

FISCAL NOTE
Requested by Legislative Council
03/23/2015

Amendment to: HB 1101

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$132,800	\$0	\$135,000
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill will increase Collection Agency annual license fees and will enable the Department to assess branch fees for out-of-state branches as well as in-state branches for Money Brokers. The revenue will help defer the cost of the consumer division expenditures.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Section 2 of the bill amends Section 13-04.1-04 and will enable the Department to assess a branch fee for out-of-state branches of licensed Money Brokers as well as in-state branches. The fiscal impact is based on the current number of out-of-state branches of licensed Money Brokers.

Section 5 of the bill amends Section 13-05-04 and increases the annual fee for collection agencies from \$300 to \$400. The fiscal impact is based on the current number of licensed collection agencies.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Revenue includes 514 Collections Agencies increased \$100 per fiscal year
 Revenue includes 300 Money Broker Branch Fee at \$50 per branch per fiscal year

Collections Agencies for 24 month period \$102,800
 Money Broker Branch fee for 24 month period \$ 30,000

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill will have no affect on expenditures.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

This bill will have no affect on appropriations.

Name: Joan Becker

Agency: Department of Financial Inst

Telephone: 701/328-9958

Date Prepared: 03/23/2015

FISCAL NOTE
Requested by Legislative Council
03/18/2015

Amendment to: HB 1101

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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Date Prepared: 03/18/2015

FISCAL NOTE
Requested by Legislative Council
12/19/2014

Amendment to: HB 1101

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Name: Joan Becker

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Date Prepared: 12/23/2014

FISCAL NOTE
Requested by Legislative Council
12/19/2014

Bill/Resolution No.: HB 1101

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This bill will have no affect on appropriations.

Name: Joan Becker

Agency: Department of Financial Inst

Telephone: 701/328-9958

Date Prepared: 12/23/2014

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1101

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1101
1/12/2015
21864

- Subcommittee
 Conference Committee

EF

Explanation or reason for introduction of bill/resolution:

Money broker licensing requirements and fees, collection agency licensing requirements and fees, and money transmitter licensing requirements.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing on HB 1101.

Aaron Webb testifying for Robert Entringer, Dept Financial Institutions. (Attachment 1).

(7:00)

Chairman Keiser: If you would look at page 2, line 17; we're striking "within the state". If I'm a large operation, national in scope, but I am not doing any business in North Dakota but some of my branches are, would I have to pay the fee for each of those branches?

Webb: Only the branches operating in ND.

Chairman Keiser: Where does it say that?

Webb: It's included within the license system that only register branches that do business with ND.

Chairman Keiser: That's the MLS, that's not paying a fee. There is the law that says they pay a fee. This doesn't reference those people meeting the MLS registration requirements.

Webb: We could add something in there that would say "any branch that does business with a resident of ND".

Chairman Keiser: That makes me more comfortable.

(9:35)

Kim Granfor~Representing the ND Collector's Association: We appreciate the openness and we do agree and support.

Chairman Keiser: Where does the \$132,000 go?

Webb: Goes into our department budget.

Chairman Keiser: Is there a reflection in your budget if this passes to decrease some other line item?

Webb: I would have to look into that?

Chairman Keiser: Is there anyone else here to speak in favor, opposition, neutral. Closes the hearing.

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1101
1/14/2015
21977

Subcommittee
 Conference Committee

ER

Explanation or reason for introduction of bill/resolution:

Money broker licensing requirements and fees, collection agency licensing requirements and fees, and money transmitter licensing requirements.

Minutes:

Attachments 1-2

Chairman Keiser: Opens the committee work session on HB 1101.

Bob Entringer~Department of Financial Institutions: Emailed the chairman the amendment and passes the amendment to the committee. (Attachment 1). When reviewing the statute, our attorney found that the statute referenced the wrong subsection. All the amendment does is overstrike the wrong subsection and inserts the correct subsection.

Chairman Keiser: So, it's technical in nature.

Entringer: It is.

Chairman Keiser: Having heard the amendment, what are the wishes of the amendment to HB 1101.

Laning: Moves to approve the amendment.

Vice Chairman Sukut: Second.

Voice roll call vote was taken and the amendment passes. (See Attachment 1).

Representative Beadle: (Attachment 2). When we had the discussion on HB 1101, one of the issues was on page 2, line 17. We reached out to the Dept of Financial Institutions and came up with the proposed language that clarifies what "within the state" to "registered to engage in money brokering in the state of ND.

Chairman Keiser: What are the wishes of the committee?

Representative Beadle: Move to further amend.

Representative Devlin: Second.

Voice roll call was taken and the amendment passes. (See Attachment 2).

Chairman Keiser: We now have HB 1101 before us, what are the wishes of the committee.

Representative Beadle: Moves a Do Pass as Amended with a referral to Appropriations.

Representative Boschee: Second.

