

DEBTOR AND CREDITOR RELATIONSHIPS

CHAPTER 137

SENATE BILL NO. 2119

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

AN ACT to create and enact chapter 13-09.1 of the North Dakota Century Code, relating to money transmitters; to amend and reenact subsection 1 of section 6-01-01.1 of the North Dakota Century Code, relating to money transmitters; to repeal chapter 13-09 of the North Dakota Century Code, relating to money transmitters; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. There is created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 13-04.1, 13-05, 13-08, ~~13-09~~13-09.1, 13-10, and 13-11.

SECTION 2. Chapter 13-09.1 of the North Dakota Century Code is created and enacted as follows:

13-09.1-01. Definitions.

For purposes of this chapter, the following definitions shall apply:

1. "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.
2. "Anti-Money Laundering Act of 2020" is the federal act which amended subchapter II of chapter 53 of title 31 United States Code, the legislative framework commonly referred to as the bank secrecy act or BSA. Anti-money laundering and countering the financing of terrorism has the same meaning as the previously used terminology.
3. "Authorized delegate" means a person a licensee designates to engage in money transmission on behalf of the licensee.
4. "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in North Dakota at the end of each day in quarters ending March thirty-first, June thirtieth, September

thirtieth, and December thirty-first, added together and divided by the total number of days in each quarter.

5. "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.
6. "Commissioner" means the commissioner of the department of financial institutions.
7. "Control" means:
 - a. (1) The power to vote, directly or indirectly, at least twenty-five percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee;
 - (2) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or
 - (3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.
 - b. Rebuttable presumption of control.
 - (1) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least ten percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee.
 - (2) A person presumed to exercise a controlling influence as defined by subsection 6 can rebut the presumption of control if the person is a passive investor.
 - c. For purposes of determining the percentage of a person controlled by any other person, the person's interest must be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares the person's home.
8. "Eligible rating" means a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating category modifiers, such as "plus" or "minus" for S&P Global, or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the rating is equal to A- or higher by S&P Global, or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P Global, or the equivalent from any other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating applies when determining whether a security bears an eligible rating.

9. "Eligible rating service" means any nationally recognized statistical rating organization as defined by the United States securities and exchange commission, and any other organization designated by the commissioner by rule or order.
10. "Federally insured depository financial institution" means a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, when such bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits.
11. "In this state" means at a physical location within North Dakota for a transaction requested in person. For a transaction requested electronically or by phone, the provider of money transmission may determine if the person requesting the transaction is "in this state" by relying on other information provided by the person regarding the location of the individual's residential address or a business entity's principal place of business or other physical address location, and any records associated with the person that the provider of money transmission may have that indicate the location, including an address associated with an account.
12. "Individual" means a natural person.
13. "Key individual" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.
14. "Licensee" means a person licensed under this chapter.
15. "Material litigation" means litigation, that according to United States generally accepted accounting principles is significant to a person's financial health and would be required to be disclosed in the person's annual audited financial statements, report to shareholders, or similar records.
16. "Monetary value" means a medium of exchange, whether or not redeemable in money.
17. "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.
18. "Money service business accredited state" means a state agency that is accredited by the conference of state bank supervisors and money transmitter regulators association for money transmission licensing and supervision.
19. "Money transmission" means any of the following:
 - a. Selling or issuing payment instruments to a person located in this state.
 - b. Selling or issuing stored value to a person located in this state.
 - c. Receiving money for transmission from a person located in this state.

The term includes payroll processing services. The term does not include the provision solely of online or telecommunications services or network access.

20. "Multistate licensing process" means any agreement entered by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals.
21. "Nationwide system" means the nationwide multistate licensing system and registry developed by the conference of state bank supervisors and the American association of residential mortgage regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.
22. "Outstanding money transmission obligations" means:

- a. Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee, or escheated in accordance with applicable abandoned property laws; or
- b. Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender, or escheated in accordance with applicable abandoned property laws.

For purposes of this subsection, "in the United States" includes, to the extent applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or a United States military installation that is located in a foreign country.

23. "Passive investor" means a person that:
- a. Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;
- b. Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;
- c. Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and
- d. Either:
- (1) Attests to subdivisions a, b, and c, in a form and in a medium prescribed by the commissioner; or
- (2) Commits to the passivity characteristics of subdivisions a, b, and c, in a written document.

24. "Payment instrument" means a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include stored value or any instrument that:
- a. Is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value; or
 - b. Not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.
25. "Payroll processing services" means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries. The term "payroll processing services" does not include an employer performing payroll processing services on its own behalf or on behalf of its affiliate, or a professional employment organization subject to regulation under applicable state law.
26. "Person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the commissioner.
27. "Receiving money for transmission" or "money received for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.
28. "Stored value" means monetary value representing a claim against the issuer evidenced by an electronic or digital record, which is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The term includes "prepaid access" as defined by title 31, Code of Federal Regulations, Section 1010.100. The term "stored value" does not include a payment instrument or closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.
29. "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

13-09.1-02. Exemptions.

This chapter does not apply to:

1. An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons exempted by this section or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers.
2. A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than money transmission itself, provided to the payor by the payee, provided that:

- a. There exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;
 - b. The payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and
 - c. Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee.
3. A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, provided that the entity:
 - a. Is properly licensed or exempt from licensing requirements under this chapter;
 - b. Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and
 - c. Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient.
 4. The United States or a department, agency, instrumentality, or its agent.
 5. Money transmission by the United States postal service or by an agent of the United States postal service.
 6. A state, county, city, or any other governmental agency or governmental subdivision, or instrumentality of a state, or its agent.
 7. A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to the International Bank Act of 1978 [12 U.S.C. Section 3102], corporation organized pursuant to the Bank Service Company Act [12 U.S.C. Sections 1861-1867], or corporation organized under the Edge Act [12 U.S.C. Sections 611-633].
 8. Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, instrumentality, or on behalf of a state or governmental subdivision, agency, or instrumentality.
 9. A board of trade designated as a contract market under the Commodity Exchange Act [7 U.S.C. Sections 1-25], or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for a board.
 10. A registered futures commission merchant under the federal commodities laws to the extent of its operation as a merchant.

11. A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer.
12. An individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of this chapter when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor.
13. A person expressly appointed as a third-party service provider to, or agent of an entity exempt under subsection 7, solely to the extent that:
 - a. The service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and
 - b. The exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent.
14. A person exempt by regulation or order if the commissioner finds the exemption to be in the public interest and that the regulation of the person is not necessary for the purposes of this chapter.

13-09.1-03. Authority to require demonstration of exemption.

The commissioner may require any person claiming to be exempt from licensing pursuant to section 13-09.1-02 to provide information and documentation to the commissioner demonstrating the person qualifies for any claimed exemption.

13-09.1-04. Implementation.

1. In order to carry out the purposes of this chapter, the commissioner may, subject to the provisions of subsections 1 and 2 of section 13-09.1-05:
 - a. Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing resources, records, or related information obtained under this chapter;
 - b. Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this chapter;
 - c. Accept, from other state or federal government agencies or officials, licensing, examination, or investigation reports made by other state or federal government agencies or officials; and
 - d. Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

2. The commissioner has the broad administrative authority to administer, interpret, and enforce this chapter; promulgate rules or regulations implementing this chapter; and to recover the cost of administering and enforcing this chapter by imposing and collecting proportionate and equitable fees and costs associated with applications, examinations, investigations, and other actions required to achieve the purpose of this chapter.

13-09.1-05. Confidentiality.

1. Except as otherwise provided in subsection 2, all information or reports obtained by the commissioner from an applicant, licensee, or authorized delegate, and all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the commissioner, or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under section 6-01-07.1.
2. The commissioner may disclose information not otherwise subject to disclosure under subsection 1 to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information or where the commissioner finds that the release is reasonably necessary for the protection and interest of the public in accordance with section 6-01-07.1.
3. This section does not prohibit the commissioner from disclosing to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.
4. Information contained in the records of the department of financial institutions that is not confidential and may be made available to the public either on the department of financial institutions' website, upon receipt by the department of financial institutions of a written request, or in the nationwide system must include:
 - a. The name, business address, telephone number, and unique identifier of a licensee;
 - b. The business address of a licensee's registered agent for service;
 - c. The name, business address, and telephone number of all authorized delegates;
 - d. The terms of or a copy of any bond filed by a licensee, provided that confidential information, including prices and fees for bond is redacted; and
 - e. Copies of any nonconfidential final orders of the department of financial institutions relating to any violation of this chapter or regulations implementing this chapter.
5. Imposition of an administrative fine or penalty under this chapter.

13-09.1-06. Supervision.

1. The commissioner may conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by this

chapter or by a rule adopted or order issued under this chapter as reasonably necessary or appropriate to administer and enforce this chapter, regulations implementing this chapter, and other applicable law, including the federal Anti-Money Laundering Act of 2020. The commissioner may:

- a. Conduct an examination either onsite or offsite as the commissioner may reasonably require;
 - b. Conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or of the federal government;
 - c. Accept the examination report of another state agency or an agency of another state or of the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the commissioner; and
 - d. Summon and examine under oath a key individual or employee of a licensee or authorized delegate and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.
2. A licensee or authorized delegate shall provide, and the commissioner shall have full and complete access to, all records the commissioner may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the commissioner, provided, the commissioner may utilize multistate record production standards and examination procedures when the standards will reasonably achieve the requirements of this subsection.
3. Unless otherwise directed by the commissioner, a licensee shall pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's authorized delegates.

13-09.1-07. Networked supervision.

1. To efficiently and effectively administer and enforce this chapter and to minimize regulatory burden, the commissioner may participate in multistate supervisory processes established between states and coordinated through the conference of state bank supervisors, money transmitter regulators association, and affiliates and successors for all licensees that hold licenses in this state and other states. As a participant in multistate supervision, the commissioner will:
 - a. Cooperate, coordinate, and share information with other state and federal regulators in accordance with section 13-09.1-05;
 - b. Enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations the membership of which is made up of state or federal governmental agencies; and
 - c. Cooperate, coordinate, and share information with organizations the membership of which is made up of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with section 13-09.1-05.

2. The commissioner may not waive, and nothing in this section constitutes a waiver of, the commissioner's authority to conduct an examination or investigation or otherwise take independent action authorized by this chapter or a rule adopted or order issued under this chapter to enforce compliance with applicable state or federal law.
3. A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in this chapter.

13-09.1-08. Relationship to federal law.

1. In the event state money transmission jurisdiction is conditioned on a federal law, any inconsistencies between a provision of this chapter and the federal law governing money transmission must be governed by the applicable federal law to the extent of the inconsistency.
2. In the event of any inconsistencies between this chapter and a federal law that governs pursuant to subsection 1, the commissioner may provide interpretive guidance that identifies:
 - a. The inconsistency; and
 - b. The appropriate means of compliance with federal law.

13-09.1-09. License required.

1. A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed under this chapter;
2. Subsection 1 does not apply to:
 - a. A person that is an authorized delegate of a person licensed under this chapter acting within the scope of authority conferred by a written contract with the licensee; or
 - b. A person that is exempt pursuant to section 13-09.1-02 and does not engage in money transmission outside the scope of the exemption.
3. A license issued under section 13-09.1-13 is not transferable or assignable.

13-09.1-10. Consistent state licensing.

1. To establish consistent licensing between North Dakota and other states, the commissioner may:
 - a. Implement all licensing provisions of this chapter in a manner that is consistent with other states that have adopted this chapter or multistate licensing processes; and
 - b. Participate in nationwide protocols for licensing cooperation and coordination among state regulators provided that the protocols are consistent with this chapter.

