

SENATE BILL NO. 2370

Introduced by

Representatives Kliniske, Weisz

Senators G. Nelson, Krebsbach, Stenehjem

1 A BILL for an Act to create and enact a new section to chapter 13-03.1 of the North Dakota
2 Century Code, relating to licensing businesses to allow currency exchange services; and to
3 amend and reenact sections 13-03.1-01, 13-03.1-03, 13-03.1-06, 13-03.1-08, 13-03.1-09,
4 13-03.1-10, 13-03.1-11, 13-03.1-12, 13-03.1-13, 13-03.1-14, 13-03.1-15, 13-03.1-15.1,
5 13-03.1-16, and 13-03.1-17 of the North Dakota Century Code, relating to the licensing of
6 businesses under the Consumer Finance Act.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 **SECTION 1. AMENDMENT.** Section 13-03.1-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **13-03.1-01. Definitions.** For purposes of this chapter, unless the context or subject
11 matter otherwise requires:

- 12 1. "Administrator" means the commissioner of banking and financial institutions.
- 13 2. "Currency exchange" means cashing a check, draft, money order, or traveler's
14 check, or issuing a money order or traveler's check as an agent for another, for a
15 fee. The term does not include providing these services incidental to a primary
16 business if there is no charge for cashing a check or draft.
- 17 ~~3.~~ 3. "License" means a permit, issued under the authority of this chapter, to ~~make loans~~
18 be in the business of making a loan or currency exchange, or both, in accordance
19 ~~with the provisions of~~ this chapter at a single place of business.
- 20 ~~3.~~ 4. "Licensee" means a person to whom one or more licenses have been issued.
- 21 ~~4.~~ ~~"Person" means an individual, partnership, association, corporation, limited liability~~
22 ~~company, and any other legal entity.~~

23 **SECTION 2. AMENDMENT.** Section 13-03.1-03 of the North Dakota Century Code is
24 amended and reenacted as follows:

1 **13-03.1-03. ~~Scope~~ Loans.** Persons licensed to make loans under ~~the provisions of~~
2 this chapter may engage in the business of lending in amounts not to exceed thirty-five
3 thousand dollars and contract for, exact, or receive, directly or indirectly, on or in connection
4 with any such loan, any charges whether for interest, compensation, consideration, or expense,
5 subject to the limitations provided in this chapter.

6 **SECTION 3. AMENDMENT.** Section 13-03.1-06 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **13-03.1-06. Investigation of application - Requirements for issuance of license -**
9 **Denial of license - Public record.**

- 10 1. Upon the filing of an application and the payment of the application and license
11 fees ~~therefor~~, the administrator shall investigate the facts concerning the
12 application.
- 13 2. The administrator shall issue a license under this chapter to operate a ~~consumer~~
14 ~~finance loan~~ business if the administrator finds:
 - 15 a. That the financial responsibility, experience, character, and general fitness of
16 the applicant ~~are such as to~~ warrant the belief ~~that~~ the business will be
17 operated lawfully and fairly; and
 - 18 b. That the applicant has assets of at least twenty-five thousand dollars for the
19 operation of the business.
- 20 3. The administrator shall approve or deny every application for a license ~~hereunder~~
21 under this chapter within sixty days from the ~~filing thereof~~ date the application is
22 filed with the ~~fee~~ required fees.
- 23 4. ~~No~~ An application may not be denied until the applicant has had a notice of a
24 hearing on the application and an opportunity to be heard ~~thereon~~ on the
25 application. ~~Whenever~~ If an application is denied, the administrator ~~shall~~, within
26 twenty days ~~thereafter~~ after the denial, shall prepare and keep on file in the
27 administrator's office a written order of denial ~~thereof~~ of the application. The order
28 must contain its findings with respect ~~thereto~~ to the application and the reasons
29 supporting the denial, and the administrator shall send a copy ~~thereof~~ of the denial
30 by registered mail to the applicant at the address set forth in the application within
31 five days after the filing of the order. If the administrator finds the applicant is not

qualified to be issued a license, the administrator shall return the license fee but may retain the investigation fee.

5. The administrator shall, upon request and payment of the annual license fee, deliver evidence of licensing under this chapter to the persons so previously licensed or authorized.

SECTION 4. AMENDMENT. Section 13-03.1-08 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-08. Place of business - Removal - Residence of borrower.