Roll call was taken for a Do Pass as Amended with 14 yes, 0 no, 1 absent and Representative Beadle is the carrier.

PROPOSED AMENDMENTS TO HOUSE BILL NO 1101

Page 1, line 4, remove “and”

Page 1, line 4, after “13-09-07.1” insert “, and 13-10-03”

Page 1, line 6, remove the second “and”

Page 1, line 7, after “requirements” insert “, and mortgage loan originator license exemptions”

Page 4, after line 22, insert

“SECTION 10. AMENDMENT. Section 13-10-03 of the North Dakota Century Code is amended and reenacted as follows:

13-10-03. License and registration required.

1. An individual, unless specifically exempted from this chapter under subsection ~~32~~, 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.

3. 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.
4. 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. “

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1101

Page 2, line 17, after “~~within the state~~” insert “registered to engage in money brokering in the state of North Dakota”

Renumber accordingly

January 14, 2015

SK
1-14-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1101

Page 1, line 4, after "13-09-07.1" insert ", and subsection 1 of section 13-10-03"

Page 1, line 6, remove the second "and"

Page 1, line 7, after "requirements" insert ", and mortgage loan originator license exemptions"

Page 2, line 17, after "the" insert "registered to engage in money brokering in this"

Page 2, line 17, remove the overstrike over "state"

Page 4, after line 22, insert:

"SECTION 10. AMENDMENT. Subsection 1 of section 13-10-03 of the North Dakota Century Code is amended and reenacted as follows:

1. An individual, unless specifically exempted from this chapter under subsection ~~32~~, 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."

Renumber accordingly

Date: Jan 14

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1101

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep. Laning Seconded By Vice Chairman Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice roll call - Amendment passes

Date: Jan 14, 2014

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1101

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Further amend
 Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Beadle Seconded By Rep Devlin

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

voice roll call - Amendment passes
page 2 - line 17

Date: Jan 14, 2014

Roll Call Vote: 3

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1101**

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep Beadle Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Lefor	x	
Vice Chairman Sukut	x		Representative Louser	x	
Representative Beadle	x		Representative Ruby	x	
Representative Becker	x		Representative Amerman	x	
Representative Devlin	x		Representative Boschee	x	
Representative Frantsvog	x		Representative Hanson	Ab	
Representative Kasper	x		Representative M Nelson	x	
Representative Laning	x				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep Beadle

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1101: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1101 was placed on the Sixth order on the calendar.

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Renumber accordingly

2015 HOUSE APPROPRIATIONS

HB 1101

2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1101
2/12/2015
Job #23786

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the customer information of money brokers, deferred presentment service providers, and debt-settlement providers

Minutes:



Chairman Jeff Delzer opened the meeting.

George Keiser Representative District 47 Bismarck offered explanations of the bill as chair of the originating committee, (Industry Business and Labor).

Chairman Jeff Delzer: how many new of the out of state are the branch ones?

Keiser: The vast majority of them are out of state. We will charge a fee to out of state branches. We will assess a fee after a 12 year period; there are 514 collection agencies

Keiser: the in state branches are already operating. Only those branches that are operating in the state of ND will be charged a fee.

Chairman Jeff Delzer

The only one you're raising the fee on is the collection agencies?

Keiser: correct; after a 12 year period. There are 500 collection agencies and 300 money broker branches.

Chairman Jeff Delzer

Housed out of state...What do they plan to do with the money; we have the dept. of financial institutions budget in front of us. Representative Thoreson; you have financial institutions budget; did you have any discussion on that?

Representative Thoreson

It was on the green sheet and we've not touch on it; we knew it was in IB&L committee and we have not taken final action on dept. of financial institutions. We will take it under advisement.

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee
Roughrider Room, State Capitol

HB 1101
2/12/2015
Job # 23799

- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to the customer information of money brokers, deferred presentment service providers, and debt-settlement providers

Minutes:



Discussion started with **Chairman Jeff Delzer**

Representative Thoreson: we saw it was on the green sheet but we did not do a lot with this particular bill.

Chairman Jeff Delzer: what happens if they have more money?

Brady Larson (Legislative Council): they have money appropriated out of their special funds

Motion for a do pass made by **Vice Chairman Keith Kempenich**
Seconded by **Representative Schmidt**

Chairman Jeff Delzer

Because we did not make a change we will turn this over to be carried by Representative Beadle.

