

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1174

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Financial Institutions)

1 A BILL for an Act to create and enact chapter 13-09 of the North Dakota Century Code, relating
2 to licensing, reports, and examination of money transmitters; to amend and reenact
3 subsection 1 of section 6-01-01.1 of the North Dakota Century Code, relating to the financial
4 institutions regulatory fund; to repeal chapter 51-17 of the North Dakota Century Code, relating
5 to the licensing of check sellers; to provide a penalty; to provide an appropriation; and to
6 provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Subsection 1 of section 6-01-01.1 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 1. There is hereby created a special fund designated as the financial institutions
11 regulatory fund. The amounts received under the following chapters, and any
12 other moneys received by the department of financial institutions, must be
13 deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 7-05, 13-03.1,
14 13-04.1, 13-05, ~~and 51-17~~ 13-08, and 13-09.

15 **SECTION 2.** Chapter 13-09 of the North Dakota Century Code is created and enacted
16 as follows:

17 **13-09-01. License required.**

- 18 1. On or after January 2, 2006, a person, except a person that is exempt pursuant to
19 section 13-09-03, may not engage in the business of money transmission without a
20 license as provided in this chapter.
21 2. A person not licensed under this chapter or not an authorized delegate of a
22 licensee is engaged in providing money transmission if the person provides those
23 services to residents of this state, even if that person has no physical presence in
24 this state.

1 3. If a licensee has a physical presence in this state, the licensee may conduct its
2 business at one or more locations, directly or indirectly owned, or through one or
3 more authorized delegates, or both, pursuant to the single license granted to the
4 licensee.

5 **13-09-02. Definitions.** In this chapter, unless the context otherwise requires:

6 1. "Applicant" means a person filing an application for a license under this chapter.

7 2. "Authorized delegate" means an entity designated by the licensee under the
8 provisions of this chapter to sell or issue payment instruments or engage in the
9 business of transmitting money on behalf of a licensee.

10 3. "Commissioner" means the commissioner of the department of financial
11 institutions.

12 4. "Control" means ownership of, or the power to vote, twenty-five percent or more of
13 the outstanding voting securities of a licensee or controlling person. For purposes
14 of determining the percentage of a licensee controlled by any person, there must
15 be aggregated with the person's interest the interest of any other person controlled
16 by that person or by any spouse, parent, or child of that person.

17 5. "Controlling person" means any person in control of a licensee.

18 6. "Department" means the department of financial institutions.

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

24 8. "Executive officer" means the licensee's president, chairman of the executive
25 committee, senior officer responsible for the licensee's business, chief financial
26 officer, and any other person who performs similar functions.

27 9. "Key shareholder" means any person or group of persons acting in concert who is
28 or are the owner of twenty-five percent or more of any voting class of an
29 applicant's stock.

30 10. "Licensee" means a person licensed under this chapter.

- 1 11. "Material litigation" means any litigation that, according to generally accepted
2 accounting principles, is deemed significant to an applicant's or licensee's financial
3 health and would be required to be referenced in that entity's annual audited
4 financial statements, report to shareholders, or similar documents.
- 5 12. "Monetary value" means a medium of exchange, whether or not redeemable in
6 money.
- 7 13. "Money transmission" means to engage in the business of the sale or issuance of
8 payment instruments, stored value, or of receiving money or monetary value for
9 transmission to a location within or outside the United States by any and all
10 means, including wire, facsimile, or electronic transfer. Notwithstanding any other
11 provision of law, "money transmission" also includes bill payment services not
12 limited to the right to receive payment of any claim for another.
- 13 14. "Outstanding payment instrument" means any payment instrument issued by the
14 licensee which has been sold in the United States directly by the licensee or any
15 payment instrument issued by the licensee which has been sold by an authorized
16 delegate of the licensee in the United States, which has been reported to the
17 licensee as having been sold, and which has not yet been paid by or for the
18 licensee.
- 19 15. "Payment instrument" means any electronic or written check, draft, money order,
20 travelers check, or other electronic or written instrument or order for the
21 transmission or payment of money, sold or issued to one or more persons,
22 whether or not such instrument is negotiable. The term "payment instrument" does
23 not include any credit card voucher, any letter of credit or any instrument that is
24 redeemable by the issuer in goods or services.
- 25 16. "Permissible investments" means:
- 26 a. Cash;
- 27 b. Certificates of deposit or other debt obligations of a financial institution, either
28 domestic or foreign;
- 29 c. Bills of exchange or time drafts drawn on and accepted by a commercial
30 bank, otherwise known as bankers' acceptances, which are eligible for
31 purchase by member banks of the federal reserve system;

