the creditor,

claimant, or forwarder after tender of such amounts due and owing to the agency within thirty days after such request; neglect, refuse, or intentionally fail to account to its clients for all money collected within forty-five days from the last day of the month in which the same is collected; or refuse or fail to furnish at intervals of not less than ninety days upon written request of the claimant or forwarder, a written report upon ~~claims~~ debts received from such claimant or forwarder.

5. In collection letters or publications, or in any communication, oral or written, threaten wage garnishment or legal suit without an objective intention to engage a lawyer and commence legal action upon the debtor's failure to comply with the request or demand made.
6. Use or employ constables, sheriffs, or any other officer authorized to serve legal papers in connection with the collection of a ~~claim~~ debt, except when performing their legally authorized duties.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-02, 13-05-06

Section 13-04-02-03 is amended as follows:

13-04-02-03. Debt collectors - Approval —Certificate. Licensed collection agencies may only appoint debt collectors who are of good moral character, are knowledgeable in collection agency practices and ethics, have a good credit reputation, and have a reputation for fair and honest dealings. The name and address of a person appointed as a debt collector must be forwarded to the department by the licensed collection agency. ~~The department, upon request by a collection agency located in North Dakota, may issue an identification card bearing the name of the debt collector and the name of the licensed collection agency. All debt collectors' identification cards are issued for an indefinite period. The identification cards of all debt collectors which are issued must be canceled and turned in to the department if the debt collector ceases to be employed by a licensed agency or upon cancellation of the agency's license.~~

History: Amended effective July 1, 1984; July 1, 1998; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-03(4)

Section 13-04-02-04 is amended as follows:

13-04-02-04. Prohibited practices. No debt collector may:

1. Perform legal services, furnish legal advice, or falsely represent, directly or by implication, that the debt collector is an attorney.

2. Solicit assignments of claims for the purpose of suit or at the instigation of an attorney.
3. Institute judicial proceedings on behalf of other persons except on an assigned ~~claim~~ debt.
4. Communicate with debtors in the name of an attorney or upon stationery or other written matter bearing an attorney's name.
5. Make any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a ~~claim~~ debt.
6. Violate sections 804 through 810 of the Federal Fair Debt Collection Practices Act [Pub. L. 90-321; 91 Stat. 876 through 880; 15 U.S.C. 1692b through 1692h].

History: Amended effective July 1, 1984; October 1, 1997; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-05 is amended as follows:

13-04-02-05. Threats or coercion prohibited. No debt collector may collect or attempt to collect any ~~money alleged to be due and owing~~ debt by means of any threat, coercion, or attempt to coerce. Without limiting the general application of the foregoing, no debt collector may:

1. Use, or expressly or implicitly threaten the use of violence or other criminal means, to cause harm to the person, reputation, or property of any person.
2. Accuse or threaten to accuse any person of fraud or any other crime, or any conduct which, if true, would tend to disgrace such other person, or in any way subject the person to ridicule or any conduct which, if true, would tend to disgrace the person, or in any way subject the person to the ridicule or contempt of society.
3. Make to another person, including any credit reporting agency, false accusations, or threats of false accusations, that a ~~consumer~~ debtor is willfully refusing to pay a just debt.
4. Threaten to sell or assign to another the obligation of the ~~consumer~~ debtor with an attending representation or implication that the result of such sale or assignment would be that the ~~consumer~~ debtor would lose any defense

to the ~~claim debt~~ or would be subjected to harsh, vindictive, or abusive collection attempts.

5. ~~Threaten to take any action prohibited by law relating to the debt collector's conduct on the rights and liabilities of all parties~~ Represent or imply that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends and is legally entitled to bring such action.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-06 is amended as follows:

13-04-02-06. Harassment or abuse prohibited. No debt collector may oppress, harass, or abuse any person in connection with the collection of or attempt to collect any ~~claim debt~~ alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, no debt collector may:

1. Use profane or obscene language or language that is intended to abuse the hearer or reader.
2. Place telephone calls without disclosure to the debtor of the caller's true identity, including name and collection agency.
3. Cause expense to any person in the form of long distance telephone tolls, telegram fees, or other charge incurred by a medium of communications, by concealment of the true purpose of the notice, letter, message, or communication.
4. Cause a telephone to ring or engage any person in telephone conversation repeatedly or continuously, or at unusual times or times known to be inconvenient.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-07 is amended as follows:

13-04-02-07. Unreasonable publication prohibited. No debt collector may unreasonably publicize information relating to any alleged indebtedness or debtor. Without limiting the general application of the foregoing, no debt collector may:

1. Communicate any information relating to a consumer's debtor's indebtedness to any employer or the employer's agent except as reasonably necessary for legal process or to effectuate a past judgment judicial remedy.
2. Disclose, publish, or communicate information relating to a consumer's debtor's indebtedness to any relative or family member of the consumer debtor, excluding the husband or wife, except through proper legal action or process or with the express consent of the debtor.
3. Disclose, publish, or communicate any information relating to a consumer's debtor's indebtedness to any other person, by publishing or posting any list of consumers debtors, commonly known as deadbeat lists, by advertising for sale any claim to enforce payment thereof of a debt, or in any manner other than through proper legal action, process, or proceeding.
4. Use any form of communication to the consumer debtor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim debt other than the return address and phone number of the debt collector.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-08 is amended as follows:

13-04-02-08. Fraudulent, deceptive, or misleading representations prohibited. No debt collector may use any fraudulent, deceptive, or misleading representation or means to collect or attempt to collect claims debts or to obtain information concerning consumers debtors. Without limiting the general application of the foregoing, no debt collector may:

1. Use any name while engaged in the collection of claims debts other than the debt collector's true name unless the assumed name is registered with the department as an alias for the debt collector.
2. Make misleading representations in any communication made to collect or attempt to collect a claim debt or to obtain or attempt to obtain information about a consumer debtor.
3. Falsely represent that the debt collector has information in the debt collector's possession or something of value for the consumer debtor in order to solicit or discover information about the consumer debtor.

4. Fail to clearly disclose the name and full business address of the person to whom the ~~claim~~ debt has been assigned or is owed at the time of making any demand for money.
5. Falsely represent or imply that any debt collector is vouched for, bonded by, affiliated with, or is an instrumentality, agent, or official of this state or any agency of federal, state, or local government.
6. Falsely represent the character, extent, or amount of a ~~claim~~ debt against a ~~consumer~~ debtor, or of its status in any legal proceeding.
7. Use, distribute, or sell any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by a court, an official, or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization, or approval.
8. Represent that an existing obligation of the ~~consumer~~ debtor may be increased by the addition of attorney's fees, investigation fees, service fees, or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation.
9. Falsely represent, or give a false impression about the status or true nature of or the services rendered by the debt collector or the debt collector's business.

History: Amended effective July 1, 1984; October 1, 1997; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-09 is amended as follows:

13-04-02-09. Unfair or unconscionable means prohibited. No debt collector may use unfair or unconscionable means to collect or attempt to collect any ~~claim~~ debt. Without limiting the general application of the foregoing, no debt collector may:

1. Seek or obtain any written statement or acknowledgment in any form that specifies that a ~~consumer's~~ debtor's obligation is one incurred for necessities of life where the original obligation was not in fact incurred for such necessities.
2. Seek or obtain any written statement or acknowledgment in any form containing an affirmation of any obligation by a ~~consumer~~ debtor who has been declared bankrupt, without clearly disclosing the nature and consequences of such affirmation and the fact that the ~~consumer~~ debtor is not legally obligated to make such affirmation.

3. Collect or attempt to collect from the ~~consumer~~ debtor any part or all of the debt collector's fee or charge for services rendered.
4. Collect or attempt to collect any interest or other charge, fee, or expense incidental to the principal obligation unless such interest or incidental fee, charge, or expense is expressly authorized by law or by the agreement creating the obligation and legally chargeable to the ~~consumer~~ debtor.
5. Communicate with a ~~consumer~~ debtor whenever it appears that the ~~consumer~~ debtor is represented by an attorney and the attorney's name and address are known unless the attorney has failed to respond to a communication within thirty days or the debt collector has been advised by the debtor or attorney that the attorney no longer represents the debtor.

History: Amended effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-06

Section 13-04-02-13 is amended as follows:

13-04-02-13. Receipts for collection of currency and coin. No debt collector may accept currency or coin as payment for a ~~claim~~ debt without issuing an original receipt to the debtor and maintaining a duplicate receipt as a part of the debt collector's permanent records.

History: Effective July 1, 1984; _____, 2012.