2. In order to fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with the nationwide system or other entities designated by the nationwide system to enable the commissioner to:
 - a. Collect and maintain records;
 - b. Coordinate multistate licensing processes and supervision processes;
 - c. Process fees; and
 - d. Facilitate communication between North Dakota and licensees or other persons subject to this chapter.
3. The commissioner may utilize the nationwide system for all aspects of licensing in accordance with this chapter, including license applications, applications for acquisitions of control, surety bonds, reporting, criminal history background checks, credit checks, fee processing, and examinations. The commissioner may utilize the nationwide system forms, processes, and functionalities in accordance with this chapter. In the event the nationwide system does not provide functionality, forms, or processes for a provision of this chapter, the commissioner may strive to implement the requirements in a manner that facilitates uniformity with respect to licensing, supervision, reporting, and regulation of licensees which are licensed in multiple jurisdictions.
4. For the purpose of participating in the nationwide system, the commissioner may waive or modify, in whole or in part, by rule, regulation, or order, any or all of the requirements and to establish new requirements as reasonably necessary to participate in the nationwide system.

13-09.1-11. Application for license.

1. Applicants for a license shall apply in a form and in a medium as prescribed by the commissioner. Each form must contain content as set forth by rule, regulation, instruction, or procedure of the commissioner and may be changed or updated by the commissioner in accordance with applicable law in order to carry out the purposes of this chapter and maintain consistency with the nationwide system licensing standards and practices. The application must state or contain, as applicable:
 - a. The legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;
 - b. A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application;
 - c. A description of any money transmission previously provided by the applicant and the money transmission that the applicant seeks to provide in this state;
 - d. A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in money transmission;

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- e. A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;
 - f. Information concerning any bankruptcy or receivership proceedings affecting the licensee or a person in control of a licensee;
 - g. A sample form of contract for authorized delegates, if applicable;
 - h. A sample form of payment instrument or stored value, as applicable;
 - i. The name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission; and
 - j. Any other information the commissioner or the nationwide system reasonably requires with respect to the applicant.
2. If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant shall also provide:
- a. The date of the applicant's incorporation or formation and state or country of incorporation or formation;
 - b. If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;
 - c. A brief description of the structure or organization of the applicant, including any parents or subsidiaries of the applicant, and whether any parents or subsidiaries are publicly traded;
 - d. The legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, in the ten-year period next preceding the submission of the application of each key individual and person in control of the applicant;
 - e. A list of any criminal convictions and material litigation in which a person in control of the applicant that is not an individual has been involved in the ten-year period preceding the submission of the application;
 - f. A copy of audited financial statements of the applicant for the most recent fiscal year and for the two-year period next preceding the submission of the application or, if determined to be acceptable to the commissioner, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the commissioner;
 - g. A certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;
 - h. If the applicant is a publicly traded corporation, a copy of the most recent report filed with the United States securities and exchange commission under section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m];
 - i. If the applicant is a wholly owned subsidiary of:

- (1) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m]; or
- (2) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;
- j. The name and address of the applicant's registered agent in this state; and
- k. Any other information the commissioner reasonably requires with respect to the applicant.
3. A nonrefundable application fee of four hundred fifty dollars and a license fee of four hundred dollars must accompany an application for a license under this section. The license fee must be refunded if the application is denied.
4. The commissioner may waive one or more requirements of subsections 1 and 2 or permit an applicant to submit other information in lieu of the required information.

13-09.1-12. Information requirements for certain individuals.

1. Any individual in control of a licensee or applicant, any individual that seeks to acquire control of a licensee, and each key individual shall furnish to the commissioner through the nationwide system the following items:
 - a. The individual's fingerprints for submission to the federal bureau of investigation and the commissioner for purposes of a national criminal history background check unless the person currently resides outside of the United States and has resided outside of the United States for the last ten years.
 - b. Personal history and experience in a form and in a medium prescribed by the commissioner, to obtain the following:
 - (1) An independent credit report from a consumer reporting agency unless the individual does not have a social security number, in which case, this requirement shall be waived;
 - (2) Information related to any criminal convictions or pending charges; and
 - (3) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.
2. If the individual has resided outside of the United States at any time in the last ten years, the individual also shall provide an investigative background report prepared by an independent search firm that meets the following requirements:
 - a. At a minimum, the search firm shall:

- (1) Demonstrate that it has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and
 - (2) Not be affiliated with or have an interest with the individual it is researching.
- b. At a minimum, the investigative background report must be written in the English language and must contain the following:
- (1) If available in the individual's current jurisdiction of residency, a comprehensive credit report, or any equivalent information obtained or generated by the independent search firm to accomplish the report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;
 - (2) Criminal records information for the past ten years, including felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;
 - (3) Employment history;
 - (4) Media history, including an electronic search of national and local publications, wire services, and business applications; and
 - (5) Financial services-related regulatory history, including money transmission, securities, banking, insurance, and mortgage-related industries.

13-09.1-13. Issuance of license.

1. When an application for an original license under this chapter appears to include all the items, addresses, all of the matters that are required, the application is complete and the commissioner shall promptly notify the applicant in a record of the date on which the application is determined to be complete. The commissioner shall approve or deny the application within one hundred twenty days after the completion date. The commissioner may for good cause extend the application period.
2. A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items, including the criminal background check response from the federal bureau of investigation, and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.
3. When an application is filed and considered complete under this section, the commissioner shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The commissioner may conduct an onsite investigation of the applicant, the reasonable cost of which the applicant must pay. The commissioner shall issue a license to an applicant under this section if the commissioner finds that all of the following conditions have been fulfilled:

- a. The applicant has complied with sections 13-09.1-11 and 13-09.1-12; and
 - b. The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the key individuals and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.
4. If an applicant avails itself or is otherwise subject to a multistate licensing process:
 - a. The commissioner may accept the investigation results of a lead investigative state for the purpose of subsection 3 if the lead investigative state has sufficient staffing, expertise, and minimum standards; or
 - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 3 and the time frames established by agreement through the multistate licensing process, provided, however, that in no case shall the time frame be noncompliant with the application period in subdivision a of subsection 1.
 5. The commissioner shall issue a formal written notice of the denial of a license application within thirty days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within thirty days after receipt of the written notice of the denial by requesting a hearing before the commissioner in accordance with chapter 28-32.
 6. The initial license term shall begin on the day the application is approved. The license shall expire on December thirty-first of the year in which the license term began, unless the initial license date is between November first and December thirty-first, in which instance the initial license term runs through December thirty-first of the following year.

13-09.1-14. Renewal of license.

1. A license under this chapter must be renewed annually.
 - a. An annual nonrefundable renewal fee must be paid by December thirty-first. The fee must equal five hundred dollars or one-fourth of one percent of the money transmission dollar volume in North Dakota for the twelve months ending June thirtieth, whichever is greater. For the transmission of virtual currency as defined in section 13-09.1-44, the fee must equal five hundred dollars or one-fourth of one percent of the average United States dollar equivalent market value of the virtual currency transmitted in North Dakota for the twelve months ending June thirtieth, whichever is greater. The fee may not exceed two thousand five hundred dollars.
 - b. The renewal term must be for a period of one year and begins on January first of each year after the initial license term and expires on December thirty-first of the year the renewal term begins.
2. A licensee shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the commissioner. The renewal report must state or

contain a description of each material change in information submitted by the licensee in its original license application which has not been reported to the commissioner.

3. The commissioner for good cause may grant an extension of the renewal date.
4. The commissioner may utilize the nationwide system to process license renewals provided that such functionality is consistent with this section.
5. A licensee may renew an expired license no later than January thirty-first subject to a late fee of fifty dollars.

13-09.1-15. Maintenance of license.

1. If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the commissioner may suspend or revoke the licensee's license in accordance with the procedures established by this chapter or other applicable state law for such suspension or revocation.
2. An applicant for a money transmission license and a money transmission licensee must at all times meet the requirements in sections 13-09.1-32, 13-09.1-33, and 13-09.1-34.

13-09.1-16. Acquisition of control.

1. Any person, or group of persons acting in concert, seeking to acquire control of a licensee shall obtain the written approval of the commissioner prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to the acquisition of control provisions when that individual becomes a key individual in the ordinary course of business.
2. A person, or group of persons acting in concert, seeking to acquire control of a licensee shall, in cooperation with the licensee:
 - a. Submit an application in a form and in a medium prescribed by the commissioner; and
 - b. Submit a nonrefundable fee of four hundred fifty dollars with the request for approval.
3. Upon request, the commissioner may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the commissioner pursuant to subdivision a of subsection 2 without using the nationwide system.
4. The application required by subdivision a of subsection 2 must include information required by section 13-09.1-12 for any new key individuals that have not previously completed the requirements of section 13-09.1-12 for a licensee.
5. When an application for acquisition of control under this section appears to include all the items and address all of the matters that are required, the application must be considered complete and the commissioner shall promptly notify the applicant in a record of the date on which the application was

- determined to be complete. The commissioner shall approve or deny the application within sixty days after the completion date; or the commissioner may for good cause extend the application period.
6. A determination by the commissioner that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.
 7. When an application is filed and considered complete under subsection 5, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The commissioner shall approve an acquisition of control pursuant to this section if the commissioner finds that all of the following conditions have been fulfilled:
 - a. The requirements of subsections 2 and 4 have been met, as applicable; and
 - b. The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.
 8. If an applicant avails itself or is otherwise subject to a multistate licensing process:
 - a. The commissioner may accept the investigation results of a lead investigative state for the purpose of subsection 7 if the lead investigative state has sufficient staffing, expertise, and minimum standards; or
 - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 7 and the time frames established by agreement through the multistate licensing process.
 9. The commissioner shall issue a formal written notice of the denial of an application to acquire control within thirty days of the decision to deny the application. The commissioner shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the commissioner under this subsection may appeal within thirty days after receipt of the written notice of the denial by requesting a hearing before the commissioner in accordance with chapter 28-32.
 10. The requirements of subsections 1 and 2 do not apply to any of the following:
 - a. A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;
 - b. A person that acquires control of a licensee by devise or descent;

- c. A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;
 - d. A person that is exempt under subsection 7 of section 13-09.1-02;
 - e. A person that the commissioner determines is not subject to subsection 1 based on the public interest;
 - f. A public offering of securities of a licensee or a person in control of a licensee; or
 - g. An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.
11. Persons in subdivisions b, c, d, f, and g of subsection 10 in cooperation with the licensee shall notify the commissioner within fifteen days after the acquisition of control.
12. The requirements of subsections 1 and 2 do not apply to a person that has complied with and received approval to engage in money transmission under this chapter or was identified as a person in control in a prior application filed with and approved by the commissioner or by a money service business accredited state pursuant to a multistate licensing process, provided that:
- a. The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;
 - b. If the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by a money service business accredited state if such rating was given;
 - c. The licensee to be acquired is projected to meet the requirements of sections 13-09.1-32, 13-09.1-33, and 13-09.1-34 after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of sections 13-09.1-32, 13-09.1-33, and 13-09.1-34 after the acquisition of control is completed;
 - d. The licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and
 - e. The person provides notice of the acquisition in cooperation with the licensee and attests to subdivisions a through d in a form and in a medium prescribed by the commissioner.
- If the notice is not disapproved within thirty days after the date on which the notice was determined to be complete, the notice is deemed approved.
13. Before filing an application for approval to acquire control of a licensee a person may request in writing a determination from the commissioner as to whether the person would be considered a person in control of a licensee

upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subsections 1 and 2.

14. If a multistate licensing process includes a determination pursuant to subsection 13 and an applicant avails itself or is otherwise subject to the multistate licensing process:
 - a. The commissioner may accept the control determination of a lead investigative state with sufficient staffing, expertise, and minimum standards for the purpose of subsection 13; or
 - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 13 and the time frames established by agreement through the multistate licensing process.

13-09.1-17. Notice and information requirements for a change of key individuals.