- 1 d. Any investment bearing a rating of one of the three highest grades as defined
2 by a nationally recognized organization that rates such securities;
- 3 e. Investment securities that are obligations of the United States, its agencies or
4 instrumentalities, or obligations that are guaranteed fully as to principal and
5 interest of the United States, or any obligations of any state, municipality, or
6 any political subdivision thereof;
- 7 f. Shares in a money market mutual fund, interest-bearing bills or notes or
8 bonds, debentures or stock traded on any national securities exchange or on
9 a national over-the-counter market, or mutual funds primarily composed of
10 such securities or a fund composed of one or more permissible investments
11 as set forth herein;
- 12 g. Any demand borrowing agreement or agreements made to a corporation or a
13 subsidiary of a corporation whose capital stock is listed on a national
14 exchange;
- 15 h. Receivables that are due to a licensee from its authorized delegates pursuant
16 to a contract described in section 13-09-15, which are not past due or
17 doubtful of collection; or
- 18 i. Any other investments or security device approved by the commissioner.
- 19 17. "Remit" means either to make direct payment of the funds to the licensee or its
20 representatives authorized to receive those funds, or to deposit the funds in a
21 bank, credit union, or savings and loan association or other similar financial
22 institution in an account specified by the licensee.
- 23 18. "Stored value" means monetary value that is evidenced by an electronic record.
- 24 **13-09-03. Exclusions.** This chapter does not apply to:
- 25 1. The United States or any department, agency, or instrumentality thereof;
- 26 2. The United States post office;
- 27 3. The state or any political subdivisions thereof;
- 28 4. Banks, bank holding companies, credit unions, building and loan associations,
29 savings and loan associations, savings banks or mutual banks organized under
30 the laws of any state or the United States, provided that they do not issue or sell
31 payment instruments through authorized delegates who are not banks, bank

1 holding companies, credit unions, building and loan associations, savings and loan
2 associations, savings banks, or mutual banks;

3 5. The provision of electronic transfer of government benefits for any federal, state, or
4 county governmental agency as defined in federal reserve board regulation E, by a
5 contractor for and on behalf of the United States or any department, agency, or
6 instrumentality thereof, or any state or any political subdivisions thereof; and

7 6. Authorized delegates of a licensee, acting within the scope of authority conferred
8 by a written contract as described in section 13-09-15.

9 **13-09-04. Licensed qualifications.** To qualify for a license each applicant must
10 satisfy the following requirements:

11 1. Each licensee under this chapter must at all times have a net worth of not less
12 than one hundred thousand dollars, calculated in accordance with generally
13 accepted accounting principles.

14 2. The financial condition and responsibility, financial and business experience, and
15 character and general fitness of the applicant must reasonably warrant the belief
16 that the applicant's business will be conducted honestly, fairly, and in a manner
17 commanding the confidence and trust of the community. In determining whether
18 this qualification is met and for purposes of investigating compliance with this
19 chapter, the commissioner may review and consider the relevant business records
20 and capital adequacy of the applicant.

21 3. Every corporate applicant, at the time of filing of an application for a license under
22 this chapter and at all times after a license is issued, must be in good standing in
23 the state of its incorporation. At the time of the filing of an application for a license
24 under this chapter and at all times after a license is issued, all noncorporate
25 applicants must be registered or qualified to do business in the state.

