

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

22008

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2208

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2208

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 23, 2001

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-------------|
| 1 | | x | 47.8 to end |
| 2 | x | | 0 to 12.00 |
| (March 19/01) 1 | x | | 0.4 to 7.3 |
| Committee Clerk Signature <i>Dow & Perez</i> | | | |

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB2208 relating to the duties and liabilities of real state brokerage firms and clients.

CLAUS LEMBKE, ND Assn. of Realtors, Supports the bill. Written testimony attached.

MOINE GATES, Chairman, Realtors Political Affairs Committee, supports the bill. Written testimony attached.

SCOTT LOUSER, ND Assn. of Realtors, supports the bill. Written testimony attached.

CASEY CHAPMAN, Atty. ND Realtors Assn., in favor of the bill.

SENATOR EVERY: How do you prove "should have known"?

CASEY CHAPMAN.: If consumer relies on agents expertise and knowledge client should not be liable. "Should have known" can be proven after the transaction for example, limits by zoning regulations should be known by the agent.

No testimony against.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2208

Hearing Date January 23, 2001

SENATOR KREBSBACH: Motion: do pass on amendment : page 2, line 2, remove "actually" and remove the overstrike over "or should have known" SENATOR TOLLEFSON: Seconded.

Roll call vote 7 yes; 0 no; 0 absent. Motion carried.

SENATOR TOLLEFSON: Motion: do pass as amended. SENATOR D. MATHERN: Seconded.

Roll call vote 7 yes; 0 no; 0 absent. Motion carried.

Carrier: SENATOR ESPEGARD.

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2208

Hearing Date January 23, 2001

March 19, 2001. Tape 1-A-0.3 to 7.3.

Committee reconvened. All members, except **Senator Espegard**, present. Committee studied

House amendments.

Senator Krebsbach: Motion to concur with House amendments. **Senator Klein**: Second.

Roll call votes: 6 yes; 0 no; 1 absent not voting. Floor assignment: **Senator Espegard**

REPORT OF STANDING COMMITTEE (410)
January 23, 2001 4:02 p.m.

Module No: SR-11-1475
Carrier: Espegard
Insert LC: 10472.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2208: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2208 was placed on the Sixth order on the calendar.

Page 2, line 2, remove "actually" and remove the overstrike over "~~or should have known~~"

Renumber accordingly

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2208

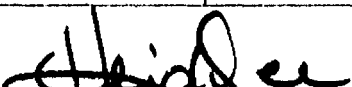
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2208

House Industry, Business and Labor Committee

Conference Committee

Hearing Date Feb. 28, 2001

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1 | X | | 20.55 |
| | | X | -1.4 |
| Committee Clerk Signature  | | | |

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Claus Lembke: *ND Assoc. of Realtors* **Written testimony in support of bill.**

Rep Kasper: This relieves the broker from the agency, why?

Lembke: This only works from broker to broker, not broker to agent.

Scott Louser: *Pres. Mnot Board of Realtors* **Written testimony in support.**

Casey Chapman: This takes out the "or should have known" for the client. This cleans up the legislation and adds "wrongful act and omissions".

Rep Keiser: What is more difficult to prove, knowledge or should-have known's?

Chapman: actual knowledge.

Chairman Berg: We'll send this back to LC for review and amendments. Close the hearing.

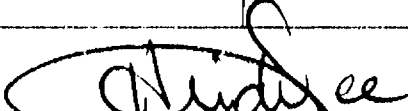
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2208(B)

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 7, 2001

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-----------|
| 3 | X | | 22.7-37.6 |
| | | | |
| | | | |
| Committee Clerk Signature  | | | |

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep M. Klein: Explained bill and amendments.

Rep Ekstrom: I move the amendments.

Rep Severson: I second.

Vice-Chairman Keiser: I move to further amend.

Rep Lemieux: I second.

Vice-Chairman Keiser: I move a do pass as amended.

Rep M. Klein: I second.