1. A licensee adding or replacing any key individual shall:
 - a. Provide notice in a manner prescribed by the commissioner within fifteen days after the effective date of the key individual's appointment; and
 - b. Provide information as required by section 13-09.1-12 within forty-five days of the effective date.
2. Within ninety days of the date on which the notice provided pursuant to subsection 1 was determined to be complete, the commissioner may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of the licensee.
3. A notice of disapproval must contain a statement of the basis for disapproval and must be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval by requesting a hearing before the commissioner within thirty days after receipt of notice of disapproval in accordance with chapter 28-32.
4. If the notice provided pursuant to subsection 1 is not disapproved within ninety days after the date on which the notice was determined to be complete, the key individual is deemed approved.
5. If a multistate licensing process includes a key individual notice review and disapproval process pursuant to this section and the licensee avails itself or is otherwise subject to the multistate licensing process:
 - a. The commissioner may accept the determination of another state if the investigating state has sufficient staffing, expertise, and minimum standards for the purpose of this section; or
 - b. If North Dakota is a lead investigative state, the commissioner may investigate the applicant pursuant to subsection 2 and the time frames established by agreement through the multistate licensing process.

13-09.1-18. Report of condition.

1. Each licensee shall submit a report of condition within forty-five days of the end of the calendar quarter, or within any extended time as the commissioner may prescribe.
2. The report of condition must include:
 - a. Financial information at the licensee level;
 - b. Nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;
 - c. Permissible investments report;
 - d. Transaction destination country reporting for money received for transmission, if applicable; and
 - e. Any other information the commissioner reasonably requires with respect to the licensee. The commissioner may utilize the nationwide system for the submission of the report required by subsection 1 and may update as necessary the requirements of this section to carry out the purposes of this chapter and maintain consistency with the nationwide system reporting.
3. The information required by subdivision d of subsection 2 may only be included in a report of condition submitted within forty-five days of the end of the fourth calendar quarter.

13-09.1-19. Audited financials.

1. Each licensee shall, within ninety days after the end of each fiscal year, or within any extended time as the commissioner may prescribe, file with the commissioner:
 - a. An audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles; and
 - b. Any other information as the commissioner may reasonably require.
2. The audited financial statements must be prepared by an independent certified public accountant or independent public accountant who is satisfactory to the commissioner.
3. The audited financial statements must include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take any action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

13-09.1-20. Authorized delegate reporting.

1. Each licensee shall submit a report of authorized delegates within forty-five days of the end of the calendar quarter. The commissioner may utilize the nationwide system for the submission of the report required by this subsection provided that such functionality is consistent with the requirements of this section.
2. The authorized delegate report must include, at a minimum, each authorized delegate's:
 - a. Company legal name;
 - b. Taxpayer employer identification number;
 - c. Principal provider identifier;
 - d. Physical address;
 - e. Mailing address;
 - f. Any business conducted in other states;
 - g. Any fictitious or trade name;
 - h. Contact person name, phone number, and electronic mail;
 - i. Start date as licensee's authorized delegate;
 - j. End date acting as licensee's authorized delegate, if applicable;
 - k. Court orders pursuant to section 13-09.1-26; and
 - l. Any other information the commissioner reasonably requires with respect to the authorized delegate.

13-09.1-21. Reports of certain events.

1. A licensee shall file a report with the commissioner within one business day after the licensee has reason to know of the occurrence of any of the following events:
 - a. The filing of a petition by or against the licensee under the federal bankruptcy code [11 U.S.C. Section 101-110], for bankruptcy or reorganization;
 - b. The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors; or
 - c. The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.
2. A licensee shall file a report with the commissioner within three business days after the licensee has reason to know of the occurrence of any of the following events:

- a. A charge or conviction of the licensee or of a key individual or person in control of the licensee for a felony; or
- b. A charge or conviction of an authorized delegate for a felony.

13-09.1-22. Anti-money laundering - Countering the financing of terrorism reports.

A licensee and an authorized delegate shall file all reports required by federal currency reporting, recordkeeping, and suspicious activity reporting requirements as set forth in the federal Anti-Money Laundering Act of 2020 and other federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this section with the appropriate federal agency is deemed compliant with the requirements of this section.

13-09.1-23. Records.

1. A licensee shall maintain the following records, for determining its compliance with this chapter for at least six years:
 - a. A record of each outstanding money transmission obligation sold;
 - b. A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
 - c. Bank statements and bank reconciliation records;
 - d. Records of outstanding money transmission obligations;
 - e. Records of each outstanding money transmission obligation paid within the six-year period;
 - f. A list of the last-known names and addresses of all of the licensee's authorized delegates; and
 - g. Any other records the commissioner reasonably requires by rule.
2. The items specified in subsection 1 may be maintained in any form of record.
3. Records specified in subsection 1 may be maintained outside this state if they are made accessible to the commissioner on seven business days' notice that is sent in a record.
4. All records maintained by the licensee as required in subsections 1 through 3 are open to inspection by the commissioner pursuant to subsection 1 of section 13-09.1-06.

13-09.1-24. Relationship between licensee and authorized delegate.

1. In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.
2. Before a licensee may conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee must:

- a. Adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;
 - b. Enter into a written contract that complies with subsection 4; and
 - c. Conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.
3. An authorized delegate must operate in full compliance with this chapter.
4. The written contract required by subsection 2 must be signed by the licensee and the authorized delegate and, at a minimum, must:
- a. Appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;
 - b. Set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;
 - c. Require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this chapter and regulations implementing this chapter, and relevant provisions of the federal Anti-Money Laundering Act of 2020;
 - d. Require the authorized delegate to remit and handle money and monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;
 - e. Impose a trust on money and monetary value net of fees received for money transmission for the benefit of the licensee;
 - f. Require the authorized delegate to prepare and maintain records as required by this chapter or regulations implementing this chapter, or as reasonably requested by the commissioner;
 - g. Acknowledge that the authorized delegate consents to examination or investigation by the commissioner;
 - h. State the licensee is subject to regulation by the commissioner and that, as part of that regulation, the commissioner may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and
 - i. Acknowledge receipt of the written policies and procedures required under subdivision a of subsection 2.
5. If the licensee's license is suspended, revoked, surrendered, or expired, the licensee must, within five business days, provide documentation to the commissioner that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the

commissioner of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

6. An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property must be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.
7. An authorized delegate may not use a subdelegate to conduct money transmission on behalf of a licensee.

13-09.1-25. Unauthorized activities.

A person shall not engage in the business of money transmission on behalf of a person not licensed under this chapter or not exempt pursuant to section 13-09.1-02. A person that engages in such activity provides money transmission to the same extent as if the person were a licensee, and must be jointly and severally liable with the unlicensed or nonexempt person.

13-09.1-26. Prohibited authorized new delegates - Penalty.

1. The district court of Burleigh County, in an action brought by a licensee, has jurisdiction to grant appropriate equitable or legal relief, including without limitation prohibiting the authorized delegate from directly or indirectly acting as an authorized delegate for any licensee in this state and the payment of restitution, damages, or other monetary relief, if the district court of Burleigh County finds that an authorized delegate failed to remit money in accordance with the written contract required by subsection 2 of section 13-09.1-24 or as otherwise directed by the licensee or required by law.
2. If the district court of Burleigh County issues an order prohibiting a person from acting as an authorized delegate for any licensee pursuant to subsection 1 of section 13-09.1-24, the licensee that brought the action shall report the order to the commissioner within thirty days and shall report the order through the nationwide system within ninety days.
3. An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit such money is guilty of a class C felony.

13-09.1-27. Timely transmission.

1. Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.
2. If a licensee fails to forward money received for transmission in accordance with this section, the licensee must respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.

13-09.1-28. Refunds.

1. This section does not apply to:
 - a. Money received for transmission subject to the federal remittance rule [title 12, Code of Federal Regulation, part 1005, subpart B]; or
 - b. Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.
2. Every licensee shall refund to the sender within ten days of receipt of the sender's written request for a refund of any and all money received for transmission unless any of the following occurs:
 - a. The money has been forwarded within ten days of the date on which the money was received for transmission;
 - b. Instructions have been given committing an equivalent amount of money to the person designated by the sender within ten days of the date on which the money was received for transmission;
 - c. The agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this section;
 - d. The refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur; or
 - e. The refund request does not enable the licensee to:
 - (1) Identify the sender's name and address or telephone number; or
 - (2) Identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.

13-09.1-29. Receipts.

1. This section does not apply to:
 - a. Money received for transmission subject to the federal remittance rule [title 12, Code of Federal Regulations, part 1005, subpart B];
 - b. Money received for transmission that is not primarily for personal, family, or household purposes;
 - c. Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or
 - d. Payroll processing services.

2. For purposes of this section, "receipt" means a paper receipt, electronic record, or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts must be provided in a retainable form.
3. Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.
 - a. The receipt must contain the following information, as applicable:
 - (1) The name of the sender;
 - (2) The name of the designated recipient;
 - (3) The date of the transaction;
 - (4) The unique transaction or identification number;
 - (5) The name of the licensee, the nationwide system unique identification number, the licensee's business address, and the licensee's customer service telephone number;
 - (6) The amount of the transaction in United States dollars;
 - (7) Any fee charged by the licensee to the sender for the transaction; and
 - (8) Any taxes collected by the licensee from the sender for the transaction.
 - b. The receipt required by this section must be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by phone, if other than English.

13-09.1-30. Notice.

Every licensee or authorized delegate shall include on a receipt or disclose on the licensee's website or mobile application the name and phone number of the department of financial institutions and a statement that the licensee's customers can contact the department of financial institutions with questions or complaints about the licensee's money transmission services.

13-09.1-31. Disclosures for payroll processing services.

1. A licensee that provides payroll processing services shall:
 - a. Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and
 - b. Make available worker paystubs or an equivalent statement to workers.
2. Subsection 1 does not apply to a licensee providing payroll processing services where the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures required by subdivision b of subsection 1.

13-09.1-32. Net worth.

1. A licensee under this chapter shall maintain at all times a tangible net worth of the greater of one hundred thousand dollars or three percent of total assets for the first one hundred million dollars, two percent of additional assets for one hundred million dollars to one billion dollars, and one-half percent of additional assets for over one billion dollars.
2. Tangible net worth must be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to subdivision f of subsection 2 of section 13-09.1-11.
3. Notwithstanding the foregoing provisions of this section, the commissioner may, for good cause shown, exempt, in part or in whole, any applicant or licensee from the requirements of this section.

13-09.1-33. Surety bond.

1. An applicant for a money transmission license must provide, and a licensee at all times must maintain, security consisting of a surety bond in a form satisfactory to the commissioner or, with the commissioner's approval, a deposit instead of a bond in accordance with this section.
2. The amount of the required security must be:
 - a. The greater of one hundred thousand dollars or an amount equal to one hundred percent of the licensee's average daily money transmission liability in this state calculated for the most recently completed three-month period, up to a maximum of five hundred thousand dollars; or
 - b. In the event that the licensee's tangible net worth exceeds ten percent of total assets, the licensee shall maintain a surety bond of one hundred thousand dollars.
3. A licensee that maintains the maximum bond amount provided for in subdivision a of subsection 2 may not be required to calculate its average daily money transmission liability in this state for purposes of this section.
4. A licensee may exceed the maximum required bond amount pursuant to subdivision e of subsection 1 of section 13-09.1-35.

13-09.1-34. Maintenance of permissible investments.

1. A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.
2. Except for permissible investments enumerated in subsection 1 of section 13-09.1-35, the commissioner, with respect to any licensee, may by rule or order limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of investments.

3. Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the federal bankruptcy code [11 U.S.C. Section 101-110] for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this subsection may be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.
4. Upon the establishment of a statutory trust in accordance with subsection 3 or when any funds are drawn on a letter of credit pursuant to subdivision d of subsection 1 of section 13-09.1-35, the commissioner shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice must be deemed satisfied if performed pursuant to a multistate agreement or through the nationwide system. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of the purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust must be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.
5. The commissioner by rule or by order may allow other types of investments that the commissioner determines are of sufficient liquidity and quality to be a permissible investment. The commissioner may participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.

13-09.1-35. Types of permissible investments.

1. The following investments are permissible under section 13-09.1-34:
 - a. Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution, and cash equivalents including automated clearinghouse items in transit to the licensee and automated clearinghouse items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated "AAA" by S&P Global, or the equivalent from any eligible rating service.
 - b. Certificates of deposit or senior debt obligations of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section 1813], or as defined under the federal Credit Union Act [12 U.S.C. Section 1781].
 - c. An obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal

and interest by the United States; or an obligation or instrumentality of a state or a governmental subdivision, agency, or instrumentality thereof.