26 **13-09-05. Bond or other security device.**

27 1. Each application must be accompanied by a surety bond, irrevocable letter of
28 credit, or such other similar security device, hereinafter "security device",
29 acceptable to the commissioner in the amount of one hundred fifty thousand
30 dollars. The commissioner may increase the amount of the bond or security
31 device to a maximum of five hundred thousand dollars for good cause. The

- 1 security device must be in a form satisfactory to the commissioner and must run to
2 the state for the benefit of any claimants against the licensee to secure the faithful
3 performance of the obligations of the licensee with respect to the receipt, handling,
4 transmission, and payment of money in connection with the sale and issuance of
5 payment instruments and transmission of money. In the case of a bond, the
6 aggregate liability of the surety may not exceed the principal sum of the bond.
7 Claimants against the licensee may themselves bring suit directly on the security
8 device or the commissioner may bring suit on behalf of such claimants, either in
9 one action or in successive actions.
- 10 2. In lieu of a security device or of any portion of the principal thereof, as required by
11 this section, the licensee may deposit with the commissioner, or with banks in this
12 state as the licensee may designate and the commissioner may approve, cash,
13 interest-bearing stocks and bonds, notes, debentures, or other obligations of the
14 United States or any agency or instrumentality thereof, or guaranteed by the
15 United States, or of this state, or of a city, county, town, village, school district, or
16 instrumentality of this state, or guaranteed by this state, to an aggregate amount,
17 based upon principal amount or market value, whichever is lower, of not less than
18 the amount of the security device or portion thereof. The securities and cash must
19 be deposited as aforesaid and held to secure the same obligations as would the
20 security device, but the depositor is entitled to receive all interest and dividends
21 thereon, with the approval of the commissioner may substitute other securities for
22 those deposited, and must be required so to do on written order of the
23 commissioner made for good cause shown.
- 24 3. The security device must remain in effect until cancellation, which may occur only
25 after thirty days' written notice to the commissioner. Cancellation does not affect
26 any liability incurred or accrued during the period.
- 27 4. The security device must remain in place for at least five years after the licensee
28 ceases money transmission operations in the state. However, notwithstanding this
29 provision, the commissioner may permit the security device to be reduced or
30 eliminated before that time to the extent that the amount of the licensee's payment
31 instruments outstanding in this state are reduced. The commissioner may also

1 permit a licensee to substitute a letter of credit or such other form of security
2 device acceptable to the commissioner for the security device in place at the time
3 the licensee ceases money transmission operations in the state.

4 **13-09-06. Permissible investments and statutory trust.**

5 1. Each licensee under this chapter must at all times possess permissible
6 investments having an aggregate market value, calculated in accordance with
7 generally accepted accounting principles, of not less than the aggregate face
8 amount of all outstanding payment instruments and stored value issued or sold by
9 the licensee in the United States. This requirement may be waived by the
10 commissioner if the dollar volume of a licensee's outstanding payment instruments
11 and stored value does not exceed the bond or other security devices posted by the
12 licensee pursuant to section 13-09-05.

13 2. Permissible investments, even if commingled with other assets of the licensee, are
14 deemed by operation of law to be held in trust for the benefit of the purchasers and
15 holders of the licensee's outstanding payment instruments in the event of the
16 bankruptcy of the licensee.

17 **13-09-07. Application for license.** Each application for a license under this chapter
18 must be made in writing, and in a form prescribed by the commissioner. Each application must
19 state or contain:

20 1. For all applicants:

21 a. The exact name of the applicant, the applicant's principal address, any
22 fictitious or trade name used by the applicant in the conduct of its business,
23 and the location of the applicant's business records.

24 b. The history of the applicant's criminal convictions and material litigation for the
25 five-year period before the date of the application.

26 c. A description of the activities conducted by the applicant and a history of
27 operations.

28 d. A description of the business activities in which the applicant seeks to be
29 engaged in the state.

30 e. A list identifying the applicant's proposed authorized delegates in the state, if
31 any, at the time of the filing of the license application.