Votes: 15 Yes, 6 no, 2 absent; motion carries

Repr. Beadle will be the carrier

Date: 2/12/15

Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1101

House Appropriations Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By: Kempenich Seconded By: Schmidt

Representatives	Yes	No	Absent	Representatives	Yes	No	Absent	Representatives	Yes	No	Absent
Chairman Jeff Delzer		✓		Representative Nelson			—	Representative Boe			—
Vice Chairman Keith Kempenich	✓			Representative Pollert	✓			Representative Glassheim	✓		
Representative Bellew		✓		Representative Sanford	✓			Representative Guggisberg	✓		
Representative Brandenburg	✓			Representative Schmidt	✓			Representative Hogan	✓		
Representative Boehning		✓		Representative Silbernagel	✓			Representative Holman	✓		
Representative Dosch	✓			Representative Skarphol	✓						
Representative Kreidt	✓			Representative Streyle		✓					
Representative Martinson	✓			Representative Thoreson		✓					
Representative Monson	✓			Representative Vigesaa		✓					
	<u>6</u>	<u>3</u>	<u>0</u>		<u>5</u>	<u>3</u>	<u>1</u>		<u>4</u>	<u>0</u>	<u>1</u>

Totals

(Yes)	<u>15</u>
No	<u>6</u>
Absent	<u>2</u>
Grand Total	<u>23</u>

Floor Assignment: Repr., Beadle

If the vote is on an amendment, briefly indicate intent: _____

REPORT OF STANDING COMMITTEE

HB 1101, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **DO PASS** (15 YEAS, 6 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed HB 1101 was placed on the Eleventh order on the calendar.

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1101

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1101 Engrossed
3/10/2015
Job Number 24554

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to the customer information of money brokers, deferred presentment service providers, and debt-settlement providers

Minutes:

Attachments

Chairman Klein: Opened the hearing.

Robert J. Entringer, Commissioner of the Department of Financial Institutions: Written Testimony Attached (1) and Proposed Amendment Attached (2). (:05-9:50)

Senator Casper: Said he had an amendment. The key in this is the last paragraph on page one of the testimony; "In this situation, the processor has entered into a contract with a company or merchant to help manage its payable and receivables". This is really about debiting and crediting. If you are an employee and you are an employer and you sign up to have funds credited to your bank account, this company would debit the employer and credit the employee and they are part of that whole ECH network of transactions. When you look at the justification for legislation and the justification for DFI in large part it is consumer protection but in this situation we don't believe these folks should be required to be licensed because they have consent and an agreement with the employer and the employee and employer have an agreement. DFI has authorized or written a letter to say that this group didn't have to be licensed in such a way and this would just be codifying that authorization. Amendment Attached (3) and Testimony from Craig Dresser, CEO of Intercept EFT Attached (4). (10:14-14:53)

Senator Campbell: Would this include any employer or employee where they electronically transfer their salary into their account?

Senator Casper: This is about the company that is conducting the transaction and whether or not they would have to be licensed by DFI and this is really a clarifying amendment to legislation. (15:00-15:32)

Senator Campbell: They are just a third party who are taking care of this not the existing people who are doing electronic transactions, it is just the example you gave?

Senator Casper: Correct.

Senator Sinner: I would like to talk a little bit about this issue. The owners of this company are personal friends of mine. What they do is facilitate transactions. (15:50-17:15)

Senator Casper: This is an innovative North Dakota company.

Chairman Klein: The commissioner has already put his blessing on it in his testimony.

Senator Sinner: Said he had a question for the Commissioner before the break about financial companies operating in North Dakota. He became aware of a situation where these companies use an old lending formula called the "Rules of 78s". The Rules of 78s says if you borrow ten thousand dollars at twenty percent interest for five years they add all the interest on the top. They calculate what it will be at the term of the loan so when you start making payments you pay back all of the interest first before you get to the principle. There is a company out of Minot that is doing this and really taking advantage of consumers. He would like an amendment to the bill that would make the Rules of 78s illegal in North Dakota. Currently most financial institutions can't do this it was made illegal forty years ago. He would like to hold the bill long enough to put an amendment on it to make this illegal. (17:45-19:26)

Kim Granfor, North Dakota Collectors Association: In full support of the bill. She said she would have to read the amendment before she could support it.

Senator Campbell: A question on Senator Sinner's potential amendment. Those types of loans are traditionally low income or have passed poor performance customers. A lot of the low income consumers would not get loans or appliances without that vehicle, not saying it is right. Could Bob comment on that?

Robert J. Entringer: Honestly I think this company that Senator Sinner is referring to is the only company in the State that uses the Rule of 78. The example I gave him is completely accurate. To outlaw Rule 78, I don't think is a bad thing because if you are doing the Rules of 78s you are losing money when a borrower doesn't pay on a timely basis because you don't get the accrued interest. If you are a banker you understand this. It is benefiting the lender. (21:29-23:02)

Chairman Klein: Senator Campbell and Senator Sinner and Bob if you would work through this amendment so we can get this all formulated. If we can get them together all in one form and have the amendments combined and brought back to the committee.

Robert J. Entringer: We will do that and have our attorney draft it all into one amendment.

Chairman Klein: Closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1101 Engrossed

3/11/2015

Job Number 24634

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the customer information of money brokers, deferred presentment service providers, and debt-settlement providers

Minutes:

Attachment

Chairman Klein: Opened the meeting. A couple of amendments were presented by the department and Senator Casper had a concern about who would need to be licensed and Senator Sinner had an issue that needed to be addressed.