15 yea, 0 nay, 0 absent Carrier Rep M. Klein

10472.0201
Title.

Prepared by the Legislative Council staff for
Representative Kasper
March 2, 2001

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2208

Page 1, line 24, after "agent" insert "of another real estate brokerage firm"

Page 2, line 1, replace "the" with "another"

Page 2, line 4, after "agent" insert "of another real estate brokerage firm" and after "subagent"
insert "of another real estate brokerage firm"

Renumber accordingly

Date: 3-7-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2208

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Keiser Seconded By M. Klein

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|-----------------------|-----|----|
| Chairman- Rick Berg | ✓ | | Rep. Jim Kasper | ✓ | |
| Vice-Chairman George Keiser | ✓ | | Rep. Matthew M. Klein | ✓ | |
| Rep. Mary Ekstorm | ✓ | | Rep. Myron Koppang | ✓ | |
| Rep. Rod Froelich | ✓ | | Rep. Doug Lemieux | ✓ | |
| Rep. Glen Froseth | ✓ | | Rep. Bill Pietsch | ✓ | |
| Rep. Roxanne Jensen | ✓ | | Rep. Dan Ruby | ✓ | |
| Rep. Nancy Johnson | ✓ | | Rep. Dale C. Severson | ✓ | |
| | | | Rep. Elwood Thorpe | ✓ | |
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Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep M. Klein

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

REPORT OF STANDING COMMITTEE (410)
March 9, 2001 8:46 a.m.

Module No: HR-41-5162
Carrier: M. Klein
Insert LC: 10472.0202 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2208, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2208 was placed on the Sixth order on the calendar.

Page 1, line 16, remove "actually" and remove the overstrike over "~~or should have known~~"

Page 1, line 24, after "agent" insert "of another real estate brokerage firm"

Page 2, line 1, replace "the" with "another"

Page 2, line 4, after "agent" insert "of another real estate brokerage firm" and after "subagent" insert "of another real estate brokerage firm"

Renumber accordingly

2001 TESTIMONY

SB 2208



North Dakota ASSOCIATION of REALTORS®

318 WEST APOLLO AVENUE • BISMARCK, NORTH DAKOTA 58503-1412
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01-23-01

Testimony before the Senate Industry, Business and Labor Committee

SB 2208

Mr. Chairman, Members of the Senate Industry, Business and Labor Committee, my Name is Claus Lembke and I represent the ND Association of REALTORS®. We are a statewide trade association with approximately 1050 members.

We would appreciate your favorable consideration of Senate Bill 2208. This legislation was drafted on behalf of the ND Association of REALTORS®.

I would like to explain to the committee the general principal of the statutes under section 43-23-12.2:

Duties to supersede Common Law

This chapter of our ND License Law deals with provisions of Agency Law. Common law as it is written elsewhere in our statutes generally provide that under an agency relationship the agent is assumed to be fully responsible for any action of his principal and vice-versa.

A few years ago with the help of this committee a specific Agency law dealing with real estate licensees and their clients (principal) was created for the protection of both the client and the licensee. This is referred to as abrogation of common law.

In example when you look at subsection 2 of 43-23-12.2 it states that "A client is not liable for a misrepresentation made by a licensee in connection with the licensee providing brokerage services.....etc."

If this situation would ever end up in a lawsuit the court would be bound to rule based on this very specific law and not under the common law principles.

At this time I like to introduce 2 members of a special task force that was assigned to this legislation.

Moine Gates, a REALTOR® with Crary Homes RE in Grand Forks is the State Chairman of our Political Affairs Committee (also a past State Legislator) and he would like to explain an amendment that we would encourage you to make to this bill. After that we have asked Scott Louser with Prudential Preferred Properties from Minot to explain our reasons for support of Senate Bill 2208.





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Moine Gates

1-23-01

Testimony before Senate Industry, Business and Labor Committee

Mr. Chairman, members of the Senate Industry, Business and Labor Committee, my name is Moine Gates and I am the Chairman of the REALTORS® Political Affairs Committee.

