

DEBTOR AND CREDITOR RELATIONSHIPS

CHAPTER 112

SENATE BILL NO. 2103

(Industry, Business and Labor Committee)
(At the request of the Department of Financial Institutions)

AN ACT to create and enact section 13-04.1-09.3 of the North Dakota Century Code, relating to money broker charges; to amend and reenact sections 13-04.1-02.1, 13-05-02.3, and 13-08-12 of the North Dakota Century Code, relating to money broker exemptions, collection agency exemptions, and deferred presentment service transaction procedures; to repeal section 13-04.1-09.2 of the North Dakota Century Code, relating to money broker charges; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-02.1. Entities exempted from licensing requirements.

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;
5. Individuals licensed under chapter 13-10;
6. State or federal agencies and their employees of state or federal agencies solely pursuant to the individual's official duties as an employee of the state or federal agency;
7. Institutions chartered by the farm credit administration;
8. Trust companies;
9. Any other person or business regulated and licensed to lend money by the state of North Dakota;
10. A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing

for real estate sold by the real estate broker, broker, or real estate salesperson; or

11. Any person, retail seller, or manufacturer providing lease financing for its own property or inventory held as a normal course of business, or to leases on any real property;
12. A certified development corporation that qualifies as a nonprofit entity under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
 - a. Loan products primarily limited to the small business administration, United States department of agriculture, or other government loan products; or
 - b. Nongovernmental loan products that are limited to loans to promote community development or home ownership, and these loans are offered with favorable terms including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance; or
13. A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in a given calendar year, makes these loans to promote community development or home ownership, and offers these loans on favorable terms, including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance.

SECTION 2. Section 13-04.1-09.3 of the North Dakota Century Code is created and enacted as follows:

13-04.1-09.3. Maximum charges permitted for loans - Installment payments - Permitted charges.

1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges and fees necessary for the extension of credit incurred at the time of origination.
2. Additional charges may be assessed for nonpayment or late payment as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive charges in excess of five percent of the payment. For loans originated for fifty thousand dollars or less, these charges may not exceed twenty dollars for each nonpayment or late payment. The charge may be collected at the time of the default or any time after default. However, if the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent payment, a charge may not be made for the subsequent default. This restriction does not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; and the identifiable charge or premium for insurance provided for by rule.

3. Additional restrictions for small loans originated for less than two thousand dollars include the following:
 - a. Installment loans must be paid in equal installments as agreed to by the parties within the loan contract. However, the maximum term for installment loans may not exceed thirty-six months, and a balloon payment is prohibited.
 - b. Outstanding balances of existing loans may be refinanced into a new small loan of less than two thousand dollars, but the combination of any refinance fees along with any fees collected as part of the original loans may not exceed one hundred dollars per calendar year.
 - c. Additional charges may be assessed as part of a loan extension or deferment of payment agreed to by the parties within the agreement. However, a licensee may not contract for or receive charges in excess of one hundred dollars for these loan extensions or deferments per calendar year.

SECTION 3. AMENDMENT. Section 13-05-02.3 of the North Dakota Century Code is amended and reenacted as follows:

13-05-02.3. Entities exempt from licensing requirements.

This chapter does not apply to:

1. Attorneys at law who are licensed to practice in the state of North Dakota. This exemption is limited to the actions of the licensed attorney and does not extend to persons either employed by the attorney or acting on behalf of the attorney;
2. Licensed real estate brokers if the engaged activity is regulated as part of that individual's professional license;
3. Banks;
4. Trust companies;
5. Building and loan associations;
6. Credit unions;
7. Agencies of a state or of the federal government and employees of state or federal agencies solely pursuant to the individual's official duties as an employee of the state or federal agency;
8. Abstract companies doing an escrow business;
9. Creditors collecting their own debts;
10. Mortgage servicing company;
11. Individuals or firms who purchase or take accounts receivable for collateral purposes;

12. Individuals employed in the capacity of creditmen upon the staff of an employer not engaged in the business of a collection agency; or
13. A public officer, receiver, or trustee acting under the order of a court.

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

13-08-12. Fees for service - Deferred presentment service transaction procedures - Penalty.

1. Before disbursing funds under a deferred presentment service transaction, a licensee shall provide to the customer a clear and conspicuous printed notice indicating:
 - a. That a deferred presentment service transaction is not intended to meet long-term financial needs.
 - b. That the customer should use a deferred presentment service transaction only to meet short-term cash needs.
 - c. That the customer will be required to pay additional fees if the deferred presentment service transaction is renewed rather than paid in full when due. If the transaction is renewed, any amount paid in excess of the fee applies to the payoff amount.
 - d. A schedule of fees charged for deferred presentment service.
 - e. Any information required under federal law.
 - f. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
2. A licensee may charge a fee for the deferred presentment service, not to exceed twenty percent of the amount paid to the customer by the licensee. This fee may not be deemed interest for any purpose of law. No other fee or charge may be charged for the deferred presentment service, except that a fee, not to exceed the cost to the licensee, may be charged for registering a transaction on a database administered or authorized by the commissioner. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process.
3. A licensee may not disburse more than five hundred dollars to the customer in a deferred presentment service transaction.
4. A licensee may not engage in a deferred presentment service transaction with a customer who has an aggregate value of all outstanding obligations from any one customer exceeding six hundred dollars which is payable to the same or any other licensee. A licensee may not enter a new deferred presentment service transaction with a customer within three business days of that customer's completion of a previous deferred presentment service transaction.

