

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 140

SENATE BILL NO. 2105

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to amend and reenact sections 13-04.1-13, 13-05-10, 13-08-15, and 13-09-21 of the North Dakota Century Code, relating to enforcement actions for money brokers, collection agencies, deferred presentment service providers, and money transmitters; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-13. Penalty. Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 2. AMENDMENT. Section 13-05-10 of the North Dakota Century Code is amended and reenacted as follows:

13-05-10. Penalty. Any person violating any of the provisions of this chapter is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 3. AMENDMENT. Section 13-08-15 of the North Dakota Century Code is amended and reenacted as follows:

13-08-15. Violations - Cease and desist orders - Penalties. Except as otherwise provided in this chapter, any person who willfully provides deferred presentment services without a license is guilty of a class C felony and any person

who violates any other provisions of this chapter or any rule adopted to implement this chapter is guilty of an infraction. If the commissioner finds, whether without a hearing or after a hearing if a hearing is requested within twenty days of notice of an action by the commissioner under this section, that a person violated this chapter or any rule adopted to implement this chapter, the commissioner may do any one or more of the following:

1. Order the person to cease and desist violating this chapter or the rule.
2. Require the refund of any fees collected by the person in violation of this chapter.
3. Impose a civil penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

SECTION 4. AMENDMENT. Section 13-09-21 of the North Dakota Century Code is amended and reenacted as follows:

13-09-21. Civil penalties. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

Approved April 8, 2009

Filed April 9, 2009

CHAPTER 141**SENATE BILL NO. 2160**

(Finance and Taxation Committee)

(At the request of the Department of Financial Institutions)

AN ACT to create and enact two new sections to chapter 13-04.1 and chapter 13-10 of the North Dakota Century Code, relating to licensing of residential mortgage brokers and regulation of loans not in excess of one thousand dollars and automatic extension of money broker license; to amend and reenact subsections 1 and 3 of section 6-01-01.1, sections 13-04.1-02.1, 13-04.1-04, and 13-04.1-05, subsection 2 of section 41-09-11, and section 51-14-03.2 of the North Dakota Century Code, relating to changes necessitated by the repeal of chapter 13-03.1, the financial institutions regulatory fund balance, exemptions from licensing requirements under the North Dakota money broker statute, annual license fees, and licensure renewal dates; to repeal chapter 13-03.1 of the North Dakota Century Code, relating to regulation of lending activities; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 3 of section 6-01-01.1 of the North Dakota Century Code are amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, ~~13-03.1~~, 13-04.1, 13-05, 13-08, ~~and~~ 13-09, and 13-10.
3. Any cash balance in the financial institutions regulatory fund after all current biennium expenditures are met must be carried forward in the financial institutions regulatory fund for the next succeeding biennium. The balance in this fund at the end of the current biennium, excluding fees collected for use in the next succeeding biennium, may not exceed twenty percent of the department's next succeeding biennial budget.

SECTION 2. AMENDMENT. Section 13-04.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02.1. Entities exempted from licensing requirements. This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;

5. ~~North Dakota licensed consumer finance companies~~ Individuals licensed under chapter 13-10;
6. State or federal agencies and their employees;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. Any other person or business regulated and licensed by the state of North Dakota;
10. A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson; or
11. Any person, retail seller, or manufacturer providing lease financing for its own property or inventory held as a normal course of business, or to leases on any real property.

SECTION 3. AMENDMENT. Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of ~~three~~ four hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty-five thousand dollars. In addition, the applicant must pay a fifty dollar annual fee for each branch location within the state. Fees must be deposited in the financial institutions regulatory fund.

SECTION 4. AMENDMENT. Section 13-04.1-05 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-05. Expiration and renewal of license. All licenses required herein expire on ~~June thirtieth~~ December thirty-first of each year and may be renewed. Renewals are effective the succeeding ~~July~~ January first. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of fifty dollars for the renewal of such license. A money broker license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a money broker license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of

ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The money broker license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

SECTION 5. A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

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

1. Every licensee 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 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 refund of one dollar or less need 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. 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 charge may 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 installment contracted for may be substantially larger than any preceding installment. When 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 by rule. 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 6. A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

Automatic six-month extension of license during 2009 calendar year. All current licensees who have made payment of a fee in accordance with section 13-04.1-04 or 13-04.1-05, for a money broker license effective after July 1, 2008,

shall be granted an extension of their current licenses until December 31, 2009. If at any time prior to December 31, 2009, a licensee's license expires or otherwise terminates under this chapter, the applicant shall be required to pay licensing fees in accordance with section 13-04.1-04, and that license will expire on December 31, 2009.