- 1 f. A sample authorized delegate contract, if applicable.
- 2 g. A sample form of payment instrument, if applicable.
- 3 h. The locations at which the applicant and its authorized delegates, if any,
4 propose to conduct the licensed activities in the state.
- 5 i. The name and address of the clearing bank or banks on which the applicant's
6 payment instruments will be drawn or through which the payment instruments
7 will be payable.
- 8 2. If the applicant is a corporation, the applicant must also provide:
 - 9 a. The date of the applicant's incorporation and state of incorporation.
 - 10 b. A certificate of good standing from the state in which the applicant was
11 incorporated.
 - 12 c. A description of the corporate structure of the applicant, including the identity
13 of any parent or subsidiary of the applicant, and the disclosure of whether any
14 parent or subsidiary is publicly traded on any stock exchange.
 - 15 d. The name, business and residence address, and employment history for the
16 past five years of the applicant's executive officers and the officers or
17 managers who will be in charge of the applicant's activities to be licensed
18 hereunder.
 - 19 e. The name, business and residence address, and employment history for the
20 period five years prior to the date of the application of any key shareholder of
21 the applicant.
 - 22 f. The history of criminal convictions and material litigation for the five-year
23 period before the date of the application of every executive officer or key
24 shareholder of the applicant.
 - 25 g. A copy of the applicant's most recent audited financial statement including
26 balance sheet, statement of income or loss, statement of changes in
27 shareholder equity, and statement of changes in financial position and, if
28 available, the applicant's audited financial statements for the immediately
29 preceding two-year period. However, if the applicant is a wholly owned
30 subsidiary of another corporation, the applicant may submit either the parent
31 corporation's consolidated audited financial statements for the current year

1 and for the immediately preceding two-year period or the parent corporation's
2 form 10K reports filed with the United States securities and exchange
3 commission for the prior three years in lieu of the applicant's financial
4 statements. If the applicant is a wholly owned subsidiary of a corporation
5 having its principal place of business outside the United States, similar
6 documentation filed with the parent corporation's non-United States regulator
7 may be submitted to satisfy this provision.

8 h. Copies of all filings, if any, made by the applicant with the United States
9 securities and exchange commission, or with a similar regulator in a country
10 other than the United States, within the year preceding the date of filing of the
11 application.

12 3. If the applicant is not a corporation, the applicant must also provide:

13 a. The name, business and residence address, personal financial statement and
14 employment history, for the past five years, of each principal of the applicant
15 and the name, business and residence address, and employment history for
16 the past five years of any other person or persons who will be in charge of the
17 applicant's activities to be licensed under this chapter;

18 b. The place and date of the applicant's registration or qualification to do
19 business in this state;

20 c. The history of criminal convictions and material litigation for the five-year
21 period before the date of the application for each individual having any
22 ownership interest in the applicant and each individual who exercises
23 supervisory responsibility with respect to the applicant's activities; and

24 d. Copies of the applicant's audited financial statements including balance
25 sheet, statement of income or loss, and statement of changes in financial
26 position for the current year and, if available, for the immediately preceding
27 two-year period.

28 4. For good cause shown, the commissioner may waive any requirement of this
29 section with respect to any license application or to permit a license applicant to
30 submit substituted information in its license application in lieu of the information
31 required by this section.

1 **13-09-08. Application fee.** Each application must be accompanied by a
2 nonrefundable investigation fee in the amount of four hundred fifty dollars and license fee of
3 four hundred dollars. The license fee must be refunded if the application is denied. The
4 commissioner shall deposit fees and costs collected by the department under this chapter in
5 the department of financial institutions regulatory fund.

