Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1101
(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact sections 13-04.1-18, 13-08-16, and 13-11-31 of the North Dakota Century Code, relating to the customer information of money brokers, deferred presentment service providers, and debt-settlement providers; to amend and reenact sections 13-04.1-01.1, 13-04.1-02.1, 13-04.1-04, 13-04.1-09, 13-04.1-15, 13-05-04, and 13-05-05.1, subsection 13 of section 13-09-02, sections 13-09-03 and 13-09-07.1, and subsections 1 and 2 of section 13-10-03 of the North Dakota Century Code, relating to money brokers, collection agencies, money transmitters, and mortgage loan originators; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-01.1. Definitions.

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Borrower" means a person or entity that seeks out, or is solicited by a money broker for the purpose of money brokering.

2. "Commissioner" means the commissioner of financial institutions.

3. "Money broker" means a person or entity who, in the ordinary course of business, engages in money brokering.

4. "Money brokering" means the act of arranging or providing loans or leases as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes.

5. "Net branch" means an office at which a licensed money broker allows a separate person that does not hold a valid North Dakota money brokers license to originate loans under the license of the money broker.

6. "Net branch arrangement" means an arrangement under which a licensed money broker enters an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits or losses, establishing, leasing, or renting the branch premises, entering other contractual relationships with vendors such as for telephones, utilities, and advertising, having control of a corporate checkbook, or exercising control of personnel through the power to hire or fire such individuals. A person may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.

7. "Precomputed loan" means a loan that is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance.

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. 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 to lend money 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 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 four hundred dollars for the annual license fee. In addition, the applicant must pay a fifty dollar annual fee for each branch location ~~within the~~registered to engage in money brokering in this state. Fees must be deposited in the financial institutions regulatory fund.

SECTION 4. AMENDMENT. Section 13-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-09. Prohibited acts and practices.

It is a violation of this chapter for a person subject to this chapter to knowingly:

1. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.

2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.

3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.

4. Engage in any unfair or deceptive practice toward any person.

5. Obtain property by fraud or misrepresentation.

6. 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.

7. 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.

8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.

9. Fail to comply with this chapter or rules adopted 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.

10. 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.

11. 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.

12. 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 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.

13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.

14. 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.

15. Fail to truthfully account for moneys belonging to a party to a loan transaction.

16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in money broker business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.

17. Enter any agreement that constitutes a precomputed loan.

SECTION 5. AMENDMENT. Section 13-04.1-15 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-15. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. ~~In addition, the licensee shall submit the original license certificate for reissue.~~

SECTION 6. Section 13-04.1-18 of the North Dakota Century Code is created and enacted as follows:

13-04.1-18. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all money brokers licensed under this chapter.

SECTION 7. AMENDMENT. Section 13-05-04 of the North Dakota Century Code is amended and reenacted as follows:

13-05-04. Application requirements - Fee to accompany application for collection agency license.

The application for a collection agency 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 13-05-03. 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. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund.

SECTION 8. AMENDMENT. Section 13-05-05.1 of the North Dakota Century Code is amended and reenacted as follows:

13-05-05.1. Change of name or address.

A licensee is required to submit within twenty business days of the date of change, notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. ~~In addition, the licensee shall submit the original license certificate for reissue.~~

SECTION 9. Section 13-08-16 of the North Dakota Century Code is created and enacted as follows:

13-08-16. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all persons licensed under this chapter.

SECTION 10. AMENDMENT. Subsection 13 of section 13-09-02 of the North Dakota Century Code is amended and reenacted as follows:

13. "Money transmission" means to engage in the business of the sale or issuance of payment instruments, stored value, or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, "money transmission" also includes bill payment services not limited to the right to receive payment of any claim for another, but does not include payment processing activities conducted for a merchant under an agency relationship.

SECTION 11. AMENDMENT. Section 13-09-03 of the North Dakota Century Code is amended and reenacted as follows:

13-09-03. Exclusions.

This chapter does not apply to:

1. The United States or any department, agency, or instrumentality thereof;

2. The United States post office;

3. The state or any political subdivisions thereof;

4. Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, or savings banks or mutual banks organized under the laws of any state or the United States, ~~provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks~~but this exemption does not extend to any other person acting on behalf of any such excluded entity;

5. The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in federal reserve board regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof; and

6. Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in section 13-09-15.

SECTION 12. AMENDMENT. Section 13-09-07.1 of the North Dakota Century Code is amended and reenacted as follows:

13-09-07.1. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner. ~~In addition, the licensee shall submit the original license certificate for reissue.~~

SECTION 13. AMENDMENT. Subsections 1 and 2 of section 13-10-03 of the North Dakota Century Code are amended and reenacted as follows:

1. An individual, unless specifically exempted from this chapter under subsection ~~3~~2, 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. 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.

e. An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator solely pursuant to that individual's official duties as an employee of the federal, state, or local government agency or housing finance agency in compliance with title 12, Code of Federal Regulations, part 1008, section 1008.103(e)(6).

f. An individual who is an employee of a bona fide nonprofit organization who acts as a loan originator solely with respect to that individual's work duties to the bona fide nonprofit organization, and who acts as a loan originator solely with respect to residential mortgage loans with terms that are favorable to the borrower in compliance with title 12, Code of Federal Regulations, part 1008, section 1008.103(e)(7).

SECTION 14. Section 13-11-31 of the North Dakota Century Code is created and enacted as follows:

13-11-31. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all debt-settlement providers licensed under this chapter.

SECTION 15. EMERGENCY. Section 13 of this Act is declared to be an emergency measure.

Wesley R. Belter
Speaker of the House

Drew Wrigley
President of the Senate

Brent J. Reich
Chief Clerk of the House

Jane Schaible
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1101 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 92 Nays 0 Absent 2

Wesley R. Belter
Speaker of the House

Brent J. Reich
Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

Drew Wrigley
President of the Senate

Jane Schaible
Secretary of the Senate

Received by the Governor at 10:44 A M. on April 8, 2015.

Approved at 1:39 P. M. on April 9, 2015.

Jack Dalrymple
Governor

Filed in this office this 9th day of April, 2015,

at 4:37 o'clock P M.

Alvin A. Jaeger
Secretary of State