

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 122

SENATE BILL NO. 2273
(Freed)

MISCELLANEOUS CRIMINAL PENALTIES

AN ACT to amend and reenact sections 13-03-22 and 57-50-08 of the North Dakota Century Code, providing criminal penalties for violation of certain statutory provisions.

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

SECTION 1. AMENDMENT.) Section 13-03-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

13-03-22. PENALTY.) Any person who violates any of the provisions of this chapter or regulations or orders promulgated thereunder shall be guilty of a class A misdemeanor. Any contract of loan made or containing provisions in violation of this chapter is void. Any act in collecting a loan which violates the provisions of this chapter shall have the result of voiding the contract of loan. A lender shall have no right to collect, receive, or retain any principal, interest, or charges whatsoever on a void contract of loan.

There shall be no violation of any of the provisions of this chapter for any act done or omitted to be done in conformity with properly promulgated rules and regulations issued under section 13-03-11; notwithstanding that such orders, rules, and regulations may, after such act or omission, be amended, rescinded, or be determined by judicial or other authority to be invalid for any reason.

SECTION 2. AMENDMENT.) Section 57-50-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

57-50-08. PENALTY.) Any person violating any of the provisions of this chapter is guilty of a class A misdemeanor.

Approved March 19, 1975

CHAPTER 123

SENATE BILL NO. 2415
(Holand, Homuth, Strand, H. Christensen)

CONSUMER FINANCE ACT

AN ACT to define, license, and regulate the business of lending in amounts of exceeding one thousand dollars and not exceeding two thousand five hundred dollars; to prescribe maximum rates of charge which licensees are permitted to make; to provide for administration and enforcement of this Act; and to prescribe penalties.

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

SECTION 1. DEFINITIONS.) For purposes of this Act, unless the context or subject matter otherwise requires:

1. "Person" means an individual, partnership, association, corporation, and any other legal entity.
2. "License" means a permit, issued under the authority of this Act, to make loans in accordance with the provisions of this Act at a single place of business.
3. "Licensee" means a person to whom one or more licenses have been issued.
4. "Administrator" means the commissioner of the department of banking and financial institutions.

SECTION 2. ADMINISTRATION.) The administrator may employ such employees as may be necessary to administer and enforce the provisions of this Act and may delegate his powers and duties under this Act to the supervisor of consumer credit. The supervisor of consumer credit and employees shall not have a financial interest directly or indirectly in any business which is subject to this Act, or in any other business which is supervised by the administrator, or in any similar business which is conducted under the authority of any law of the United States. All fees received by the administrator under the provisions of this Act shall be credited to the general fund of this state.

SECTION 3. SCOPE.) Persons licensed under the provisions of this Act may engage in the business of lending in amounts

of more than one thousand dollars and not more than two thousand five hundred dollars and contract for, exact or receive, directly or indirectly, on or in connection with any such loan, any charges whether for interest, compensation, consideration, or expense, which in the aggregate are greater than that permitted by section 47-14-09. This Act shall not apply to loans made under the small loans act of 1959 approved at the election of June 29, 1960, as amended, but persons licensed under that act may obtain licenses to make loans under this Act.

SECTION 4. PROCEDURE AND JUDICIAL REVIEW.) The provisions of chapter 28-32 of the North Dakota Century Code shall govern all proceedings under this Act or judicial review thereof, where said provisions do not conflict with specific provisions of this Act.

SECTION 5. APPLICATION AND FEES.) Application for a license shall be in writing, under oath, and in the form prescribed by the administrator. The application shall give the location where the business is to be conducted and shall contain such further information as the administrator may require, including the names and addresses of the partners, officers, directors, or trustees, and of such of the principal owners or members as will provide the basis for the investigations and findings contemplated by section 6 of this Act. When making such application, the applicant shall pay to the department of banking and financial institutions three hundred dollars fee for investigating the application, and one hundred dollars for the annual license fee.

