

Introduced by

Education Committee

(At the request of the Bank of North Dakota)

1 A BILL for an Act to create and enact sections 15-62.1-16, 15-62.1-17, 15-62.1-18, 15-62.1-19,
2 15-62.1-20, 15-62.1-21, and 15-62.1-22 of the North Dakota Century Code, relating to defaulted
3 student loan collection; to amend and reenact sections 15-62.1-04, 15-62.1-06, 15-62.1-07, and
4 15-62.1-10 of the North Dakota Century Code, relating to defaulted student loan collection; and
5 to provide for a retroactive application.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 15-62.1-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **15-62.1-04. Repayment of loans.**

10 The agency shall ~~may~~ establish rules for the repayment, or deferment of repayment, of loans
11 guaranteed under this chapter consistent with the Higher Education Act of 1965, as amended,
12 and shall also establish rules for the repayment, or deferment of repayment, of loans
13 guaranteed by the agency which are not coinsured by the federal government.

14 **SECTION 2. AMENDMENT.** Section 15-62.1-06 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **15-62.1-06. Procedure on default of guaranteed loan.**

- 17 1. For purposes of this chapter a loan is in default when the conditions for default stated
18 in the borrower's promissory note have been met.
- 19 2. Consequences of default include:
- 20 a. Repayment of the remaining balance, which includes principal, accrued interest,
21 and fees is accelerated and due;
- 22 b. The agency may proceed by garnishment against the borrower or cosigner under
23 section 15-62.1-16;

- 1 c. ~~The agency may provide notice of the default to a licensing entity for nonrenewal~~
2 ~~or suspension of any license or licenses held by the borrower or cosigner after~~
3 ~~establishment of a collection order under section 15-62.1-21. The agency shall~~
4 ~~provide the borrower or cosigner with notice that the license or licenses of the~~
5 ~~borrower or cosigner will be suspended or not renewed after thirty days have~~
6 ~~passed from the date of notification unless the borrower or cosigner satisfies the~~
7 ~~entire outstanding debt or enters an agreement to repay the debt and makes~~
8 ~~regular payment on the debt in a manner and at times satisfactory to the agency.~~
9 ~~If the borrower or cosigner fails to satisfy the entire outstanding debt or enter an~~
10 ~~agreement to repay the debt and make payment on the debt in a manner and at~~
11 ~~times satisfactory to the agency, the agency shall notify the proper licensing~~
12 ~~authority to suspend or fail to renew the borrower's or cosigner's certificate,~~
13 ~~license, or permit. If the borrower or cosigner satisfies the entire outstanding~~
14 ~~payment due or enters an agreement to repay the debt and makes regular~~
15 ~~payment on the debt in a manner and at times satisfactory to the agency, the~~
16 ~~agency shall notify the licensing entity within thirty days the borrower's or~~
17 ~~cosigner's certificate, license, or permit must be reinstated. An appeal by a~~
18 ~~borrower or cosigner who has had a certificate, license, or permit suspended~~
19 ~~under this section is an appeal from the agency's final collection order under~~
20 ~~chapter 28-32 and may not be appealed to the licensing authority; under section~~
21 28-25-11, may request the court to order suspension of any occupational or
22 professional certificate, license, or permit issued by or on behalf of the state or
23 any occupational or professional board;
24 d. ~~The agency may record the lien created under section 15-62.1-17;~~
25 e. ~~The agency may establish an administrative collection order under section~~
26 ~~15-62.1-18;~~
27 f. ~~The agency may apply for set off of state income taxes to satisfy the loan debt~~
28 ~~under chapter 57-38.3;~~
29 g. ~~The agency may assess and charge to the borrower or cosigner collection costs~~
30 ~~described under section 15-62.1-07.~~

- 1 3. The agency shall notify the borrower and cosigner of the default and the
2 consequences of default imposed under subsection 2 by mailing a notice to the
3 borrower's and cosigner's most recent address provided by the borrower or cosigner
4 or obtained by the agency.
- 5 4. a. The borrower or cosigner may contest a notice of default identified in
6 subsection 3 by filing a written request for review with the agency within thirty
7 days after the date of the notice requesting the loan status be reviewed. The
8 borrower or cosigner has the burden to show at the time of the notice of default:
9 (1) The loan was not in default under subsection 1;
10 (2) The borrower entered, and was in compliance with, a default prevention
11 agreement with the agency; and
12 (3) Notice of default is incorrect, inaccurate, or does not reflect actual payments
13 made up to the date of the notice of default.
- 14 b. Within sixty days after receiving a written request for review the agency shall
15 inform the borrower or cosigner in writing of the agency's decision.
- 16 5. Whenever it appears to the satisfaction of the agency that a guaranteed loan made in
17 accordance with the provisions of this chapter is in default, and the ~~eligible-~~
18 ~~lender~~notice required under subsection 3 has certified such fact to been given, the
19 borrower or cosigner did not respond to the notice required under subsection 3, or the
20 agency~~borrower or cosigner was unsuccessful in contesting the notice of default under~~
21 subsection 4, the agency shall reimburse the eligible lender ~~making the loan~~ from the
22 reserve fund to the extent the loan was guaranteed by the fund. Whenever payment of
23 the guaranteed principal balance of any insured or guaranteed loan is demanded of
24 the agency, the note and accompanying evidence of the loan must be tendered to the
25 agency in manner and form to confer good title so that the loan may be collected by
26 the agency as it may determine according to law. Neither minority nor any statute of
27 limitations may be used as a defense against collection of any loan through court
28 proceedings.

