

**1999 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1161**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1161

House Industry Business & Labor

Conference Committee

Hearing Date January 11, 1999

Tape Number	Side A	Side B	Meter #
2	x		52-55
2		x	0-16.5
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

CHAIRMAN BERG OPENED THE HEARING ON HB 1161; A BILL RELATING TO VOLUNTARY AND INVOLUNTARY DISSOLUTION AND LIQUIDATION OF STATE TRUST COMPANIES.

DAVID CLINTON introduced HB 1161. (See written testimony).

REP. KLEIN asked if there is anything in the laws that does this already?

DAVID said that there is nothing explicit. You would battle with legal argument. By definition it doesn't but by default it probably does/

REP. KLEIN further asked how long these state trust companies have been in existence? What are they.

DAVID said there are four of them. Investment Centers, Northern Capital, Heartland, Farm \_\_\_\_.

We did provide a courtesy copy to the companies.

Page 2

House Industry Business & Labor

Bill/Resolution Number HB 1161

Hearing Date January 11, 1999

REP. KEISER asked if this bill is adopted, will it apply to other trust operations that might be housing banks?

DAVID said yes.

REP. KEISER further asked if all real estate trust companies and all forms of trust companies - are they state charters and would they qualify in this program?

DAVID deferred the question to the Commissioner.

COMMISSIONER said this only applies to Chapter 605 trust companies that are charter members.

REP. JOHNSON questioned page 7 of the bill. "Fictional tracing rule," what does that mean?

DAVID the process eliminates a confusing process of paying out to creditors. The analysis is much simpler and eliminates future challenges.

KOPPANG asked if any trust company has ever been dissolved in the past.

DAVID at least one trust company went through the process and its still going through the process.

Chairman BERG closed the hearing on the bill.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1161 1-27-99

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-27-99

Tape Number	Side A	Side B	Meter #
2		x	1312 - 1485
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **HB 1161**

Chairman Berg opened the discussion of HB 1161.

Rep. Severson made a motion for a Do Pass.

Rep. Keiser second the motion.

The roll call vote was 15 yea, 0 nay.

The motion carries.

Rep. Severson will carry the bill.

Date: 1-27-99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1161

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do pass

Motion Made By Severson Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe	/	
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Severson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
January 27, 1999 4:36 p.m.

Module No: HR-17-1315  
Carrier: Severson  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1161: Industry, Business and Labor Committee (Rep. Berg, Chairman)** recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1161 was placed on the Eleventh order on the calendar.

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1161**

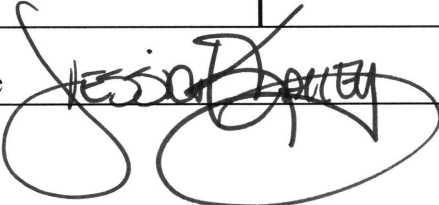
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1161

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 10, 1999

Tape Number	Side A	Side B	Meter #
1		x	3050-end, 0-2050
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1161. All senators were present.

David Clinton introduced HB1161. His testimony is included. Senator Mutch asked if this bill is passed, would the decision making be moved from the board to the commissioner. Mr.

Clinton told him that it would.

Gary Preszler testified in support of HB1161. His testimony is included. Senator Mathern asked him if it is usually prorated as to what they can pay out. Mr. Preszler said that it was. Senator Krebsbach asked if the four companies in the state now reported only to the state or if they reported it federally also. He said that they report to both. Senator Krebsbach asked him if he saw any additional requirements to his office with the passage of this bill. He said that he did not.

Senator Mutch closed the hearing on HB1161.



Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number Hb1161

Hearing Date February 10, 1999

Committee discussion took place on March 10, 1999.

Senator Mathern motioned for a do pass committee recommendation on HB1161. Senator

Krebsbach seconded her motion. The motion carried with a 6-0-1 vote.

Senator Mathern will carry the bill.

Date: 3/10 SR444514  
 Roll Call Vote #: 1

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**HOUSE BILL/RESOLUTION NO. 1161**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By MATHERN Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson					

Total (Yes) 6 No 0

Absent 1

Floor Assignment MATHERN

REPORT OF STANDING COMMITTEE (410)  
March 11, 1999 9:54 a.m.

