

2011 SENATE JUDICIARY

SB 2124

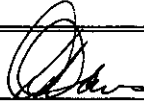
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2124
1/12/11
Job #12800

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to surety bond requirements, minimum net worth requirements, confidentiality, notice regarding change of name and address, call reports, and commissioner reporting to nationwide mortgage licensing system and registry with regard to money brokers.

Minutes:

There is attached written testimony

Senator Nething – Chairman

Bob Entringer – Commissioner- Department of Financial Institutions State of ND – See written testimony.

Senator Nelson – Asks if this is based on anything coming into Uniform Laws.

Entringer – Replies, the references he made that came from the Federal Safe Act is pretty much a Uniform Act. He says the reason they are bring into the Money Brokers Statute is last session when they introduced a bill for Chapter 13.10, they originally got that from the Conference of State Bank supervisors which is the national entity they are a member of and they run the nationwide mortgage system, they thought that bill included companies but it only included mortgage loan originators. 13.10 deals with licensing of the individual.

Senator Nething – Asks why this bill is here.

Entringer – He responds that a lot of the provisions that come 13.10 they thought it covered companies. A continues on to explain the bill.

Senator Nething – Asks if this isn't passed what would happen.

Entringer – Says net worth is a problem, suspension and removal authority is there but its cumbersome this makes it more straight forward. It approves their ability to regulate these companies. He continues on to describe the licensing system and registry.

Senator Olafson – Asks what kind of financial institution would fall under money brokers.

Entringer – Replies is a lender that isn't licensed under any other section of the chapter. Most companies they have licensed are mortgage lenders.

Senator Sitte – Asks what the burden is placed on these small money lenders.

Entringer – Says the biggest burden he sees would be the net worth. He continues on to explain the bill.

Senator Lyson – Asks how many people will fall below the \$25000 net worth.

Entringer – Said in ND there is one.

Senator Nething – Asks about the amendment brought in by the Attorney General.

Entringer – Explains his amendment and gives examples of net branching.

Close the hearing on 2124


2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2124
1/12/11
Job #13504

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to surety bond requirements, minimum net worth requirements, confidentiality, notice regarding change of name and address, call reports, and commissioner reporting to nationwide mortgage licensing system and registry with regard to money brokers.

Minutes:

Senator Nething - Chairman

Senator Olafson moves the amendment

Senator Lyson seconds

Committee discusses the different amendments they received. They decided to hold any action on the bill.

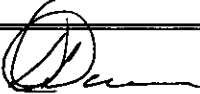
Motion to move the amendment withdrawn

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2124
2/9/11
Job #14266

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to surety bond requirements, minimum net worth requirements, confidentiality, notice regarding change of name and address, call reports, and commissioner reporting to nationwide mortgage licensing system and registry with regard to money brokers.

Minutes:

There is an attached amendment

Senator Nething - Chairman

Committee discusses the proposed amendments.

Bob Entringer – Commission- Department of Financial Institutions State of ND – Proposes amendments. #Insert definitions of net branch and net branching arrangement. He proceeds to discuss the changes. Amendment #2 eliminates the unconstitutionality of what was being done in the bill. He describes the changes being made. Amendment #3 removes the word attorney's.

Matt Sagsveen – Attorney General's Office -

Senator Olafson moves for a do pass on amendments 1, 2, and 3.

Senator Lyson seconds

Verbal vote – all yes

Roll call vote

Senator Olafson moves a do pass as amended

Senator Sitte seconds

Vote – 6 yes, 0 no

Senator Sorvaag will carry

Date: 1/26/11
Roll Call Vote # 1

Withdraw

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2124

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Olafson Seconded By S. Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment S.