Senator Sinner: Went over the amendments that he added and the rest of the amendment. Amendment Attached (1). (1:02-2:23)

Chairman Klein: Commented that page five came from Robert J. Entringer.

Senator Sinner: That constitutes all of the amendments they are pretty simple.

Senator Sinner: Moved the amendments.

Senator Miller: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Sinner: Moved a do pass as amended.

Senator Murphy: Seconded the motion.

Roll Call Vote: Yes-7 No-0 Absent-0

Senator Sinner will carry the bill.

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1101 Engrossed
3/17/2015
Job Number 24969

- Subcommittee
 Conference Committee

Committee Clerk Signature

Era Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to customer information of money brokers, deferred presentment service providers, and debt-settlement providers

Minutes:

Attachment

Chairman Klein: Someone needs to make a motion to reconsider actions where we passed HB 1101.

Senator Burckhard: Made a motion to reconsider HB 1101.

Senator Campbell: Seconded the motion.

Chairman Klein: All in favor of that motion say I, opposed no. We have the bill before us again. The bill came before us last week and there were some concerns about the emergency clause being put in the wrong section. Mr. Entringer sent me a message and this is the correction. That is why the bill was brought back to our committee. Amendment Attached (1).

Senator Sinner: Moved the amendments.

Senator Murphy: Seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

Senator Sinner: Moved a do pass on Engrossed HB 1101 as amended.

Senator Murphy: Seconded the motion.

Roll Call Vote: Yes-6 No-0 Absent-1

Senator Sinner will carry the bill.

March 11, 2015

1 of 4
To
3/11/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1101

- Page 1, line 4, after "sections" insert "13-04.1-01.1,"
- Page 1, line 4, after the second comma insert "13-04.1-09,"
- Page 1, line 4, after the fifth comma insert "subsection 13 of section 13-09-02, sections"
- Page 1, line 4, remove "and"
- Page 1, line 5, remove "subsection 1 of section"
- Page 1, line 6, replace "broker licensing requirements and fees" with "brokers"
- Page 1, line 6, remove "agency licensing requirements and"
- Page 1, line 7, replace "fees" with "agencies"
- Page 1, line 7, replace "transmitter licensing requirements" with "transmitters"
- Page 1, line 7, remove "originator license"
- Page 1, line 8, replace "exemptions" with "originators; and to declare an emergency"
- Page 1, after line 9, insert:

"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 which is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance."

Page 2, after line 18, insert:

"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."

Page 3, after line 26, insert:

"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

4 of 4

processing activities conducted for a merchant under an agency relationship."

Page 4, line 23, replace "Subsection 1 of section" with "Section"

Page 4, after line 30, insert:

- "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).
- 3. 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.
- 4. 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."

Renumber accordingly

15.8026.02004
Title.04000

Adopted by the Industry, Business and Labor
Committee

March 17, 2015

TV
3/17/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1101

In addition to the amendments adopted by the Senate as printed on pages 761-764 of the Senate Journal, Engrossed House Bill No. 1101 is further amended as follows:

Page 5, after line 5, insert:

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

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1101 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.8026.02003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Sinner Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1101 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.8026.02003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Sinner Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

If the vote is on an amendment, briefly indicate intent:

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1101 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Burckhard Seconded By Senator Campbell

Senators	Yes	No	Senators	Yes	No
Chairman Klein			Senator Murphy		
Vice Chairman Campbell			Senator Sinner		
Senator Burckhard					
Senator Miller					
Senator Poolman					
VOICE VOTE CARRIED					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1101 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.8026.02004

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Sinner Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Murphy	X	
Vice Chairman Campbell	X		Senator Sinner	X	
Senator Burckhard	X				
Senator Miller	Absent				
Senator Poolman	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1101 Engrossed**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Sinner Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Klein	X		Senator Murphy	X	
Vice Chairman Campbell	X		Senator Sinner	X	
Senator Burckhard	X				
Senator Miller	Absent				
Senator Poolman	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Sinner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1101, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1101 was placed on the Sixth order on the calendar.

Page 1, line 4, after "sections" insert "13-04.1-01.1,"

Page 1, line 4, after the second comma insert "13-04.1-09,"

Page 1, line 4, after the fifth comma insert "subsection 13 of section 13-09-02, sections"

Page 1, line 4, remove "and"

Page 1, line 5, remove "subsection 1 of section"

Page 1, line 6, replace "broker licensing requirements and fees" with "brokers"

Page 1, line 6, remove "agency licensing requirements and"

Page 1, line 7, replace "fees" with "agencies"

Page 1, line 7, replace "transmitter licensing requirements" with "transmitters"

Page 1, line 7, remove "originator license"

Page 1, line 8, replace "exemptions" with "originators; and to declare an emergency"

Page 1, after line 9, insert:

"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 which is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance."