Module No: SR-44-4516  
Carrier: D. Mathern  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1161: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1161 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1161

TESTIMONY FOR HOUSE BILL NO. 1161

House Industry, Business, and Labor Committee

Testimony of David E. Clinton, Assistant Commissioner, Department of Banking and Financial Institutions

House Bill No. 1161 provides a mechanism for the voluntary or involuntary dissolution and liquidation of state trust companies in the absence of a clear efficient and expeditious statutory framework to do so now. House Bill No. 1161 authorizes the banking commissioner to close and liquidate a state trust company on a finding that the state trust company is insolvent or imminently insolvent or that the best interests of clients and creditors would be served by having the state trust company liquidated.

House Bill No. 1161 is patterned heavily after Texas statutes providing for the closing and liquidation of Texas trust companies. I understand that Texas law is patterned heavily after similar authority granted to the FDIC to close and liquidate insured deposit trust companies in a prompt and efficient manner.

Section 1 (Action to close state trust company) establishes the role of the banking commission as receiver and sets the criteria for liquidation and also affords the state trust company the opportunity to voluntarily follow this process.

Section 2 (Involuntary closing) sets the practical methods to close a state trust company and establishes venue in Burleigh County, North Dakota.

Section 3 (Nature and duration of receivership) provides the general nature of the receivership where the commissioner serves as receiver with the authority to exercise all powers and authorities of the state trust company. Additionally, Section 3 provides for limited liability for acts of the Commissioner in carrying out the Commissioner's duties as receiver.

Section 4 (Contest of liquidation) provides the mechanism whereby interested parties may contest the closing of the state trust company and enjoin the receiver from liquidating the assets of the state trust company during the contest. Section 4 also provides for flexibility to address specific sub-issues that may require priority and expedient processing during the time that the court would issue a restraining order.

Section 5 (Notice of state trust company closing) establishes how notice of the state trust company closing is made to interested parties, including specifically creditors and clients.

Section 6 (Inventory) directs the receiver to prepare a comprehensive inventory of the state trust company's assets which would be open to public inspection.

Section 7 (Title and receiver) grants the receiver title to all of the state trust company's property and establishes priority as to the rights of the receiver.

Section 8 (Rights fixed) establishes a point of time as of the closing of the state trust company to fix all rights.

Section 9 (Depositories) grants discretion to the receiver to deposit funds on behalf of the state trust company in the Bank of North Dakota or any other North Dakota depository institution.

Section 10 (Pending lawsuits) provides that a court judgment or order rendered after the date the trust company was closed would not be binding on the receiver unless the receiver was made a party to the suit and establishes a one-year timeframe to which the receiver can be made a party to a pending lawsuit.

Section 11 (New lawsuits) limits venue for all new lawsuits in the same court in which the receivership proceeding is pending and also establishes exclusive venue for an action brought against the receiver as placed in Burleigh County, North Dakota.

Section 12 (Records with third parties) authorizes the receiver to request certain records of the state trust company that relate to the business of the state trust company without cost to the receiver.

Section 13 (Injunction in aid of liquidation) grants authority to the receiver to apply to the court for an injunction restraining a state trust company institutional related party from transacting the state trust company's business or wasting or disposing of its property subject to further court order.

Section 14 (Subpoena) grants subpoena powers to the receiver as an administrative function in which non-compliance to the administrative subpoena is enforced by court order.

Section 15 (Preferences) authorizes the receiver to void a transfer of the property of the state trust company if the transfer is made within four months before the date the state trust company is closed for liquidation, or in the case of a interested participant of the state trust company within one year before the date the state trust company is closed for liquidation, if the transfer was made with the intent of giving a creditor more favorable treatment than other creditors of the same class might receive.

Section 16 (Administrative expenses) authorizes the receiver to employ personnel that the receiver considers necessary to assist in the performance of the receiver's duties and charges the expense of employing these people as part of the administrative expense of liquidation.