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

Verbal

PROPOSED AMENDMENTS TO SENATE BILL NO. 2124

Page 1, line 1, after "enact" insert ", two new subsections to section 13-04.1-01.1,"

Page 1, line 2, after the second "to" insert "the definition of a net branch and net branching arrangement,"

Page 1, after line 11, insert:

SECTION 1. Two new subsections to section 13-04.1-01.1 are created and enacted as follows:

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

"Net Branch Arrangement" means an arrangement in which a licensed money broker enters into 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 into other contractual relationships with vendors such as 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.

Page 1, remove line 19

Page 1, line 20, remove "arrangement."

Page 2, line 17, replace "or such other amount determined by the commissioner by rule. The" with an underscored period

Page 2, remove lines 18 through 20

Page 2, line 21, replace "interest." with "2."

Page 2, line 22, replace "2." with "3."

Page 2 line 24, replace "3." with "4."

Page 3, after line 1, insert:

2. If the net worth of a licensee falls below the minimum net worth as set forth in subsection 1, the licensee must provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner that the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license.

Page 3, remove lines 2 through 6

Page 3, line 17, after "ten" insert "business"

Page 12, line 6, replace "as established by rule or order of" with an underscored period

Page 12, remove line 7

Page 12, line 24, replace "ten" with "twenty business"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2124

Page 11, line 25, replace first "or" with an underscored comma, and after "44-04" insert ", or section 6-01-07.1,"

Page 12, line 2, replace "or" with an underscored comma, and after "44-04" insert ", or section 6-01-07.1"

Page 12, line 13, remove "private civil action or"

Page 12, after line 17, insert:

- 4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 shall only be required to be disclosed pursuant to an order of the court, the court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.

Page 12, line 18, replace "4." With "5.", and after "44-04" insert "or section 6-01-07.1"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2124

Page 1, line 6, remove "and"

Page 1, line 6, after "13-10-03" insert ", and 13-10-16"

Page 10, line 26, remove "attorneys,"

Page 14, after line 21, insert:

"SECTION 15. AMENDMENT. Subsection 6 of section 13-10-16 of the North Dakota Century Code is amended and reenacted as follows:

- 6. In order to carry out the purposes of this section, the commissioner may:
 - a. Retain ~~attorneys~~, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
 - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;
 - d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
 - e. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2124: Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2124 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "two new subsections to section 13-04.1-01.1,"

Page 1, line 1, after "13-04.1-04.2" insert a comma

Page 1, line 2, after the second "to" insert "the definition of a net branch and net branching arrangement,"

Page 1, line 6, after "13-10-03" insert "and subsection 6 of section 13-10-16"

Page 1, after line 12, insert:

"SECTION 1. Two new subsections to section 13-04.1-01.1 of the North Dakota Century Code are created and enacted as follows:

"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.

"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."

Page 1, remove line 19

Page 1, line 20, remove "arrangement."

Page 2, line 17, remove "or such other amount determined by the commissioner by rule. The"

Page 2, remove lines 18 through 20

Page 2, line 21, remove "interest"

Page 3, remove lines 2 through 4

Page 3, line 5, remove "The commissioner may adopt rules with respect to the requirements for minimum net"

Page 3, replace line 6 with "If the net worth of a licensee falls below the minimum net worth set forth in subsection 1, the licensee shall provide a plan, subject to the approval of the commissioner, to increase the licensee's net worth to an amount in conformance with this section. Submission of a plan under this section must be made within twenty business days of a notice from the commissioner which states the licensee is not in compliance with subsection 1. If the licensee does not submit a plan under this"

section, fails to comply with an approved plan, or has repeated violations of subsection 1, the commissioner may revoke the license."

Page 3, line 17, after "ten" insert "business"

Page 10, line 26, remove "attorneys,"

Page 11, line 25, replace the first "or" with an underscored comma

Page 11, line 25, after "44-04" insert ", or section 6-01-07.1,"

Page 12, line 2, replace "or" with an underscored comma

Page 12, line 2, after "44-04" insert ", or section 6-01-07.1"

Page 12, line 6, remove "as established by rule or order of"

Page 12, line 7, remove "the commissioner"

Page 12, line 13, remove "private civil action or"

Page 12, after line 17, insert:

"4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records."

