

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1130
(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact section 13-08-05.1 and two new sections to chapter 13-09 of the North Dakota Century Code, relating to notice regarding change of name and address of licensed deferred presentment service providers and money transmitters and prohibited acts and practices of licensed money transmitters; to amend and reenact sections 13-08-02 and 13-08-11, subsection 6 of section 13-08-12, sections 13-08-14 and 13-08-14.1, subsection 7 of section 13-09-02, subsection 3 of section 13-09-14, and section 13-09-17 of the North Dakota Century Code, relating to license requirements, retention of records, licensee transaction procedures, suspension and revocation of license, suspension and removal of agency officers and employees, definition of electronic instruments regarding deferred presentment service providers, and money transmitters; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-08-02 of the North Dakota Century Code is amended and reenacted as follows:

13-08-02. License requirements.

A person may not engage in the business of deferred presentment service without a license issued under this chapter. A separate license is required for each location from which the business of deferred presentment service is conducted. A person is considered to be engaging in the business of deferred presentment service if the customer is located in this state.

SECTION 2. Section 13-08-05.1 of the North Dakota Century Code is created and enacted as follows:

13-08-05.1. Change of name or address.

A licensee shall 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 3. AMENDMENT. Section 13-08-11 of the North Dakota Century Code is amended and reenacted as follows:

13-08-11. Retention of records.

Each licensee shall keep and use in the licensee's business any books, accounts, and records the commissioner may require to carry into effect the provisions of this chapter and the rules issued under this chapter. Every licensee shall preserve required books, accounts, and records for at least six years. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

SECTION 4. AMENDMENT. Subsection 6 of section 13-08-12 of the North Dakota Century Code is amended and reenacted as follows:

6. Each deferred presentment service transaction, including a renewal, must be documented by a written agreement signed or similarly authenticated by the customer. The original agreement must contain the name of the licensee; the transaction date; the amount of the obligation; and a statement of the total amount of fees charged, expressed as a dollar amount and as an annual percentage rate; the name and signature of the individual who signs the agreement on behalf of the licensee; the name and address of the check maker; the transaction number assigned by the database; the date of negotiation of the check; the signature of the check maker; a statement that a licensee may not renew a transaction more than once; a statement that the renewal fee may not exceed twenty percent of the amount being renewed; the maximum term of the transaction, including a statement that the renewal may not exceed sixty business days; a statement that the term of the renewal period may not be less than fifteen business days; and a statement containing the right of rescission printed immediately above the signature line of the written agreement in a minimum of ten-point font and providing a space for the check maker to initial that the notice to the right of rescission was received. The original agreement may not include a hold harmless clause; a confession of judgment clause; any assignment of or order for payment of wages or other compensation for services; a provision in which the check maker agrees not to assert any claim or defense arising out of the agreement; a waiver of any provision of this chapter; any representation from the check maker as to the sufficiency of funds regarding any past deferred presentment service transactions; or any statement regarding criminal prosecution with respect to the agreement. A renewal agreement must be contained in a separate section, as part of the original written agreement or in other form as approved by the commissioner. The renewal agreement must restate the original transaction date, the renewal transaction date, the amount of the check paid to the check maker, the fee charged in dollars, and the maturity date. The agreement must authorize the licensee to defer presentment or negotiation of the check, or electronic debit of the customer's account, until a specified date. The maker of a check may redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee. A customer agreeing to an electronic deferred presentment service transaction may repay the obligation at any time before the agreed-upon date. A customer may rescind any transaction by the close of the business day following the day on which the customer receives payment from the licensee at no cost. If a customer agreeing to an electronic deferred presentment service transaction rescinds the transaction, the licensee must facilitate the repayment of the funds through the same electronic means the licensee used to deliver the funds to the customer.

SECTION 5. AMENDMENT. Section 13-08-14 of the North Dakota Century Code is amended and reenacted as follows:

13-08-14. Suspension - Revocation.

1. ~~After notice and hearing, the~~The commissioner may suspend or revoke~~issue and serve upon any licensee an order suspending or revoking a license if the commissioner finds that the licensee or any principal of the licensee has been convicted of a felony or that the licensee knowingly or through lack of due care:~~
- a. Failed to pay the annual license fee imposed under this chapter or any examination fee imposed by the commissioner under the authority of this chapter;
 - b. Committed any fraud, engaged in any dishonest activities, or made any misrepresentations;
 - c. Violated this chapter or any rule adopted under this chapter or violated any other law in the course of the licensee's business activities as a licensee;
 - d. Made false statements in the application for the license; ~~or~~

- e. Engaged in any unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business;
 - f. Failed to maintain the required bond; or
 - g. Failed to maintain registration with the secretary of state if so required.
2. ~~Written notice must be given at least twenty days before the date of a hearing under this chapter. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.~~
 3. If a hearing is not requested within twenty business days of the date the order is served upon the licensee or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
 4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may upon written notice enter an order temporarily suspending such license for a period not exceeding sixty days, pending the holding of a hearing as prescribed in this chapter.