Section 17 (Disposal of property and settling claims) authorizes the receiver to dispose of property and settle claims consistent with a court order to do so.

Section 18 (Fiduciary activities) requires the receiver to file quarterly reports concerning the liquidation proceeding and to provide a full accounting of all administrative expenses.



Section 19 (Fiduciary activities) authorizes the receiver to terminate all fiduciary positions the state trust company might hold, surrender all property held by it as a fiduciary, and settle the state trust company's fiduciary accounts. Section 19 also directs the receiver to release all segregated and identifiable fiduciary property held by the state trust company to successor fiduciaries. Section 19 also directs the receiver to distribute commingled funds pro rata to all fiduciary claimants of commingled funds based on their proportionate interests after the payment of all administrative expenses related to settling just the fiduciary claims.

Section 20 (Disposition and maintenance of records) authorizes the receiver, on approval by the court, to dispose of obsolete and unnecessary records and classifies records of a liquidated state trust company as exempt from public disclosure.

Section 21 (Filing claims) provides the mechanism for a person to file claim against the estate of the trust company and establishes priority in terms of how the state trust company assets will be distributed.

Based on the above, the Department stands in support of House Bill No. 1161 and requests a favorable "Do Pass" from the Committee.

TESTIMONY FOR HOUSE BILL NO. 1161

Senate Industry, Business, and Labor Committee

Testimony of David E. Clinton, Assistant Commissioner, Department of Banking and Financial Institutions, in support of House Bill No. 1161

House Bill No. 1161 provides a mechanism for the voluntary or involuntary dissolution and liquidation of state trust companies in the absence of a clear, efficient, and expeditious statutory framework to do so now. House Bill No. 1161 authorizes the Banking Commissioner or State Banking Board to close and liquidate a state trust company on a finding that the state trust company is insolvent or imminently insolvent or that the best interests of clients and creditors would be served by having the state trust company liquidated.

Presently, Section 6-05-34 provides, in part, that Sections 6-07-01, 6-07-02, 6-07-04, 6-07-05, and 6-07-06 (Sections under the Dissolution, Solvency Chapter) apply to corporations doing business under Chapter 6-05 (Trust Companies Chapter). However, by omission to the list of applicable sections in Section 6-05-34, Sections 6-07-03 (Banks Insolvent, When), 6-07-04.1 (Insolvent Bank – Order to Show Cause Hearing), and 6-07-04.2 (Acquisition of an Institution) do not apply to independent trust companies.

Additionally, the General Business Corporation Act provisions concerning involuntary dissolution (Section 10-19.1-115) apply to independent trust

companies. Apart from supervised voluntary dissolutions, specified shareholder actions, and specified creditor actions, the Attorney General may dissolve an independent trust company pursuant to Section 10-19.1-118. That Section authorizes the Attorney General to bring a court action, in one case, where it is established that the corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise. However, the State Banking Board or Commissioner is offered no additional authority under the Business Corporation Act.

One state that has faced a number of insolvent independent trust companies is Texas. In so doing, Texas has enacted curative legislation to remedy past problems and difficulties under its previous dissolution statutes.

House Bill No. 1161 is patterned heavily after Texas statutes providing for the closing and liquidation of Texas trust companies.

Section 1 (Action to close state trust company) establishes the role of the banking commission as receiver and sets the criteria for liquidation and also affords the state trust company the opportunity to voluntarily follow this process.

Section 2 (Involuntary closing) sets the practical methods to close a state trust company and establishes venue in Burleigh County, North Dakota.

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exercise all powers and authorities of the state trust company. Additionally, Section 3 provides for limited liability for acts of the Commissioner in carrying out the Commissioner's duties as receiver.

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Section 20 (Disposition and maintenance of records) authorizes the receiver, on approval by the court, to dispose of obsolete and unnecessary records and classifies records of a liquidated state trust company as exempt from public disclosure.

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Based on the above, the Department stands in support of House Bill No. 1161 and requests a favorable "Do Pass" from the Committee.