Page 12, line 18, replace "4," with "5,"

Page 12, line 18, after "44-04" insert "or section 6-01-07.1,"

Page 12, line 20, after "1" insert an underscored comma

Page 12, line 24, replace "ten" with "twenty business"

Page 14, after line 21, insert:

"SECTION 16. AMENDMENT. Subsection 6 of section 13-10-16 of the North Dakota Century Code is amended and reenacted as follows:

6. In order to carry out the purposes of this section, the commissioner may:
 - a. Retain ~~attorneys,~~ accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
 - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

- d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; or
- e. Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner."

Renumber accordingly

2011 HOUSE JUDICIARY

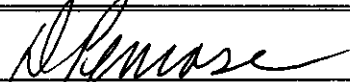
SB 2124

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2124
March 7, 2011
15009

Conference Committee

Committee Clerk Signature 

Minutes:

Chairman DeKrey: We will open the hearing on SB 2124.

Robert Entringer, Commissioner, ND Dept of Financial Institutions: Support, explained the bill (see attached 1).

Rep. Delmore: On page 2, you didn't change the level of bond. You think the \$25,000 is an adequate amount.

Robert Entringer: We haven't had a claim on a bond so, right now, it should be sufficient. We had originally proposed to allow the Commissioner to raise the level of the bond based on the volume of outstanding loans. We didn't include the language as to how we were going to accomplish that. We were going to do that through administrative rulemaking. We decided to scrap that and leave it at \$25,000.

Rep. Delmore: You talked about giving notice, is some of that public notice where you find inconsistencies, and is there a method of letting the public know that there is a problem.

Robert Entringer: What specifically are you referring to.

Rep. Delmore: On page 4, you talked about the process relating to suspension, revocation of a license, etc. You talked about due process and notice given, etc. Is notice ever given to the public when there is something fraudulent that you discovered.

Robert Entringer: No, we don't provide anything on our website or issue any press release of that type; but it is a public document. Having said that, if we do enter into an enforcement action, we do have to report that to the Licensing System which is a nationwide system. I'm not sure if that then becomes public on the Consumer Access site for that, if it applied to a specific company, it may become public on that site.

Rep. Hogan: How many enforcement actions are you involved with in a typical biennium.

Robert Entringer: Very few, I don't know that we've had any this last biennium so far.

Rep. Klemin: On section 5, the minimum net worth requirement, what is the purpose of that, we have the \$25,000 bond, and then you have an additional \$25,000 net worth requirement, which doesn't seem like much from the standpoint of a money broker. What's the reason for having a minimum net worth.

Robert Entringer: Basically, our feeling is if the company doesn't have at least a \$25,000 net worth, we don't want them going out and doing business and offering mortgage loans to consumers. The bond does protect the consumer if the company does do something wrong. For example, we had a company, I think it was during this biennium, that did a loan for a consumer, offered to give them a certain amount of money, didn't give them what they had indicated they would do, and the consumer went ahead with an expansion to their home and didn't get the loan to cover that, so they had contractors wanting to get paid. They actually filed a claim against our bond and the bonding company paid out and that gave them enough money to recover the additional costs they had already paid to the contractor.

Rep. Klemin: That didn't affect the minimum net worth; they didn't have a direct claim against the company, they didn't sue the company, did they.

Robert Entringer: They did sue the company, the company had gone out of business; the bond actually still existed for the term when the company was in business.

Rep. Klemin: Well, under that scenario, minimum net worth requirement would really not accomplish much, would it.

Robert Entringer: In that situation, that's really right. It wouldn't have accomplished much. That kind of goes to the point of wanting that minimum net worth so that the company would stay in business. We've actually licensed companies with as low as \$3,000 in a net worth when they've come for a license. In my opinion, it's not enough to have a mortgage company doing business with that small amount of net worth.