General Authority: NDCC 13-05-06

Law Implemented: NDCC 13-05-07

**CHAPTER 13-05-01
MONEY BROKERS**

Section	
13-05-01-01	No Advance Fee - Exception
13-05-01-02	Contracts to Be in Writing
13-05-01-03	Full Disclosure Required
13-05-01-04	Contents of Loan Disclosure Statement
13-05-01-05	Restrictions on Chargeable Costs and Expenses
13-05-01-06	Filing of Annual Reports <u>[Repealed]</u>
13-05-01-07	Availability of Records
13-05-01-08	Statements to Borrowers
13-05-01-09	Notice to Borrower Regarding Regulation by the Department of Financial Institutions
13-05-01-10	Copy of Written Contracts to the Potential Borrower
13-05-01-11	Unprofessional Conduct and Grounds for Revocation of License

Section 13-05-01-04 is amended as follows:

13-05-01-04. Contents of loan disclosure statement. Whenever a money broker arranges a loan for a borrower, the following loan disclosure statement statements must be prepared by the money broker for the borrower and set forth in a plain language and meaningful order:

1. **Summary of loan terms.**
 - a. ~~Principal amount of loan.~~
 - b. ~~Estimated deductions from principal amount.~~
 - (1) ~~Costs and expenses.~~
 - (2) ~~Brokerage commission.~~
 - (3) ~~Liens and other amounts to be paid on authorization of borrower.~~
 - (4) ~~Any other deductions.~~
 - c. ~~Estimated cash payable to borrower~~ Money brokers must provide all loan disclosures mandated under title 12, Code of Federal Regulations, part 1024 and title 12, Code of Federal Regulations, part 1026.
2. **General information concerning loans.**

- a. The amount of principal and interest payable, the interest rate, the number of payments and whether they are monthly or quarterly, and whether there is a final or balloon payment to pay off the loan in full. If there is a balloon payment, the following cautionary instructions must be printed in bold type on the contract:

CAUTION TO BORROWER: IF YOU DO NOT HAVE THE FUNDS TO PAY THE BALLOON PAYMENT WHEN DUE, IT MAY BE NECESSARY FOR YOU TO OBTAIN A NEW LOAN AGAINST YOUR PROPERTY FOR THIS PURPOSE AND YOU MAY BE REQUIRED TO AGAIN PAY COMMISSION AND EXPENSES FOR ARRANGING THE LOAN. KEEP THIS IN MIND IN DECIDING UPON THE AMOUNT AND TERMS OF THE LOAN THAT YOU OBTAIN AT THIS TIME.

- b. Other information necessary, including the land description, types of instruments to be executed, and type of lien that will be against the property if the instruments are executed.
- c. Any prepayment penalty on full disclosure of the terms thereof.
- d. Whether credit life or credit disability will be required of the borrower as a condition of making the loan.

3. ~~Deductions from loan proceeds.~~

- a. ~~Estimated costs and expenses to be paid by the borrower out of the principal amount of the loan, including appraisal fees, escrow fees, abstract or title insurance fees, notary fees, attorney's fees, recording fees, credit investigation fees, and other costs and expenses.~~
- b. ~~An estimate of the liens and other amounts to be paid out of the principal amount of the loan, on authorization of the borrower, including fire or other property insurance premiums, credit life or disability insurance premiums, beneficiary statement fees, reconveyance or similar fees, or liens against property securing the loan or other fees.~~

- 4. ~~Estimated figures.~~** All figures which are estimates must be clearly identified as such and a statement must be included specifying whether or not the borrower may refuse to accept the commitment if the estimates are exceeded by a specified percent, and, if so, the contract must set forth the specified percent. Disclosures must be made in plain English and set forth in meaningful order.

~~Disclosures must be made in plain English and set forth in meaningful order.~~

History: Effective February 1, 1984; amended effective _____, 2012.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-01, 13-04.1-06, 13-04.1-07

Section 13-05-01-06 is repealed:

13-05-01-06. Filing of annual reports. ~~Every money broker licensee operating as a money broker shall file an annual report with the department of financial institutions. This must be done at the time of submitting the application for renewal of license on the forms supplied with the renewal application. If the department of financial institutions deems that further inquiry is necessary, the money broker shall give specific details on any transaction to the department of financial institutions. Repealed effective _____, 2012~~

History: Effective February 1, 1984; amended effective June 1, 2002.