*Frontier*  
*Trust*

February 5, 1999

Senate Industry, Business and Labor Committee  
North Dakota State Senate  
Legislative Assembly  
State Capitol Building  
600 East Boulevard Avenue  
Bismarck, North Dakota 58505

RE: Opposition to HB 1161, Trust Company Dissolution

Dear Chairman Mutch and members of the committee:

My name is Susan Ribeiro. I am president and chief executive officer for Frontier Trust Company, a state chartered trust company which is located in Fargo, North Dakota. Frontier is a wholly owned subsidiary of The Equitable and has been in operation in Fargo for more than ten years. We have 14 employees in Fargo and, as of December 31, 1998, have more than 3 billion dollars in assets. Frontier is formed under North Dakota law and is subject to supervision by the state department of banking and financial institutions. However, Frontier also deals with a number of federal regulatory agencies (such as the SEC and IRS) because of the nature of the company's business. Although I am writing to you to oppose HB 1161, I want you to know that Frontier has never been remotely threatened with any type of enforcement action by any regulatory agency. I take considerable pride in the efforts which my staff and I make to conform Frontier's operations to principles of safe and sound management and the results which those efforts have produced. We are concerned about HB 1161 as a matter of principal, not because we have any reason to think that its provisions will ever be applied to Frontier with or without its consent. I also want to let you know that I did not participate in the consideration of this bill by the House IBL committee. The bill was heard and passed out of the committee before I had the opportunity to prepare this letter. My views haven't been considered and rejected by the House of Representatives.

Frontier opposes this bill because 1) there is no established need for it, 2) it provides that a trust company can be closed or placed in a conservatorship (which in effect closes the trust company) under conditions which don't apply to any other type of financial institution under the supervision of the department of banking, and, 3) it too severely restricts the trust company's ability to obtain real judicial review of a state banking board decision to impose a receivership or conservatorship. I want to talk about each of these problems individually.



There isn't a need for this bill.

I understand that the commissioner of banking supported this bill in the house by saying that it is based upon Texas law after Texas had a number of problems with some of its trust companies. I understand that he also said it isn't being proposed because of any problems with North Dakota's trust companies and, that it wouldn't affect the one trust company which has been placed in conservatorship because of that company's unique circumstances. Why then is this law being proposed? What problem does it purport to solve?

I've been told that the gist of the department's support for the bill in the House IBL hearing was that the current laws for receiverships and dissolutions don't clearly apply to trust companies. I don't agree. The North Dakota Century Code includes chapter 6-07, entitled "Dissolution, Insolvency, Suspension, and Liquidation". It has provisions for a voluntary dissolution by "any corporation organized under Title 6" (including a trust company) through a court proceeding and notice to the commissioner and secretary of state. Chapter 6-07 also addresses involuntary dissolution proceedings; section 6-05-34 makes the general involuntary dissolution sections (6-07-02 through 6-07-06) specifically applicable to a trust company. Furthermore, unlike banks, trust companies are specifically subject to chapter 10-19.1, the business corporation act. The corporation laws also have statutes for voluntary and involuntary liquidations. This bill (Page 1, lines 11-13) says that the commissioner is to do the voluntary liquidation. Why the change from current law which would permit the court to designate who will be in charge of a voluntary liquidation?

The different standards for trust companies and other financial institutions are not appropriate.

Section 1 permits a trust company to be closed by either the commissioner or the board. However, the current law (and that which remains in place for all other state chartered financial institutions) requires a receivership to be imposed only on the order of the state banking board. I don't know whether Texas has a banking board, but North Dakota does and unless the public policy of North Dakota has changed, it is the state banking board which should be the agency which orders the receivership, not the commissioner. Furthermore, under current law, receiverships are imposed only if there is an existing or imminent insolvency or if the financial institution has violated a banking or credit union board order. This bill changes that for a trust company and lets the commissioner or board shut the company down if either decides "that the best interest of [ ] clients or creditors would be served by requiring that the state trust company be closed and its assets liquidated." (Page 1, lines 7 through 11) This is a dramatic change in the law, is much too vague, and gives an inappropriate amount of "discretion" to the commissioner.

The bill tries to unduly restrict a trust company's ability to obtain effective judicial review of a closure.