- d. The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the commissioner that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by paragraph 3 of subdivision d of subsection 1.

(1) The letter of credit must:

- (a) Be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that:

[1] Bears an eligible rating or whose parent company bears an eligible rating; and

[2] Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

- (b) Be irrevocable, unconditional, and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

- (c) Not contain reference to any other agreements, documents, or entities, or otherwise provide for any security interest in the licensee; and

- (d) Contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the commissioner in writing by certified or registered mail or courier mail or other receipted means, at least sixty days before any expiration date, that the irrevocable letter of credit will not be extended.

- (2) In the event of any notice of expiration or nonextension of a letter of credit issued under subparagraph d of paragraph 1 of subdivision d of subsection 1, the licensee shall be required to demonstrate to the satisfaction of the commissioner, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with subsection 1 of section 13-09.1-34 upon the expiration of the letter of credit. If the licensee is not able to do so, the commissioner may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with subsection 1 of section 13-09.1-34. Any such draw must be offset against the licensee's outstanding money transmission obligations. The drawn funds must be held in trust by the commissioner or the commissioner's designated agent, to the extent authorized by law, as agent for the benefit of the

purchasers and holders of the licensee's outstanding money transmission obligations.

(3) The letter of credit must provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:

(a) The original letter of credit, including any amendments; and

(b) A written statement from the beneficiary stating that any of the following events have occurred:

[1] The filing of a petition by or against the licensee under the federal bankruptcy code [11 U.S.C. Section 101-110], for bankruptcy or reorganization;

[2] The filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

[3] The seizure of assets of a licensee by a commissioner pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or

[4] The beneficiary has received notice of expiration or nonextension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with subsection 1 of section 13-09.1-34 upon the expiration or nonextension of the letter of credit.

(4) The commissioner may designate an agent to serve on the commissioner's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the commissioner. The commissioner's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of subdivision d of subsection 1 are assigned to the commissioner.

(5) The commissioner may participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including services provided by the nationwide system and state regulatory registry, LLC.

e. One hundred percent of the surety bond or deposit provided for under section 13-09.1-33 that exceeds the average daily money transmission liability in this state.

2. Unless permitted by the commissioner by rule or by order to exceed the limit as set forth herein, the following investments are permissible under section 13-09.1-34 to the extent specified:

- a. Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee's total permissible investments:
- b. Of the receivables permissible under subdivision a of subsection 2, receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed ten percent of the aggregate value of the licensee's total permissible investments; and
- c. The following investments are permissible up to twenty percent per category and combined up to fifty percent of the aggregate value of the licensee's total permissible investments:
 - (1) A short-term, up to six months, investment bearing an eligible rating;
 - (2) Commercial paper bearing an eligible rating;
 - (3) A bill, note, bond, or debenture bearing an eligible rating;
 - (4) United States tri-party repurchase agreements collateralized at one hundred percent or more with United States government or agency securities, municipal bonds, or other securities bearing an eligible rating;
 - (5) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P Global, or the equivalent from any other eligible rating service; and
 - (6) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subdivisions a through c of subsection 1.
- d. Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions are permissible up to ten percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:
 - (1) Has an eligible rating;
 - (2) Is registered under the Foreign Account Tax Compliance Act;
 - (3) Is not located in any country subject to sanctions from the office of foreign assets control; and
 - (4) Is not located in a high-risk or noncooperative jurisdiction as designated by the financial action task force.

13-09.1-36. Suspension and revocation.

1. The commissioner may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

- a. The licensee violates this chapter or a rule adopted or an order issued under this chapter;
 - b. The licensee does not cooperate with an examination or investigation by the commissioner;
 - c. The licensee engages in fraud, intentional misrepresentation, or gross negligence;
 - d. An authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this chapter, as a result of the licensee's willful misconduct or willful blindness;
 - e. The competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, key individual, or responsible person of the authorized delegate indicates that it is not in the public interest to permit the person to provide money transmission;
 - f. The licensee engages in an unsafe or unsound practice;
 - g. The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or
 - h. The licensee does not remove an authorized delegate after the commissioner issues and serves upon the licensee a final order, including a finding that the authorized delegate has violated this chapter.
2. In determining whether a licensee is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the person involved.

13-09.1-37. Suspension and revocation of authorized delegates.

1. The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:
 - a. The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;
 - b. The authorized delegate did not cooperate with an examination or investigation by the commissioner;
 - c. The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;
 - d. The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;
 - e. The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or
 - f. The authorized delegate is engaging in an unsafe or unsound practice.

2. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss, the gravity of the violation of this chapter or a rule adopted or order issued under this chapter, and the previous conduct of the authorized delegate.
3. An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.

13-09.1-38. Orders to cease and desist.

1. If the commissioner determines that a violation of this chapter or of a rule adopted or an order issued under this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon issuance.
2. The commissioner may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the commissioner.
3. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 28-32.
4. An order to cease and desist expires unless the commissioner commences an administrative proceeding pursuant to chapter 28-32 within ten days after it is issued.

13-09.1-39. Consent orders.

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

13-09.1-40. Criminal penalties.

1. A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter or that intentionally makes a false entry or omits a material entry in such a record is guilty of a class C felony.
2. A person that knowingly engages in an activity for which a license is required under this chapter without being licensed under this chapter is guilty of a class C felony.

13-09.1-41. Civil penalties.

The commissioner may assess a civil penalty against a person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed one thousand dollars per day for each day that the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees. Each transaction in violation of this chapter and each day that a violation continues is a separate violation. A civil money penalty collected under this section must be paid to the department of financial institutions and deposited in the financial institutions regulatory fund.

13-09.1-42. Unlicensed persons.

1. If the commissioner has reason to believe that a person has violated or is violating section 13-09.1-09, the commissioner may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section 13-09.1-09.
2. In an emergency, the commissioner may petition the district court of Burleigh County for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.
3. An order to cease and desist becomes effective upon service upon the unlicensed person.
4. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 28-32.

13-09.1-43. Transition period.

This chapter goes into effect August 1, 2023. For current licensees, the effective date is upon license renewal, but no later than December 31, 2023.

13-09.1-44. Definitions.

For the purposes of sections 13-09.1-44 through 13-09.1-49, the following definitions apply:

1. "Control of virtual currency", when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual-currency transaction.
2. "Exchange", used as a verb, means to assume control of virtual currency from or on behalf of a person, at least momentarily, to sell, trade, or convert:
 - a. Virtual currency for money, bank credit, or one or more forms of virtual currency; or
 - b. Money or bank credit for one or more forms of virtual currency.
3. "Transfer" means to assume control of virtual currency from or on behalf of a person and to:
 - a. Credit the virtual currency to the account of another person;
 - b. Move the virtual currency from one account of a person to another account of the same person; or

- c. Relinquish control of virtual currency to another person.
- 4. "United States dollar equivalent of virtual currency" means the equivalent value of a particular virtual currency in United States dollars shown on a virtual-currency exchange based in the United States for a particular date or period specified in this chapter.
- 5. "Virtual currency":
 - a. Means a digital representation of value that:
 - (1) Is used as a medium of exchange, unit of account, or store of value; and
 - (2) Is not money, whether or not denominated in money; and
 - b. Does not include:
 - (1) A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency; or
 - (2) A digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.
- 6. "Virtual-currency administration" means issuing virtual currency with the authority to redeem the currency for money, bank credit, or other virtual currency.
- 7. "Virtual-currency business activity" means:
 - a. Exchanging, transferring, or storing virtual currency or engaging in virtual-currency administration, whether directly or through an agreement with a virtual-currency control-services vendor;
 - b. Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or
 - c. Exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:
 - (1) Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received; or
 - (2) Money or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.
- 8. "Virtual-currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

13-09.1-45. Scope.

1. This chapter does not apply to the exchange, transfer, or storage of virtual currency or to virtual-currency administration to the extent the Electronic Fund Transfer Act of 1978 [15 U.S.C. Sections 1693-1693r], the Securities Exchange Act of 1934 [15 U.S.C. Sections 78a-78oo], the Commodities Exchange Act of 1936 [7 U.S.C. Sections 1-27f], or chapter 10-04 govern the activity.
2. Sections 13-09.1-44 through 13-09.1-49 do not apply to activity by:
 - a. A person that:
 - (1) Contributes only connectivity software or computing power to a decentralized virtual currency, or to a protocol governing transfer of the digital representation of value;
 - (2) Provides only data storage or security services for a business engaged in virtual-currency business activity and does not otherwise engage in virtual-currency business activity on behalf of another person; or
 - (3) Provides only to a person otherwise exempt from this chapter virtual currency as one or more enterprise solutions used solely among each other and has no agreement or relationship with a person that is an end-user of virtual currency;
 - b. A person using virtual currency, including creating, investing, buying or selling, or obtaining virtual currency as payment for the purchase or sale of goods or services, solely:
 - (1) On its own behalf;
 - (2) For personal, family, or household purposes; or
 - (3) For academic purposes;
 - c. A person whose virtual-currency business activity with or on behalf of persons is reasonably expected to be valued, in the aggregate, on an annual basis at five thousand dollars or less, measured by the United States dollar equivalent of virtual currency;
 - d. An attorney to the extent of providing escrow services to a person;
 - e. A title insurance company to the extent of providing escrow services to a person;
 - f. A securities intermediary, as defined in chapter 41-08, or a commodity intermediary, as defined in chapter 41-09, that:
 - (1) Does not engage in the ordinary course of business in virtual-currency business activity with or on behalf of a person in addition to maintaining securities accounts or commodities accounts and is regulated as a securities intermediary or commodity intermediary under federal law, law of this state other than this chapter, or law of another state; and

- (2) Affords a person protections comparable to those set forth in section 13-09.1-10;
- g. A secured creditor under chapter 41-09 or creditor with a judicial lien or lien arising by operation of law on collateral that is virtual currency, if the virtual-currency business activity of the creditor is limited to enforcement of the security interest in compliance with chapter 41-09 or lien in compliance with the law applicable to the lien;
- h. A virtual-currency control-services vendor; or
- i. A person that:
- (1) Does not receive compensation from a person for:
- (a) Providing virtual-currency products or services; or
- (b) Conducting virtual-currency business activity; or
- (2) Is engaged in testing products or services with the person's own funds.
3. The commissioner may determine that a person or class of persons, given facts particular to the person or class, should be exempt from this chapter, whether the person or class is covered by requirements imposed under federal law on a money service business.

13-09.1-46. Conditions precedent to engaging in virtual-currency business activity.

1. A person may not engage in virtual-currency business activity, or hold itself out as being able to engage in virtual-currency business activity, with or on behalf of another person unless the person is:
- a. Licensed in this state by the commissioner pursuant to section 13-09.1-13;
or
- b. Exempt from licensing under section 13-09.1-02.
2. A person that is licensed to engage in virtual-currency business activity is engaged in the business of money transmission and is subject to the requirements of this chapter.

13-09.1-47. Required disclosures.

1. A licensee that engages in virtual-currency business activity shall provide to a person who uses the licensee's products or services the disclosures required by subsection 2 and any additional disclosure the commissioner by rule or order determines reasonably necessary for the protection of persons. The commissioner shall determine by rule or order the time and form required for disclosure. A disclosure required by this section must be made separately from any other information provided by the licensee and in a clear and conspicuous manner in a record the person may keep. A licensee may propose for the commissioner's approval alternate disclosure as appropriate for the licensee's virtual-currency business activity with or on behalf of a person.

