

# MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2228

2001 SENATE FINANCE AND TAXATION

SB 2228

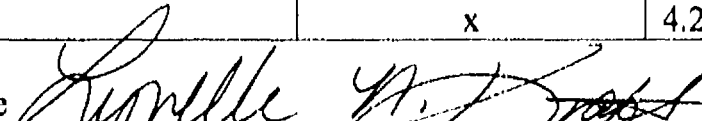
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2228

Senate Finance and Taxation Committee

Conference Committee

Hearing Date 1/23/01

Tape Number	Side A	Side B	Meter #
1		x	8.6-24.5
		x	50-end
2	x		0-7.8
1/24/01 - 2		x	4.2-9
Committee Clerk Signature 			

Minutes:

Senator Urlacher: Opened the hearing on SB 2228, relating to fees for late payment of consumer debt.

Senator Karen Krebsbach: Introduced the bill, introduced presenter.

Cal Rolfson: ND Bankers Assoc., testified in support. Written testimony attached.

Senator Nichols: Are they notified that they are late? Does a late charge continue each month because they missed one?

Cal Rolfson: Most institutions notify. No, late charge does not continue.

Senator Urlacher: What if they make a partial payment?

Cal Rolfson: I'm not sure.

Greg Tschider: ND Credit Union League, testified in support. In regards to partial payment, the percentage is calculated on the unpaid amount. Gives examples. Asking for fairness for the consumers that make their payment on time. \$10 is not much of an incentive to pay.

Page 2  
Senate Finance and Taxation Committee  
Bill/Resolution Number 2228  
Hearing Date 1/23/01

Jack McDonald: Independent Community Banks of ND, testified in support. Echoes the testimony of Cal Rolfson and Greg Tschider.

Senator Urlacher: Closed the hearing. Action delayed.

Discussion held later. Meter number 50-end, side B-tape 1 & 0-7.8, Tape 2, Side A.

AMENDMENT ACTION:

Motion made by Senator Nichols, Seconded by Senator Wardner, to amend.

Discussion held 1/24/01. Meter number 4.2-9.

AMENDMENT ACTION:

Motion made by Senator Christmann, Seconded by Senator Nichols, to move amendment to Pg 4, Line 26 changing 10 to 15. Voice Vote taken. All in favor, amendment adopted.

COMMITTEE ACTION: 1/24/01

Motion made by Senator Christmann for a DO PASS AS AMENDED, Seconded by Senator Wardner. Vote was 6 yeas, 0 nays, 0 absent and not voting. Bill carrier was Senator Christmann.

Date: 1/23/01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2228

Senate Finance and Taxation Committee

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

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

Action Taken To form amendment

Motion Made By Nichols Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman					
Senator Wardner-Vice Chairman					
Senator Christmann					
Senator Stenehjem					
Senator Kroeplin					
Senator Nichols					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 1/24/01  
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2228

Senate Finance and Taxation Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

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

Action Taken Voice Vote on amendments

Motion Made By Christman page 4, line 26, obj 10 to 15  
Seconded By Nichols

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman					
Senator Wardner-Vice Chairman					
Senator Christmann					
Senator Stenehjem					
Senator Kroeplin					
Senator Nichols					

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 1/24/01  
 Roll Call Vote #: 23

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2228**

Senate Finance and Taxation Committee

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

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

Action Taken do pass or amended

Motion Made By Christman Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman	✓				
Senator Wardner-Vice Chairman	✓				
Senator Christmann	✓				
Senator Stenehjem	✓				
Senator Kroeplin	✓				
Senator Nichols	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Christman

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

REPORT OF STANDING COMMITTEE (410)  
January 25, 2001 2:06 p.m.

Module No: SR-13-1630  
Carrier: Christmann  
Insert LC: 18285.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2228: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2228 was placed on the Sixth order on the calendar.**

Page 4, line 26, overstrike "ten" and insert immediately thereafter "fifteen"

Renumber accordingly



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2001 HOUSE FINANCE AND TAXATION

SB 2228

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2228

House Finance and Taxation Committee

Conference Committee

Hearing Date March 6, 2001

Tape Number	Side A	Side B	Meter #
1		x	3,306
Committee Clerk Signature <i>Jamie Stein</i>			

Minutes:

**REP. AL CARLSON, CHAIRMAN** Opened the hearing.

**CAL ROLFSON, LEGISLATIVE COUNCIL FOR NORTH DAKOTA BANKER'S ASSOCIATION,** Testified in support of the bill. See attached written testimony.

**REP. KELSH** Is there anything in the law that regulates or defines what a late payment is?

**CAL ROLFSON** To my knowledge, I am not aware of a definition of that. Physically, in every contract, there is a grace period, generally, fifteen days, there are some grace periods set out in the law.