1. Not more than one place of business ~~for the making and collecting of loans made pursuant to this chapter shall~~ may be maintained under the same license, but the administrator may issue additional licenses to the same licensee upon compliance with all the provisions of this chapter governing issuance of a single license. Nothing in this chapter ~~shall be construed to require~~ requires a license for any place of business devoted entirely to accounting or other recordkeeping.
2. ~~Whenever~~ If a licensee changes the licensee's place of business to a location other than that set forth in the licensee's license, the licensee shall give fifteen days' written notice ~~thereof~~ of the change to the administrator.
3. Loans made by mail ~~shall~~ do not violate this section.

SECTION 5. AMENDMENT. Section 13-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-09. Revocation or suspension of license.

1. The administrator may issue to a ~~person licensed to make loans under this chapter~~ licensee an order to show cause why the ~~person's~~ licensee's license should not be revoked or suspended for a period not in excess of six months. The order must state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the administrator shall revoke or suspend the license if the administrator finds that:
 - a. The licensee ~~has~~ repeatedly and willfully violated this chapter or any rule or order ~~lawfully made pursuant~~ under to this chapter; or

b. Facts or conditions exist which would clearly have justified the administrator in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

2. ~~No~~ A revocation or suspension of a license is not lawful unless ~~prior to~~ before institution of proceedings by the administrator notice is given to the licensee of the facts or conduct ~~which~~ that warrant the intended action, and the licensee is given an opportunity to show compliance with all ~~lawful~~ requirements for retention of the license.

3. If the administrator finds that probable cause for revocation of a license exists and that enforcement of this chapter requires immediate suspension of the license pending investigation, the administrator may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

4. ~~Whenever~~ If the administrator revokes or suspends a license, the administrator shall enter ~~an~~ a revocation or supervision order to that effect and ~~forthwith~~ notify the licensee of the revocation or suspension. Within five days after the entry of the order, the administrator shall deliver to the licensee a copy of the order and the findings supporting the order.

5. ~~Any person holding a license to make loans under this chapter~~ A licensee may relinquish ~~the~~ a license by notifying the administrator in writing of ~~its~~ relinquishment, but this relinquishment does not affect the ~~person's~~ licensee's liability for acts previously committed.

6. ~~No revocation~~ Revocation, suspension, or relinquishment of a license ~~impairs~~ does not impair or affects ~~affects~~ affect the obligation of any preexisting ~~lawful~~ contract between the licensee and any debtor.

7. The administrator may reinstate a license, terminate a suspension, or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the administrator in refusing to grant a license.

SECTION 6. AMENDMENT. Section 13-03.1-10 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-10. Records - Annual reports - Biennial report.

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the administrator to determine whether the licensee is complying with this chapter. The recordkeeping system of a licensee is sufficient if the licensee makes the required information reasonably available. The records pertaining to any ~~loan~~ transaction under this chapter need not be preserved for more than two years after making the final entry relating to the ~~loan~~ transaction, but in the case of a revolving loan account the two years is measured from the date of each entry.
2. On or before July thirty-first each year the parent company of each licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all ~~loans~~ transactions under this chapter made by its licensees. The administrator shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. The administrator may make and publish annually an analysis and recapitulation of such reports.
3. The administrator shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04. In addition to any requirements established ~~pursuant to~~ under section 54-06-04, the administrator's report must include a summary or abstract of the annual reports filed with the administrator.

SECTION 7. AMENDMENT. Section 13-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-11. Examinations and investigations.

1. At least once each thirty months the administrator or a duly authorized representative shall make an examination of the ~~loans~~ transactions, business, and records of every licensee. In addition, for the purpose of discovering violations of this chapter or securing information lawfully required, the administrator may at any time investigate the ~~loans~~ transactions, business, and records of any ~~lender~~ licensee. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the ~~lender~~ licensee. Fees for such examinations must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all

reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

2. If the ~~lender's~~ licensee's records are located outside this state, the ~~lender~~ licensee, at the ~~lender's~~ licensee's option, shall make ~~them~~ the records available to the administrator at a convenient location within this state, or pay the reasonable and necessary expenses for the administrator or administrator's representative to examine ~~them~~ the records at the place ~~where they~~ the records are maintained.

The administrator may designate representatives, including comparable officials of the state in which the records are located, to inspect ~~them~~ the records on the administrator's behalf.