General Authority: NDCC 13-04.1-01

Law Implemented: NDCC 13-04.1-05

CHAPTER 13-06-01
DEFERRED PRESENTMENT SERVICE PROVIDERS

Section	
13-06-01-01	Definitions
13-06-01-02	Financial Responsibility
13-06-01-03	Determination of Bond Amount
13-06-01-04	Application
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13-06-01-06	Change of Control
13-06-01-07	Reports of Commissioner
13-06-01-08	Regulations - Examinations
13-06-01-09	Retention of Records
13-06-01-10	Required Records
13-06-01-11	Procedures
13-06-01-12	Credit Practices
13-06-01-13	General
13-06-01-14	Written Agreement <u>[Repealed]</u>
13-06-01-15	Surrender of License
13-06-01-16	Advertising
13-06-01-16.1	<u>Database</u>
13-06-01-16.2	<u>Database Transaction Requirements</u>
13-06-01-16.3	<u>Cancellation, Modification or Closing of Transactions on Database</u>
13-06-01-16.4	<u>Database Transaction Fees</u>
13-06-01-17	Enforcement

Section 13-06-01-01 is amended as follows:

13-06-01-01. Definitions. As used in this chapter:

1. "Annual percentage rate" means a measure of the cost of credit, expressed as a yearly rate, as calculated under the Truth in Lending Act [15 U.S.C. 1601].
2. "Closed transaction" or "close" means a completed deferred presentment service transaction that has been closed on the database.
3. "Close of business" means the time of day that a provider closes its office to the public for that calendar day.
4. "Database" means the statewide transactional database administered by the department pursuant to North Dakota Century Code chapter 13-08.
5. "Database vendor" means the vendor, contracted with the department for the purpose of developing and administering the daily operations of the database.

6. "Date of the transaction" means the date on which the written agreement is signed and the funds are advanced.
- ~~3-7.~~ "Deferred presentment service provider" means an entity often referred to as a payday loan, payday advance, or deferred deposit loan provider.
8. "Department" means the North Dakota department of financial institutions.
- ~~4-9.~~ "Financial responsibility" means a financial condition, at a minimum, that is a positive net worth as disclosed in the most recent financial statement.
- ~~5-10.~~ "Generally accepted accounting practices" means procedures adopted by the American institute of certified public accountants and federal accounting standards boards.
- ~~6-11.~~ "Maturity date" means the date agreed upon by a licensee and ~~check maker~~ customer to present a check for final payment. "Maturity date" may also be referred to as date of negotiation, date of presentment, or presenting a check for payment.
12. "Open transaction" or "open" means a deferred presentment service transaction which has been registered and recorded but not completed on the database.
- ~~7-13.~~ "Principal shareholders" means any shareholders which control directly or indirectly the power to vote twenty-five percent or more of the voting shares of the corporation.
14. "Recorded" means the database has assigned a transaction authorization number to a registered transaction, logged it as an open transaction, and communicated the transaction authorization number to the deferred presentment provider.
15. "Registered" means that a deferred presentment provider has provided to the database the information required to identify a valid deferred presentment transaction.
- ~~8-16.~~ "Transaction" means a deferred presentment service transaction.

9- 17. "Unencumbered assets" means any assets when a market value can be readily determined and which are not pledged or held under a security interest.

History: Effective July 1, 2001; amended effective _____, 2012.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-01

Section 13-06-01-07 is amended as follows:

13-06-01-07. Reports of commissioner. Written reports in this section must be on a form prescribed by the commissioner. Written reports that are required by the commissioner to be filed within fifteen calendar days of the occurrence of the events are:

1. ~~On or before April fifteenth of each year, the licensee shall file with the commissioner a financial report as of March thirty first, relating to all transactions made by the licensees.~~
2. A report of the name change of the licensee must be filed with the department prior to the name change.
- 3- 2. Whenever a licensee desires to change the licensed place of business, the licensee shall provide the department with the following prior to the relocation:
 - a. A written notice providing the complete address of the new location.
 - b. Photographs of both the exterior and interior of the new location.
 - c. A written sworn statement that the new location will not share the premises with that of another business.
 - d. A report of a change of management of the licensee.
 - e. The original license for reissue.