Page 2, after line 18, insert:

"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."

Page 3, after line 26, insert:

"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."

Page 4, line 23, replace "Subsection 1 of section" with "Section"

Page 4, after line 30, insert:

- "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).
3. 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.
 4. 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."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1101, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1101 was placed on the Sixth order on the calendar.

In addition to the amendments adopted by the Senate as printed on pages 761-764 of the Senate Journal, Engrossed House Bill No. 1101 is further amended as follows:

Page 5, after line 5, insert:

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

Re-number accordingly

2015 TESTIMONY

HB 1101

Jan 12, 2015

MEMORANDUM

DATE: January 1, 2015
TO: House Industry, Business and Labor Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of House Bill No. 1101

Chairman Keiser and members of the House Industry, Business and Labor Committee, thank you for the opportunity to testify in support of House Bill No. 1101

Mr. Chairman and members of the Committee, House Bill No. 1101 includes amendments to Chapters 13-04.1, 13-05, 13-08, 13-09 and 13-11 of the North Dakota Century Code relating to consumer finance licensees.

Section 1 of the Bill relates to section 13-04.1-02.1 of the money broker act. Specifically, this section provides a listing of entities that are exempt from licensure under the money broker statute. Currently, under subsection 9, an exemption exists for any other person or business regulated and licensed by the State of North Dakota. The purpose of this

exemption is to prevent the need for multiple lending licenses within the state. However, over the past couple years, some companies have argued that any licensure from the state would qualify them for an exemption under the statute. One example of this argument has come from out-of-state collection companies taking the position that they do not need a lending license, since they are already licensed with the department. While our department has consistently interpreted this provision to exempt only persons or businesses regulated or licensed to lend money, this statutory change would remove the need for an interpretation.

Section 2 of the Bill relates to the annual fee charged for money broker branch locations. As some background, each money broker applies for a North Dakota license through the Nationwide Mortgage Licensing System and Registry (“NMLS”). As part of its application/renewal, the licensee registers all branch locations that will provide loans to residents of North Dakota. As currently written, the statute only charges an annual fee for a money broker’s in-state branch locations. We are proposing to remove the words “within this state” which would allow the department to charge an annual fee for all branch locations (in-state and out-of-state). The department is proposing this amendment since licensees lend to residents of North Dakota through both in-state and out-of-state registered

branches, the department processes and approves registration of all these branches, and the department has the obligation to examine all registered branches regardless of location. This fee structure is similar to other states and is also compares to how the department charges for branches under the collection agency statute.

Sections 3, 6 and 9 of the Bill relate to sections of our consumer statutes that provides for department notification relating to change of name or address. As written, these sections require a licensee to return their original license certificate for reissue. Since all our licensees are now on the Nationwide Mortgage License System (NMLS), it is more efficient for the department to issue a license number and input that number within the company's NMLS profile. This removes the need for the department to issue paper licenses.

Sections 4, 7 and 10 of the Bill provide for new sections of the money broker, deferred presentment service provider (payday lenders) and debt-settlement company statutes. These sections would expressly extend the customer information protections of Chapter 6-08.1 to these licensees; generally requiring a customer's consent prior to sharing their information with a third party. Currently, customer information protections found under this statute relate to "financial institutions" physically located within the

State. While the department has always held that this law extends to all financial companies regulated by the department, we have recently encountered resistance from out-of-state licensees contesting this position. In order to provide these protections to residents of North Dakota, who share substantial amount of information with in-state and out-of-state licensees, the department is proposing to incorporate the provisions of chapter 6-08.1 to the extent that they are not inconsistent with the licensing statutes.

Section 5 of the Bill relates to the annual fees charged to collection agencies licensed under chapter 13-05. Currently, collection agencies pay a three-hundred dollar annual license fee while other consumer finance entities licensed by the department pay between four-hundred and four-hundred and fifty dollars annually. Under the amendment, the collection agency annual fee would be raised from three-hundred dollars, to four-hundred dollars. It has not been since the 2003 session that the collection agency fee has been raised. The primary reason for the amendment is the increase in operating expenses experienced by the department including salaries, travel, and training of examiners. Further, the department has expended a growing portion of its resources in regulation of out-of-state companies doing business with residents of North Dakota. Out-of State

collection agencies account for 498 of the 512 licenses issued by the department.

Section 8 of the Bill relates to section 13-09-03 of the money transmission statute, addressing exclusions from licensure. The amendment modifies the language contained in subsection 4 which covers the exemption for banks, credit unions and other financial institutions. The department drafted this amendment in order to clarify that the exemption only covers the financial institutions listed, and does not extend to any third parties entity working on behalf of, or in partnership with, the financial institution. Additionally, the modification clarifies that the financial institution does not lose its exemption by selling instruments through a third party.

