

DEBTOR AND CREDITOR RELATIONSHIP

CHAPTER 136

HOUSE BILL NO. 1172
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

MONEY BROKER ADVANCE FEES

AN ACT to create and enact a new section to chapter 13-04.1 of the North Dakota Century Code, relating to advance fees by money brokers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 13-04.1 of the North Dakota Century Code is created and enacted as follows:

Advance fees prohibited - Exception. No money broker may take any type of fee in advance before the funding of the loan, unless the money broker is licensed under this chapter.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 137

SENATE BILL NO. 2208

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial
Institutions)

INTERSTATE COLLECTION ACTIVITIES

AN ACT to amend and reenact section 13-05-02 of the North Dakota Century Code, relating to out-of-state persons or agencies collecting from individuals living in North Dakota.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-05-02 of the North Dakota Century Code is amended and reenacted as follows:

13-05-02. Collection agency license required to collect claims. Except as otherwise herein provided, no person other than a collection agency licensed and authorized under this chapter may advertise or solicit either in print, by letter, in person, or otherwise, the right to collect or receive payment of any claim for another or sell or give away collection letters as demand forms in the state of North Dakota. As used in this chapter, the term "collection agency" does not include attorneys at law, licensed real estate brokers, banks, trust companies, building and loan associations, abstract companies doing an escrow business, creditors collecting their own debts, individuals or firms who purchase or take accounts receivable for collateral purposes, individuals employed in the capacity of creditman upon the staff of an employer not engaged in the business of a collection agency, or any public officer, receiver, or trustee acting under the order of a court. A person may not be considered to be engaged in collection activity within this state if that person's activities are limited to collecting debts from debtors located in this state by means of interstate communications, including telephone, mail, or facsimile transmission from the person's location in another state if the person is licensed and bonded in that state and the state has enacted similar legislation.

Approved March 16, 1993
Filed March 16, 1993

CHAPTER 138

HOUSE BILL NO. 1176
(Industry, Business and Labor Committee)
(At the request of the Department of Banking and Financial
Institutions)

COLLECTION AGENCY CEASE AND DESIST AND PENALTIES

AN ACT to create and enact two new subsections to section 13-05-06 of the North Dakota Century Code, relating to department of banking and financial institutions' cease and desist authority and assessment of civil money penalties involving collection agency activity.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Two new subsections to section 13-05-06 of the North Dakota Century Code are created and enacted as follows:

Issue and serve upon any person, or licensed collection agency, an order to cease and desist to take corrective action when the department has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.

Impose civil money penalties against persons or agencies willfully violating an order to cease and desist in an amount not to exceed five hundred dollars for each violation. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the assessment of civil money penalties. Any civil money penalties collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

Approved March 19, 1993
Filed March 19, 1993

CHAPTER 139

SENATE BILL NO. 2362
(Senators Nalewaja, Mathern, Krebsbach)
(Representatives R. Berg, Boucher, Porter)

CONSUMER CREDIT COUNSELING SERVICES

AN ACT relating to consumer credit counseling services; and providing a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Consumer credit counseling service - Definition. As used in this Act, "consumer credit counseling service" means a nonprofit corporation engaged in the business of debt adjusting as defined in section 13-06-01.

SECTION 2. Consumer credit counseling service - Contract requirements. Any agreement between a consumer credit counseling service and a debtor for counseling and assistance must be in writing and signed by both parties. The consumer credit counseling service shall give the debtor a copy of the signed agreement. The agreement must disclose the total amount that may be retained by the consumer credit counseling service if the contract is fully performed, the terms upon which the debtor may cancel the contract, and all debts that are to be managed by the counseling service, including the name of each creditor and the amount of each debt. A consumer credit counseling service may not enter an agreement with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and that the debtor will be benefited by the plan.

SECTION 3. Consumer credit counseling service - Surety bond or other security. A consumer credit counseling service entering an agreement with a debtor who resides in this state shall file with the attorney general a surety bond or other security in an amount equal to the largest sum accrued in the service's trust account during the prior year, or five thousand dollars, whichever is greater. The bond or other security must be payable to the state of North Dakota and must be acceptable to the attorney general for the use and benefit of debtors making payments to a consumer credit counseling service and suffering damages caused by the consumer credit counseling service.

SECTION 4. Consumer credit counseling service - Trust accounts. A consumer credit counseling service shall deposit in a trust account in a financial institution, within one business day of receipt, any payments received from or on behalf of a debtor. A debtor's payments must be identifiable in the trust account. Funds in the trust account may not be commingled with any other funds. The consumer credit counseling service shall credit any interest accrued as a result of payments deposited in a trust account to debt management education programs.

SECTION 5. Consumer credit counseling service - Accounting records - Availability of statements. A consumer credit counseling service shall maintain books, records, and accounts in a manner that allows the attorney general to determine compliance with the law. A consumer credit counseling service shall prepare a weekly statement of all receipts and disbursements, including payments

received from or on behalf of a debtor, disbursements made on behalf of the debtor, fees collected, and funds held in escrow. The consumer credit counseling service shall make available to each debtor, upon request, a copy of the debtor's statement of account. All books, records, and accounts must be retained by a consumer credit counseling service for at least six years after the final entry of any recorded transaction.

SECTION 6. Fees - Payments - Cancellation. A consumer credit counseling service may charge an origination fee of up to fifty dollars, which may be subtracted from the intital amount paid by the debtor to the counseling service. The consumer credit counseling service may withdraw and retain as partial payment of the service's total fee up to fifteen percent of any sum deposited by the debtor for distribution. The remainder must be disbursed to the listed creditors in accordance with the parties' agreement. Disbursement must be made within forty-five days after deposit by the debtor. Before an automatic termination, either party may cancel the agreement without cause upon giving to the other party thirty days' written notice of an intent to cancel. In the event of a cancellation, the consumer credit counseling service shall notify the debtor's creditors within thirty days.

SECTION 7. Prohibitions - Investigation - Civil penalty. A consumer credit counseling service may not take a confession of judgment or a power of attorney to confess judgment against the debtor, or appear as the debtor in any judicial proceeding. The attorney general may, upon the attorney general's own motion, and shall, upon receipt of a complaint, investigate any alleged violation of law by a consumer credit counseling service. For that purpose, the attorney general may subpoena witnesses, administer oaths, take testimony, and require the production of books, documents, and other records. The attorney general may institute a civil action in the name of the state in the district court for an injunction prohibiting any practice in violation of this Act. The court, upon notice to the defendant of not less than five days, and upon proof that the defendant has engaged in a practice in violation of this Act may enjoin the defendant from engaging in any practice in violation of this Act. In addition, the court may impose a civil penalty not to exceed five thousand dollars for each violation of this Act. The attorney general may recover costs and disbursements, including the costs of investigation and reasonable attorney's fees.

Approved April 15, 1993
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