History: Effective July 1, 2001; amended effective _____, 2012.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-08(4)

Section 13-06-01-10 is amended as follows:

13-06-01-10. Required records. Every licensee shall keep the following records:

1. **Transaction register.**

- a. The transaction register must contain the original entry and be a permanent record, and must show for every transaction the account transaction number, date of transaction, maturity date, date of rollover and new maturity date if any, amount of transaction, name of ~~check maker and all other accountholders on that account customer~~, and the amount of fees expressed in dollar amount.
 - b. The transaction register must be kept numerically by transaction number in the order made and must have headings for each of the items required.
2. **An individual account record.** An individual account record must be kept for each ~~check maker~~ customer. Such account record must show the name and address of the ~~check maker customer, co-makers~~, transaction number, date of transaction, maturity date, and fee expressed in dollar amount.
3. **File of all original papers.** A separate file shall be maintained for each ~~check maker~~ customer and shall contain the written agreement and acknowledged copy of the disclosure statement of transaction. Evidence of disclosure must be retained for six years from the date of the transaction. When prior written approval has been obtained from the commissioner, a licensee may maintain these files in any medium or format that accurately reproduces original documents or papers.
4. **Check copies.** Copies of checks received in the deferred presentment service transaction.
5. **Cash book.** All receipts and disbursements, of any amount whatsoever, must be entered in the cash book or equivalent record on the day they occur. Separate headings must be provided for payments and fees collected from ~~check makers~~ customers. The cash book must be a record of all details of income and disbursements, including all entries to individual accounts of ~~check makers~~ customers.
6. **Alphabetical record of ~~check makers and co-makers~~ customers.** The alphabetical record must show the ~~account~~ transaction number and the name of each ~~check maker and co-maker~~ customer who is currently indebted to the licensee, with sufficient information to locate the account record.
7. **Permanent file.** Each licensee shall maintain a permanent file which includes the following:
 - a. A copy of all correspondence sent to or received from the department within the past twenty-four months.

- b. A copy of the last two examination reports and any related correspondence.
- 8. **Check record.** A record must be retained of each check presented for negotiation, including checks deposited, cashed, and checks presented directly to the ~~check maker's~~ customer's issuing bank.
- 9. ~~**Renewal record.** A record must be retained of all renewals as a separate record.~~
- 10. **Returned checks.** A record must be retained of all checks returned for nonsufficient funds, account closed, or stop payment.
- ~~11.~~10. **Rescinded transactions.** A record must be retained of all rescinded transactions by ~~check maker~~ customer as a separate record.

Erasures may not be made in the payment and charge sections of any account records or written agreements. In case of error, a line must be drawn in ink through the improper entry and the correct entry made on the following line. The entries on the record must correspond with the receipts given the ~~check maker~~ customer.

Records of transactions made under North Dakota Century Code chapter 13-08 must be kept separate or readily identifiable from other types of business conducted in the office.

Electronic data processing, combination forms, and special office systems may be used if in accordance with generally accepted accounting practices and must contain the information required by this section.

History: Effective July 1, 2001; amended effective _____, 2012.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-11

Section 13-06-01-12 is amended as follows:

13-06-01-12. Credit practices. Any deferred presentment service provider that contracts with a third-party collection service in an attempt to collect nonsufficient funds, account closed, stop payment orders, or any other returned checks shall provide in the contract a notice of the twenty dollar maximum allowed returned check charge collected ~~per year per check maker~~ transaction.

A licensee while collecting or attempting to collect an alleged debt may not engage in any of the following acts:

- 1. Using or threatening to use force, violence, or physical harm to a ~~check maker~~ customer or the ~~check maker's~~ customer's family or property.