Rep. Koppelman: The term money broker, what does that include, is this payday loan companies, or a different designation.

Robert Entringer: No, it does not include payday loan companies. A money broker is someone who solicits and offers to arrange loans for the ND consumer. So it can include anyone that is lending money or advertises that they will find a lender for you

and charge a fee for that. If I just wanted to find a lender for you, I could do that, but I need to be licensed as a money broker. The majority of our companies that are licensed are mortgage lenders. We do have some that are commercial lenders, they don't do any residential real estate lending; they do commercial lending only. But we also do have some true brokers that go out and will find a lender for you for a fee.

Rep. Koppelman: But I notice that in the chapter, it talks about banks, credit unions, savings and loans, insurance companies, etc. being exempted from licensing requirements. I'm still trying to figure out who these people are that aren't any of those named entities. Are they mortgage originators? I know, often times if you go into a lending institution, at least historically, they might originate a mortgage for you, but they not hold the mortgage, they might sell it to someone else to actually service and own the loan after that. But that's usually a bank or a mortgage loan company, can you enlighten me a little further.

Robert Entringer: It's a private company who is doing this, or a private individual. For example, here in Bismarck, America's Home Loans is a money broker licensed in Fargo, First Class Mortgage is a company that we license.

Rep. Hogan: How many money brokers are there in ND.

Robert Entringer: Two hundred and thirty (230) approximately.

Rep. Kretschmar: The regulatory act that Congress passed last year, did it have some effect on these companies too.

Robert Entringer: Yes it does. We enforce all of the federal regulations with respect to mortgage lending. It does apply to these companies and we enforce those regulations.

Chairman DeKrey: Thank you. Further testimony in support of SB 2124. Testimony in opposition. We will close the hearing. We will take a look at SB 2124. What are the committee's wishes.

Rep. Hogan: I move a Do Pass.

Rep. Delmore: Second the motion.

14 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Kingsbury

Date: 3/7/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2124

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner					

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Kingsbury

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

REPORT OF STANDING COMMITTEE

SB 2124, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2124 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2124



State of North Dakota

DEPARTMENT
of FINANCIAL
INSTITUTIONS

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

①

MEMORANDUM

DATE: January 12, 2011
TO: Senate Judiciary Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of Senate Bill No. 2124

Chairman Nething and members of the Senate Judiciary Committee, thank you for the opportunity to provide my testimony in support of Senate Bill No. 2124.

Mr. Chairman and members of the Committee, Senate Bill No. 2124 deals primarily with changes to the Department's regulation of money brokers and also pertains to changes with respect to the Department's regulation of mortgage loan originators. The licensed money brokers in North Dakota are primarily mortgage companies/lenders.

In Section 1 of the Bill we are proposing to require each branch of a money broker to be registered with the Department and to prohibit a registration for a branch which constitutes a net branch or a net branching

arrangement. I will be proposing an amendment to the bill which removes the rule making authority and instead would introduce new definitions as to what constitutes a "net branch" and a "net branching arrangement".

In Section 2 of the Bill we move the bonding requirements to a new section which is found in Section 3 of the Bill. As you can see in Section 3 we were proposing to grant the Commissioner the authority to increase the surety bond based on the dollar amount of loans originated, as well as increasing the amount of the surety bond if it is deemed necessary to protect the public interest. As you will see in our proposed amendment we remove the rule making authority and simply set the bond at its present level of \$25,000 and then add a new subsection 2 which requires the bond be on forms provided by the commissioner. Further, if an action is commenced on a bond the Commissioner may require the filing of a new bond or immediately upon recovery of any action on the bond the licensee must file a new bond.

Section 4 establishes a minimum net worth requirement of \$25,000 for a licensee. Here again we propose to amend the bill by requiring a plan to restore equity to the minimum of \$25,000. In the proposed amendment the net worth restoration plan is subject to the approval of the commissioner; the plan must be submitted within 20 business days; and, if

the licensee does not comply with the plan or repeatedly violates the minimum net worth requirement, then the commissioner may revoke the license.