Finally, included within our bill is a fiscal note outlining the Bill's impact on the agency appropriation. As you can see from that note, two amendments within the bill will increase the amount of revenue for the department. The first would be the \$100 annual fee increase for collection agency licensees, which over a two-year period would amount to revenue of \$102,800 (based on 514 licensees at \$100/year). The second increase to department revenue would result from the money broker out-of-state

branch fee, which over a two-year period would result in revenue of \$30,000 (300 out-of-state branches at \$50/year).

Mr. Chairman, thank you for the opportunity to provide this testimony, and I would be happy to answer any questions the Committee may have.

January 14, 2015 |

PROPOSED AMENDMENTS TO HOUSE BILL NO 1101

Page 1, line 4, remove "and"

Page 1, line 4, after "13-09-07.1" insert ", and 13-10-03"

Page 1, line 6, remove the second "and"

Page 1, line 7, after "requirements" insert ", and mortgage loan originator license exemptions"

Page 4, after line 22, insert

"SECTION 10. AMENDMENT. Section 13-10-03 of the North Dakota Century Code is amended and reenacted as follows:

13-10-03. License and registration required.

1. An individual, unless specifically exempted from this chapter under subsection ~~32~~, 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.

3. 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.
4. 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. "

Renumber accordingly

Jan 14, 2015

2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1101

Page 2, line 17, after "~~within the state~~" insert "registered to engage in money brokering in the state of North Dakota"

Renumber accordingly



State of North Dakota

DEPARTMENT
of FINANCIAL
INSTITUTIONS

#1

Robert J. Entringer
Commissioner

Aaron K. Webb
Assistant Commissioner

I. Lise Kruse
Chief Examiner - Banks

Corey J. Krebs
Chief Examiner - Credit Unions

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: March 10, 2015

TO: Senate Industry, Business and Labor Committee

FROM: Robert J. Entringer, Commissioner

SUBJECT: Testimony in Support of Engrossed House Bill No. 1101

Chairman Klein and members of the Senate Industry, Business and Labor Committee, thank you for the opportunity to testify in support of Engrossed House Bill No. 1101.

Mr. Chairman and members of the Committee, Engrossed House Bill No. 1101 includes amendments to Chapters 13-04.1, 13-05, 13-08, 13-09 and 13-11 of the North Dakota Century Code relating to various licensees with the department.

Section 1 of the Bill relates to section 13-04.1-02.1 of the money broker act. Specifically, this section provides a listing of entities that are exempt from licensure under the money broker statute. Currently, under subsection 9, an exemption exists for any other person or business regulated and licensed by the State of North Dakota. The purpose of this exemption is to prevent the need for multiple lending licenses within the state. However, over the past couple years, some companies have argued that any licensure from the state would qualify them for an exemption under the statute. One example of this argument has come from out-of-state collection companies taking the position that they do not need a lending license, since they are already licensed with the department. While our department has consistently interpreted this provision to exempt only

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persons or businesses regulated or licensed to lend money, this statutory change would remove the need for an interpretation.

Section 2 of the Bill relates to the annual fee charged for money broker branch locations. As some background, each money broker applies for a North Dakota license through the Nationwide Mortgage Licensing System and Registry ("NMLS"). As part of its application/renewal, the licensee registers all branch locations that will provide loans to residents of North Dakota. As currently written, the statute only charges an annual fee for a money broker's in-state branch locations. The engrossed version of the bill would modify the language of section 13-04.1-04 in order to allow the department to charge an annual fee for all branch locations (in-state and out-of-state) engaging in money brokering with residents of North Dakota. The department is proposing this amendment since licensees lend to residents of North Dakota through both in-state and out-of-state registered branches, the department processes and approves registration of all these branches, and the department has the obligation to examine all registered branches regardless of location. This fee structure is similar to other states and it also compares to how the department charges for branches under the collection agency statute.

Sections 3, 6 and 9 of the Bill relate to sections of our consumer statutes that provides for department notification relating to change of name or address. As written, these sections require a licensee to return their original license certificate for reissue. Since all our licensees are now on the Nationwide Mortgage License System (NMLS), it is more efficient for the department to issue a license number and input that number within the company's NMLS profile. This removes the need for the department to issue paper licenses.

Sections 4, 7 and 11 of the Bill provide for new sections of the money broker, deferred presentment service provider (payday lenders) and debt-settlement company statutes. These sections would expressly extend the customer information protections of Chapter 6-08.1 to these licensees; generally requiring a customer's consent prior to sharing their information with a third party. Currently, customer information protections found under this statute relate to "financial institutions" physically located within the State. While the department has always held that this law extends to all financial companies regulated by the department, we have recently encountered resistance from out-of-state licensees contesting this position.

In order to provide these protections to residents of North Dakota, who provide a substantial amount of information with in-state and out-of-state licensees, the department is proposing to incorporate the provisions of chapter 6-08.1 to the extent that they are not inconsistent with the licensing statutes.