SECTION 6. INVESTIGATION OF APPLICATION - REQUIREMENTS FOR ISSUANCE OF LICENSE - DENIAL OF LICENSE - PUBLIC RECORD.)

1. Upon the filing of an application and the payment of the fees therefor the administrator shall investigate the facts concerning the application.
2. The administrator shall issue a license to operate a consumer finance loan business if he shall find:
 - a. That the financial responsibility, experience, character, and general fitness of the applicant are such as to warrant the belief that the business will be operated lawfully, and fairly; and
 - b. That the applicant has assets of at least twenty-five thousand dollars for the operation of the business.
3. The administrator shall approve or deny every application for a license hereunder within sixty days from the filing thereof with the fee.
4. No application shall be denied until the applicant shall have had a notice of a hearing on the application and an

opportunity to be heard thereon. Whenever an application is denied, the administrator shall, within twenty days thereafter, prepare and keep on file in his office a written order of denial thereof. The order shall contain its findings with respect thereto and the reasons supporting the denial, and the administrator shall send a copy thereof by registered mail to the applicant at the address set forth in the application within five days after the filing of such order. If the administrator shall find the applicant is not qualified to be issued a license, he shall also forthwith return the license fee but may retain the investigation fee.

5. All persons licensed or otherwise authorized under the provisions of the small loans act of 1959 on the effective date of this Act may obtain licenses to make loans under this Act. The administrator shall, upon request and payment of the annual license fee, deliver evidence of licensing under this Act to the persons so previously licensed or authorized.

SECTION 7. POSTING OF LICENSE - CONTINUING LICENSE - ANNUAL FEE.)

1. Each license shall state the address at which the business is to be conducted and shall state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation. Each license shall be kept posted in the licensed place of business and shall not be transferable or assignable.
2. Each license shall remain in full force and effect until surrendered, revoked, or suspended, provided that on or before the tenth day of June of each year the licensee shall pay to the administrator the sum of one hundred dollars for each license held by him, as a license fee for the succeeding fiscal year.

SECTION 8. 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 Act shall 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 Act governing issuance of a single license. Nothing in this Act shall be construed to require a license for any place of business devoted entirely to accounting or other record keeping.

2. Whenever a licensee changes his place of business to a location other than that set forth in his license, he shall give fifteen days written notice thereof to the administrator.
3. Loans made by mail shall not violate this section.

SECTION 9. REVOCATION OR SUSPENSION OF LICENSE.)

1. The administrator may issue to a person licensed to make loans under this Act an order to show cause why his license should not be revoked or suspended for a period not in excess of six months. The order shall 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 he finds that:
 - a. The licensee has repeatedly and willfully violated this Act or any rule or order lawfully made pursuant to this Act; 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 revocation or suspension of a license is lawful unless prior to institution of proceedings by the administrator notice is given to the licensee of the facts or conduct which 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 Act requires immediate suspension of the license pending investigation, he may, after a hearing upon five days written notice, enter an order suspending the license for not more than thirty days.
4. Whenever the administrator revokes or suspends a license, he shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he 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 Act may relinquish the license by notifying the administrator in writing of its relinquishment but this relinquishment shall not affect his liability for acts previously committed.

6. No revocation, suspension, or relinquishment of a license shall impair or 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 10. RECORDS - ANNUAL REPORTS.)

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 the provisions of this Act. The record keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account the two years is measured from the date of each entry.
2. On or before September fifteenth each year every licensee shall file with the administrator a composite annual report in the form prescribed by the administrator relating to all loans made by him. 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. Information contained in annual reports shall be confidential and may be published only in composite form.

SECTION 11. EXAMINATIONS AND INVESTIGATIONS.)