6 **13-09-09. Issuance of license.**

- 7 1. Upon the filing of a complete application, the commissioner shall investigate the
8 financial condition and responsibility, financial and business experience, character,
9 and general fitness of the applicant. The commissioner may conduct an onsite
10 investigation of the applicant, the reasonable cost of which must be borne by the
11 applicant. If the commissioner finds that the applicant's business will be conducted
12 honestly, fairly, and in a manner commanding the confidence and trust of the
13 community and that the applicant has fulfilled the requirements imposed by this
14 chapter and has paid the required license fee, the commissioner shall issue a
15 license to the applicant authorizing the applicant to engage in the licensed
16 activities in this state. If these requirements have not been met, the commissioner
17 shall deny the application in writing, setting forth the reasons for the denial.
- 18 2. The commissioner shall approve or deny every application for an original license
19 within one hundred twenty days from the date a complete application is submitted,
20 which period may be extended by the written consent of the applicant. The
21 commissioner shall notify the applicant of the date when the application is deemed
22 complete.
- 23 3. Any applicant aggrieved by a denial issued by the commissioner under this chapter
24 may at any time within thirty days from the date of receipt of written notice of the
25 denial request a hearing before the commissioner.

26 **13-09-10. Renewal of license and annual report.**

- 27 1. A licensee under this chapter shall pay an annual renewal fee of four hundred fifty
28 dollars which is not subject to refund.
- 29 2. The renewal fee must be accompanied by a report, in a form prescribed by the
30 commissioner, which must include:

- 1 a. A copy of its most recent audited consolidated annual financial statement
2 including balance sheet, statement of income or loss, statement of changes in
3 shareholder's equity, and statement of changes in financial position, or, in the
4 case of a licensee that is a wholly owned subsidiary of another corporation,
5 the consolidated audited annual financial statement of the parent corporation
6 may be filed in lieu of the licensee's audited annual financial statement;
7 b. For the most recent quarter for which data is available before the date of the
8 filing of the renewal application, but in no event more than one hundred
9 twenty days before the renewal date, the licensee must provide the number of
10 payment instruments sold by the licensee in the state, the dollar amount of
11 those instruments, and the dollar amount of those instruments currently
12 outstanding;
13 c. Any material changes to any of the information submitted by the licensee on
14 its original application which have not previously been reported to the
15 commissioner on any other report required to be filed under this chapter;
16 d. A list of the licensee's permissible investments; and
17 e. A list of the locations, if any, within this state at which business regulated by
18 this chapter is being conducted by either the licensee or its authorized
19 delegates.
20 3. All licenses issued pursuant to this chapter expire on June thirtieth of each year.
21 Applications for renewal must be submitted thirty days before expiration of the
22 license. A licensee that has not filed a renewal report or paid its renewal fee by
23 June thirtieth and has not been granted an extension of time to do so by the
24 commissioner must have its license suspended. The licensee in such case has
25 thirty days after its license is suspended in which to file a renewal report and pay
26 the renewal fee, plus fifty dollars for each business day after suspension that the
27 commissioner does not receive the renewal report and the renewal fee. For good
28 cause, the commissioner may grant an extension of the renewal date or reduce or
29 suspend the fifty dollars per day late filing fee.

30 **13-09-11. Extraordinary reporting requirements.** Within fifteen business days of the
31 occurrence of any one of the events listed below, a licensee shall file a written report with the

1 commissioner describing such event and its expected impact on the licensee's activities in the
2 state:

- 3 1. Any material changes in information provided in a licensee's application or renewal
4 report;
- 5 2. The filing for bankruptcy or reorganization by the licensee;
- 6 3. The institution of revocation or suspension proceedings against the licensee by
7 any state or governmental authority with regard to the licensee's money
8 transmission activities;
- 9 4. Any felony indictment of the licensee or any of its key officers or directors related
10 to money transmission activities; and
- 11 5. Any felony conviction of the licensee or any of its key officers or directors related to
12 money transmission activities.