Section 5 of the Bill relates to the annual fees charged to collection agencies licensed under chapter 13-05. Currently, collection agencies pay a three-hundred dollar annual license fee while other entities licensed by the department pay between four-hundred and four-hundred and fifty dollars annually. Under the amendment, the collection agency annual fee would be raised from three-hundred dollars, to four-hundred dollars. It has not been since the 2003 session that the collection agency fee has been raised. The primary reason for the amendment is the increase in operating expenses experienced by the department including salaries, travel, and training of examiners. Further, the department has expended a growing portion of its resources in regulation of out-of-state companies doing business with residents of North Dakota. Out-of State collection agencies account for 478 of the 498 licenses issued by the department.

Section 8 of the Bill relates to section 13-09-03 of the money transmission statute, addressing exclusions from licensure. The amendment modifies the language contained in subsection 4 which covers the exemption for banks, credit unions and other financial institutions. The department drafted this amendment in order to clarify that the exemption only covers the financial institutions listed, and does not extend to any third parties entity working on behalf of, or in partnership with, the financial institution. Additionally, the modification clarifies that the financial institution does not lose its exemption by selling instruments through a third party.

Mr. Chairman, as you know we have been working with Senator Casper on an amendment to the money transmitter statute. The amendment will clarify a position which the department took regarding whether or not Senator Casper's constituent needed a money transmitter license from the department. I would like to thank Senator Casper for working with us on this amendment and would like the committee to know we are supportive of the proposed amendment.

Section 10 of the Bill merely corrects a numbering error under section 13-10-03 of the Mortgage Loan Originator chapter. As written, the section incorrectly references exemptions located within subsection 3, when these exemptions are actually located in subsection 2.

Mr. Chairman we also have an amendment we would like to offer for the committee's consideration. After the bill had already been heard on the House side an issue arose related to the mortgage lenders at the Bank of North Dakota and our proposed amendment will address the issue. In today's residential mortgage world all mortgage loan originators (MLOs) are required to either be licensed by the respective state or registered on the Nationwide Mortgage Licensing System or NMLS. Once the MLO is licensed or registered they are given a unique identifier from NMLS. The MLOs at the Bank of North Dakota are specifically exempt from licensing under federal law and are not able to be registered on NMLS because they do not have a federal regulator. As a result the MLOs at the Bank do not have a unique identifier and they have now encountered difficulties selling their mortgage loans on the secondary market because the documents do not have the NMLS unique identifier. This amendment places the federal exemption into state law and will enable us to create an exempt registration on the NMLS thereby giving the Bank of ND MLOs an NMLS unique identifier. This exemption also codifies an exemption from the same federal law for MLOs of a bona fide nonprofit such as Habitat for Humanity.

Finally, included within our bill is a fiscal note outlining the Bill's impact on the agency appropriation. As you can see from that note, two amendments within the bill will increase the amount of revenue for the department. The first would be the \$100 annual fee increase for collection agency licensees, which over a two-year period would amount to revenue of \$102,800 (based on 514 licensees at \$100/year). The second increase to department revenue would result from the money broker out-of-state branch fee, which over a two-year period would result in revenue of \$30,000 (300 out-of-state branches at \$50/year).

Mr. Chairman, thank you for the opportunity to provide this testimony, and I would be happy to answer any questions the Committee may have.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1101

Page 1, line 4, remove "and"

Page 1, line 5, remove "subsection 1 of section"

Page 1, line 8, after "exemption" insert "; to provide an effective date; and to declare an emergency"

Page 4, line 23, replace "Subsection 1 of section" with "Section"

Page 4, after line 30, insert:

- "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 only pursuant to his or her 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 only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only 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).

- 3. 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.
- 4. 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.”

Page 5, after line 5, insert:

SECTION 12. EFFECTIVE DATE. Section 10 of this Act becomes effective immediately upon its filing with the Secretary of State.

SECTION 13. EMERGENCY. Section 10 of this Act is declared to be an emergency measure.”

Renumber accordingly.

15.8026.02002
Title.

Prepared by the Legislative Council staff for
Senator Casper

March 9, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1101

Page 1, line 4, after the fourth comma insert "and"

Page 1, line 4, after the fifth comma insert "subsection 13 of section 13-09-02, sections"

Page 1, line 4, remove the sixth comma

Page 3, after line 26, insert:

"SECTION 8. 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. The term does not include payment processing activities conducted for a merchant under an agency relationship.

Renumber accordingly



March 9th, 2015

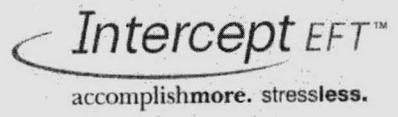
To:
Senate Committee on Industry, Business and Labor
Senator Jerry Klein, Chairman

I am writing in reference and support of the proposed Amendment to HB 1101 relating to Money Transmission and the Money Transmitter License requirements. It is important that we pass this Amendment to bring more clarity and definition to the existing statute. This will better define who should be required to have a Money Transmitter License and who should not.