3. For the purposes of this section, the administrator may administer oaths or affirmations and, upon the administrator's own motion or upon request of any party, may subpoena witnesses, compel ~~their~~ witnesses' attendance, adduce evidence, and require the production of any matter ~~which~~ that is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

4. Upon failure without ~~lawful~~ excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected ~~thereby~~ by this failure, the administrator may apply to the district court of the county in which the consumer finance ~~loan~~ business is being conducted for an order compelling compliance.

SECTION 8. AMENDMENT. Section 13-03.1-12 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-12. ~~Regulations~~ Rules and orders - Certified copies of official documents.

1. The administrator ~~shall have power and authority to promulgate~~ may adopt in accordance with chapter 28-32 ~~as it may be amended~~, such rules and regulations as may be reasonably necessary to carry out ~~the provisions of~~ this chapter.
2. On application of any person and payment of the costs ~~thereof~~ of application, the administrator shall furnish a certified copy of any license, ~~regulation~~ rule, or order.

SECTION 9. AMENDMENT. Section 13-03.1-13 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-13. Advertising. ~~No~~ A licensee or other person subject to this chapter may not advertise, display, distribute, broadcast, or televise any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for ~~loans~~ a transaction under this chapter, or cause or permit the same to be done.

SECTION 10. AMENDMENT. Section 13-03.1-14 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-14. Other business in the same office - Business confined to licensed office.

1. If the administrator finds, after a hearing, that the conduct of other business by the licensee or any other person has concealed evasion of the chapter or the rules ~~and regulations~~ made ~~hereunder~~ under this chapter, the administrator shall order ~~such~~ the licensee in writing to desist from such conduct.
2. ~~No~~ A licensee may not make ~~loans~~ transactions provided for by this chapter under any name; or at any place of business within this state other than that stated in the license except as provided in section 13-03.1-08.

SECTION 11. AMENDMENT. Section 13-03.1-15 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-15. Loans - Maximum charges permitted - Installment payments - Other charges.

1. ~~Every~~ A licensee ~~to make loans~~ may make loans under this section, including revolving loans, in any principal amount more than one thousand dollars but not more than thirty-five thousand dollars and may contract for, receive, or collect interest on the loans at any rate agreed upon by the licensee and the borrower.
2. Every loan contract must require payment of principal and charges in installments ~~which must be that are~~ payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. ~~No~~ An installment contracted for may not be substantially larger than any preceding installment, except in the case of revolving loan contracts. ~~When~~ If

a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.

3. Interest may be collected on the unpaid balance of any judgment at a rate not exceeding that permitted by section 47-14-09.

4. No further amount whatsoever in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. ~~No~~ An agreement may not provide for the payment by the debtor of attorney fees. However, such restrictions do not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, an amount not exceeding closing costs actually incurred in connection with a loan secured by an interest in land (including fees or premiums for title examination, title insurance, and surveys, fees for notarizing title or mortgage documents, and appraisal fees), and the identifiable charge or premium for insurance provided for in section 13-03.1-17. A bona fide error of law or fact is not deemed a violation of this section. A bona fide clerical error in the calculation of interest is not deemed a violation of this section if the licensee corrects the error.

SECTION 12. AMENDMENT. Section 13-03.1-15.1 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-15.1. Maximum charges permitted for loans not in excess of one thousand dollars - Refund - Installment payments - Permitted charges.

1. ~~Every~~ A licensee to make loans may make loans under this section in any amount not exceeding one thousand dollars, and may contract for, receive, or collect on the loans, charges not in excess of two and one-half percent per month on that part of the unpaid balance of principal not exceeding two hundred fifty dollars; two percent per month on that part of the unpaid balance of principal exceeding two hundred fifty dollars but not exceeding five hundred dollars; one and three-fourths percent per month on that part of the unpaid balance of principal in excess of five hundred dollars but not exceeding seven hundred fifty dollars; and one and one-half percent per month on that part of the unpaid balance of principal exceeding seven hundred fifty dollars but not exceeding one thousand dollars. For the purpose of computing charges for a fraction of a month, whether at the

maximum rate or less, a day is considered one-thirtieth of a month. Amounts to be charged for any small loan by a licensee to make loans under this chapter may also be calculated and charged on a stated dollar per hundred basis but the charges over the entire term of the loan may not be in excess of the equivalent percentage charges on the monthly unpaid balances of principal authorized in this section. If charges are calculated and charged on a dollar per hundred basis, the loan must be repayable in substantially equal periodic installments of principal and charges, and the annual percentage simple interest equivalent must be conspicuously stated in the note or small loan contract executed in connection with the loan.