2. Threatening arrest or criminal prosecution when no basis for such action lawfully exists.
3. Threatening the seizure, attachment, and sale of a ~~check-maker's~~ customer's property when such action can only be taken pursuant to court order unless disclosure is made that prior court proceedings are required.
4. Disclosing or threatening to disclose information adversely affecting a ~~check-maker's~~ customer's reputation for creditworthiness with knowledge or reason to know such information is false.
5. Threatening to initiate or initiating communication with a ~~check-maker's~~ customer's employer.
6. Communicating or threatening to communicate with a ~~check-maker~~ customer or the ~~check-maker's~~ customer's family with such unreasonable frequency as to constitute harassment or at times reasonably considered to be unusual hours or known to be inconvenient.
7. Using profane, obscene, or abusive language with a ~~check-maker~~ customer or the ~~check-maker's~~ customer's family.
8. Disclosing or threatening to disclose information relating to a ~~check maker's~~ customer's indebtedness to any other person except when such other person has a legitimate business need for the information.
9. Disclosing or threatening to disclose information concerning the existence of a debt, which the licensee knows to be reasonably disputed by the ~~check-maker~~ customer, without disclosing the fact that the debt is disputed.
10. Attempting or threatening to attempt enforcement of a right or remedy with knowledge or reason to know that the right or remedy does not exist.
11. Using any form of communication simulating legal or judicial process which gives the appearance of being authorized, issued, or approved by a governmental agency or official or attorney at law when it is not.
12. Using badges, uniforms, or other indicia of any governmental agency or official except as authorized by law.
13. Misrepresenting the amount of the debt alleged to be owed.

14. Representing that an alleged debt may be increased by the addition of attorney's fees, investigation fees, or any other fees or charges when there is no contractual or statutory authorization for such addition.

History: Effective July 1, 2001; amended effective _____, 2012.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-12(7)

Section 13-06-01-13 is amended as follows:

13-06-01-13. General.

1. The deferred presentment service check must be presented for payment within ~~forty-six~~ sixty days of the original transaction date.
2. When a payment is made in cash, the licensee shall give a receipt to the ~~check maker~~ customer.
3. Unless otherwise authorized by subsection 14 of North Dakota Century Code section 13-08-12, no other business may be conducted at the licensed location unless authorized in writing by the commissioner. The commissioner's authorization will be predicated upon the licensee's agreement to the following:
 - a. That the authorization will not conceal nor facilitate concealment of an evasion of North Dakota Century Code chapter 13-06.
 - b. To comply with any applicable state or federal statutes and regulations.
 - c. To obtain any license or registration required by a federal, state, or local governmental agency to engage in the other business authorized.
 - d. That the commissioner may examine all records and investigate any or all transactions of the licensee.
 - e. That the commissioner retains the right, upon notice and opportunity to be heard, to alter, amend, or revoke another business authorization.

- f. That if any federal or state statute or regulation enacted thereafter prohibits the activity, the authorization shall become null and void immediately.

History: Effective July 1, 2001; amended effective _____, 2012.

General Authority: NDCC 13-08-10

Law Implemented: NDCC 13-08-12

Section 13-06-01-14 is repealed:

13-06-01-14. Written agreement. ~~At the time any transaction is made and funds are advanced, the licensee shall give to the maker of the check a signed written agreement. The written agreement must contain the following:~~

- ~~1. The name of the licensee.~~
- ~~2. The name and address of the check maker.~~
- ~~3. The date of the transaction.~~
- ~~4. The amount of the check.~~
- ~~5. The total amount of fees charged, expressed as a dollar amount and as an annual percentage rate.~~
- ~~6. The date of negotiation of the check.~~
- ~~7. The signature of the check maker.~~
- ~~8. A statement that a licensee may not renew a transaction more than once.~~
- ~~9. A statement that the renewal fee cannot exceed twenty percent of the amount being renewed.~~
- ~~10. The maximum term of the transaction, including the renewal, may not exceed forty five days.~~
- ~~11. The term of the renewal period may not be less than fifteen days.~~
- ~~12. 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 transaction date, the amount of the check paid to the check maker, the fee charged in dollars and annual percentage rate, and maturity date.~~

- ~~13. A statement containing the right of rescission must be printed immediately above the signature line of the written agreement and must be in a minimum of ten-point font. A space must be provided for the check maker to initial that notice of the right of rescission was received. Repealed effective _____, 2012.~~

~~History: Effective July 1, 2001.~~

~~General Authority: NDCC 13-08-10~~

~~Law Implemented: NDCC 13-08-12~~

Section 13-06-01-16.1 is created as follows:

13-06-01-16.1. Database. The commissioner may directly administer, or contract with a third party vendor to operate and maintain a website on behalf of the department, in which each transaction shall be recorded for the purpose of preventing violations of North Dakota Century Code chapter 13-08. Each transaction shall be registered with the database and receive a transaction authorization number evidencing the transaction as being recorded in the database prior to a licensee giving currency or a payment instrument to the customer. As part of the registration process, the licensee shall choose an employee to serve as the licensee's security administrator to act as a point of contact for matters relating to the database administration.

