



House Bill 1283

Presented by: Barry Haugen, President
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Before: House Industry, Business and Labor Committee
Representative Scott Louser, Chairman

Date: January 24, 2023

Chairman Louser and members of the House Industry, Business and Labor Committee (Committee), my name is Barry Haugen, and I am President of the Independent Community Banks of North Dakota (ICBND). ICBND membership totals over 50 independent community banks throughout our state. ICBND opposes HB 1283 and requests a “Do Not Pass” recommendation from the Committee.

While we appreciate the bill sponsors’ intent of guarantying financial services to all legal and viable enterprises, ICBND believes HB 1283 has significant unintended consequences for community banks in North Dakota, as well as for their individual and business customers.

Community banks are wholeheartedly in the business of doing business with industries that are critical to the economy of North Dakota. Our members do this every day through a relationship-based model. In addition, community banks are already subject to significant anti-discrimination laws including the Equal Credit Opportunity Act (ECOA) which applies to consumer and business lending activities. These laws are enforced by federal prudential regulators including the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of Currency (OCC) and the Federal Reserve Board (Fed).

Section 1 paragraph 1 of the bill includes some entities that are not under the purview of the Department of Financial Institutions of the State of North Dakota, including nationally chartered banks and thrift institutions, which immediately creates a problem. As a result, the legislation and its reporting requirements would unfairly apply only to state-chartered financial institutions.

Section 1 paragraph 2(a) would limit a community bank’s decision to extend a financial product or service specifically to quantitative, impartial, risk-based financial standards. This flies in the face of the relationship-based model of community banking where decisions do not fit nicely into a defined decision matrix. Nor would we want them to. Lending decisions are often made based on the “character” of the borrower and that community bank’s experience with the potential borrower or reputation of that potential borrower. Extensions of credit are often granted when these same “quantitative, impartial, risk-based financial standards” would not warrant extension of credit. And, at times, extension of credit is denied even though these aforementioned financial standards would have been met. Additionally, not every community bank has the expertise to effectively lend to every industry. For example, much of my personal history is in the fossil fuel pipeline and energy services business. Not every community bank would be comfortable lending to entities in this space not because of the industry, but because of their lack of lending expertise to that very unique industry.

Section 1 paragraph 3 further compromises the community banking model by requiring onerous and unnecessary reporting, at a minimum, for any decisions made upon “nonfinancial, nontraditional, and subjective measures”. Who determines, and how do they determine, what defines “nontraditional” or “subjective” measures?

Section 1 paragraph 3(a) goes on to require disclosures be made not only to the Commissioner of financial institutions, but to the Insurance Commissioner. The Insurance Commissioner has no regulatory oversight authority over banking activities. This would require disclosure from the community bank to the two state agencies the “standards, guidelines, and criteria” used by the community bank to determine access to or denial of a financial product or service to a person in this state when that community bank used “standards or guidelines based on nonfinancial, nontraditional, and subjective measures”.

So let’s look at some real world anecdotal situations community banks deal with every day: One of our member banks regularly makes \$100 or \$200 loans to an elderly woman in its community, so she can afford her prescriptions. Her only income is social security. The bank does not charge her any loan fees and charges a reasonable interest rate. This loan is not a money maker and would be “high-risk” on paper. But the elderly customer pays her loans back time after time and the bank continues to make these loans because it’s simply the right thing to do. This bill would require disclosure of this activity as it’s certainly based on nontraditional and subjective underwriting. The need for disclosure may cause banks to shy away from making these “character” loans, which community banks make every day.

Many elderly and younger adults simply don’t have credit scores. Our community banks extend credit to these situations every day because they know the individuals or the families. But under the requirements of Section 1 paragraph 3, disclosures would be required to the two agencies again. Again, we fear required disclosure would cause community banks to stop making these types of loans.

Countless farmers, ranchers and small business owners who don’t qualify on paper for operating loans or to buy that new piece of equipment, especially when they are trying to get started, are extended credit not based on financial or traditional standards but based on a belief in their plan and the knowledge that their character is solid. They would likely not be afforded credit on some credit scoring matrix. This example too seems to require disclosure to the agencies.

I fully understand that reporting the above situations to the agencies is not the intent of the bill, but words matter and as written these would require disclosure by my interpretation. All of this additional disclosure obviously raises the costs to the Department of Financial Institutions, which will ultimately increase costs for community banks as the DFI is a special funds agency. The end-result of the proposed legislation may cause banks to reevaluate making the aforementioned loans based on the time, cost and complexity of reporting.

Finally, Section 1 paragraph 4 seeks to create a blacklist of community banks that have adopted standards or guidelines based on nonfinancial, nontraditional, and subjective measures on the DFI website. The community banks reflected in my anecdotal situations would find themselves on that list. I don’t think this serves any constructive purpose.

Chairman Louser and members of the House Industry, Business and Labor Committee, ICBND opposes House Bill 1283 and requests the Committee give the bill a “Do Not Pass” recommendation. If the goal of the bill is to guarantee certain entities will continue to have access to credit, this bill misses the mark. Community banks are very much in favor of making loans to all entities that are legally permitted to do business, which includes those businesses in the fossil fuel energy and agriculture industries. In fact, our association and the greater national association we support are currently fighting for the right to continue to make the loans and to do so without the additional burden of assessing climate risk as part of the underwriting process.

Thank you for your time and attention.