13 **13-09-12. Changes in control of a licensee.**

- 14 1. A licensee shall give the commissioner written notice of a proposed change of
15 control within fifteen days after learning of the proposed change of control and
16 request approval of the acquisition.
- 17 2. After review of a request for approval under subsection 1, the commissioner may
18 require the licensee to provide additional information concerning the proposed
19 persons in control of the licensee. The additional information must be limited to
20 the same types required of the licensee or persons in control of the licensee as
21 part of its original license or renewal application.
- 22 3. The commissioner shall approve a request for change of control under
23 subsection 1 if, after investigation, the commissioner determines that the person or
24 group of persons requesting approval has the competence, experience, character,
25 and general fitness to operate the licensee or person in control of the licensee in a
26 lawful and proper manner and that the interests of the public will not be
27 jeopardized by the change of control.
- 28 4. The following persons are exempt from the requirements of subsection 1, but the
29 licensee shall notify the commissioner of a change of control:

- 1 a. A person that acts as a proxy for the sole purpose of voting at a designated
2 meeting of the securityholders or holders of voting interests of a licensee or
3 person in control of a licensee;
4 b. A person that acquires control as a personal representative, custodian,
5 guardian, conservator, or trustee, or as an officer appointed by a court of
6 competent jurisdiction or by operation of law; and
7 c. A person that the commissioner by rule or order exempts in the public
8 interest.
9 5. Before filing a request for approval to acquire control, a person may request in
10 writing a determination from the commissioner as to whether the person would be
11 considered a person in control of a licensee upon consummation of a proposed
12 transaction.

13 **13-09-13. Examinations.**

- 14 1. The commissioner may conduct an annual onsite examination of a licensee upon
15 reasonable written notice to the licensee. The commissioner may examine a
16 licensee without prior notice if the commissioner has a reasonable basis to believe
17 that the licensee is in noncompliance with this chapter. Should the commissioner
18 conclude that an onsite examination of a licensee is necessary, the licensee shall
19 pay an examination or visitation fee and the commissioner shall charge for the
20 actual cost of the examination or visitation at an hourly rate set by the
21 commissioner which is sufficient to cover all reasonable expenses associated with
22 the examination or visitation. The onsite examination may be conducted in
23 conjunction with examinations to be performed by representatives of agencies of
24 another state or states. The commissioner, in lieu of an onsite examination, may
25 accept the examination report of an agency of another state, or a report prepared
26 by an independent accounting firm, and reports so accepted are considered for all
27 purposes as an official report of the commissioner. The reasonable expenses
28 incurred by the department, agencies of another state, or an independent licensed
29 or certified public accountant in making the examination or report must be borne by
30 the licensee.

1 2. The commissioner may request financial data from a licensee in addition to that
2 required under section 13-09-10, or conduct an onsite examination of any
3 authorized delegate or location of a licensee within this state without prior notice to
4 the authorized delegate or licensee only if the commissioner has a reasonable
5 basis to believe that the licensee or authorized delegate is in noncompliance with
6 this chapter. When the commissioner examines an authorized delegate's
7 operations, the authorized delegate shall pay all reasonably incurred costs of such
8 examination. When the commissioner examines a licensee's location within the
9 state, the licensee shall pay all reasonably incurred costs of such examination.

10 **13-09-14. Maintenance of records.**

11 1. Each licensee shall make, keep, and preserve the following books, accounts, and
12 other records for a period of five years and which are open to inspection by the
13 commissioner:

- 14 a. A record or records of each payment instrument and stored value sold;
15 b. A general ledger containing all assets, liability, capital, income, and expense
16 accounts, which general ledger must be posted at least monthly;
17 c. Bank statements and bank reconciliation records;
18 d. Records of outstanding payment instruments and stored value;
19 e. Records of each payment instrument and stored value paid within the
20 five-year period;
21 f. A list of the names and addresses of all of the licensee's authorized
22 delegates; and
23 g. Any other records the commissioner reasonably requires by rule.

24 2. Maintenance of such documents as are required by this section in a photographic,
25 electronic, or other similar form constitutes compliance with this section.

26 3. Records may be maintained at a location other than within this state so long as the
27 records are made accessible to the commissioner on seven business days' written
28 notice.