SECTION 6. AMENDMENT. Section 13-08-14.1 of the North Dakota Century Code is amended and reenacted as follows:

13-08-14.1. Suspension and removal of deferred presentment service provider officers and employees.

1. The commissioner of financial institutions may issue and serve upon ~~a any current or former~~ deferred presentment service provider officer or employee and upon the licensee involved a ~~complaint~~ order stating the basis for the commissioner's belief that the:
 - a. That the current or former officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
 - a. (1) Violating a law, rule, order, or written agreement with the commissioner;
 - b. (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity; ~~or.~~
 - e. (3) Performing an act of commission or omission or practice, which is a breach of trust or a breach of fiduciary duty.
 - b. The term of suspension or removal from employment and participation within the conduct or the affairs of a deferred presentment service provider.
2. ~~The complaint~~ order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty business days of the date the ~~complaint~~ order is served upon the ~~officer or employee~~, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter ~~an~~ a final order suspending or temporarily removing the current or former employee or officer from office ~~for a period not exceeding three years from the effective date of the suspension or temporary removal. The current or former officer or employee may request a termination of the final order after a period of no less than three years.~~
4. A contested or default suspension or temporary removal order is effective immediately upon service of the final order on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. ~~Any~~ Any current or former officer or employee suspended or temporarily removed from ~~office~~ employment and participation within the conduct or the affairs of a deferred presentment service provider pursuant to this section is not eligible, while

under suspension, for reinstatement to a position within a licensed deferred presentment service provider or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.

5. When ~~any~~ any current or former officer or employee or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the deferred presentment service provider affairs, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.
6. Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.

SECTION 7. AMENDMENT. Subsection 7 of section 13-09-02 of the North Dakota Century Code is amended and reenacted as follows:

7. "Electronic instrument" means a card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic strip, or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services provided by the issuer or its affiliates.

SECTION 8. AMENDMENT. Subsection 3 of section 13-09-14 of the North Dakota Century Code is amended and reenacted as follows:

3. Records may be maintained at a location other than within this state so long as the records are made accessible to the commissioner on seven business days' written notice. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

SECTION 9. AMENDMENT. Section 13-09-17 of the North Dakota Century Code is amended and reenacted as follows:

13-09-17. Suspension or revocation of licenses.

1. The commissioner may suspend or revoke issue and serve upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
 4. a. Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying such application;
 2. b. The licensee's net worth becomes inadequate and the licensee, after ten days' written notice from the commissioner, fails to take such steps as the commissioner deems necessary to remedy such deficiency;
 3. c. The licensee knowingly violates any material provision of this chapter or any rule or order validly adopted by the commissioner under authority of this title;
 4. d. The licensee is conducting its business in an unsafe or unsound manner;

5. e. The licensee is insolvent;
6. f. The licensee has suspended payment of its obligations, made an assignment for the benefit of its creditors, or admitted in writing its inability to pay its debts as they become due;
7. g. The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy;
8. h. The licensee refuses to permit the commissioner to make any examination authorized by this chapter; or
9. i. The licensee willfully fails to make any report required by this chapter.;
- j. The licensee has failed to pay the annual license fee imposed under this chapter or any examination fee imposed by the commissioner under the authority of this chapter;
- k. The licensee has failed to maintain the required bond or other security device; or
- l. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty business days of the date the order is served upon the licensee or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may upon written notice enter an order temporarily suspending such license for a period not exceeding sixty days, pending the holding of a hearing as prescribed in this chapter.

SECTION 10. A new section to chapter 13-09 of the North Dakota Century Code is created and enacted as follows:

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 11. A new section to chapter 13-09 of the North Dakota Century Code is created and enacted as follows:

Prohibited acts and practices.

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

1. Subscribe to, or 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 the statements are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact.

4. Engage in any unfair or deceptive practice toward any person.
5. Conduct or solicit 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.
6. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
7. 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.
8. Make, in any manner, any false or deceptive statement or representation.
9. 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 in connection with any investigation conducted by the commissioner or another governmental agency.
10. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
11. Fail to truthfully account for moneys belonging to or collected from another.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1130.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State