Under the bill, a trust company isn't entitled to receive advance notice of the intended closing. But, if it wants to challenge the receivership in court it has to file the action to do so "not later than the second business day after the closing of the state trust company, excluding legal holidays." The only reason I can think of for making this time limit so short is to prevent the trust company from gathering sufficient facts and legal resources to mount a credible challenge. Frankly, there is no reason that a receivership shouldn't be subject to

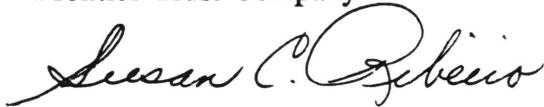
judicial review for a much longer and more reasonable period of time, especially since the state remains in possession of the assets during the course of all judicial reviews through the state supreme court.

The department of banking is proposing a very substantial change to North Dakota law - this is not a matter of housekeeping. The bill was also prepared without any input from the trust companies which are subject to it. Without an existing need for it, this seems to me to be unwarranted. If the commissioner wants to make such big changes, industry input should be sought in advance and industry concerns should be addressed. They weren't. For that reason and the others I've given, **I ask you to vote DNP on this bill.**

Thank you for your consideration of my letter.

Sincerely Yours,

Frontier Trust Company

A handwritten signature in cursive script that reads "Susan C. Ribeiro".

Susan C. Ribeiro, President and  
Chief Executive Officer

cc: Gary Preszler  
Marilyn Foss

TESTIMONY FOR HOUSE BILL NO. 1161

Senate Industry, Business, and Labor Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions, in support of House Bill No. 1161

The purpose of House Bill No. 1161 is to establish a process to resolve an insolvent trust company, in the event insolvency occurs, with as little loss and hopefully no loss at all to accountholders.

Presently, there are four active North Dakota state-chartered trust companies. Additionally, one trust company is currently in conservatorship, but to the best that I can determine it has never taken any public trust accounts. The conservatorship has existed for some time and the Attorney General's Office is presently reviewing a possible court filing for dissolution of the trust company. Further, in early 1998 Williams Trust Company, which was owned by Western Cooperative Credit Union, Williston, through a wholly-owned subsidiary, petitioned the District Court for voluntary dissolution. Again, as stated in my testimony to this Committee yesterday on House Bill No. 1103, these four North Dakota trust companies are not affiliated with a bank and are not insured by the Federal Deposit Insurance Corporation. The fiduciary assets range from \$64 million for Trust Center of America, \$131 million for Heartland Trust Company,

\$870 million for Northern Capital Trust Co., to over \$3 billion for Frontier Trust Company.

All North Dakota state-chartered banks and nationally-chartered banks, with the exception of the Bank of North Dakota, must maintain FDIC deposit insurance.

### **TEXAS MEETING**

House Bill No. 1161 was developed following a meeting I attended the latter part of October 1998 hosted by the Texas Department of Banking. The meeting was designed to bring together all states that charter and supervise independent trust companies to determine issues such as trust companies operating in a multi-state branching environment, the need to establish minimum capital maintenance standards, and states' problems encountered in resolving insolvent trust companies. The Texas Department of Banking has had extensive experience with insolvency issues and has closed in excess of 30 trust companies in a 10-year period from 1985 through 1994. The information provided by the Texas Department of Banking stated the reason for failures was "Because of primarily mismanagement and fraud, over \$20 million in fiduciary funds were lost by accountholders." The Texas Department of Banking personnel discussed at length initial problems encountered with Texas laws, and the extensive revisions made under Texas law to attempt, through receivership action, sell trust company receivership estates in order to minimize or eliminate loss to trust accountholders.

The Texas experience in resolving trust companies is the reason the Department introduced House Bill No. 1161. Careful consideration was given to the Texas differences that exist within the regulatory and court systems. Further, this Department also had some experience with insolvency issues related to trust companies as explained by Assistant Commissioner Clinton with the First American Bank and Trust Company case, and the current trust company in conservatorship.