SECTION 7. Chapter 13-10 of the North Dakota Century Code is created and enacted as follows:

13-10-01. Purpose. The purpose of this chapter is to protect consumers seeking mortgage loans and to ensure that the mortgage lending industry is operating without unfair, deceptive, and fraudulent practices on the part of mortgage loan originators.

13-10-02. Definitions. For purposes of this chapter:

1. "Depository institution" has the same meaning as is currently defined under section 3 of the Federal Deposit Insurance Act and includes any credit union.
2. "Federal banking agencies" means the board of governors of the federal reserve system, the comptroller of the currency, the director of the office of thrift supervision, the national credit union administration, and the federal deposit insurance corporation.
3. "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.
4. "Individual" means a natural person.
5. "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under this chapter.
 - a. For purposes of this subsection, "clerical or support duties" may include subsequent to the receipt of an application:
 - (1) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
 - (2) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.
 - b. An individual engaging solely in loan processor or underwriter activities, shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator.

6. "Mortgage loan originator":
- a. Means an individual who for compensation or gain or in the expectation of compensation or gain:
 - (1) Takes a residential mortgage loan application; or
 - (2) Offers or negotiates terms of a residential mortgage loan;
 - b. Does not include an individual engaged solely as a loan processor or underwriter except as otherwise provided in subsection 4 of section 13-10-03;
 - c. Does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with North Dakota law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator; and
 - d. Does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in 11 U.S.C. 101(53D).
7. "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of licensed mortgage loan originators.
8. "Nontraditional mortgage product" means any mortgage product other than a thirty-year fixed rate mortgage.
9. "Person" means a natural person, corporation, company, limited liability company, partnership, or association.
10. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:
- a. Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
 - b. Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
 - c. Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;
 - d. Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
 - e. Offering to engage in any activity, or act in any capacity, described in this subsection.

11. "Registered mortgage loan originator" means any individual who:
 - a. Meets the definition of mortgage loan originator and is an employee of:
 - (1) A depository institution;
 - (2) A subsidiary that is:
 - (a) Owned and controlled by a depository institution; and
 - (b) Regulated by a federal banking agency; or
 - (3) An institution regulated by the farm credit administration; and
 - b. Is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.
12. "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the Truth in Lending Act, or residential real estate upon which is constructed or intended to be constructed such a dwelling.
13. "Residential real estate" means any real property located in North Dakota, upon which is constructed or intended to be constructed a dwelling.
14. "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry.

13-10-03. License and registration required.

1. An individual, unless specifically exempted from this chapter under subsection 3, shall not engage in the business of a mortgage loan originator with respect to any dwelling located in this state without first obtaining and maintaining annually a license under this chapter. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
2. To facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, the effective date for subsection 1 is August 1, 2009, or such later date approved by the secretary of the United States department of housing and urban development, pursuant to the authority granted under Public Law 110-289, section 1508(a). All persons subject to licensing under this section, who are currently licensed under chapter 13-04.1, shall continue to be subject to licensure under chapter 13-04.1 until January 1, 2010, when they shall be required to be licensed under this chapter. If at any point before January 1, 2010, a person subject to licensing under this section fails to be licensed under chapter 13-04.1, that person shall be required to be licensed under this chapter.

3. The following are exempt from this chapter:
 - a. Registered mortgage loan originators, when acting for an entity described in subdivision a of subsection 11 of section 13-10-02 are exempt from this chapter.
 - b. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
 - c. Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
 - d. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.
4. A loan processor or underwriter who is an independent contractor may not engage in the activities of a loan processor or underwriter unless such independent contractor loan processor or underwriter obtains and maintains a license under subsection 1. Each independent contractor loan processor or underwriter licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry.
5. To implement an orderly and efficient licensing process, the commissioner may establish licensing rules or regulations and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the commissioner may establish expedited review and licensing procedures.

13-10-04. State license and registration application and issuance.