**REP. KELSH** Does this apply to charges on loans on services, like medical services?

**CAL ROLFSON** No

**REP. CARLSON** In summarizing, if the loan is less than two thousand dollars, then it would be fifteen percent of the installment or fifty dollars, whichever is less, so if I have an installment of

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House Finance and Taxation Committee

Bill/Resolution Number SB 2228

Hearing Date March 6, 2001

one hundred dollars, fifteen percent would be fifteen dollars, or fifty dollars, so they would have to pick the fifteen dollars?

**CAL ROLFSON** That is correct.

**REP. CARLSON** If it is over two thousand dollars, then it would be one hundred dollars and the fifteen percent still applies?

**CAL ROLFSON** No, if it's two thousand dollars or more than two thousand dollars, it would be up to one hundred dollars. If you look at the breaking point, under the two thousand dollars, actually, it is payments of three hundred and thirty three dollars, which would, essentially, be fifty dollars. Above that, between there and two thousand dollars, you would still have a fifty dollar payment as the maximum which could be charged. Over two thousand dollars, the one hundred dollar payment, would be five percent.

**REP. KROEBER** You are raising it from fifteen dollars, line 11 says it may not exceed fifteen dollars, and then on line 15, it may not exceed fifty dollars?

**CAL ROLFSON** Under current law, the maximum is ten dollars or ten percent, whichever is the lesser.

**REP. KROEBER** On line 11, are we not crossing out fifteen dollars or fifteen percent.

**CAL ROLFSON** The deleted language on line 11 and 13, page 1, is still the law, and that is reflected in the underlined language on line 13 through 15. That is just the style of language that the drafter made. That deals with commercial loans, mortgages or agricultural loans. The other ones deal just with retail installment contracts.

**REP. CARLSON** Why did you change the language on Section 1, on the commercial mortgages and agricultural notes or mortgages?

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House Finance and Taxation Committee

Bill/Resolution Number SB 2228

Hearing Date March 6, 2001

**CAL ROLFSON** It was just a style change, I did not draft the bill, but it puts in I believe, what the drafter believed as better language.

**REP. KROEBER** On page 3 of your testimony, you state that the result is that the delinquent borrowers would abuse the system, what percent do you think are these delinquent borrowers?

**CAL ROLFSON** I wish I knew that, the example I gave you of the fifteen thousand dollar tractor payment is a real example where payments were delayed, knowing for many many months that only a ten dollar charge could be leveled. It was essentially, free borrowing for that period of time. It is certainly the minority.

**REP. CARLSON** If you wrote a bad check, what would be your standard charges?

**CAL ROLFSON** My understanding is that charges that range, from bank to bank, are in the twenty nine dollar range for writing a bad check.

**REP. CARLSON** So in most cases, what we are doing here, for late payments, where the money is being spent, we are charging less than the charge for a bad check.

**CAL ROLFSON** Absolutely, significantly less.

**REP. DROVDAL** That is a charge the bank is going to make against the individual, it does not include a charge the business or its collection agency will charge.

**CAL ROLFSON** You are correct.

**REP. WINRICH** Your example dealt with retail installment contracts where, apparently, there was an annual installment of a significant sized payment, this would also apply to somebody who signs a retail installment contract for the purchase of a refrigerator and ends up with a seventy five dollar per month payment or something, would it not?

**CAL ROLFSON** Yes, it would.

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House Finance and Taxation Committee

Bill/Resolution Number SB 2228

Hearing Date March 6, 2001

**REP. WINRICH** On page 4 of the bill, where you deal with the retail installment contract in line 26, it talks about fifteen percent of the delinquent installment payment or fifty dollars, whichever is less, and also in the language on page 1, which was stricken, on line 12, it said fifteen percent of the late payment, on line 16, it simply says, may not exceed fifty dollars or fifteen percent. There is no base for the fifteen percent. Is that an omission?

**CAL ROLFSON** I believe the introductory words are "a late fee" would perhaps, respond to that issue. The late fee, would be that amount.

**JACK MCDONALD, INDEPENDENT COMMUNITY BANKS OF NORTH DAKOTA,**

Testified in support of the bill for the same reasons that Cal Rolfson said.

**REP. CARLSON** Do any neighboring states raise the interest rate if you are delinquent?

**JACK MCDONALD** Somebody else more familiar may be able to answer that, I am not aware.

There are states that do that.

**GREG TSCHIDER, NORTH DAKOTA CREDIT UNION LEAGUE** Testified in support of the bill. See attached written testimony.

**REP. CARLSON** The agreement you sign on an a loan with a consumer where the payment is in excess of two thousand dollars, what does that agreement say, obviously, now the law would say, when we do this, it could be up to one hundred dollars, do you put a percentage in as well as up to one hundred dollars, or what to you do?

**GREG TSCHIDER** What we do now, is quote the law as it is. The verbage you see here in this bill, is the verbage we would type on our contracts.