1. The administrator shall conduct a yearly examination of the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this Act or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any lender. For these purposes he shall have free and reasonable access to the offices, places of business, and records of the lender. The actual costs of the examination shall be paid by the licensee.
2. If the lender's records are located outside this state, the lender at his option shall make them available to the administrator at a convenient location within this state, or pay the reasonable and necessary expenses for the administrator or his representative to examine them at the place where they are maintained. The

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

3. For the purposes of this section, the administrator may administer oaths or affirmations and upon his own motion or upon request of any party may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which 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, 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 12. REGULATIONS AND ORDERS - CERTIFIED COPIES OF OFFICIAL DOCUMENTS.)

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

SECTION 13. ADVERTISING.) No licensee or other person subject to this Act shall advertise, display, distribute, broadcast, or televise any false, misleading, or deceptive statement or representation with regard to the rates, terms, or conditions for loans, or cause or permit the same to be done.

SECTION 14. OTHER BUSINESS IN THE SAME OFFICE - BUSINESS CONFINED TO LICENSED OFFICE.)

1. If the administrator shall find, after a hearing, that the conduct of other business by the licensee or any other person has concealed evasion of the Act or the rules and regulations made hereunder, he shall order such licensee in writing to desist from such conduct.
2. No licensee shall make loans provided for by this Act under any name, or at any place of business within this state other than that stated in the license except as provided in section 8.

SECTION 15. MAXIMUM CHARGES PERMITTED - INSTALLMENT PAYMENTS - OTHER CHARGES.)

1. Every licensee may make loans, including revolving loans, in any principal amount not less than one thousand dollars and not more than two thousand five hundred dollars, and may contract for, receive or collect on such loans, charges not in excess of one and one-half percent per month on the unpaid balance of principal. For the purpose of computing charges for a fraction of a month, whether at the maximum rate or less, every month shall be deemed to have thirty days and a day shall be considered one-thirtieth of a month.
2. Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for shall 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.
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 Act shall be directly or indirectly charged, contracted for, or received. No agreement may provide for the payment by the debtor of attorney fees. However, such restrictions shall 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 seventy-five dollars for 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 17 of this Act. 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.
5. No licensee shall have outstanding to the same person at the same time a loan under this Act and also under the small loans act of 1959.

SECTION 16. REQUIREMENTS FOR MAKING AND PAYMENTS OF LOANS - CONFESSIONS OF JUDGMENT - INCOMPLETE INSTRUMENTS.)

1. Every licensee 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; and
 - 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 licensee shall:
 - a. Take any confession of judgment or any power of attorney running to himself 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 17. INSURANCE - POLICIES OF INSURANCE - EXISTING INSURANCE.)

1. The following types of insurance may be written in connection with loans made by licensees under this Act:
 - 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 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; and
 - c. Life (on one or more borrowers) and health and accident 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 shall be canceled and a refund of the

unearned premium shall be credited or paid the borrower.

2. Notwithstanding any other provision of this Act, 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 shall not be deemed to be an additional or further charge in connection with the contract of loan.
3. The insurance premium for such insurance may be collected from the borrower or included in the contract of loan at the time the loan is made. No insurance premiums or charges, other than for credit life and health and accident insurance, may be included in a loan contract having a maturity of more than thirty-six months and fifteen days unless no charges are computed on such premiums or charges.
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 insurance commissioner. A licensee may require that such insurance be provided, including endorsements thereon, prior to any disbursement of loan proceeds, but charges shall not accrue on any loan until the loan proceeds are disbursed. Nothing in this Act shall be so construed as to impair or invalidate the obligations of any contract of loan which was lawfully entered into prior to the effective date of this Act.

SECTION 18. PENALTY.) Any person who shall violate any of the provisions of this Act or regulations or orders promulgated thereunder shall be guilty of a class A misdemeanor. In the event any contract of loan or any act in its making or collection violates the provisions of this Act, the lender shall have no right to collect, receive, or retain any interest or charges whatsoever.

SECTION 19. TITLE OF ACT.) This Act shall be known and may be cited as the North Dakota Consumer Finance Act.

Approved April 8, 1975