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2. Before establishing a relationship with a person, a licensee shall disclose, to the extent applicable to the virtual-currency business activity the licensee will undertake with the person, including:
- a. A schedule of fees and charges the licensee may assess, the manner by which fees and charges will be calculated if they are not set in advance and disclosed, and the timing of the fees and charges;
 - b. Whether the product or service provided by the licensee is covered by:
 - (1) A form of insurance or is otherwise guaranteed against loss by an agency of the United States:
 - (a) Up to the full United States dollar equivalent of virtual currency purchased from the licensee or for control of virtual currency by the licensee as of the date of the placement or purchase, including the maximum amount provided by insurance under the federal deposit insurance corporation, the national credit union administration, or otherwise available from the securities investor protection corporation; or
 - (b) If not provided at the full United States dollar equivalent of virtual currency purchased from the licensee or for control of virtual currency by the licensee, the maximum amount of coverage for each person expressed in the United States dollar equivalent of the virtual currency; or
 - (2) Private insurance against theft or loss, including cyber theft or theft by other means;
 - c. The irrevocability of a transfer or exchange and any exception to irrevocability;
 - d. A description of:
 - (1) Liability for an unauthorized, mistaken, or accidental transfer or exchange;
 - (2) The person's responsibility to provide notice to the licensee of the transfer or exchange;
 - (3) The basis for any recovery by the person from the licensee;
 - (4) General error-resolution rights applicable to the transfer or exchange; and
 - (5) The method for the person to update the person's contact information with the licensee;
 - e. That the date or time when the transfer or exchange is made and the person's account is debited may differ from the date or time when the person initiates the instruction to make the transfer or exchange;

- f. Whether the person has a right to stop a preauthorized payment or revoke authorization for a transfer and the procedure to initiate a stop-payment order or revoke authorization for a subsequent transfer;
 - g. The person's right to receive a receipt, trade ticket, or other evidence of the transfer or exchange;
 - h. The person's right to at least thirty days' notice of a change in the licensee's fee schedule, other terms and conditions of operating its virtual-currency business activity with the person and the policies applicable to the person's account; and
 - i. That virtual currency is not money.
3. Except as otherwise provided in subsection 4, at the conclusion of a virtual-currency transaction with or on behalf of a person, a licensee shall provide the person a confirmation in a record which contains:
 - a. The name and contact information of the licensee, including information the person may need to ask a question or file a complaint;
 - b. The type, value, date, precise time, and amount of the transaction; and
 - c. The fee charged for the transaction, including any charge for conversion of virtual currency to money, bank credit, or other virtual currency.
4. If a licensee discloses it will provide a daily confirmation in the initial disclosure under subsection 3, the licensee may elect to provide a single, daily confirmation for all transactions with or on behalf of a person on that day instead of a per-transaction confirmation.

13-09.1-48. Property interests and entitlement to virtual currency.

1. A licensee that has control of virtual currency for one or more persons shall maintain control of virtual currency in each type of virtual currency sufficient to satisfy the aggregate entitlements of the persons to the type of virtual currency.
2. If a licensee violates subsection 1, the property interests of the persons in the virtual currency are pro rata property interests in the type of virtual currency to which the persons are entitled, without regard to the time the persons became entitled to the virtual currency or the licensee obtained control of the virtual currency.
3. The virtual currency referred to in this section is:
 - a. Held for the persons entitled to the virtual currency;
 - b. Not property of the licensee;
 - c. Not subject to the claims of creditors of the licensee; and
 - d. Deemed a permissible investment under this chapter.

13-09.1-49. Additional requirement and clarifications for virtual-currency business activities.

1. A licensee engaged in virtual-currency business activities must comply with all provisions of this chapter to the extent applicable to the licensee's activities.
2. A licensee engaged in virtual-currency business activities may include in its calculation of tangible net worth virtual currency measured by the average value of the virtual currency in United States dollar equivalent over the prior six months, excluding control of virtual currency for a person entitled to the protections pursuant to section 13-09.1-48.
3. A licensee shall maintain, for all virtual-currency business activity with or on behalf of a person five years after the date of the activity, a record of:
 - a. Each transaction of the licensee with or on behalf of the person or for the licensee's account in this state, including:
 - (1) The identity of the person;
 - (2) The form of the transaction;
 - (3) The amount, date, and payment instructions given by the person; and
 - (4) The account number, name, and United States postal service address of the person, and, to the extent feasible, other parties to the transaction;
 - b. The aggregate number of transactions and aggregate value of transactions by the licensee with or on behalf of the person and for the licensee's account in this state, expressed in United States dollar equivalent of virtual currency for the previous twelve calendar months;
 - c. Each transaction in which the licensee exchanges one form of virtual currency for money or another form of virtual currency with or on behalf of the person;
 - d. A general ledger posted at least monthly that lists all assets, liabilities, capital, income, and expenses of the licensee;
 - e. Each business-call report the licensee is required to create or provide to the department of financial institutions or the nationwide system;
 - f. Bank statements and bank reconciliation records for the licensee and the name, account number, and United States postal service address of each bank the licensee uses in the conduct of its virtual-currency business activity with or on behalf of the person;
 - g. A report of any dispute with the person; and
 - h. A report of any virtual-currency business activity transaction with or on behalf of a person which the licensee was unable to complete.
4. A licensee shall maintain records required by subsection 3 in a form that enables the commissioner to determine whether the licensee is in compliance with this chapter, any court order, and law of this state other than this chapter.

SECTION 3. REPEAL. Chapter 13-09 of the North Dakota Century Code is repealed.

Approved March 15, 2023

Filed March 16, 2023

CHAPTER 138

SENATE BILL NO. 2090

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

AN ACT to create and enact chapter 13-12 of the North Dakota Century Code, relating to residential mortgage lenders; to amend and reenact sections 13-04.1-01, 13-04.1-02.1, 13-04.1-03, 13-04.1-08, 13-04.1-08.1, 13-04.1-09, 13-04.1-09.3, 13-04.1-10, 13-04.1-13, 13-04.1-14, and 13-04.1-17 of the North Dakota Century Code, relating to money brokers; to repeal section 13-04.1-16 of the North Dakota Century Code, relating to call reports; to provide a penalty; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 13-04.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-01. Administration.

The department of financial institutions shall use its facilities to administer and enforce this chapter. ~~Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter.~~ The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

SECTION 2. AMENDMENT. Section 13-04.1-02.1 of the North Dakota Century Code is amended and reenacted as follows:

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

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. Insurance companies;
5. Residential mortgage lenders licensed under chapter 13-12;
6. Individuals licensed under chapter 13-10 solely pursuant to the individual's official duties as a mortgage loan originator;

- 6-7. State or federal agencies and employees of state or federal agencies solely pursuant to the individual's official duties as an employee of the state or federal agency;
- 7-8. Institutions chartered by the farm credit administration;
- 8-9. Trust companies;
- 9-10. Any other person or business regulated and licensed to lend money by the state of North Dakota;
- 10-11. A real estate broker, broker, or a real estate salesperson as defined in section 43-23-06.1 in the brokering of loans to assist a person in obtaining financing for real estate sold by the real estate broker, broker, or real estate salesperson;
- 11-12. Any person, retail seller, or manufacturer providing or arranging financing for its own property or inventory held as a normal course of business, or to leases on any real property;
- 12-13. A bona fide pawnbrokering transaction made by a pawnbroker licensed by a North Dakota county or municipality;
14. A certified development corporation that qualifies as a nonprofit entity under section 501(c)(3) of the federal Internal Revenue Code [26 U.S.C. 501(c)(3)] in the offers of:
- a. Loan products primarily limited to the small business administration, United States department of agriculture, or other government loan products; or
 - b. Nongovernmental loan products that are limited to loans to promote community development or home ownership, and these loans are offered with favorable terms including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance; or
- 13-15. A nonprofit corporation that qualifies as a nonprofit entity under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)] which is not primarily in the business of soliciting or brokering loans, if the nonprofit corporation makes five or fewer loans in a given calendar year, makes these loans to promote community development or home ownership, and offers these loans on favorable terms, including an interest rate at or below the wall street journal prime rate and loan fees of less than a quarter percent of the loan origination balance.

SECTION 3. AMENDMENT. Section 13-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-03. Application for money broker license.

Every application for a money broker license or branch registration, or for a renewal thereof, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department shall deem necessary and proper. A branch registration that constitutes a net branch or net branching arrangement is prohibited. The department may further

require any ~~application~~applicant to provide additional information which is not requested on the application form. The applicant must register with the North Dakota secretary of state if so required.

SECTION 4. AMENDMENT. Section 13-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-08. Revocation of license - Suspension of license - Surrender of license.

1. The commissioner may issue ~~and serve~~ upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
 - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
 - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
 - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.
 - d. The licensee has failed to maintain the required bond.
 - e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If no hearing is requested within twenty days of the date the order is served upon the licensee, ~~or if the order is final.~~ If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order shall be final suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, ~~upon written notice,~~ enter an order suspending such license for a period not exceeding the time required to serve upon the licensee written notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender the licensee's license by ~~delivering it to~~ providing the department of financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

SECTION 5. AMENDMENT. Section 13-04.1-08.1 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-08.1. Suspension and removal of money broker officers and employees.

1. The commissioner of financial institutions may issue ~~and serve~~ upon a current or former money broker officer or employee and upon the licensee involved an order stating:
 - a. That the current or former officer or employee is ~~willfully~~ engaging or has ~~willfully~~ engaged in any of the following conduct:
 - (1) Violating a law, rule, order, or written agreement with the commissioner.
 - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity.
 - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
 - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a ~~money broker~~financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served, ~~or if the order shall be final. If~~ a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order shall be final suspending or removing the current or former employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon ~~service of the final order~~issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a money broker pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the money broker, or both. The order is effective immediately upon ~~service~~issuance of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

6. ~~Under this section, a person engages in conduct "willfully" if the person acted intentionally in the sense that the person was aware of what the person was doing.~~

SECTION 6. 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~~multistate 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.

SECTION 7. AMENDMENT. Section 13-04.1-09.3 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges and fees necessary for the extension of credit incurred at the time of origination.
2. Additional charges may be assessed for nonpayment or late payment as agreed to by the parties within the loan contract. However, a licensee may not contract for or receive charges in excess of five percent of the payment. For loans originated for fifty thousand dollars or less, these charges may not exceed twenty dollars for each nonpayment or late payment. The charge may be collected at the time of the default or any time after default. However, if the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent payment, a charge may not be made for the subsequent default. ~~This restriction does not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; and the identifiable charge or premium for insurance provided for by rule.~~
3. The restrictions outlined in subsections 1, 2, and 4 do not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; or the identifiable charge or premium for insurance provided for by rule.

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

SECTION 8. AMENDMENT. Section 13-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-10. Orders and injunctions.

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order which is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public; provided, however, that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if such request is made within ten days after receipt of the order. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom.
2. Apply to the district court of ~~any county in this state~~ Burleigh County, for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

SECTION 9. AMENDMENT. Section 13-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-13. Penalty.

Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed ~~five thousand dollars per violation upon a person or agency who willfully~~ one hundred thousand dollars for each occurrence and one thousand dollars per day for each day the violation continues after issuance of the order against any person who violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the ~~state treasurer~~ department of financial institutions and deposited in the financial institutions regulatory fund.

SECTION 10. AMENDMENT. Section 13-04.1-14 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-14. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide ~~mortgage~~ mortgage multistate licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to such information or material, continue to apply to such information or material after the information or material has been disclosed to the nationwide ~~mortgage~~ mortgage multistate licensing system and registry. Such information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
 - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - b. Subpoena or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide ~~mortgage~~ mortgage multistate licensing system and registry with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a

privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.

5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

SECTION 11. AMENDMENT. Section 13-04.1-17 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-17. Report to nationwide ~~mortgage~~multistate licensing system and registry.

Notwithstanding state privacy law, the commissioner shall report regularly violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide ~~mortgage~~multistate licensing system and registry subject to the provisions contained in section 13-10-15.

SECTION 12. Chapter 13-12 of the North Dakota Century Code is created and enacted as follows:

13-12-01. Administration.

The department of financial institutions shall administer and enforce this chapter. The department may promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

13-12-02. Definitions.

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

1. "Borrower" means an individual who seeks out, or is solicited by a residential mortgage lender for the purpose of residential mortgage lending.
2. "Commissioner" means the commissioner of the department of financial institutions.
3. "Net branch" means an office at which a licensed residential mortgage lender allows a separate person that does not hold a valid North Dakota residential mortgage lender license to originate loans under the license of the residential mortgage lender.
4. "Net branch arrangement" means an arrangement under which a licensed residential mortgage lender 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.