29 **SECTION 3. AMENDMENT.** Section 15-62.1-07 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **15-62.1-07. Fees for insurance and other reasonable costs.**

2 The agency is hereby authorized to ~~may~~ charge reasonable fees for guarantee and
3 insurance to students obtaining or who have obtained loans under this chapter and either actual
4 collection costs or no more than twenty-five percent of accumulated principal and interest to
5 borrowers and cosigners whose loans are in default under subsection 1 of section 15-62.1-06,
6 ~~and such~~the fees must be available to defray costs of administering the guarantee loan
7 program. Fees in excess of the amount required to pay the cost of administering the program
8 must be deposited in the reserve fund. The authority of the agency to charge reasonable fees
9 for guarantee and insurance and collection costs to borrowers and cosigners who are in default
10 applies retroactively to all borrowers and cosigners for loans obtained under this chapter
11 whenever the underlying note or notes were executed.

12 **SECTION 4. AMENDMENT.** Section 15-62.1-10 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **15-62.1-10. Eligibility for participation in federal student loan program.**

15 The agency is ~~directed to~~may comply with such requirements as may be necessary to enter
16 into an agreement with the government of the United States for the purpose of procuring funds
17 and assistance for the administration, development, and operation of a guarantee loan program.
18 No provision of this chapter may be construed or have the effect of preventing the agency from
19 complying with the guarantee loan program requirements of title IV, part B, of the Higher
20 Education Act of 1965, or similar acts of the Congress of the United States or with any
21 amendments thereto relating to the guarantee loan program. In the event that the agency
22 guarantees student loans without federal coinsurance, the agency shall, by rule, establish
23 terms, conditions, and standards governing the operation and administration of the guarantee
24 student loan program. In no case, however, may the agency rules serve to further restrict
25 eligibility requirements or loan limits from those which were applicable as of the date the
26 industrial commission approves the guarantee of loans without federal coinsurance or the date
27 of the termination of federal programs providing coinsurance of student loans.

28 **SECTION 5.** Section 15-62.1-16 of the North Dakota Century Code is created and enacted
29 as follows:

1 **15-62.1-16. Collection order is equivalent to a judgment for garnishment proceedings.**

2 A collection order that has become vested under section 15-62.1-21 is equivalent to a
3 judgment, and has the same effect as a judgment secured in a court of competent jurisdiction in
4 the amount stated on the collection order for procedures by garnishment under chapter 32-09.1
5 against the borrower or cosigner of any note for student loans guaranteed under this chapter.

6 **SECTION 6.** Section 15-62.1-17 of the North Dakota Century Code is created and enacted
7 as follows:

8 **15-62.1-17. Lien.**

9 1. The amount owing on a loan that is in default under the chapter, including principal,
10 interest, and collection costs, is a lien upon all property and right to property, real or
11 personal, belonging to the borrower or cosigner. The lien arises thirty days after the
12 date a notice of collection order under subsection 1 of section 15-62.1-19 is served or
13 the date of the final decision of the agency under section 15-62.1-20, whichever is
14 later, and continues until the balance of the loan, including principal, interest, and
15 collection costs, is paid in full.

16 2. A lien created under subsection 1 of section 15-62.1-17 is not valid against a
17 mortgagee or other lienholder, pledgee, purchaser, or judgment creditor until notice of
18 the lien is recorded in the records of the recording district where the property subject
19 to lien is situated.

20 **SECTION 7.** Section 15-62.1-18 of the North Dakota Century Code is created and enacted
21 as follows:

22 **15-62.1-18. Authority and procedure to administratively establish and enforce a**
23 **collection order.**

24 If a judgment in favor of the agency has not been entered by the court regarding a defaulted
25 loan awarded under this chapter, the agency may establish a duty to repay the defaulted loan
26 through a collection order using the procedures prescribed in sections 15-62.1-19 through
27 15-62.1-22 and may enforce the collection order. Action under this section may be undertaken
28 at the agency's discretion if the borrower is in default under section 15-62.1-06.

29 **SECTION 8.** Section 15-62.1-19 of the North Dakota Century Code is created and enacted
30 as follows:

1 **15-62.1-19. Initiation of administrative action to establish a collection order -**

2 **Required notice.**

3 1. An action to establish a collection order authorized under section 15-62.1-18 is
4 initiated by the agency's serving on the borrower or cosigner a notice of establishment
5 of collection order. The notice must be served in the manner described in rule 4 of the
6 North Dakota Rules of Civil Procedure.