1. Applicants for a license shall apply in a form as prescribed by the commissioner. Each such form must contain content as set forth by rule, regulation, instruction, or procedure of the commissioner and may be changed or updated as necessary by the commissioner in order to carry out the purposes of this chapter.
2. To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter.
3. In connection with an application for licensing as a mortgage loan originator, the applicant shall, at a minimum, furnish to the nationwide mortgage licensing system and registry information concerning the applicant's identity, including:

- a. Fingerprints for submission to the federal bureau of investigation and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check; and
- b. Personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the commissioner to obtain:
 - (1) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
 - (2) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.
4. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection 3, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.
5. For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 3, the commissioner may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

13-10-05. Issuance of license. The commissioner shall not issue a mortgage loan originator license unless the commissioner makes at a minimum the following findings:

1. The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that a subsequent formal vacation of such revocation shall not be deemed a revocation.
2. The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court:
 - a. During the seven-year period preceding the date of the application for licensing and registration; or
 - b. At any time preceding such date of application, if such felony involved an act of fraud, dishonesty, or a breach of trust, or money laundering;
 - c. Provided that any pardon of a conviction shall not be a conviction for purposes of this subsection.
3. a. The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan

4. Prelicensing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.
5. The prelicensing education requirements approved by the nationwide mortgage licensing system and registry in subsection 1 for any state shall be accepted as credit toward completion of prelicensing education requirements in North Dakota.
6. A person previously licensed under this chapter after the effective date of this chapter applying to be licensed again must prove that that person has completed all of the continuing education requirements for the year in which the license was last held.

13-10-07. Testing of loan originators.

1. In order to meet the written test requirement referred to in subsection 5 of section 13-10-05, an individual must pass, in accordance with the standards established under this subsection, a qualified written test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.
2. A written test shall not be treated as a qualified written test for purposes of subsection 1 unless the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including:
 - a. Ethics;
 - b. Federal law and regulation pertaining to mortgage origination;
 - c. State law and regulation pertaining to mortgage origination; and
 - d. Federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues.
3. Nothing in this section prohibits a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the applicant or the location of any subsidiary or affiliate of the employer of the applicant or the location of any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.
4.
 - a. An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.
 - b. An individual may retake a test three consecutive times, with each consecutive taking occurring at least thirty days after the preceding test.
 - c. After failing three consecutive tests, an individual shall wait at least six months before taking the test again.

- d. A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer shall retake the test, not taking into account any time during which individual is a registered mortgage loan originator.

13-10-08. Standards for license renewal.

1. The minimum standards for license renewal for mortgage loan originators include the following:
 - a. The mortgage loan originator continues to meet the minimum standards for license issuance under section 13-10-05.
 - b. The mortgage loan originator has satisfied the annual continuing education requirements described in section 13-10-09.
 - c. The mortgage loan originator has paid all required fees for renewal of the license.
2. The license of a mortgage loan originator failing to satisfy the minimum standards for license renewal shall expire. The commissioner may adopt procedures for the reinstatement of expired licenses consistent with the standards established by the nationwide mortgage licensing system and registry.

13-10-09. Continuing education for mortgage loan originators.

1. To meet the annual continuing education requirements referred to in section 13-10-08, a licensed mortgage loan originator shall complete at least eight hours of education approved in accordance with subsection 2, which shall include at least:
 - a. Three hours of federal law and regulations;
 - b. Two hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; and
 - c. Two hours of training related to lending standards for the nontraditional mortgage product marketplace.
2. For purposes of subsection 1, continuing education courses shall be reviewed and approved by the nationwide mortgage licensing system and registry based upon reasonable standards. Review and approval of a continuing education course must include review and approval of the course provider.
3. Nothing in this section precludes any education course, as approved by the nationwide mortgage licensing system and registry, which is provided by the employer of the mortgage loan originator or an entity that is affiliated with the mortgage loan originator by an agency contract or any subsidiary or affiliate of such employer or entity.
4. Continuing education may be offered in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry.

5. For a licensed mortgage loan originator:

 - a. Except as allowed by subsection 2 of section 13-10-08 and subsection 9 of this section, an individual may only receive credit for a continuing education course in the year in which the course is taken; and
 - b. An individual may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

6. A licensed mortgage loan originator who is an approved instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.
7. A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry in subsection 1 for any state shall be accepted as credit toward completion of continuing education requirements in North Dakota.
8. A licensed mortgage loan originator who subsequently becomes unlicensed must complete the continuing education requirements for the last year in which the license was held prior to issuance of a new or renewed license.
9. A person meeting the requirements of subdivisions a and c of subsection 1 of section 13-10-08 may make up any deficiency in continuing education as established by rule or regulation of the commissioner.