5. "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.
6. "Residential mortgage lender" means a person that, in the ordinary course of business, engages in residential mortgage lending.
7. "Residential mortgage lending" means the act of arranging or providing residential mortgage loans 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 residential mortgage loans for a person.
8. "Residential mortgage loan" means residential mortgage loan as defined in subsection 12 of section 13-10-02.
9. "Residential real estate" means residential real estate as defined in subsection 13 of section 13-10-02.

13-12-03. Residential mortgage lender license required.

Except as otherwise provided, a person other than a residential mortgage lender licensed and authorized under this chapter may not engage in residential mortgage lending in the state without a residential mortgage lender license issued by the commissioner. A person engages in residential mortgage lending if the borrower resides in North Dakota.

13-12-04. Entities exempted from licensing requirements.

This chapter does not apply to:

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

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

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

13-12-05. Application for residential mortgage lender license.

Every application or renewal for a residential mortgage lender license or branch registration must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department deems necessary and proper. A branch registration that constitutes a net branch or net branching arrangement is prohibited. The department may further require any applicant to provide additional information which is not requested on the application form. The applicant must register with the secretary of state, if so required.

13-12-06. Fee to accompany application for residential mortgage lender license.

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-12-05. At the time of making the application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for the annual license fee. In addition, the applicant must pay a fifty dollar annual fee for each branch location registered to engage in residential mortgage lending in this state. Fees must be deposited in the financial institutions regulatory fund.

13-12-07. Surety bond required.

1. Each licensee shall maintain a surety bond in an amount not less than fifty thousand dollars. The surety bond must be in a form prescribed by the commissioner.
2. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond.
3. Immediately upon recovery of any action on the bond, the licensee shall file a new bond.

13-12-08. Minimum net worth required.

A minimum net worth must be continuously maintained by every licensee in accordance with this section.

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

13-12-09. Expiration and renewal of license.

All licenses expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the license, the department may charge an additional fee of fifty dollars for the renewal of the license. A residential mortgage lender license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a residential mortgage lender license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The residential mortgage lender license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

13-12-10. Powers of the department of financial institutions.

The department of financial institutions may:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be

conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Establish codes of ethical conduct for licensees.

13-12-11. Manner in which records to be kept.

Every residential mortgage lender licensed under this chapter shall keep a record of all sums collected by the residential mortgage lender and of all loans completed as a result of the lender's efforts for a period of six years from the date of last entry. The records of a licensee may be maintained electronically provided they can be reproduced upon request by the department of financial institutions and within the required statutory time period provided in this section. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

13-12-12. Revocation of license - Suspension of license - Surrender of license.

1. The commissioner may issue upon any licensee an order suspending or revoking a licensee's license if the commissioner finds:
 - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
 - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
 - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue a license.
 - d. The licensee has failed to maintain the required bond.
 - e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served upon the licensee, the order is final. If a hearing is held and the commissioner finds the record so warrants, the commissioner may enter a final order. The final order suspending or revoking the license is final.

4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of the license pending investigation, it may enter an order suspending the license for a period not exceeding the time required to serve upon the licensee written notice plus sixty days, pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender the licensee's license by providing the department of financial institutions with written notice of its surrender, but a surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

13-12-13. Suspension and removal of residential mortgage lender officers and employees.

1. The commissioner may issue and serve upon a current or former residential mortgage lender officer or employee and upon the licensee involved an order stating:
 - a. That the current or former officer or employee is engaging or has engaged in any of the following conduct:
 - (1) Violating a law, rule, order, or written agreement with the commissioner.
 - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving lending activity.
 - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
 - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a residential mortgage lender.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order suspending or removing the current or former employee. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer or employee suspended or removed from employment and participation within the conduct or the affairs of a residential mortgage lender pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.
5. When a current or former officer, employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or

federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the residential mortgage lender, or both. The order is effective immediately upon issuance and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

13-12-14. Prohibited acts and practices.

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

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 or rule, 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 make any omission of material fact in connection with any information or reports filed with a governmental agency or the nationwide multistate 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 mortgage lending 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.

13-12-15. Advance fees prohibited - Exception.

A residential mortgage lender may not take any type of fee in advance before the funding of the loan, unless the residential mortgage lender is licensed under this chapter. A residential mortgage lender licensed under this chapter may accept an advance expense deposit which may not exceed the residential mortgage lender's good-faith estimate of the actual cost of any appraisal or credit reports performed by an independent appraiser or independent credit reporting agency and required by the originating lender for the evaluation of the potential borrower's loan application. Any expense deposit that exceeds the actual cost of any appraisal or credit report must be promptly refunded to the borrower or credited to the borrower's account at the time of the loan closing. A residential mortgage lender may also charge a fee in advance to lock an interest rate.

13-12-16. Maximum charges permitted for loans - Installment payments - Permitted charges.

1. Interest charges and other fees must be set at rates, amounts, and terms as agreed to by the parties within the loan contract. A licensee may not contract for or receive finance charges pursuant to a loan in excess of an annual rate of thirty-six percent, including all charges and fees necessary for the extension of credit incurred at the time of origination.
2. Additional charges may be assessed for nonpayment or late payment as agreed to by the parties within the loan contract. A licensee may not contract for or receive charges in excess of five percent of the payment. For loans

originated for fifty thousand dollars or less, these charges may not exceed twenty dollars for each nonpayment or late payment. The charge may be collected at the time of the default or any time after default. If the charge is taken out of any payment received after a default occurs and if the deduction results in the default of a subsequent payment, a charge may not be made for the subsequent default.

3. The restrictions outlined in subsections 1 and 2 do not apply to court costs; lawful fees for the filing, recording, or releasing in any public office of any instrument securing a loan; and the identifiable charge or premium for insurance provided for by rule.

13-12-17. Orders and injunctions.

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order which is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public, provided that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if a request is made within ten days after receipt of the order. A hearing to appeal must be held in accordance with chapter 28-32.
2. Apply to the district court of Burleigh County for an injunction restraining the person and the agents, employees, partners, officers, and directors of the person from continuing the act, practice, or transaction of engaging or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

13-12-18. Investigations, subpoenas, and examination authority.

In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. The department of financial institutions in its discretion:
 - a. May make a public or private investigation or examination within or outside this state as it deems necessary to determine whether a person has violated or is about to violate any provision of this chapter or rule, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation or examination fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by

- this section. Fees must be deposited in the financial institutions regulatory fund.
- b. May require or permit any person to file a statement in writing, under oath, or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated or examined.
 - c. May publish information concerning any violation of this chapter or any rule or order under this chapter.
2. For the purpose of any investigation, examination, or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
 3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the department of financial institutions, may issue to the person an order requiring the person to appear before the department there to produce documentary evidence if so ordered or to give evidence touching the matter in question under investigation or examination. Failure to obey the order of the court may be punished by the court as a contempt of court.
 4. A person is not excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of a person may tend to incriminate the person or subject the person to a penalty forfeiture. An individual may not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
 5. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:
 - a. Criminal, civil, and administrative history information, including nonconviction data;
 - b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act [15 U.S.C. 1681 et seq.]; and
 - c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.

6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.
7. Upon request, each licensee or person subject to this chapter shall make available to the commissioner the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books, records, and interviews of the officers, principals, mortgage loan originators, employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.
8. Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:
 - a. Accounting compilations;
 - b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
 - c. Other information deemed necessary to carry out the purposes of this section.
9. In making any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, a person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct its ordinary business affairs.
10. In order to carry out the purposes of this section, the commissioner may:
 - a. Retain accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;
 - c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;

- d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
 - e. Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.
11. The authority of this section remains in effect, whether a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without such authority.
 12. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

13-12-19. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

13-12-20. Remedies not exclusive.

The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

13-12-21. Penalty.

A person or company violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty not to exceed one hundred thousand dollars for each occurrence and one thousand dollars per day for each day the violation continues after issuance of the order against any person or company who violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the department of financial institutions and deposited in the financial institutions regulatory fund.

13-12-22. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in the Secure and Fair Enforcement for Mortgage Licensing Act [Public Law 110-289, section 1512, 12 U.S.C. 5111, et seq.], the requirements under any federal law, chapter 44-04, or section

6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide multistate licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. The information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.

2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
 - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - b. Subpoena or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide multistate licensing system and registry with respect to such information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

13-12-23. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner.

13-12-24. Call reports.

Each licensee shall submit to the nationwide multistate licensing system and registry reports of condition which must be in the form and must contain the information as the nationwide multistate licensing system and registry may require.

13-12-25. Report to nationwide multistate licensing system and registry.

Notwithstanding state privacy law, the commissioner regularly shall report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide multistate licensing system and registry subject to the provisions contained in section 13-12-22.

13-12-26. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all residential mortgage lenders licensed under this chapter.

13-12-27. Notice to borrower regarding regulation by the department of financial institutions.

The written contract must contain the following notice in capital letters: NOTICE: RESIDENTIAL MORTGAGE LENDERS ARE LICENSED AND REGULATED BY THE NORTH DAKOTA DEPARTMENT OF FINANCIAL INSTITUTIONS. THE DEPARTMENT OF FINANCIAL INSTITUTIONS HAS NOT PASSED ON THE MERITS OF THE CONTRACT AND LICENSING DOES NOT CONSTITUTE AN APPROVAL OF THE TERMS OR OF THE LENDERS ABILITY TO ARRANGE ANY LOAN. COMPLAINTS REGARDING THE SERVICES OF RESIDENTIAL MORTGAGE LENDERS SHOULD BE DIRECTED TO THE DEPARTMENT OF FINANCIAL INSTITUTIONS.

SECTION 13. REPEAL. Section 13-04.1-16 of the North Dakota Century Code is repealed.

SECTION 14. APPLICATION. Residential mortgage lenders holding a valid North Dakota money brokers license as of August 1, 2023, are not required to obtain a residential mortgage lenders license as required in section 13-12-03 until December 31, 2023. All other provisions of this chapter are applicable to residential mortgage lenders as of August 1, 2023.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 139

HOUSE BILL NO. 1068

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

AN ACT to create and enact chapter 13-13 of the North Dakota Century Code, relating to residential mortgage loan servicers; to provide a penalty; and to provide an appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 13-13 of the North Dakota Century Code is created and enacted as follows:

13-13-01. Administration.

The department of financial institutions shall administer and enforce this chapter. The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

13-13-02. Definitions.

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

1. "Allowable assets for liquidity" means those assets that may be used to satisfy the liquidity requirements in this chapter, including unrestricted cash and cash equivalents and unencumbered investment grade assets held for sale or trade, which include mortgage-backed securities, obligations of government-sponsored enterprises, and United States treasury obligations.
2. "Board of directors" means the formal body established by an applicant or licensee that is responsible for corporate governance and compliance with this chapter.
3. "Commissioner" means the commissioner of the department of financial institutions.
4. "Corporate governance" means the structure of the institution and how it is managed, including the corporate rules, policies, processes, and practices used to oversee and manage the institution.
5. "Government-sponsored enterprises" means the federal national mortgage association (fannie mae), the government national mortgage association (ginnie mae), and the federal home loan mortgage corporation (freddie mac).