History: Effective _____, 2012.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

Section 13-06-01-16.2 is created as follows:

13-06-01-16.2. Database transaction requirements.

1. Prior to engaging in any transaction, a licensee must:
 - a. Access the vendor database using the assigned user identification and password provided to each employee by the security administrator for the licensee;
 - b. Conduct a search of the database based upon either a social security number, alien registration number, or individual taxpayer identification number of the customer seeking a new transaction. The database will provide the result of the search indicating whether the customer is eligible or ineligible to enter into a new transaction;
 - c. If the customer is eligible for a new transaction, the licensee shall submit all of the required information regarding a customer necessary to have the transaction registered on the database;

- d. Once all of the required information has been submitted to the database, and the customer's eligibility is confirmed, the transaction will be recorded as open on the database, assigned a transaction authorization number, and the transaction authorization number will be communicated to the licensee as evidence that the transaction has been authorized by the database. The licensee shall place the transaction authorization number on the deferred presentment agreement and provide a copy of the agreement to the customer.
 - e. In the event that the database is not accessible, the licensee shall follow procedures outlined by the database vendor.
2. It is a violation of this chapter for a licensee to knowingly enter transactional information into the database that is incomplete or inaccurate.

History: Effective _____, 2012.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

Section 13-06-01-16.3 is created as follows:

13-06-01-16.3. Cancellation, modification or closing of transactions on database.

1. If a deferred presentment agreement is cancelled, the licensee shall not assess either the transaction fee or the verification fee to the customer. The licensee shall immediately close the transaction on the database.
2. If a licensee becomes aware of a change of information relating to an open transaction, the licensee shall immediately update the transaction on the database to ensure that all identifying information regarding both the customer and the transaction are accurate, including any comments on the transaction which the licensee deems relevant.
3. Licensees shall be responsible for immediately closing all transactions on the database. The licensee shall input the date a transaction closes, as well as the payment method.

4. The department shall have the authority to make changes to the database transactions as deemed necessary. This includes the ability to instruct the database vendor to close any transactions associated with a licensee whose license to conduct business in North Dakota remains in a non-active status for thirty days or more.

History: Effective _____, 2012.

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

Section 13-06-01-16.4 is created as follows:

13-06-01-16.4. Database transaction fees. A licensee shall be responsible to make payment of all database transaction fees charged for registering a transaction on the database administered or authorized by the commissioner. Database transaction fees will be charged on a per transaction basis. A licensee may charge the database transaction fee to each customer securing the loan for which the database transaction fee is based.

History: Effective _____, 2012

General Authority: NDCC 13-08-10, 13-08-12

Law Implemented: NDCC 13-08-12

ARTICLE 13-07

MONEY TRANSMITTERS

Chapter
13-07-01 Money Transmitters

CHAPTER 13-07-01
MONEY TRANSMITTERS

Section 13-07-01-01 is created as follows:

Section 13-07-01-01 Definitions

13-07-01-01. Definitions.

1. "Past due or doubtful of collection" means cash due from an authorized delegate that is not remitted on or before the tenth business day after the date the authorized delegate is required to remit the money under the written agreement between the license holder and the authorized delegate.

History: Effective _____, 2012.

General Authority: NDCC 13-09-14

Law Implemented: NDCC 13-09-02, 13-09-15

ARTICLE 13-08

MORTGAGE LOAN ORIGINATORS

Chapter
13-08-01 Mortgage Loan Originators

CHAPTER 13-08-01
MORTGAGE LOAN ORIGINATORS

Section
13-08-01-01 Fees

Section 13-08-01-01 is created as follows:

13-08-01-01. Fees. At the time of making an application for licensure under North Dakota Century Code chapter 13-10, the applicant shall include payment in the sum of twenty-five dollars, as a fee for investigating the application, and the sum of fifty dollars for the license fee. Additionally, each licensee shall pay a fifty dollar annual fee upon each renewal. When a mortgage loan originator has been delinquent in renewing their license, the department may charge an additional fee of fifty dollars for the reinstatement of such license. Upon a change of employment to a different money broker, a mortgage loan originator shall pay a fee of twenty-five dollars. All fees shall be submitted through the Nationwide Mortgage Licensing System.

History: Effective _____, 2012.

General Authority: NDCC 13-10-03, 13-10-10

Law Implemented: NDCC 13-10-10