2. When any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis is paid in full by cash, a new loan, renewal, or otherwise, one month or more before the final installment date, the licensee shall refund or credit to the borrower a portion of the total charges which must be at least as great as the sum of the full periodic installment balances scheduled to follow the installment date following the date of prepayment in full bears to the sum of all the periodic installment balances of the loan contract, both sums to be determined according to the payment schedules that had been agreed upon in the loan contract. Charges during the month of payment must be prorated in the proportion that the number of days remaining in the installment period bears to the total days of the installment period. ~~No~~ A refund of one dollar or less need not be made.

3. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, a licensee may charge, collect, and receive on any installment of principal and charges continuing unpaid for five or more days from the date the payment is due a sum that may not exceed the amount of charges during the final full month of the loan before maturity. The charge may not be collected more than once for the same default. The charge may be collected at the time of the default or any time ~~thereafter~~ after default. However, if the charge is taken out of any payment received after a default occurs and if the deduction

results in the default of a subsequent installment, ~~no~~ a charge may not be made for the subsequent default.

4. On any note or loan contract in which charges have been calculated and charged on a dollar per hundred basis, if the payment date for any scheduled installment is deferred one or more full months and a corresponding deferment is made for all subsequent installments, the licensee may charge and receive a deferment charge that may not exceed one-twelfth of the charges authorized in subsection 1 applied to the balance of principal and charges due at the date of the deferment multiplied by the number of full months during the deferment in which no payment is made. Thereafter, charges must be made over the remaining extended life of the loan in the same manner and at the same ratio as though no deferral or extension had been granted. The charges may be collected at the time of the deferment or any later time. If the loan is prepaid in full during the deferment period, the borrower is entitled to receive in addition to the refund required under subsection 2 a refund of that portion of the deferment charge applicable to any unexpired months of the deferment period.

5. A licensee may not enter into any contract of loan under this section under which the borrower agrees to make any scheduled payment of principal and charges more than twenty-four and one-half calendar months from the date of making the contract. Every loan contract must require payment of principal and charges in installments that must be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. ~~No~~ An installment contracted for may be substantially larger than any preceding installment. ~~When~~ If a loan contract provides for monthly installments, the first installment may be payable at any time within forty-five days after the date of the loan.

6. A licensee may not induce or permit any person, or husband and wife, jointly or severally, to be obligated, directly or indirectly, under more than one contract of loan at the same time if the multiple loans result in a higher rate of charge than would otherwise be permitted by this chapter.

7. No further amount in addition to the charges provided for in this chapter may be directly or indirectly charged, contracted for, or received. However, this restriction does not apply to court costs, lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan, and the identifiable charge or premium for insurance provided for in section 13-03.1-17. If any sum in excess of the amounts authorized by this chapter is willfully charged, contracted for or received, the licensee or any assignee or other person has no right to collect or receive any charges or recompense.

SECTION 13. AMENDMENT. Section 13-03.1-16 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-16. Requirements for making and payments of loans - Confessions of judgment - Incomplete instruments.

1. ~~Every~~ A licensee to make loans shall:
 - a. Give a receipt to the person making a cash payment on account of any loan unless payment is made by check or money order.
 - b. Permit payment in full to be made in advance.
 - c. Upon repayment of the loan in full, provide evidence of payment, release any mortgage, or financing statement no longer securing any indebtedness, restore any pledge, and cancel any assignment given to the licensee.
2. ~~No~~ A licensee to make loans may not:
 - a. Take any confession of judgment or any power of attorney running to the licensee or to any third person to confess judgment or to appear for the borrower in a judicial proceeding; nor
 - b. Take any instrument in which blanks are left to be filled in after the loan is made.

SECTION 14. AMENDMENT. Section 13-03.1-17 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-17. ~~Insurance Loans~~ - Insurance policies - Existing insurance.

