

March 19, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1101

In lieu of the amendments as printed on pages 761-764 of the Senate Journal and the amendments adopted by the Senate as printed on page 833 of the Senate Journal, Engrossed House Bill No. 1101 is amended as follows:

Page 1, line 3, remove the second "and"

Page 1, line 4, after "sections" insert "13-04.1-01.1,"

Page 1, line 4, after the second comma insert "13-04.1-09,"

Page 1, line 4, after the fourth comma insert "and"

Page 1, line 4, after the fifth comma insert "subsection 13 of section 13-09-02, sections"

Page 1, line 4, remove the sixth comma

Page 1, line 5, replace "subsection" with "subsections"

Page 1, line 5, after "1" insert "and 2"

Page 1, line 6, replace "broker licensing requirements and fees" with "brokers"

Page 1, line 6, remove "agency licensing requirements and"

Page 1, line 7, replace "fees" with "agencies"

Page 1, line 7, replace "transmitter licensing requirements" with "transmitters"

Page 1, line 7, remove "originator license"

Page 1, line 8, replace "exemptions" with "originators; and to declare an emergency"

Page 1, after line 9, insert:

**"SECTION 1. AMENDMENT.** Section 13-04.1-01.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-01.1. Definitions.**

As used in this chapter, unless the context or subject matter otherwise requires:

1. "Borrower" means a person or entity that seeks out, or is solicited by a money broker for the purpose of money brokering.
2. "Commissioner" means the commissioner of financial institutions.
3. "Money broker" means a person or entity who, in the ordinary course of business, engages in money brokering.
4. "Money brokering" means the act of arranging or providing loans or leases as a form of financing, or advertising or soliciting either in print, by letter, in person, or otherwise, the right to find lenders or provide loans or leases for persons or businesses desirous of obtaining funds for any purposes.

5. "Net branch" means an office at which a licensed money broker allows a separate person that does not hold a valid North Dakota money brokers license to originate loans under the license of the money broker.
6. "Net branch arrangement" means an arrangement under which a licensed money broker enters an agreement whereby its designated branch manager has the appearance of ownership of the licensee by, among other things, sharing in the profits or losses, establishing, leasing, or renting the branch premises, entering other contractual relationships with vendors such as for telephones, utilities, and advertising, having control of a corporate checkbook, or exercising control of personnel through the power to hire or fire such individuals. A person may be considered to be utilizing a net branch if the net branch agreement requires the branch manager to indemnify the licensee for damages from any apparent, express, or implied agency representation by or through the branch's actions or if the agreement requires the branch manager to issue a personal check to cover operating expenses whether or not funds are available from an operating account of the licensee.
7. "Precomputed loan" means a loan that is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance."

Page 2, after line 18, insert:

**"SECTION 4. AMENDMENT.** Section 13-04.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-09. Prohibited acts and practices.**

It is a violation of this chapter for a person subject to this chapter to knowingly:

1. Make or cause to be made any material false statement or representation in any application or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.
2. Directly or indirectly, employ any device, scheme, or artifice to defraud or mislead borrowers or lenders to defraud any person.
3. Directly or indirectly, make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading in connection with the procurement or promise of procurement of any lender or loan funds.
4. Engage in any unfair or deceptive practice toward any person.
5. Obtain property by fraud or misrepresentation.
6. Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting.

7. Conduct any business covered by this chapter without holding a valid license as required under this chapter, or assist or aid and abet any person in the conduct of business under this chapter without a valid license as required under this chapter.
8. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
9. Fail to comply with this chapter or rules adopted under this chapter, or fail to comply with any other state or federal law, including the rules and regulations thereunder, applicable to any business authorized or conducted under this chapter.
10. Make, in any manner, any false or deceptive statement or representation, including, with regard to the rates, points, or other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising.
11. Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide mortgage licensing system and registry or in connection with any investigation conducted by the commissioner or another governmental agency.
12. Make any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a loan or make any payment, threat, or promise, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property.
13. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
14. Cause or require a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer.
15. Fail to truthfully account for moneys belonging to a party to a loan transaction.
16. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in money broker business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower or potential borrower.
17. Enter any agreement that constitutes a precomputed loan."

Page 3, after line 26, insert:

**"SECTION 10. AMENDMENT.** Subsection 13 of section 13-09-02 of the North Dakota Century Code is amended and reenacted as follows:

13. "Money transmission" means to engage in the business of the sale or issuance of payment instruments, stored value, or of receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, "money transmission" also includes bill payment services not limited to the right to receive payment of any claim for another, but does not include payment processing activities conducted for a merchant under an agency relationship."

Page 4, line 23, replace "Subsection" with "Subsections"

Page 4, line 23, after "1" insert "and 2"

Page 4, line 24, replace "is" with "are"

Page 4, after line 30, insert:

- "2. The following are exempt from this chapter:
  - a. Registered mortgage loan originators, when acting for an entity described in subdivision a of subsection 11 of section 13-10-02 are exempt from this chapter.
  - b. Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member of the individual.
  - c. Any individual who offers or negotiates terms of a residential mortgage loan secured by a dwelling that served as the individual's residence.
  - d. A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator.
  - e. An individual who is an employee of a federal, state, or local government agency or housing finance agency and who acts as a loan originator solely pursuant to that individual's official duties as an employee of the federal, state, or local government agency or housing finance agency in compliance with title 12, Code of Federal Regulations, part 1008, section 1008.103(e)(6).
  - f. An individual who is an employee of a bona fide nonprofit organization who acts as a loan originator solely with respect to that individual's work duties to the bona fide nonprofit organization, and who acts as a loan originator solely with respect to residential mortgage loans with terms that are favorable to the borrower in compliance with title 12, Code of Federal Regulations, part 1008, section 1008.103(e)(7).

Page 5, after line 5, insert:

**"SECTION 15. EMERGENCY.** Section 13 of this Act is declared to be an emergency measure."

Renumber accordingly