6. "Interim serviced prior to sale" means the activity of collecting a limited number of contractual mortgage payments immediately after origination on loans held for sale but prior to the loans being sold into the secondary market.
7. "Internal audit" means the internal activity of performing independent, objective assurance and consulting to evaluate and improve the effectiveness of company operations, risk management, internal controls, and governance processes.
8. "Large servicer" means a residential mortgage servicer with servicing portfolios of two thousand or more one-to-four unit residential mortgage loans serviced or subserviced for others, excluding whole loans owned, and loans being "interim" serviced prior to sale as of the most recent calendar year end, reported in the nationwide multistate licensing system and registry mortgage call report, and that operates in two or more states, districts, or territories of the United States either currently or as of the prior calendar year end. For entities within a holding company or affiliated group of companies' applicability must be at the large servicer level. This definition excludes servicers solely owning or conducting reverse mortgage servicing, or both, or the reverse mortgage portfolio administered by the large servicer.
9. "Lender" means any person that extends money to a borrower with the expectation of being repaid.
10. "Liquidity risk" means the potential that the servicer will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures.
11. "Mortgage call report" means the quarterly or annual report of residential real estate loan origination, servicing, and financial information completed by companies licensed in the nationwide multistate licensing system and registry.
12. "Mortgage servicing rights" refers to the contractual right to service residential mortgage loans on behalf of the owner of the associated mortgage in exchange for specified compensation in accordance with the servicing contract.
13. "Mortgage servicing rights investor" means entities that invest in and own mortgage servicing rights and rely on subservicers to administer the loans on their behalf. Mortgage servicing rights investors are often referred to as master servicers.
14. "Nationwide multistate licensing system and registry" means the registry developed by the conference of state bank supervisors and the American association of residential mortgage regulators and owned and operated by the state regulatory registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries.
15. "Operating liquidity" means the funds necessary to perform normal business operations, such as payment of rent, salaries, interest expense, and other typical expenses associated with operating the entity.

16. "Records" means books, accounts, papers, records, and files, no matter in what format they are kept, which are used in conducting business under this chapter.
17. "Residential mortgage loan servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any federally related mortgage loan, including amounts for escrow accounts under section 10 of the Real Estate Settlement Procedures Act [12 U.S.C. 2609], and making the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.
18. "Reverse mortgage" means a loan collateralized by real estate, typically made to borrowers over fifty-five years of age, which does not require contractual monthly payments and is typically repaid upon the death of the borrower through the sale of the home or refinance by the heirs.
19. "Risk management assessment" means the functional evaluations performed under the risk management program and reports provided to the board of directors under the relevant governance protocol.
20. "Risk management program" means the policies and procedures designed to identify, measure, monitor, and mitigate risk sufficient for the level of sophistication of the residential mortgage loan servicer.
21. "Service or servicing a loan" means on behalf of the lender or investor of a residential mortgage loan:
 - a. Collecting or receiving payments on existing obligations due and owing to the lender or investor, including payments of principal, interest, escrow amounts, and other amounts due;
 - b. Collecting fees due to the servicer;
 - c. Working with the borrower and the licensed lender or servicer to collect data and make decisions necessary to modify certain terms of those obligations either temporarily or permanently;
 - d. Otherwise finalizing collection through the foreclosure process; or
 - e. Servicing a reverse mortgage loan.
22. "Servicer" means the entity performing the routine administration of residential mortgage loans on behalf of the owner or owners of the related mortgages under the terms of a servicing contract.
23. "Servicing liquidity or liquidity" means the financial resources necessary to manage liquidity risk arising from servicing functions required in acquiring and financing mortgage servicing rights, hedging costs, including margin calls, associated with the mortgage servicing rights asset and financing facilities, and advances or costs of advance financing for principal, interest, taxes, insurance, and any other servicing-related advances.

24. "Subservicer" means the entity performing the routine administration of residential mortgage loans as agent of a servicer or mortgage servicing rights investor under the terms of a subservicing contract.
25. "Tangible net worth" means total equity less receivables due from related entities, less goodwill, and other intangibles less pledged assets.
26. "Whole loans" means loans where a mortgage and the underlying credit risk is owned and held on the balance sheet of the entity with all ownership rights.

13-13-03. Residential mortgage loan servicing license required.

Except as otherwise provided, a person other than a residential mortgage loan servicer licensed and authorized under this chapter may not engage in residential mortgage loan servicing, either as a servicer, subservicer, or mortgage servicing rights investor, in the state without a residential mortgage loan servicer license issued by the commissioner. A person engages in residential mortgage loan servicing in the state if the borrower resides in North Dakota.

13-13-04. Entities exempted from licensing requirements.

This chapter does not apply to:

1. Banks;
2. Credit unions;
3. Savings and loan associations;
4. State or federal housing finance agencies;
5. Institutions chartered by the farm credit administration; or
6. Not-for-profit mortgage servicers.

13-13-05. Application for residential mortgage loan servicer license.

Every application for a residential mortgage loan servicer license, branch registration, or a renewal, must be made upon forms designed and furnished by the department of financial institutions and must contain any information which the department deems necessary and proper. The department may further require any applicant to provide additional information that is not requested on the application form. The applicant shall register with the North Dakota secretary of state if so required.

13-13-06. Fee to accompany application for residential mortgage loan servicer license.

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location or locations where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, and will provide the basis for the investigation and findings contemplated under section 13-13-05. At the time of making an application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for a license fee.

13-13-07. Financial condition.

This section applies to large servicers as defined in subsection 9 of section 13-13-02.

1. A large servicer must maintain capital and liquidity in compliance with this section.
2. For the purposes of complying with the capital and liquidity requirements of this section, all financial data must be determined in accordance with generally accepted accounting principles.
3. A large servicer that meets the federal housing finance agency eligibility requirements for enterprise single-family seller or servicers for capital, net worth ratio, and liquidity, regardless of whether the servicer is approved for government-sponsored enterprises servicing, meets the requirements of subsections 1 and 2 of this section. Large servicers shall maintain written policies and procedures implementing the capital and servicing liquidity requirements of this section. Such policies and procedures must include a sustainable written methodology for satisfying the requirements of this subsection and be available to the commissioner upon request.
4. Large servicers shall maintain sufficient allowable assets for liquidity in addition to the amounts required for servicing liquidity to cover normal business operations. Large servicers shall have sound cash management and business operating plans that match the size and sophistication of the institution to ensure normal business operations. Management must develop, establish, and implement plans, policies, and procedures for maintaining operating liquidity sufficient for the ongoing needs of the institution. The plans, policies, and procedures must contain sustainable, written methodologies for maintaining sufficient operating liquidity and be available to the commissioner upon request.

13-13-08. Financial condition for applicant or licensee not subject to section 13-13-07.

1. An applicant or licensee not subject to section 13-13-07 which is operating as an approved servicer by one or more government-sponsored enterprises must maintain liquidity to include operating reserves, and tangible net worth that meet the standards set by the entity. If approved by more than one entity, the applicant or licensee must meet the highest standard of the entities for which they are approved. Applicants or licensees with a combined portfolio are subject to this standard.
2. An applicant or licensee with a portfolio of loans not subject to any government-sponsored enterprises requirements must maintain liquidity to include operating reserves of 0.00035 times the unpaid principal balance of the portfolio and maintain a minimum tangible net worth as set forth in paragraph a of this subsection or, in lieu of the tangible net worth, maintain a one million dollar surety bond.

a. Minimum tangible net worth, based on nationwide portfolio:

0-199 loans \$100,000

200-299 loans \$200,000

<u>300-399 loans</u>	<u>\$300,000</u>
<u>400-499 loans</u>	<u>\$400,000</u>
<u>500-599 loans</u>	<u>\$500,000</u>
<u>600-699 loans</u>	<u>\$600,000</u>
<u>700-799 loans</u>	<u>\$700,000</u>
<u>800-899 loans</u>	<u>\$800,000</u>
<u>900-999 loans</u>	<u>\$900,000</u>
<u>1,000 plus loans</u>	<u>\$1,000,000</u>

- b. An applicant or licensee servicing North Dakota residential mortgage accounts may apply to the commissioner to waive or adjust one or more of these capital or liquidity requirements. In considering such a request, the commissioner will consider the number and types of loans being serviced and whether the licensee has a positive net worth and adequate operating reserves. For purposes of this section, "operating reserves" are funds set aside in anticipation of future payments or obligations and are included in liquidity.
- c. Licensees subject to this section must annually or more frequently report, as prescribed by the commissioner, on liquidity, including operating reserves, and tangible net worth.

13-13-09. Corporate governance.

This section applies to large servicers as defined in section 13-13-02.

- 1. Large servicers shall establish and maintain a board of directors responsible for its oversight. For large servicers that are not approved to service loans by a government-sponsored enterprise, or where these federal agencies have granted approval for a board alternative, an institution may establish a similar body constituted to exercise oversight and fulfill the board of directors' responsibilities in subsection 2.
- 2. The board of directors shall be responsible for:
 - a. Establishing a written corporate governance framework, including appropriate internal controls designed to monitor corporate governance and assess compliance with the corporate governance framework.
 - b. Monitoring and ensuring institution compliance with the corporate governance framework and this chapter.
 - c. Reporting, accurately and timely, regulatory reports, including the requirements for filing the mortgage call report as required by section 13-13-23.
 - d. Establishing internal audit requirements that are appropriate for the size, complexity, and risk profile of the servicer, with appropriate independence

- to provide a reliable evaluation of the servicer's internal control structure, risk management, and governance.
3. Licensees subject to this section shall obtain an external opinion audit, including audited financial statements and audit reports conducted by an independent public accountant annually, including at a minimum:
 - a. Annual financial statements, including balance sheet, statement of operations or income statement, cashflows, notes, and supplemental schedules prepared in accordance with generally accepted accounting principles.
 - b. Assessment of the internal control structure.
 - c. Computation of tangible net worth.
 - d. Validation of mortgage servicing rights valuation and reserve methodology, if applicable.
 - e. Verification of adequate fidelity and errors and omissions insurance.
 - f. Testing of controls related to risk management activities, including compliance and stress testing, where applicable.
 4. Licensees subject to this section shall establish a risk management program under the oversight of the board of directors that identifies, measures, monitors, and controls risk sufficient for the level of sophistication of the servicer. The risk management program must:
 - a. Have appropriate processes and models in place to measure, monitor, and mitigate financial risk and changes to the risk profile of the servicer and assets being serviced.
 - b. Be scaled to the complexity of the organization, but be sufficiently robust to manage risks in several areas, including:
 - (1) Credit risk. The potential that a borrower or counterparty will fail to perform on an obligation.
 - (2) Liquidity risk. The potential that the servicer will be unable to meet its obligations as they come due because of an inability to liquidate assets or obtain adequate funding or that it cannot easily unwind or offset specific exposures.
 - (3) Operational risk. The risk resulting from inadequate or failed internal processes, people, and systems or from external events.
 - (4) Market risk. The risk to the servicer's condition resulting from adverse movements in market rates or prices.
 - (5) Compliance risk. The risk of regulatory sanctions, fines, penalties, or losses resulting from failure to comply with laws, rules, regulations, or other supervisory requirements applicable to the servicer.

- (6) Legal risk. The potential that actions against the institution that result in unenforceable contracts, lawsuits, legal sanctions, or adverse judgments can disrupt or otherwise negatively affect the operations or condition of the servicer.
- (7) Reputation risk. The risk to earnings and capital arising from negative publicity regarding the servicer's business practices.
5. Licensees subject to this section shall conduct a risk management assessment on an annual basis, concluding with a formal report to the board of directors. Evidence of risk management activities throughout the year must be maintained and made part of the report, including findings of issues and the response to address those findings.
6. Licensees subject to this section must maintain the audits, policies and procedures, and assessment results as part of their books and records available to the commissioner upon request.

13-13-10. Expiration and renewal of license.

All licenses required under this chapter expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted no later than thirty days before the expiration of the license and must be accompanied by the required annual renewal fee, which is not subject to refund. The renewal fee must equal five hundred dollars or two dollars and forty cents per one hundred thousand dollars of North Dakota mortgage loans serviced, whichever is greater. The renewal fee shall be based on the average mortgage loans serviced over the previous four quarters ending June thirtieth of the current year as reported on the mortgage call report. The renewal fee may not exceed one hundred thousand dollars. Fees must be paid to the department of financial institutions and be deposited in the financial institutions regulatory fund. The form and content of renewal applications must be determined by the department of financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing its license, the department of financial institutions may charge an additional fee of fifty dollars for the renewal of the license. A residential mortgage loan servicer license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a residential mortgage loan servicer license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The residential mortgage loan servicer license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

13-13-11. Powers of the department of financial institutions.