Section 5 requires that when a licensee ceases business they have to inform the Department of the location of the records, as well as providing the name of the individual who is responsible for maintaining those records; if the location should change, they need to notify the Department as well as the new individual who is responsible for those records. We are proposing an amendment to extend the time frame to 10 business days.

Section 6 clarifies the Department's process relating to the suspension and revocation of a license by allowing the Commissioner to issue and serve upon a licensee an Order suspending or revoking their license if one of the conditions in Subsections "a" through "e" exist. The proposed change to this Section provides due process under Chapter 28-32 of the North Dakota Century Code. Further, if a hearing is not requested by a licensee, after proper notice from the department, then a Final Order suspending or revoking the license may be issued. Finally, the proposed language under section 6 of this bill provides the Commissioner with the authority to immediately suspend a license if probable cause for revocation exists. This immediate suspension, not to exceed 60 days,

would allow the Commissioner to temporarily freeze a situation where the actions of a licensee could have a continuing negative impact on North Dakota consumers. During this period of temporary suspension, the Commissioner would follow the notice and hearing process for suspension or removal under this section.

Section 7 allows the Commissioner to suspend or remove officers or employees, whether they are a current or former officers or employees, based on the provisions set forth in Subsection 1a; this section also requires the term of the suspension or removal to be included within the Order. The Section provides due process under Chapter 28-32 and further allows the individual suspended or removed to request a termination of a Final Order after a period of not less than three years. In addition, the amendment in this Section allows the Department to prohibit an individual suspended or removed from participating in the affairs of one of the other entities the Department licenses or regulates.

Section 8 expands the formerly fraudulent practices section and changes it to prohibited acts and practices. The language is derived from Chapter 13-10 of the North Dakota Century Code related to mortgage loan originators; this language came from the Federal S.A.F.E. Act (Secure and Fair Enforcement for Mortgage Licensing Act). The sets the same

prohibited acts and practices for the company as it does for the individuals licensed to originate mortgage loans for the company.

Section 9 expands on the section of the money broker chapter to clearly indicate the Department has examination authority, as well as investigative and subpoena authority. Again, the additional items found beginning on page 9, line 13, are drawn from the Federal S.A.F.E. Act. It is my understanding the Attorney General's Office will introduce an amendment to remove the word "attorneys" on page 10, line 26, of this Bill and the Department certainly understands and supports that amendment.

Section 10 of the Bill establishes confidentiality standards identical to those found in Chapter 13-10 of the North Dakota Century Code which again were based on the Federal S.A.F.E. Act and incorporating North Dakota's open records limitations found in Chapter 44-04 of the North Dakota Century Code. As you will note from our proposed amendment, the department is requesting removal of the rule making authority found under page 12, lines 6 and 7 of the bill.

Section 11 requires a notification of a name or address change and requires the licensee to submit the license for reissue. We are proposing amendments to extend the time frame to 20 business days.

Section 12 requires a licensee to submit to the Nationwide Mortgage Licensing System and Registry a report of condition. A report of condition essentially is a report detailing the types and dollar volume of loans which the licensee has extended to consumers. Again, this requirement is drawn from Chapter 13-10 and is based on the Federal S.A.F.E. Act.

Section 13 of the Bill requires the Department or the Commissioner to report violations of our licensing chapter, as well as any enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry. This Section, again, is drawn from the Federal S.A.F.E. Act.

Section 14 of the Bill simply removes the transition section found beginning on page 13, lines 20-29, and renumbers the remainder of the statute.

Mr. Chairman and members of the Committee, I would be happy to answer any questions the Committee may have.