13-10-10. Authority to require license. In addition to any other duties imposed upon the commissioner by law, the commissioner shall require mortgage loan originators to be licensed and registered through the nationwide mortgage licensing system and registry. To carry out this requirement, the commissioner may participate in the nationwide mortgage licensing system and registry. For this purpose, the commissioner may establish by rule requirements as necessary, including:

1. Background checks for:

 - a. Criminal history through fingerprint or other databases;
 - b. Civil or administrative records;
 - c. Credit history; or
 - d. Any other information as deemed necessary by the nationwide mortgage licensing system and registry;

2. The payment of fees to apply for or renew licenses through the nationwide mortgage licensing system and registry;
3. The setting or resetting as necessary of renewal or reporting dates; and

4. Requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for participation in the nationwide mortgage licensing system and registry.

13-10-11. Nationwide mortgage licensing system and registry information challenge process. The commissioner shall establish a process by which mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the commissioner.

13-10-12. Enforcement authorities, violations, and penalties.

1. To ensure the effective supervision and enforcement of this chapter the commissioner may:
 - a. Deny, suspend, revoke, condition, or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter or order or directive entered under this chapter.
 - b. Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee fails at any time to meet the requirements of section 13-10-05 or 13-10-08, or withholds information or makes a material misstatement in an application for a license or renewal of a license.
 - c. Order restitution against persons subject to this chapter for violations of this chapter.
 - d. Impose fines on persons subject to this chapter pursuant to subsections 2, 3, and 4.
 - e. Issue orders or directives under this chapter as follows:
 - (1) Order or direct persons subject to this chapter to cease and desist from conducting business, including immediate temporary orders to cease and desist.
 - (2) Order or direct persons subject to this chapter to cease any harmful activities or violations of this chapter, including immediate temporary orders to cease and desist.
 - (3) Enter immediate temporary orders to cease business under a license or interim license issued pursuant to the authority granted under subsection 5 of section 13-10-03 if the commissioner determines that such license was erroneously granted or the licensee is currently in violation of this chapter.
 - (4) Order or direct such other affirmative action as the commissioner deems necessary.
2. The commissioner may impose a civil penalty on a mortgage loan originator or person subject to this chapter, if the commissioner finds, on the record after notice and opportunity for hearing, that such mortgage loan originator or person subject to this chapter has violated or failed to comply with any requirement of this chapter or any regulation prescribed

by the commissioner under this chapter or order issued under authority of this chapter.

3. The maximum amount of penalty for each act or omission described in subsection 2 is twenty-five thousand dollars.
4. Each violation or failure to comply with any directive or order of the commissioner is a separate and distinct violation or failure.

13-10-13. Surety bond and minimum net worth requirements - Surety bond required.

1. Each mortgage loan originator must be covered by a surety bond in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the surety bond of such person subject to this chapter may be used in lieu of the mortgage loan originator's surety bond requirement.
 - a. The surety bond shall provide coverage for each mortgage loan originator in an amount as prescribed in subsection 2.
 - b. The surety bond must be in a form as prescribed by the commissioner.
 - c. The commissioner may promulgate rules or regulations with respect to the requirements for such surety bonds as are necessary to accomplish the purposes of this chapter.
2. The licensee shall maintain a surety bond in the amount as determined by the commissioner by rule. The amount must be reflective of the dollar amount of loans originated as of the previous yearend. However, the commissioner may increase the amount of the surety bond if the commissioner determines that such an increase is necessary to protect the public interests.
3. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
4. Immediately upon recovery upon any action on the bond, the licensee shall file a new bond.

13-10-14. Minimum net worth required. A minimum net worth must be continuously maintained for mortgage loan originators in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter, the net worth of such person subject to this chapter may be used in lieu of the mortgage loan originator's minimum net worth requirement.