7 2. The notice served under subsection 1 must state:

8 a. The amount of the liability for default under section 15-62.1-06 including all
9 principal, interest, and collection costs for which the borrower and cosigner is
10 found to be responsible;

11 b. A lien may be recorded against the borrower's or cosigner's property as
12 authorized under section 15-62.1-17;

13 c. The agency may proceed in garnishment under section 15-62.1-16 and chapter
14 32-09.1 against the borrower or cosigner;

15 d. ~~The agency may provide notice of the default to a licensing entity for nonrenewal~~
16 ~~or suspension of any license held by the borrower under subdivision c of~~
17 ~~subsection 2 of section 15-62.1-06;~~ under section 28-25-11, may request the
18 court to order suspension of any occupational or professional certificate, license,
19 or permit issued by or on behalf of the state or any occupational or professional
20 board;

21 e. The borrower or cosigner may appear at a hearing held on behalf of the agency
22 by the office of administrative hearings and show cause that a collection order
23 should not be entered or that the amount of liability for default stated in the notice
24 of establishment of collection order is incorrect because, at the time of the notice:

25 (1) No loan payment was more than the number of days past due for default
26 defined in the borrower's promissory note;

27 (2) The borrower had entered, or was in compliance with, an agreement to
28 forbear or defer default with the agency; or

29 (3) The amount of liability for default stated in the notice of establishment of
30 collection order under subsection 1 is incorrect, inaccurate, or does not

1 reflect actual payments made up to the date of the notice of establishment
2 of collection order; and

3 f. If the borrower or cosigner served with the notice does not request a hearing
4 within thirty days after the date of service of the notice, a collection order will be
5 entered, and the property of the borrower and cosigner will be subject to a lien
6 under section 15-62.1-17 in the amount stated in the collection order without
7 further notice or hearing.

8 **SECTION 9.** Section 15-62.1-20 of the North Dakota Century Code is created and enacted
9 as follows:

10 **15-62.1-20. Hearings in administrative action to establish a collection order - Burden**
11 **of proof.**

12 1. A borrower or cosigner served with a notice of establishment of collection order under
13 section 15-62.1-19 is entitled to a hearing before the office of administrative hearings if
14 the request for a hearing is served on the agency by registered mail, return receipt
15 requested, within thirty days after the date the notice is served on the borrower or
16 cosigner.

17 2. If a request for a hearing in accordance with subsection 1 is made, the issuance of a
18 collection order is automatically stayed pending the decision of the administrative law
19 judge. If a request for a hearing is not made, the collection order is final at the
20 expiration of the thirty-day period specified in subsection 1.

21 3. A borrower or cosigner claiming that the notice of collection order is incorrect has the
22 burden at hearing to prove the existence of one of the conditions described in
23 subdivision e of subsection 2 of section 15-62.1-19.

24 4. Within sixty days after the date of the hearing, the hearing officer shall enter a decision
25 determining whether default has occurred and, if default has occurred, specifying the
26 amount of the collection order and declaring that the property of the borrower and
27 cosigner is subject to a lien under section 15-62.1-17 in the amount of the collection
28 order.

29 5. If the borrower or cosigner who requested the hearing fails to appear at the hearing,
30 the hearing officer shall enter a decision:

31 a. Confirming that a default has occurred;

- 1 b. Confirming the amount of the collection order; and
- 2 c. Declaring the property of the borrower or cosigner is subject to a lien under
- 3 section 15-62.1-17 for the amount of the collection order.
- 4 6. The decision of the hearing officer is a final decision that the borrower or cosigner may
- 5 appeal under chapter 28-32.

6 **SECTION 10.** Section 15-62.1-21 of the North Dakota Century Code is created and enacted
7 as follows:

8 **15-62.1-21. Collection orders as judgments.**

9 A collection order is equivalent to a judgment and becomes vested:

- 10 1. At the expiration of the thirty-day period described in subsection 1 of section
- 11 15-62.1-20 if a hearing is not requested; or
- 12 2. On the date the hearing officer enters a decision in favor of the agency if the borrower
- 13 or cosigner requested a hearing.

14 **SECTION 11.** Section 15-62.1-22 of the North Dakota Century Code is created and enacted
15 as follows:

16 **15-62.1-22. Nature of remedies.**

17 Section 15-62.1-21 provides a remedy in addition to and not as a substitute for any other
18 remedies available to the agency. Any rights and remedies the agency has against the borrower
19 are available to the agency against any cosigners. Any rights and remedies the borrower has
20 against the agency are available to cosigners against the agency for purposes of contesting
21 default of student loan debt. All rights and remedies the agency has against any borrowers and
22 cosigners apply retroactively against all borrowers and cosigners whenever the underlying note
23 or notes for student loans were executed.