NDLA, Intern 04

From: Jack McDonald [jackmcdonald@wheelerwolf.com]
Sent: Sunday, January 16, 2011 9:15 PM
To: Nething, Dave; NDLA, Intern 04
Cc: Jack McDonald; Bill Neumann
Subject: SB 2124

Sen. Nething: The Judiciary Committee heard this bill last week. Unfortunately the Bar Association at the time of the hearing was not aware that buried deep within the bill, at lines 13-17, page 12, is language that says the concerned records are not subject to subpoenas and discovery, and further that they cannot be admitted into evidence in civil proceedings. The Bar Association neither supports nor opposes this bill generally, but is concerned that those words seek to use the authority of the Legislative Assembly to declare certain records in the possession of the Department of Financial Institutions beyond the reach of the courts of North Dakota, and inadmissible as evidence in court.

The problem the Bar Association has with that language is that they are contrary to the first sentence of Article VI, Section 3 of the North Dakota Constitution, which says "The supreme court shall have authority to promulgate rules of procedure, including appellate procedure, to be followed by all the courts of this state;" That procedural authority includes rules of evidence, and the language in SB 2124 clearly attempts to create a rule that regards both procedure and evidence.

I understand the reasons the DFI seeks to have these documents confidential, but good reasons cannot justify passage of an unconstitutional law.

We recently worked with the Insurance Department to modify and remove similar language in one of its bills. The Bar Association is asking that you hold this bill for a few days to allow us to work with DFI in coming up with some alternative language.

Thank you for your consideration.

Jack McDonald
Wheeler Wolf Law Firm LLP
Box 1776
Bismarck, ND 58502-1776
Ph: 701-751-1776; Fx: 701-751-1777



State of North Dakota

**DEPARTMENT
of FINANCIAL
INSTITUTIONS**

CSBS ACCREDITED 1993
NASCUS ACCREDITED 2000

MEMORANDUM

DATE: March 7, 2011
TO: House Judiciary Committee
FROM: Robert J. Entringer, Commissioner
SUBJECT: Testimony in Support of Engrossed Senate Bill No. 2124

Chairman DeKrey and members of the House Judiciary Committee, thank you for the opportunity to provide my testimony in support of Engrossed Senate Bill No. 2124.

Mr. Chairman and members of the Committee, Engrossed Senate Bill No. 2124 deals primarily with changes to the Department's regulation of money brokers and also pertains to changes with respect to the Department's regulation of mortgage loan originators. The licensed money brokers in North Dakota are primarily mortgage companies/lenders.

Section 1 of the Bill creates two new definitions to section 13-04.1-01.1 of the North Dakota Century Code relating to the meaning of a "Net

branch" and "Net branch arrangement". These terms are used under section 2 of this Bill.

In Section 2 we are proposing to require each branch of a money broker to be registered with the Department and to prohibit a registration for a branch which constitutes a net branch or a net branching arrangement. As you can see from the definition of a net branching arrangement is the branch manager gives the appearance of ownership of the licensee where in reality the owner of the company has delegated all authority over this branch to the manager and may require the branch manager to indemnify the licensee from certain damages. The Department's position with respect to net branching has been that our licenses are not transferable and therefore such a net branching arrangement is not permissible. We felt it best to include this prohibition in the statute to solidify our position; this will make our law more uniform with what HUD and other states have done in this area.

In Section 3 of the Bill we remove the bonding requirements and place them into a new section of the Code which is found in Section 4 of the Bill. As you can see in Section 4, the amount of the surety bond remains at its present level of \$25,000 and requires the bond be in a form prescribed by the commissioner. Further, if an action is commenced on a

bond, the Commissioner may require the filing of a new bond. Finally, the Bill provides that the licensee must file a new bond immediately upon recovery of any action on the bond.

Section 5 establishes a minimum net worth requirement of \$25,000 for a licensee. Section 5 also provides that if a licensee's net worth falls below the minimum net worth requirement, the licensee shall provide a net worth restoration plan which, subject to the approval of the commissioner, would increase the licensee's net worth to an amount in conformance with the section. A restoration plan must be submitted within 20 business days of a notice from the commissioner. Finally, if the licensee does not submit a restoration plan, fails to comply with an approved plan, or repeatedly violates the minimum net worth requirement, the commissioner may revoke the license.