29 **13-09-15. Authorized delegate contracts.** Licensees desiring to conduct licensed
30 activities through authorized delegates shall authorize each delegate to operate pursuant to an

1 express written contract, which, for contracts entered into after the effective date of this Act,
2 must provide the following:

- 3 1. That the licensee appoints the person as its delegate with authority to engage in
4 money transmission on behalf of the licensee;
- 5 2. That neither a licensee nor an authorized delegate may authorize subdelegates
6 without the written consent of the commissioner; and
- 7 3. That licensees are subject to supervision and regulation by the commissioner; and

8 **13-09-16. Authorized delegate conduct.**

- 9 1. An authorized delegate may not make a fraudulent or false statement or
10 misrepresentation to a licensee or to the commissioner.
- 11 2. All money transmission or sale or issuance of payment instrument activities
12 conducted by authorized delegates must be strictly in accordance with the
13 licensee's written procedures provided to the authorized delegate.
- 14 3. An authorized delegate must remit all money owing to the licensee in accordance
15 with the terms of the contract between the licensee and the authorized delegate.
- 16 4. An authorized delegate is deemed to consent to the commissioner's inspection,
17 with or without prior notice to the licensee or authorized delegates.
- 18 5. An authorized delegate is under a duty to act only as authorized under the contract
19 with the licensee and this chapter and an authorized delegate who exceeds its
20 authority is subject to cancellation of its contract and further disciplinary action by
21 the commissioner.
- 22 6. All funds, less fees, received by an authorized delegate of a licensee from the sale
23 or delivery of a payment instrument issued by a licensee or received by an
24 authorized delegate for transmission must, from the time such funds are received
25 by such authorized delegate until such time when the funds or an equivalent
26 amount are remitted by the authorized delegate to the licensee, constitute trust
27 funds owned by and belonging to the licensee. If an authorized delegate
28 commingles any such funds with any other funds or property owned or controlled
29 by the authorized delegate, all commingled proceeds and other property is
30 impressed with a trust in favor of the licensee in an amount equal to the amount of
31 the proceeds due the licensee.

1 **13-09-17. Suspension or revocation of licenses.** The commissioner may suspend
2 or revoke a licensee's license if the commissioner finds that:

- 3 1. Any fact or condition exists that, if it had existed at the time when the licensee
4 applied for its license, would have been grounds for denying such application;
- 5 2. The licensee's net worth becomes inadequate and the licensee, after ten days'
6 written notice from the commissioner, fails to take such steps as the commissioner
7 deems necessary to remedy such deficiency;
- 8 3. The licensee knowingly violates any material provision of this chapter or any rule
9 or order validly adopted by the commissioner under authority of this title;
- 10 4. The licensee is conducting its business in an unsafe or unsound manner;
- 11 5. The licensee is insolvent;
- 12 6. The licensee has suspended payment of its obligations, made an assignment for
13 the benefit of its creditors, or admitted in writing its inability to pay its debts as they
14 become due;
- 15 7. The licensee has applied for an adjudication of bankruptcy, reorganization,
16 arrangement, or other relief under any bankruptcy;
- 17 8. The licensee refuses to permit the commissioner to make any examination
18 authorized by this chapter; or
- 19 9. The licensee willfully fails to make any report required by this chapter.

20 **13-09-18. Suspension or revocation of authorized delegates.**

- 21 1. The commissioner may issue an order suspending or revoking the designation of
22 an authorized delegate, if the commissioner finds that:
 - 23 a. The authorized delegate violates this chapter or a rule adopted or an order
24 issued under this chapter;
 - 25 b. The authorized delegate does not cooperate with an examination or
26 investigation by the commissioner;
 - 27 c. The authorized delegate engages in fraud, intentional misrepresentation, or
28 gross negligence;
 - 29 d. The authorized delegate is convicted of a violation of a state or federal
30 antimoney laundering statute;

1 e. The competence, experience, character, or general fitness of the authorized
2 delegate or a person in control of the authorized delegate indicates that it is
3 not in the public interest to permit the authorized delegate to provide money
4 services; or

5 f. The authorized delegate is engaging in an unsafe or unsound practice.

6 2. In determining whether an authorized delegate is engaging in an unsafe or
7 unsound practice, the commissioner may consider the size and condition of the
8 authorized delegate's provision of money services, the magnitude of the loss, if
9 any, the gravity of the violation of this chapter, and the previous conduct of the
10 authorized delegate.

