

**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, and 13-05, ~~and 51-17.~~

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 applicant's  
29          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 means,  
10                   including wire, facsimile, or electronic transfer.
- 11       14. "Outstanding payment instrument" means any payment instrument issued by the  
12                   licensee which has been sold in the United States directly by the licensee or any  
13                   payment instrument issued by the licensee which has been sold by an authorized  
14                   delegate of the licensee in the United States, which has been reported to the  
15                   licensee as having been sold, and which has not yet been paid by or for the  
16                   licensee.
- 17       15. "Payment instrument" means any electronic or written check, draft, money order,  
18                   travelers check, or other electronic or written instrument or order for the  
19                   transmission or payment of money, sold or issued to one or more persons, whether  
20                   or not such instrument is negotiable. The term "payment instrument" does not  
21                   include any credit card voucher, any letter of credit or any instrument that is  
22                   redeemable by the issuer in goods or services.
- 23       16. "Permissible investments" means:
- 24           a. Cash;
- 25           b. Certificates of deposit or other debt obligations of a financial institution, either  
26                   domestic or foreign;
- 27           c. Bills of exchange or time drafts drawn on and accepted by a commercial  
28                   bank, otherwise known as bankers' acceptances, which are eligible for  
29                   purchase by member banks of the federal reserve system;
- 30           d. Any investment bearing a rating of one of the three highest grades as defined  
31                   by a nationally recognized organization that rates such securities;

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

- 1           5. The provision of electronic transfer of government benefits for any federal, state, or  
2           county governmental agency as defined in federal reserve board regulation E, by a  
3           contractor for and on behalf of the United States or any department, agency, or  
4           instrumentality thereof, or any state or any political subdivisions thereof; and  
5           6. Authorized delegates of a licensee, acting within the scope of authority conferred  
6           by a written contract as described in section 13-09-15.

7           **13-09-04. Licensed qualifications.** To qualify for a license each applicant must  
8 satisfy the following requirements:

- 9           1. Each licensee under this chapter must at all times have a net worth of not less than  
10           one hundred thousand dollars, calculated in accordance with generally accepted  
11           accounting principles.  
12           2. The financial condition and responsibility, financial and business experience, and  
13           character and general fitness of the applicant must reasonably warrant the belief  
14           that the applicant's business will be conducted honestly, fairly, and in a manner  
15           commanding the confidence and trust of the community. In determining whether  
16           this qualification is met and for purposes of investigating compliance with this  
17           chapter, the commissioner may review and consider the relevant business records  
18           and capital adequacy of the applicant.  
19           3. Every corporate applicant, at the time of filing of an application for a license under  
20           this chapter and at all times after a license is issued, must be in good standing in  
21           the state of its incorporation. At the time of the filing of an application for a license  
22           under this chapter and at all times after a license is issued, all noncorporate  
23           applicants must be registered or qualified to do business in the state.

24           **13-09-05. Bond or other security device.**

- 25           1. Each application must be accompanied by a surety bond, irrevocable letter of  
26           credit, or such other similar security device, hereinafter "security device",  
27           acceptable to the commissioner in the amount of one hundred fifty thousand  
28           dollars. The commissioner may increase the amount of the bond or security device  
29           to a maximum of five hundred thousand dollars for good cause. The security  
30           device must be in a form satisfactory to the commissioner and must run to the state  
31           for the benefit of any claimants against the licensee to secure the faithful

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

1           acceptable to the commissioner for the security device in place at the time the  
2           licensee ceases money transmission operations in the state.

3           **13-09-06. Permissible investments and statutory trust.**

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

16           **13-09-07. Application for license.** Each application for a license under this chapter  
17 must be made in writing, and in a form prescribed by the commissioner. Each application must  
18 state or contain:

- 19           1. For all applicants:
- 20           a. The exact name of the applicant, the applicant's principal address, any  
21           fictitious or trade name used by the applicant in the conduct of its business,  
22           and the location of the applicant's business records.
- 23           b. The history of the applicant's criminal convictions and material litigation for the  
24           five-year period before the date of the application.
- 25           c. A description of the activities conducted by the applicant and a history of  
26           operations.
- 27           d. A description of the business activities in which the applicant seeks to be  
28           engaged in the state.
- 29           e. A list identifying the applicant's proposed authorized delegates in the state, if  
30           any, at the time of the filing of the license application.
- 31           f. A sample authorized delegate contract, if applicable.

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

- 1                   form 10K reports filed with the United States securities and exchange  
2                   commission for the prior three years in lieu of the applicant's financial  
3                   statements. If the applicant is a wholly owned subsidiary of a corporation  
4                   having its principal place of business outside the United States, similar  
5                   documentation filed with the parent corporation's non-United States regulator  
6                   may be submitted to satisfy this provision.
- 7                   h. Copies of all filings, if any, made by the applicant with the United States  
8                   securities and exchange commission, or with a similar regulator in a country  
9                   other than the United States, within the year preceding the date of filing of the  
10                   application.
- 11                  3. If the applicant is not a corporation, the applicant must also provide:
- 12                   a. The name, business and residence address, personal financial statement and  
13                   employment history, for the past five years, of each principal of the applicant  
14                   and the name, business and residence address, and employment history for  
15                   the past five years of any other person or persons who will be in charge of the  
16                   applicant's activities to be licensed under this chapter;
- 17                   b. The place and date of the applicant's registration or qualification to do  
18                   business in this state;
- 19                   c. The history of criminal convictions and material litigation for the five-year  
20                   period before the date of the application for each individual having any  
21                   ownership interest in the applicant and each individual who exercises  
22                   supervisory responsibility with respect to the applicant's activities; and
- 23                   d. Copies of the applicant's audited financial statements including balance sheet,  
24                   statement of income or loss, and statement of changes in financial position for  
25                   the current year and, if available, for the immediately preceding two-year  
26                   period.
- 27                  4. For good cause shown, the commissioner may waive any requirement of this  
28                   section with respect to any license application or to permit a license applicant to  
29                   submit substituted information in its license application in lieu of the information  
30                   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 the  
5 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 activities  
16 in this state for a term of one year. If these requirements have not been met, the  
17 commissioner shall deny the application in writing, setting forth the reasons for the  
18 denial.
- 19           2. The commissioner shall approve or deny every application for an original license  
20 within one hundred twenty days from the date a complete application is submitted,  
21 which period may be extended by the written consent of the applicant. The  
22 commissioner shall notify the applicant of the date when the application is deemed  
23 complete.
- 24           3. Any applicant aggrieved by a denial issued by the commissioner under this chapter  
25 may at any time within thirty days from the date of receipt of written notice of the  
26 denial request a hearing before the commissioner.