### **BANK RECEIVERSHIPS**

The proposed receivership action contemplated under House Bill No. 1161 is also similar to our experience in handling insolvent banks through FDIC receivership actions under federal law to resolve the institution in the least costly method. The process for the FDIC is to conduct a non-public meeting with potential bidders two weeks prior to an expected closing date. During the two-week time period prospective acquirers will have an opportunity to perform due diligence and review various contractual agreements for selection of assets and will prepare and submit a bid to the FDIC. Once a winning bidder is selected, the institution is declared insolvent and the FDIC obtains court approval (present law does not require the FDIC to seek court approval) for the sale of the assets to the potential buyer. From the public's perspective the end result is a notice that the institution has been declared insolvent, but is also being reopened the next business

day and the customers will become customers of either a newly chartered bank or an existing bank.

Just like depositors of a commercial bank, accountholders of trust companies can and do lose money if assets are not sufficient to be able to pay all claims filed with the receivership.

If procedures are inadequate to be able to resolve receivership estates, then the only alternative is liquidation, which will result in the largest loss to accountholders.

### **FRONTIER TRUST COMPANY LETTER**

A February 5, 1999, letter addressed to this Committee opposes House Bill No. 1161. I can address all concerns raised and will identify errors within the letter as to the process and how it works.

First, the letter indicates the writer did not have an opportunity to participate in the consideration of the bill by the House IBL Committee, and page 3 suggests that the bill was prepared without any input from the trust companies which are subject to it. A copy of House Bill No. 1161 in its entirety and House Bill No. 1103 that was heard yesterday were furnished to the trust companies by my memo dated December 24, 1998. Paragraph two of the Frontier Trust Company letter says there is "*(1) no need for it.*" The need is, as I have explained, to minimize or potentially eliminate any loss to accountholders. The Frontier Trust Company

letter also opposes the bill because *“a trust company can be closed or placed into conservatorship ... under conditions which don't apply to any other type of financial institution.”* Since trust companies are not insured by the FDIC with the FDIC's standing in place of accountholders, it is entirely appropriate for different conditions to apply. Finally, opposition to the bill was expressed as *“too severely restricts the trust company's ability to obtain real judicial review of a State Banking Board decision to impose receivership or conservatorship.”* Again, as used in my example, the longer and more cumbersome process established for the Department to resolve the receivership estate will very likely result in less assets available to accountholders and increase their potential losses.

Page 2 of the Frontier Trust Company letter, paragraph 2, refers to Section 6-05-34, and makes general reference to Sections “6-07-02 through 6-07-06”. This is in error as Section 6-05-34 does not reference Section 6-07-03, Insolvency Definition, nor Section 6-07-04.1, Order to Show Cause Hearing, nor Section 6-07-04.2, Acquisition of the Institution. The letter also makes reference to the general corporate statutes for inactive corporations and the ability of the Attorney General to seek court dissolution for non-voluntary inactivity status.

The Frontier Trust Company letter, page 2, paragraph 3, refers to *“an existing or imminent insolvency ... for violations of a “Banking or Credit Union*

*Board Order*". Again, this is incorrect as the definition of insolvency that includes violations of a final Board Order as contained in Section 6-07-03 again is not incorporated by reference in Section 6-05-34.

The final paragraph on page 2, discusses the time limit for seeking and "*gathering sufficient facts and legal resources to mount a credible (judicial court) challenge*". Again, in my example in the event of an insolvency where the trust company's capital is gone due to losses, it is the accountholders who will ultimately incur larger losses due to additional expenses by the trust company to mount extensive court challenges as a shareholder does not have anything beyond their investment to lose. The purpose of House Bill No. 1161 is the ability to conduct a bid meeting and you must be able to tell prospective acquirers that the assets can be transferred in short order and clear title to the assets can be conveyed without the likelihood of the assets tied up in extensive court proceedings. The bid meeting process simply will not work if clear title to the assets cannot be transferred within a short period of time.

### *IN CONCLUSION*

The State of North Dakota, as it has done, allows for the chartering non-FDIC insured trust companies, and charges the Department of Banking and Financial Institutions with the responsibility to supervise these institutions. If you



require us to supervise these institutions, then the necessary tools must also be implemented to assist in resolving insolvencies that can and do occur with the least amount of disruption and loss to accountholders. Existing North Dakota law simply does not provide clear insolvency definitions and the best methods to minimize potential accountholder loss. A more clear procedure to appoint receivers and to resolve receivership estates is needed.