We are asking for your support of Senate Bill 2208. As we have done in the past, we sent this proposed legislation to the Real Estate Commission for their input. Mr. Reich, the legal council of the Real Estate Commission, has suggested a change that would remove the overstrike from the following words on page 2 line 2 "or should have known". We have looked at his suggestion and we agree to the removal of the overstrike.

By removing the overstrike in subsection 3 but leaving it in subsection 2 we essentially place a higher standard on real estate licensees over the client. That, in our opinion, is reasonable and a standard that should be expected.





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1-23-01

SB 2208

Testimony before the Senate Industry, Business and Labor Committee

The purpose for this proposed legislation is based on the recommendations given to the National Association of REALTORS® Risk Management Committee by the Legislative Working Group. The report was given to the committee in April of 2000 with recommendations concerning issues such as Vicarious Liability and Imputed Knowledge.

One concern was to either eliminate or modify the consumer's vicarious liability for the acts of the licensee. The rationale behind this recommendation stated the common law theory of vicarious liability, under which a principal may be liable for the acts of his/her agent, is not appropriate in a real estate brokerage relationship.

Consumers do not expect that they could have vicarious liability for a licensee's actions, and it is likely that they would not select an agency relationship at all if this type of liability is present. It would benefit the consumer if it specifically is eliminated, and this would be consistent with consumer expectations.

The wording for our changes comes based on examples from the states of Kansas and Idaho. Our legal counsel drafted changes and presented them to the ND Real Estate Commission. There was some slight modification that all parties recently agreed to as alluded to by Moine Gates in his earlier testimony.

Thank you.





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Claus Lembke

02-28-01

Testimony before the House Industry, Business and Labor Committee

SB 2208

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We would appreciate your favorable consideration of Senate Bill 2208. This legislation was drafted on behalf of the ND Association of REALTORS®.

I would like to explain to the committee the general principal of the statutes under section 43-23-12.2:

Duties to supersede Common Law

This chapter of our ND License Law deals with provisions of Agency Law. Common law as it is written elsewhere in our statutes generally provide that under an agency relationship the agent is assumed to be fully responsible for any action of his principal and vice-versa.

A few years ago with the help of this committee a specific Agency law dealing with real estate licensees and their clients (principal) was created for the protection of both the client and the licensee. This is referred to as abrogation of common law.

In example when you look at subsection 2 of 43-23-12.2 it states that "A client is not liable for a misrepresentation made by a licensee in connection with the licensee providing brokerage services.....etc."

If this situation would ever end up in a lawsuit the court would be bound to rule based on this very specific law and not under the common law principles.

At this time I like to introduce the members of a special task force that was assigned to this legislation.

- Scott Louser with Prudential Preferred Properties from Minot.
- Casey Chapman, Legal Council for the North Dakota Association of REALTORS® and the leading expert on Agency Laws in North Dakota.



Scott Louser
02-28-01
SB 2208

Testimony before the House Industry, Business and Labor Committee

Mr. Chairman and members of the HIBL Committee. My name is Scott Louser. I am a REALTOR® in Minot and the President-elect of the Minot Board of REALTORS®. I am also a member of the NDAR Political Affairs Committee.

The purpose for this proposed legislation is based on the recommendations given to the National Association of REALTORS® Risk Management Committee by the Legislative Working Group. The report was given to the committee in April of 2000 with recommendations concerning issues such as Vicarious Liability and Imputed Knowledge.

One concern was to either eliminate or modify the consumer's vicarious liability for the acts of the licensee. The rationale behind this recommendation stated the common law theory of vicarious liability, under which a principal may be liable for the acts of his/her agent, is not appropriate in a real estate brokerage relationship.

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The wording for our changes comes based on examples from the states of Kansas and Idaho. Our legal counsel drafted changes and presented them to the ND Real Estate Commission. There was some slight modification that all parties recently agreed to and approved by Senate in the engrossed version of SB 2208.

We are asking for your favorable consideration.

Thank you.