27           **13-09-10. Renewal of license and annual report.**

- 28           1. A licensee under this chapter shall pay an annual renewal fee of four hundred fifty  
29 dollars which is not subject to refund.
- 30           2. The renewal fee must be accompanied by a report, in a form prescribed by the  
31 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 any  
7 state or governmental authority with regard to the licensee's money transmission  
8 activities;
- 9 4. Any felony indictment of the licensee or any of its key officers or directors related to  
10 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 the  
20 same types required of the licensee or persons in control of the licensee as part of  
21 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 jeopardized  
27 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 The commissioner may set, by rule, the maximum remittance time.
- 17 4. An authorized delegate is deemed to consent to the commissioner's inspection,  
18 with or without prior notice to the licensee or authorized delegates.
- 19 5. An authorized delegate is under a duty to act only as authorized under the contract  
20 with the licensee and this chapter and an authorized delegate who exceeds its  
21 authority is subject to cancellation of its contract and further disciplinary action by  
22 the commissioner.
- 23 6. All funds, less fees, received by an authorized delegate of a licensee from the sale  
24 or delivery of a payment instrument issued by a licensee or received by an  
25 authorized delegate for transmission must, from the time such funds are received  
26 by such authorized delegate until such time when the funds or an equivalent  
27 amount are remitted by the authorized delegate to the licensee, constitute trust  
28 funds owned by and belonging to the licensee. If an authorized delegate  
29 commingles any such funds with any other funds or property owned or controlled  
30 by the authorized delegate, all commingled proceeds and other property is

1           impressed with a trust in favor of the licensee in an amount equal to the amount of  
2           the proceeds due the licensee.

3           **13-09-17. Suspension or revocation of licenses.** The commissioner may suspend  
4 or revoke a licensee's license if the commissioner finds that:

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

22          **13-09-18. Suspension or revocation of authorized delegates.**

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

- 1           d. The authorized delegate is convicted of a violation of a state or federal  
2           antimoney laundering statute;
- 3           e. The competence, experience, character, or general fitness of the authorized  
4           delegate or a person in control of the authorized delegate indicates that it is  
5           not in the public interest to permit the authorized delegate to provide money  
6           services; or
- 7           f. The authorized delegate is engaging in an unsafe or unsound practice.
- 8           2. In determining whether an authorized delegate is engaging in an unsafe or  
9           unsound practice, the commissioner may consider the size and condition of the  
10           authorized delegate's provision of money services, the magnitude of the loss, if  
11           any, the gravity of the violation of this chapter, and the previous conduct of the  
12           authorized delegate.
- 13           3. An authorized delegate may appeal from a suspension or revocation of designation  
14           as an authorized delegate by filing a written appeal with the commissioner within  
15           twenty days of the issuance of the order.

16           **13-09-19. Orders to cease and desist.**

- 17           1. If the commissioner determines that an unlicensed person, a licensee, or an  
18           authorized delegate has committed a violation of this chapter or of a rule adopted  
19           or and order issued under this chapter, the commissioner may issue an order to  
20           cease and desist from the violation. The order becomes effective upon service.
- 21           2. The commissioner may issue an order against a licensee to cease and desist from  
22           providing money transmission services through an authorized delegate that is the  
23           subject of a separate order pursuant to section 13-09-18.
- 24           3. An order to cease and desist remains effective and enforceable pending the  
25           completion of any administrative proceeding.
- 26           4. The entity against which a cease and desist order has been issued may appeal the  
27           issuance of the cease and desist order by filing a written appeal with the  
28           commissioner within twenty days of the date the order is served on the licensee or  
29           delegate.
- 30           5. The commissioner may apply to the district court for an appropriate order to protect  
31           the public interest, including a temporary restraining order.

1           **13-09-20. Consent orders.** The commissioner may enter into a consent order at any  
2 time with a person to resolve a matter arising under this chapter. A consent order must be  
3 signed by the person to whom it is issued or by the person's authorized representative, and  
4 must indicate agreement with the terms contained in the order. A consent order may provide  
5 that it does not constitute an admission by a person that this chapter or a rule adopted or an  
6 order issued under this chapter has been violated.

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

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

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

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

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

25           **13-09-23. Administrative procedures.** All administrative proceedings under this  
26 chapter must be conducted in accordance with chapter 28-32.

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

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

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

9           **SECTION 5. EFFECTIVE DATE.** Section 3 of this Act becomes effective on January 2,  
10 2006.