I urge the Committee's favorable consideration to House Bill No. 1161 and request a "Do Pass".



STATE OF NORTH DAKOTA  
DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

CSBS Accredited since 1993

Gary D. Preszler  
COMMISSIONER

Robert J. Entringer  
CHIEF EXAMINER - BANKS

David E. Clinton  
ASST. COMMISSIONER

Jim Laidlaw  
CHIEF EXAMINER  
CREDIT UNIONS

## MEMORANDUM

DATE: December 24, 1998

TO: North Dakota Chapter 6-05 Trust Companies

FROM: Gary D. Preszler, Commissioner

SUBJECT: Department Prefiled Legislation

Attached please find copies of the Department prefiled bills affecting North Dakota independent trust companies (operating under Chapter 6-05 of the North Dakota Century Code) to be considered by the 56<sup>th</sup> Legislative Assembly.

During the latter part of October I attended a meeting hosted by the Texas Department of Banking for all states that supervise independent trust companies. Topics included the coordination of supervision for trust companies operating multi-state, revisions to a draft multi-state trust agreement for the coordination of supervision and examination responsibilities authored by the Conference of State Bank Supervisions, the need for standardized capital maintenance requirements, and receivership authority for insolvent institutions. I also extensively reviewed Texas laws establishing receivership authority since they have had considerable experience in resolving a number of insolvent trust companies. As a result of the meeting and my further review, I have determined the need for the introduction of two Department bills. A brief explanation of the attached bills follows.

*FIDELITY BOND*

Although state law presently requires a surety deposit up to \$500,000, the surety deposit may only be large enough to cover receivership costs based upon the Texas Department of Banking presentation. In cases of employee/officer dishonesty, additional recovery afforded by a fidelity bond may minimize or eliminate any loss to trust account holders. Consequently, the proposed bill sets forth the requirement for fidelity bond coverage similar to the requirement for state-chartered banks under Section 6-03-71. Based upon Department records, all four North Dakota state-chartered independent trust companies already maintain some fidelity bond coverage on officers and employees. Therefore, the proposed legislation should not create any present burden or additional cost provided the coverage maintained is deemed adequate.

*TRUST COMPANY RECEIVERSHIP*

Presently there is no clear statutory authority other than to place the assets of an insolvent trust company in the hands of the district court, which process is likely to only result in liquidation. The idea is to provide a mechanism to be able to sell the assets of the trust company, possibly at a premium to help offset any deficit, with the approval of the district court, and provide for a successor trustee to the benefit of and least disruption to trust account holders. The bill was drafted after reviewing Texas law, which is similar to FDIC receivership authority to provide for the sale of commercial banks where FDIC is named the receiver.

If you want to discuss or comment on the Department's prefiled bills, please feel free to contact either Assistant Commissioner David Clinton or myself at any time by calling 701-328-9933.

GDP:sr

6-05-34. Other code provisions applicable to corporations doing business under this chapter. The provisions of title 10, as it may be amended from time to time, governing profit corporations, and sections 6-01-06, 6-01-09, 6-03-11, 6-03-12, 6-03-27, 6-03-33, 6-03-34, 6-03-35, 6-03-41, 6-03-42, 6-03-51, 6-03-52, 6-03-53, 6-03-54, 6-03-55, 6-03-56, 6-03-57, 6-03-58, 6-03-61, 6-03-62, 6-03-63, 6-03-64, 6-03-65, 6-03-70, 6-03-72, 6-07-02, 6-07-04, 6-07-05, 6-07-06, 6-08-03, 6-08-06, 6-08-09, 6-08-14, 6-08-20 are applicable to and must be observed by all corporations organized under this chapter, except as to provisions thereof inconsistent with the provisions of this chapter.