1. The following types of insurance may be written in connection with loans made by licensees under this chapter, however, nothing in this chapter limits the right of a licensee and a borrower to enter into a transaction involving the purchase of

insurance or other products by the borrower from or through the licensee if the purchase is voluntary on the part of the borrower, is not a condition to the making of the loan, and if the insurance purchase is related to and written in connection with the making of a loan under this chapter:

- a. In the case of motor vehicles having a book value of more than five hundred dollars, fire, theft, and windstorm, and fifty dollars or more deductible collision; and in the case of all motor vehicles, bodily injury liability and property damage liability. If neither liability ~~or~~ nor property damage insurance is written, but other insurance is written covering a motor vehicle, the borrower shall sign the following statement: "This contract does not provide for motor vehicle liability and property insurance."
- b. Fire and extended coverage insurance upon property.
- c. Life (on one or more borrowers) and accident and health insurance or any of them may be written upon, or in connection with, any loan in any amount not exceeding the total amount to be repaid under the loan contract, and for a term not extending beyond the final maturity date of the loan contract; provided, that in the event of a renewal or prepayment of a contract or loan, this type of insurance must be canceled and a refund of the unearned premium must be credited or paid the borrower.

2. Notwithstanding any other provision of this chapter, any gain or advantage in the form of commission or otherwise, to the licensee or to any employee, affiliate, or associate of the licensee from such insurance or its sale is not deemed to be an additional or further charge in connection with the contract of loan.

3. The insurance premium for any insurance related to and written in connection with the making of a loan under this chapter may be collected from the borrower or included in the loan contract at the time the loan is made. Any insurance related to and written in connection with the making of a loan under this chapter may not exceed the term of the loan or any extensions of the term.

4. If a borrower procures insurance by or through a licensee, the licensee shall deliver to the borrower within fifteen days after the making of the loan an executed copy of the insurance policy or certificate of insurance. A borrower may procure insurance

to secure a loan from any agent authorized to do business by the commissioner of insurance. A licensee may require that such insurance be provided, including endorsements thereon, prior to any disbursement of loan proceeds, but charges will not accrue on any loan until the loan proceeds are disbursed. Nothing in this chapter impairs or invalidates the obligations of any loan contract which was lawfully entered into prior to July 1, 1975.

SECTION 15. A new section to chapter 13-03.1 of the North Dakota Century Code is created and enacted as follows:

Currency exchange - Locations - Fees - Bond.

1. A person may not engage in the business of a currency exchange without first obtaining a license to exchange currency under this chapter. A license may not be issued under this section if the applicant's place of business to be operated under the license is located or proposed to be located within one-half mile [.80 kilometer] of another licensed currency exchange. This distance limitation is measured by a straight line from the closest points of the closest structures involved.
2. A licensee to exchange currency may not contract with another person to manage the currency exchange business; however, this does not prohibit the licensee from employing individuals to operate a currency exchange facility.
3. A licensee shall display the fees charged by the licensee to exchange currency in a prominent manner on the premises of the business as required by the administrator. The administrator shall adopt rules establishing fees a licensee to exchange currency may charge to issue a money order or traveler's check and shall adopt rules establishing the direct cost of verification fees a licensee to exchange currency may charge for cashing a check, draft, money order, or traveler's check. In addition to any direct cost of verification fees a licensee may charge under this section, the licensee may charge the following fees:
 - a. The greater of ten percent of the face amount or five dollars, for cashing a draft, personal check, traveler's check, or money order.
 - b. The greater of five percent of the face amount or five dollars, for cashing a payment instrument such as a payroll check.

- 1 c. The greater of six percent of the face amount or five dollars, for cashing a
2 payment instrument such as a payroll check, without proof of identification.
3 d. The greater of three percent of the face amount or five dollars, for cashing a
4 state public assistance check or a federal social security check.
5 e. The greater of four percent of the face amount or five dollars, for cashing a
6 state public assistance check or a federal social security check, without proof
7 of identification.

- 8 4. A licensee to exchange currency must have a surety bond in the sum of ten
9 thousand dollars. The bond must run to the administrator and is for the benefit of
10 creditors of the licensee for liability incurred by the licensee on money orders
11 issued or sold by the licensee; for liability incurred by the licensee for sums due to
12 a payee or endorsee of a check, draft, or money order left with the licensee for
13 collection; and for liability incurred by the licensee in connection with providing
14 currency exchange services. The administrator may require a licensee to file a
15 bond in an additional amount if the administrator considers it necessary to meet the
16 requirements of this subsection. In determining the additional amount of the bond
17 which may be required, the administrator may require the licensee to file its
18 financial records, including all bank statements, pertaining to the sale of money
19 orders for the preceding twelve-month period. In no case may the bond be less
20 than the initial twenty-five thousand dollars or more than the outstanding liabilities.
21 5. A licensee may not accept money or currency for deposit or act as bailee or agent
22 of persons to hold money or currency in escrow for others for any purpose. A
23 licensee may not exchange currency on the premises of a charitable gaming site.