The department of financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with the chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity,

and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Establish codes of ethical conduct for licensees.
3. The commissioner may:
 - a. Order or direct the licensee subject to this chapter to satisfy additional conditions necessary to ensure that the institution will continue to operate in a safe and sound manner and be able to continue to service loans in compliance with state and federal law or regulation where risk to the institution or borrower is extremely high, as determined by a formal review.
 - b. Provide notice that all or part of this chapter is not applicable to an institution where risk to the institution is extremely low, as determined by a formal review.
 - c. Provide public notice of a temporary suspension of all or certain sections of this chapter where economic, environmental, or societal events are determined to be of such severity to warrant a temporary suspension.

13-13-12. Manner in which records to be kept.

Every residential mortgage loan servicer licensed under this chapter shall keep a record of all sums collected and all loans serviced by the residential mortgage loan servicer for a period of six years from the date of last entry. If the records can be reproduced upon request by the department of financial institutions within the required statutory time period provided in this section, the records of a licensee may be maintained electronically. When a licensee ceases operations for any reason, the licensee shall inform the department of the location of the records. In addition, the licensee shall provide the name of the individual responsible for maintenance of the records. The licensee shall notify the department within ten business days of the change of the location of the records or the change of the individual responsible for maintenance of the records.

13-13-13. Revocation of license - Suspension of license - Surrender of license.

1. The commissioner may issue upon any licensee an order suspending or revoking a licensee's license if the commissioner finds that:
 - a. The licensee has failed to pay the annual license fee under this chapter or any examination fee imposed by the commissioner under the authority of this chapter.
 - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
 - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of financial institutions in refusing originally to issue such license.
 - d. The licensee has failed to maintain the required bond.

- e. The licensee has failed to maintain registration with the secretary of state if so required.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served upon the licensee, the order is final. If a hearing is held and the commissioner finds that the record warrants, the commissioner may enter a final order. The final order is final suspending or revoking the license.
4. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of the license pending investigation, it may, upon issuance, enter an order suspending the license pending the holding of a hearing as prescribed in this chapter.
5. Any licensee may surrender its license, but surrender does not affect the licensee's civil or criminal liability for acts committed before the surrender.

13-13-14. Suspension and removal of residential mortgage loan servicer officers and employees.

1. The commissioner of financial institutions may issue upon a current or former residential mortgage loan servicer officer or employee and upon the licensee involved an order stating:
 - a. The current or former officer or employee is engaging or has engaged in any of the following conduct:
 - (1) Violating a law, rule, order, or written agreement with the commissioner.
 - (2) Engaging in harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving servicing activity.
 - (3) Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
 - b. The term of the suspension or removal from employment and participation within the conduct or the affairs of a residential mortgage loan servicer.
2. The order must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the order is served, the order is final. If a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter a final order. The final order suspending or removing the current or former employee is final. The current or former officer or employee may request a termination of the final order after a period of no less than three years.
4. A contested or default suspension or removal order is effective immediately upon issuance on the current or former officer or employee and upon the licensee. A consent order is effective as agreed. Any current or former officer

or employee suspended or removed from employment and participation within the conduct or the affairs of a residential mortgage loan servicer pursuant to this section is not eligible, while under suspension or removal, to be employed or otherwise participate in the affairs of any financial corporation, financial institution, credit union, or any other entity licensed by the department of financial institutions.

5. When any current or former officer or employee, or other person participating in the conduct of the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of any entity licensed or chartered by the department. The order is effective upon issuance and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, conviction or agreement to plea to lesser charges, or similar state order or judgment is entered, the suspension or prohibition is permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

13-13-15. Prohibited acts and practices.

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

1. Make or cause to be made any materially false statement or representation in any document or statement required to be filed under any provision of this chapter, or to omit 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 a material fact necessary in order to make the statements made, in 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. 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.
7. Fail to make disclosures as required by this chapter and any other applicable state or federal law and regulations.
8. 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, applicable to any business authorized or conducted under this chapter.
9. Negligently make any false statement or make any omission of material fact in connection with any information or reports filed with a governmental agency.

the nationwide multistate licensing system and registry, or in connection with any investigation conducted by the commissioner or another governmental agency.

10. Collect, charge, attempt to collect or charge, or use or propose any agreement purporting to collect or charge any fee prohibited by this chapter.
11. 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.
12. Fail to truthfully account for moneys belonging to a party to a loan transaction.
13. Conduct another business within the same office, suite, room, or place of business at which the licensee engages in residential mortgage loan servicer business unless the commissioner provides written authorization after a determination the other business is not contrary to the best interests of any borrower.
14. Enter any agreement that constitutes a precomputed loan.

13-13-16. Orders and injunctions.

Whenever it appears to the department of financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue an order that is effective upon issuance, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public. Any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if the request is made within ten days after receipt of the order. The hearing must be held in accordance with chapter 28-32 as must any appeal.
2. Apply to the district court of Burleigh County for an injunction restraining a person and the agents, employees, partners, officers, and directors of the person from continuing the act, practice, or transaction of engaging or doing any acts in furtherance of, and for other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance of any defendants and their agents, employees, partners, officers, or directors, and the production of documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant an injunction as the facts may warrant. The court may not require the department to post a bond.

13-13-17. Investigations, subpoenas, and examination authority.

In addition to any authority allowed under this chapter, the commissioner may conduct investigations and examinations as follows:

1. The department of financial institutions may:

- a. Make a public or private investigation or examination within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order, or to aid in the enforcement of this chapter or in the prescribing of rules and forms. The licensee shall pay an investigation or examination fee and must be charged by the department of financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be deposited in the financial institutions regulatory fund.
 - b. Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated or examined.
 - c. Publish information concerning any violation of this chapter or any rule or order.
2. For the purpose of any investigation, examination, or proceeding under this chapter, the department of financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
 3. The district court, upon application by the department of financial institutions, may issue an order requiring a witness to appear before the department, to produce documentary evidence if so ordered or to give evidence touching the matter in question under investigation or examination. Failure to obey the order of the court may be punished by the court as a contempt of court.
 4. No person is excused from attending and testifying or from producing any document or record before the department of financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the grounds that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
 5. For purposes of initial licensing, license renewal, license suspension, license conditioning, license revocation or termination, or general or specific inquiry or investigation to determine compliance with this chapter, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence, including:
 - a. Criminal, civil, and administrative history information, including nonconviction data;
 - b. Personal history and experience information, including independent credit reports obtained from a consumer reporting agency described in section

- 603(p) of the Fair Credit Reporting Act [15 U.S.C. section 1681 et seq.]; and
- c. Any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of the location, possession, control, or custody of such documents, information, or evidence.
 6. For purposes of investigating violations or complaints arising under this chapter, or for purposes of examination, the commissioner may review, investigate, or examine any licensee or person subject to this chapter, as often as necessary in order to carry out the purposes of this chapter.
 7. Each licensee or person subject to this chapter shall make available to the commissioner upon request the books and records relating to the operations of the licensee or person subject to this chapter. The commissioner shall have access to the books and records and interview the officers, principals, employees, independent contractors, agents, and customers of the licensee or person subject to this chapter concerning their business.
 8. Each licensee or person subject to this chapter shall make or compile reports or prepare other information as directed by the commissioner in order to carry out the purposes of this section, including:
 - a. Accounting compilations;
 - b. Information lists and data concerning loan transactions in a format prescribed by the commissioner; or
 - c. Other information deemed necessary to carry out the purposes of this section.
 9. In making any investigation or examination authorized by this chapter, the commissioner may control access to any documents and records of the licensee or person under investigation or examination. The commissioner may take possession of the documents and records or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, a person may not remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being altered or destroyed for purposes of concealing a violation of this chapter, the licensee or owner of the documents and records may have access to the documents or records as necessary to conduct its ordinary business affairs.
 10. In order to carry out the purposes of this section, the commissioner may:
 - a. Retain accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - b. Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods

- or procedures, and documents, records, information, or evidence obtained under this section:
- c. Use, hire, contract, or employ publicly or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to this chapter;
 - d. Accept and rely on examination or investigation reports made by other government officials, within or without this state; and
 - e. Accept audit reports made by an independent certified public accountant for the licensee or person subject to this chapter in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the commissioner.
11. The authority of this section remains in effect, whether such a licensee or person subject to this chapter acts or claims to act under any licensing or registration law of this state or claims to act without authority.
12. A licensee or person subject to investigation or examination under this section may not knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

13-13-18. Response to department requests.

An applicant, licensee, or other person subject to the provisions of this chapter shall comply with requests for information, documents, or other requests from the department of financial institutions within the time specified in the request, which must be a minimum of ten days, or, if no time is specified, within thirty days of the mailing of the request by the department of financial institutions. If the request for information is in regard to a new application or renewal of an existing application and is not received within the time specified in the request, or within thirty days of the mailing of the request, the department may deny the application.

13-13-19. Remedies not exclusive.

The remedies provided for in this chapter are in addition to and not exclusive of any other remedies provided by law.

13-13-20. Penalty.

Any person violating any of the provisions of this chapter or any rule or order of the department of financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony. The commissioner may impose a civil money penalty against any person who violates a law, rule, written agreement, or order under this chapter. The commissioner may not impose a civil money penalty in excess of one hundred thousand dollars for each occurrence and one thousand dollars per day for each day that the violation continues after issuance of an order. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be deposited in the financial institutions regulatory fund.

13-13-21. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing:

1. Except as otherwise provided in Public Law 110-289, section 1512, the requirements under any federal law, chapter 44-04, or section 6-01-07.1, regarding the privacy or confidentiality of any information or material provided to the nationwide multistate licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to information or material, continue to apply to information or material after the information or material has been disclosed to the nationwide multistate licensing system and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law, chapter 44-04, or section 6-01-07.1.
2. For these purposes, the commissioner may enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies.
3. Information or material that is subject to a privilege or confidentiality under subsection 1 is not subject to:
 - a. Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or
 - b. Subpoena or discovery, or admission into evidence, in any administrative process, unless with respect to any privilege held by the nationwide multistate licensing system and registry with respect to such information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of the person, that privilege.
4. The commissioner shall take all necessary steps, under any applicable law or rule, to protect the disclosure of information or material that is subject to a privilege or confidentiality under subsection 1. Records subject to a privilege or confidentiality under subsection 1 may be required to be disclosed only pursuant to an order of the court. The court ordering the disclosure shall issue a protective order to protect the confidential nature of the records.
5. Application of chapter 44-04 or section 6-01-07.1, relating to the disclosure of confidential supervisory information or any information or material described in subsection 1 which is inconsistent with subsection 1, is superseded by the requirements of this section.

13-13-22. Change of name or address.

A licensee is required to submit within twenty business days of the date of change notification of a change of name or change of address. The notification must be in the form prescribed by the commissioner.

13-13-23. Call reports.

Each licensee shall submit to the nationwide multistate licensing system and registry reports of condition which must be in the prescribed form and must contain

the information as the nationwide multistate licensing system and registry may require. Failure to accurately report information required by this section is deemed to be a violation of subsection 1 of section 13-13-15.

13-13-24. Report to nationwide multistate licensing system.

Notwithstanding state privacy law, the commissioner shall regularly report violations of this chapter, as well as enforcement actions and other relevant information, to the nationwide multistate licensing system and registry subject to the provisions contained in section 13-12-15.

13-13-25. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all residential mortgage loan servicers licensed under this chapter.

SECTION 2. APPROPRIATION - DEPARTMENT OF FINANCIAL INSTITUTIONS - AUTHORIZATION - FULL-TIME EQUIVALENT POSITION. The funds provided in this section, or so much of the funds as may be necessary, are appropriated from special funds derived from licensing and examination fees, to the department of financial institutions for the purpose of administering and enforcing laws, rules, and regulations relating to residential mortgage loan servicers, for the biennium beginning July 1, 2023, and ending June 30, 2025.

Salaries and wages	\$200,000
Operating expenses	<u>25,000</u>
Total special funds	\$225,000
Full-time equivalent positions	1.00

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