A licensee may rely on a written or electronic representation of a customer regarding the existence of any outstanding obligations for deferred presentment held by a licensee other than the licensee receiving the representation until the database provided for under this subsection is in operation, and after that time may not rely on a customer's representation but must verify the fact using the database. However, if a licensee has multiple locations, that licensee may not rely on the representation of a customer regarding the existence of any outstanding obligation for deferred presentment held by that licensee, or one of the licensee's multiple locations, unless the licensee and the licensee's multiple locations use a point of sale registry or some other accounting system to attempt to prevent violations of this subsection. The commissioner shall administer or authorize the development of a database in which each transaction must be recorded for the purpose of preventing violations of this section. The commissioner shall adopt rules governing the creation, structure, and use of the database.

5. Before a licensee may negotiate or present a check for payment, the check must be endorsed with the actual name under which the licensee is doing business.
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; 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; a statement that the maximum term of the transaction, including the renewal, may not exceed sixty calendar days; a statement that the term of the renewal period may not be less than fifteen calendar 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.

7. If a check or electronic debit is returned to the licensee from a payer financial institution due to insufficient funds, closed account, or a stop payment order, the licensee has the right to all civil remedies available to collect the obligation. The licensee may contract for and collect a returned check or electronic debit charge not to exceed the collection fees and costs authorized in subdivision c of subsection 2 of section 6-08-16. No other fee or charge may be collected as a result of a returned check or electronic debit or as a result of default by the customer in timely payment to the licensee.
8. A customer who has authority to make a check or authorize an electronic debit and enters a deferred presentment service agreement is not subject to a criminal penalty relating to the check, electronic debit, or the deferred presentment service agreement unless the customer's account was closed on the original date of the transaction. At the time of entering a transaction involving a written check, a licensee shall verify that the account on which the check is written is open. A licensee may not pursue or threaten to pursue criminal penalties against a customer for criminal penalties prohibited by this subsection.
9. A licensee may not engage in unfair or deceptive acts, practices, or advertising in the conduct of a deferred presentment service business.
10. The amount paid to the customer by the licensee in a deferred presentment service transaction must be paid in the form of cash, check, or an electronic credit to the customer's account.
11. Each licensee must conspicuously post in the licensee's licensed location a notice of the fees imposed for the deferred presentment service. A licensee that engages in a deferred presentment service transaction via the internet shall require its customers to acknowledge the fees imposed using a click-through or other method that prevents customers from completing the transaction without reviewing the licensee's fees.
12. Except as provided under subsection 13, a licensee may not renew a deferred presentment service transaction more than once. A licensee's renewal fee may not exceed twenty percent of the amount being renewed. The renewal fee must be paid in cash, money order, or cashier's check. The total period of deferral, including the initial deferral and one renewal, may not exceed sixty days. An individual renewal period may not be less than fifteen days. After sixty days the renewed deferred presentment service transaction must be paid off in cash, money order, electronic payment, or cashier's check by the customer or, if a check is used, the check must be deposited by the licensee.
13. A licensee may enter a workout agreement with the borrower if the borrower believes financial hardship prevents the borrower from paying off the deferred presentment service transaction at the end of the original agreement or following any renewal. The workout agreement must outline the repayment

terms in writing and must require weekly, biweekly, or monthly even installments not to exceed twelve months. An additional interest or fee may not be charged as part of this workout, the deferred presentment service provider shall continue to report the transaction as an outstanding deferred presentment service transaction on any database administered by the commissioner, and entering a workout agreement is voluntary on the part of the deferred presentment service provider and the borrower.

14. A licensee may not renew, repay, refinance, or consolidate a deferred presentment service transaction with the proceeds of another deferred presentment service transaction with that licensee by the same maker or customer. It is presumed that a deferred presentment service transaction initiated within three business days before completion of a deferred presentment service transaction is a violation of this subsection.
- 44-15. A licensee may not conduct another business, other than a bona fide pawnbroking business, within the same office, suite, room, or place of business at which the licensee engages in deferred presentment service transactions unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of consumers.
- 45-16. A licensee shall provide a notice in a prominent place on each deferred presentment service agreement in no less than ten-point type in substantially the following form:
- State law prohibits this business from allowing customers to have outstanding at any one time, deferred presentment service transactions totaling more than six hundred dollars.
- 46-17. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor.

SECTION 5. REPEAL. Section 13-04.1-09.2 of the North Dakota Century Code is repealed.

Approved April 16, 2021

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