InterceptEFT has been around since 1993 providing payment services for over 50,000 companies in all 50 states for such things as Direct Deposit of Payroll, processing monthly and one time debits for services and products that company/merchant provides and Credit Card Processing. Our primary focus is processing ACH (Automated Clearing House) transactions through our partner FDIC/OCC Banks. These transactions move money in and out of checking and savings accounts.

A situation arose in 2013 where we had to defend our position that InterceptEFT wasn't required to have a Money Transmitter License. During this event it became evident that the current statute hadn't kept up with today's technology and really didn't define what a company such as InterceptEFT did in a way that would either require us to have a License or not. After much deliberation from the ND DFI and our request(s) to rule that we should not be required to be licensed, the ND DFI did rule in our favor. With that said, we felt that it was important to address the current statute and help better define a company such as InterceptEFT in the current Law and prevent this from happening to another company such as ours in the future.

This Law affects many companies who process transactions and/or maintain accounts on behalf of other companies such as a payroll processor and/or accountants who may move money on behalf of their corporate clients in and out of their client's employee's accounts to ensure a timely payroll. Or an accountant or processor who is collecting payments on behalf of a company/merchant for services or products that they have provided to its customers. In this situation, the processor has entered into a contract with a company or merchant to help manage its payables and receivables. There is no risk to the consumer as the consumer has received product or services from the said company or merchant and has directed company and or merchant to collect payment via an electronic payment. Many merchants don't have the capabilities to do so on their own and as a result, need a third party payment processor as a partner.





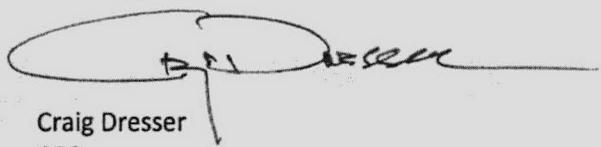
The result of this change will provide more clarity in the law and will allow the ND DFI to make quicker and better decisions in cases that come up in the future. When we looked at the application form regarding Money Transmitter and its questionnaire, it simply didn't pertain to what we were doing and it seemed like we were trying to pound a square peg in a round hole. Not only does this make it difficult for a company such as InterceptEFT to determine its position but also puts the ND DFI in a difficult situation in trying to interrupt the existing statute. By better defining the law through the adoption of this amendment, it helps us all to ensure we are in compliance with the law while continuing to protect the rights of our citizens/consumers.

As technology grows and consumers continue to want and sometimes need these new payment options that provides a faster, cheaper and secure ways to move funds, it's businesses such as InterceptEFT that are essential in providing these services. They work diligently with their partner banks to ensure a safe and secure environment and as such, are watched and regulated through the existing banking rules and regulations that exist today.

I would like to thank the ND DFI for working with us and giving us guidance through the process to ensure that this Amendment would accommodate all interested parties and yet provide the necessary protection to the consumers of ND that we should expect.

Again, thank you for your consideration.

Sincerely,



Craig Dresser
CEO

Intercept EFT™
accomplishmore. stressless.

3/11/15

#1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1101

Page 1, line 4, after "sections" insert "13-04.1-01.1"

Page 1, line 4, after "13-04.1-04," insert "13-04.1-09"

Page 1, line 4, after "13-05-05.1," insert "subsection 13 of section 13-09-02, sections"

Page 1, line 4, remove "and"

Page 1, line 5, remove "subsection 1 of section"

Page 1, line 5, after "to" insert "the definition of and prohibition against precomputed loans,"

Page 1, line 7, after "fees" insert "the definition of money transmission,"

Page 1, line 8, after "exemptions" insert "; to provide an effective date; and to declare an emergency"

Page 1, after line 9, insert:

"SECTION 1. AMENDMENT. Section 13-04.1-04.1 of the North Dakota Century Code is **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 which is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance."

Page 2, after line 18, insert:

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 into any agreement that constitutes a precomputed loan.

Page 3, after line 26, insert:

"SECTION 9. 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."

Page 4, line 23, replace "Subsection 1 of section" with "Section"

Page 4, after line 30, insert:

- "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 only pursuant to his or her 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 only with respect to his or her work duties to the bona fide nonprofit organization, and who acts as a loan originator only 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).
3. 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.
 4. 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.”

Page 5, after line 5, insert:

“SECTION 13. EFFECTIVE DATE. Section 11 of this Act becomes effective immediately upon its filing with the Secretary of State.

SECTION 14. EMERGENCY. Section 11 of this Act is declared to be an emergency measure.”

Renumber accordingly

3/17/15

#1

Sixty-fourth
Legislative Assembly
of North Dakota

March 13, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1101

In addition to the amendments as printed on page 761-764 of the Senate Journal, Engrossed Bill No. 1101 is further amended as follows:

Page 5, after line 5, insert:

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

Renumber accordingly.