Section 6 requires that when a licensee ceases business for any reason, they have to inform the Department of the location of the records, as well as providing the name of the individual who is responsible for maintaining those records. If the location of the records should change, the licensee would need to notify the Department as well as the new individual who is responsible for those records. Section 6 of this Bill provides that the notice shall be given to the department within 10 business days.

Section 7 clarifies the Department's process relating to the suspension and revocation of a license by allowing the Commissioner to issue and serve upon a licensee an Order suspending or revoking their license if any of the conditions in Subsections "a" through "e" exist. The proposed change to this Section maintains due process for a licensee under Chapter 28-32 of the North Dakota Century Code. If a hearing is not requested by a licensee, after service of notice from the department, a Final Order suspending or revoking the license may be issued. Finally, the proposed language under section 7 of this bill provides the Commissioner with the authority to immediately suspend a license if probable cause for revocation exists. This immediate suspension, not to exceed 60 days, would allow the Commissioner to temporarily freeze a situation where the actions of a licensee could have a continuing negative impact on North Dakota consumers. During this period of temporary suspension, the Commissioner would follow the notice and hearing process for suspension or removal under this section.

Section 8 allows the Commissioner to suspend or remove officers or employees, whether they are current or former officers or employees, based on the provisions set forth in Subsection 1(a); this section also requires the term of the suspension or removal to be included within the

Order. The Section continues to provide due process for licensees under Chapter 28-32 and further allows the individual suspended or removed to request a termination of a Final Order after a period of not less than three years (if applicable). In addition, the amendment in this Section allows the Department to prohibit an individual suspended or removed under this chapter from participating in the conduct or affairs of any other entity regulated or licensed by the Department.

Section 9 changes the title of section 13-04.1-09 from "Fraudulent practices" to "Prohibited acts and practices". The amended language under this section is derived from Chapter 13-10 of the North Dakota Century Code relating to mortgage loan originators; this language came from the Federal S.A.F.E. Act (Secure and Fair Enforcement for Mortgage Licensing Act). This section sets the same prohibited acts and practices for the company as it does for the individuals licensed to originate mortgage loans for the company.

Section 10 expands on section 13-04.1-11 of the money broker chapter to clearly indicate the Department has examination authority, as well as, investigative and subpoena authority. Again, the additional subsections which are found beginning on page 9, line 29, are drawn from the Federal S.A.F.E. Act.

Section 11 of the Bill establishes confidentiality standards similar to those found in Chapter 13-10 of the North Dakota Century Code which are based on the Federal S.A.F.E. Act and incorporate open records protections found in Chapter 44-04 and section 6-01-07.1 of the North Dakota Century Code.

Section 12 requires notification of a name or address change and requires the licensee to submit the license for reissue. Section 12 further requires that a licensee notify the department within 20 business days of the change.

Section 13 requires a licensee to submit to the Nationwide Mortgage Licensing System and Registry a report of condition. A report of condition essentially is a report detailing the types and dollar volume of loans which the licensee has extended to consumers. Again, this requirement is drawn from Chapter 13-10 and is based on the Federal S.A.F.E. Act.

Section 14 of the Bill requires the Department or the Commissioner to report violations of our licensing chapter, as well as any enforcement actions and other relevant information to the Nationwide Mortgage Licensing System and Registry. This Section, again, is drawn from the Federal S.A.F.E. Act.

Section 15 of the Bill simply removes the transition section of the Mortgage Loan Originators statute.

Section 16 removes the ability of the department to directly retain attorneys. This amendment was proposed by the Office of Attorney General, and the Department understands the need for the amended language and does not object to the change.

Mr. Chairman and members of the Committee, I would be happy to answer any questions you may have.