Source: S.L. 1897, ch. 142, § 2; R.C. 1899, 1943, § 6-0534; S.L. 1971, ch. 108, § 3; 1977, § 3258a; R.C. 1905, § 4677; C.L. 1913, ch. 71, § 2; 1991, ch. 87, § 2. § 5205; S.L. 1931, ch. 93, § 1, subs. b; R.C.

**6-07-03. Banks insolvent, when.** A bank is deemed insolvent:

1. When the actual value of its assets is insufficient to pay its liabilities;
2. When it is unable to meet the demands of its creditors in the usual and customary manner;
3. When it fails to make good its reserve as required by law; or
4. When it fails to comply with any lawful order of the state banking board within any time specified therein.

Source: S.L. 1905, ch. 165, § 40; R.C. 1905, § 4674; C.L. 1913, § 5189; S.L. 1915, ch. 53, § 1; 1925 Supp., § 5189; S.L. 1931, ch. 96, § 50; R.C. 1943, § 6-0703; 1991, ch. 87, § 3.

**6-07-04.1. Insolvent bank — Order to show cause hearing — Exception.** Upon a determination by the commissioner that any bank is insolvent, the commissioner may order the bank to inject capital in an amount determined by the commissioner to be sufficient to permit the bank to operate in a safe and sound condition or show cause why it should not be declared insolvent by the state banking board. The commissioner's order must include the basis for his determination, with reasonable specificity, and identify and attach the pages or portions of the examination report or other documents supporting his determination. The order to show cause hearing must be heard by the state banking board. The minimum notice for the hearing is three business days. In the commissioner's order to inject capital or show cause why it should not be declared insolvent by the state banking board, the commissioner shall indicate whether a purchase and assumption transaction is contemplated if the banking board declares the bank insolvent. If the state banking board determines that the bank is insolvent, the board shall appoint a receiver. The receiver shall exercise its powers as set forth in this chapter.

The hearing provided for in this section is not required when the bank is in violation of an existing final capital order and the state banking board has determined that an emergency exists which may result in serious losses to the depositors. In such a case, the state banking board may declare the bank insolvent without a hearing and appoint a receiver. The receiver shall exercise all powers as set forth in this chapter.

Such course may be taken from actions taken under this section only in accordance with the provisions of section 6-07-14.

Source: S.L. 1987, ch. 119, § 1.

**6-07-04.2. Acquisition of an institution.** The receiver of an insolvent institution or the state banking board, when it has acquired possession of the institution for the purpose of acquisition pursuant to section 6-07-10, may not permit the acquisition of the financial institution. The state banking board may grant approval under this chapter for applications for the reorganization of a state bank or establishment of facilities. The receiver of an

insolvent institution or board, when acting under the provisions of this section, may reject any and all bids.

The procedures may be modified by the state banking board to the extent the board deems necessary under the circumstances. No notice of application need be given and no public hearing need be held.

**Source:** S.L. 1987, ch. 120, § 1; 1991, ch. 37, § 4; 1995, ch. 79, § 12. section 12 of chapter 79, S.L. 1995 becomes effective August 1, 1996.

**Effective Date.**

The 1995 amendment of this section by

<u>Docket Number</u> <u>Applicant Name</u> <u>Address</u> <u>City, State, Zip</u>	<u>Delegation</u>	<u>Filing Region</u> <u>Application Type</u> <u>Application Category</u> <u>Application Sub-category</u>	<u>Tracking Number</u> <u>Date Filed</u> <u>Decision Due Date</u> <u>Related Tracking #</u>	<u>Name (See explanation)</u> <u>Address</u> <u>City, State, Zip</u> <u>Decision : Eff Dates</u>	<u>Decision</u>
14938 * NON-DELEGATED FRONTIER TRUST COMPANY, FSB 3100 13TH AVENUE SOUTH FARGO, ND 58103		MIDWEST NEW INSTITUTION FSB DENOVO	R4-1997-0541 12/17/1997 05/02/1999 R4-1997-0540		IN PROCESS

**Explanation:** - If the application type is a **Branch**, the information in this column will be about the branch. If the application type is a **HC**, the information will be the name of the institution to be acquired. For all other applications, such as **OAKAR** or **Merger**, the information will be the name of the Joint Applicant.

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