1. Minimum net worth must be maintained in the amount of twenty-five thousand dollars. However, the commissioner may increase the amount of minimum net worth if the commissioner determines that such an increase is necessary to protect the public interest.
2. The commissioner may promulgate rules or regulations with respect to the requirements for minimum net worth as are necessary to accomplish the purposes of this chapter.

13-10-15. Confidentiality. To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law or chapter 44-04 regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to such information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or chapter 44-04.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the commissioner.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
 - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - b. Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.
4. Application of chapter 44-04 relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1 shall be superseded by the requirements of this section.
5. This section does not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public.

13-10-16. Investigation and examination authority. In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this

chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:

- a. Criminal, civil, and administrative history information, including nonconviction data;
 - b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
 - c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.
2. For the purposes of investigating violations or complaints arising under this chapter, or for the purposes of examination, the commissioner may review, investigate, or examine any licensee, individual, or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter. The commissioner may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the commissioner deems relevant to the inquiry.
3. Each licensee, individual, or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of such licensee, individual, or person subject to this chapter. The commissioner shall have access to such books and records and interview the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee, individual, or person subject to this chapter concerning their business.
4. Each licensee, individual, or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:
- a. Accounting compilations;
 - b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
 - c. Such other information deemed necessary to carry out the purposes of this section.
5. In making any examination or investigation authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under examination or investigation. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no

individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.

6. In order to carry out the purposes of this section, the commissioner may:
 - a. Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
 - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;
 - d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
 - e. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.
7. The authority of this section remains in effect, whether such a licensee, individual, or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without such authority.
8. No licensee, individual, or person subject to investigation or examination under this section may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

13-10-17. Prohibited acts and practices. It is a violation of this chapter for a person or individual subject to this chapter to:

1. Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
2. Engage in any unfair or deceptive practice toward any person;
3. Obtain property by fraud or misrepresentation;

4. Solicit or enter into a contract with a borrower that provides in substance that the person or individual subject to this chapter may earn a fee or commission through best efforts to obtain a loan even though no loan is actually obtained for the borrower;
5. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting;
6. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter;
7. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations;
8. Fail to comply with this chapter or rules or regulations promulgated under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter;
9. Make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;
10. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency;
11. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;
12. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter;
13. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or
14. Fail to truthfully account for moneys belonging to a party to a residential mortgage loan transaction.

13-10-18. Mortgage call reports. Each mortgage licensee shall submit to the nationwide mortgage licensing system and registry reports of condition, which shall be in such form and shall contain such information as the nationwide mortgage licensing system and registry may require.

13-10-19. Report to nationwide mortgage licensing system and registry. Notwithstanding state privacy law, the commissioner is required to report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry subject to the provisions contained in section 13-10-15.

13-10-20. Privately insured credit unions. Nonfederally insured credit unions which employ loan originators, as defined in Public Law 110-289, title V, the S.A.F.E. Act, shall register such employees with the nationwide mortgage licensing system and registry by furnishing the information concerning the employees' identity set forth in section 1507(a)(2) of Public Law 110-289, title V.

13-10-21. Unique identifier shown. The unique identifier of any person originating a residential mortgage loan shall be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or websites, and any other documents as established by rule, regulation, or order of the commissioner.

SECTION 8. AMENDMENT. Subsection 2 of section 41-09-11 of the North Dakota Century Code is amended and reenacted as follows:

2. A transaction, although subject to this chapter, is also subject to section 47-19-41 and chapters ~~13-03-4~~ 13-04.1, 35-05, 49-09, and 51-13. In the case of conflict between this chapter and any of those statutes, the provisions of those statutes control. Failure to comply with any applicable statute has only the effect that is specified therein.

SECTION 9. AMENDMENT. Section 51-14-03.2 of the North Dakota Century Code is amended and reenacted as follows:

51-14-03.2. Application of other provisions. Credit extended by a seller or holder of a revolving charge agreement to a buyer is not subject to chapter ~~13-03-4~~ 13-04.1 or 47-14.

SECTION 10. REPEAL. Chapter 13-03.1 of the North Dakota Century Code is repealed.

SECTION 11. EFFECTIVE DATE. Sections 1 and 6 of this Act become effective immediately upon filing with the secretary of state and all other sections of this Act become effective on August 1, 2009.

SECTION 12. EMERGENCY. Sections 1 and 6 of this Act are declared to be an emergency measure.

Approved April 9, 2009
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