11 3. An authorized delegate may appeal from a suspension or revocation of
12 designation as an authorized delegate by filing a written appeal with the
13 commissioner within twenty days of the issuance of the order.

14 **13-09-19. Orders to cease and desist.**

15 1. If the commissioner determines that an unlicensed person, a licensee, or an
16 authorized delegate has committed a violation of this chapter or of a rule adopted
17 or and order issued under this chapter, the commissioner may issue an order to
18 cease and desist from the violation. The order becomes effective upon service.

19 2. The commissioner may issue an order against a licensee to cease and desist from
20 providing money transmission services through an authorized delegate that is the
21 subject of a separate order pursuant to section 13-09-18.

22 3. An order to cease and desist remains effective and enforceable pending the
23 completion of any administrative proceeding.

24 4. The entity against which a cease and desist order has been issued may appeal the
25 issuance of the cease and desist order by filing a written appeal with the
26 commissioner within twenty days of the date the order is served on the licensee or
27 delegate.

28 5. The commissioner may apply to the district court for an appropriate order to protect
29 the public interest, including a temporary restraining order.

30 **13-09-20. Consent orders.** The commissioner may enter into a consent order at any
31 time with a person to resolve a matter arising under this chapter. A consent order must be

1 signed by the person to whom it is issued or by the person's authorized representative, and
2 must indicate agreement with the terms contained in the order. A consent order may provide
3 that it does not constitute an admission by a person that this chapter or a rule adopted or an
4 order issued under this chapter has been violated.

5 **13-09-21. Civil penalties.** The commissioner may impose a civil money penalty not to
6 exceed five thousand dollars per violation upon a person or agency who willfully violates a law,
7 rule, or order under this chapter. An interested party may appeal the assessment of a civil
8 money penalty by filing a written notice of appeal within twenty days after service of the
9 assessment of civil money penalties. A civil money penalty collected under this section must
10 be paid to the state treasurer and deposited in the financial institutions regulatory fund.

11 **13-09-22. Criminal penalties.**

12 1. A person who intentionally makes a false statement, misrepresentation, or false
13 certification in a record filed or required to be maintained under this chapter, or that
14 intentionally makes a false entry or omits a material entry in such a record, is guilty
15 of a class C felony.

16 2. Any person violating any of the provisions of this chapter or any rule or order of the
17 department of financial institutions made pursuant to the provisions of this chapter
18 or who engages in any act, practice, or transaction declared by any provision of
19 this chapter to be unlawful, is guilty of a class C felony.

20 3. An individual who knowingly engages in any activity for which a license is required
21 under this chapter without being licensed under this chapter, is guilty of a class C
22 felony.

23 **13-09-23. Administrative procedures.** All administrative proceedings under this
24 chapter must be conducted in accordance with chapter 28-32.

25 **13-09-24. Savings and transitional provisions.** A license issued under the
26 provisions of chapter 51-17 that is in effect immediately before the effective date of this Act
27 remains in force as a license under this chapter until the license's expiration date. Thereafter,
28 the licensee must be treated as if the licensee had applied for and had received a license under
29 this chapter and is required to comply with the renewal requirements set forth in this chapter.

30 **SECTION 3. REPEAL.** Chapter 51-17 of the North Dakota Century Code is repealed.

1 **SECTION 4. APPROPRIATION.** There is appropriated out of any moneys in the
2 financial institutions regulatory fund in the state treasury, not otherwise appropriated, the sum
3 of \$193,742 to the department of financial institutions for the purpose of defraying the expenses
4 related to licensing and regulation of money transmitters, for the biennium beginning July 1,
5 2005, and ending June 30, 2007. The department of financial institutions may employ no more
6 than one additional full-time equivalent position for the licensing and regulation of money
7 transmitters.

8 **SECTION 5. EFFECTIVE DATE.** Section 3 of this Act becomes effective on
9 January 2, 2006.