**REP. CARLSON** You would not establish a percentage, you would just say, if you are late, we are going to charge you one hundred dollars?

**GREG TSCHIDER** That is right. It would be very simple and up front because that is what the law is. As long as you stay under the limit, you could agree to most anything.

**REP. CARLSON** Your intent is to take it to one hundred dollars?

**GREG TSCHIDER** Everyone has different fees and different ways of handling things. It would be up to each credit union to decide, from a public relations standpoint, how they are going to treat their members. There are times where we can assess late payments, but we don't. If someone has a good reason, perhaps they were ill, or on vacation, maybe there was a problem in the family, we waive those. Wouldn't you rather pay a credit card where there is a substantially higher penalty, then pay your credit union loan, where all they can charge you is ten dollars. Ten dollars doesn't go very far. We feel that is not even a slap on the hand anymore.

**REP. WINRICH** I would like to explore the conditions under which these contracts are generated, and what triggered this is your example about a motor home. Related to attending a RV show, he felt he could have borrowed the necessary funds on the spot at this show, without any sort of credit check or whatever. This, I assume is either purchased or backed by some type of financial institution, is that a typical approach to these retail installment contracts?

**GREG TSCHIDER** The normal procedure is that an arrangement is made between the dealer and the financial institution, before the sale or purchase. The perimeters of the loan are, basically, set up as to what the interest rate is going to be, what the late payments are going to be, etc. Went on to explain the normal application. You stated you did not feel there was a credit check or background check on credit, we will never get involved in a situation like that, there will have to be a credit report.

**REP. WINRICH** I am always amazed at how easy it is to borrow money.

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House Finance and Taxation Committee  
Bill/Resolution Number SB 2228  
Hearing Date March 6, 2001

**GREG TSCHIDER** You are right, it is very easy to get credit these days. Our loss experience at credit unions has not been with retail installment contracts. The great majority has been with credit cards. Explained his experience at a credit union hearing where a couple had one hundred thirty five thousand dollars in credit cards which they came to bankruptcy court with.

With no further testimony, the hearing was closed.

**COMMITTEE ACTION 3-6-01, TAPE #2, SIDE A, METER #1723**

**CAL ROLESON** Appeared before the committee to answer questions the committee had.

**REP. HERBEL** Made a motion for a **DO PASS**.

**REP. DROYDAL** Second the motion. **MOTION CARRIED**

9 YES      5 NO      1 ABSENT

**REP. LLOYD** Was given the floor assignment.



Date: 3-6-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2228

House FINANCE & TAXATION Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Herbel Seconded By Rep. Drovdal

Representatives	Yes	No	Representatives	Yes	No
CARLSON, AL, CHAIRMAN	✓		NICHOLAS, EUGENE	✓	
DROVDAL, DAVID, V-CHAIR	✓		RENNER, DENNIS	A	
BRANDENBURG, MICHAEL	✓		RENNERFELDT, EARL	✓	
CLARK, BYRON		✓	SCHMIDT, ARLO		✓
GROSZ, MICHAEL	✓		WIKENHEISER, RAY	✓	
HERBEL, GIL	✓		WINRICH, LONNY		✓
KELSH, SCOT		✓			
KROEBER, JOE		✓			
LLOYD, EDWARD	✓				

Total (Yes) 9 No 5

Absent 1

Floor Assignment Rep. Lloyd

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

**REPORT OF STANDING COMMITTEE (410)**  
March 6, 2001 3:57 p.m.

Module No: HR-38-4954  
Carrier: Lloyd  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**SB 2228, as engrossed: Finance and Taxation Committee (Rep. Carlson, Chairman)**  
recommends **DO PASS** (9 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING).  
Engrossed SB 2228 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2228

**TESTIMONY BY**  
**CALVIN N. ROLFSON, LEGISLATIVE COUNSEL**  
**NORTH DAKOTA BANKERS ASSOCIATION**  
**REGARDING**  
**SENATE BILL 2228**

**MY NAME IS CAL ROLFSON. I AM THE LEGISLATIVE COUNSEL FOR THE NORTH DAKOTA BANKERS ASSOCIATION. I APPEAR ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION IN SUPPORT OF SENATE BILL 2228.**

**SENATE BILL 2228 PROPOSES TO AMEND SUBDIVISION "e" OF SUBSECTION 2 OF SECTION 51-13-02. THAT SECTION SETS OUT WHAT MUST BE INCLUDED IN RETAIL INSTALLMENT CONTRACTS IN CONSUMER LOAN SETTINGS. RETAIL INSTALLMENT CONTRACTS ARE USED BY IMPLEMENT DEALERS AND BUSINESSES TO ALLOW CONSUMERS TO TAKE POSSESSION OF THE PROPERTY BEFORE IT IS PAID FOR AND TO BUY THE ASSET THROUGH PERIODIC PAYMENTS. THE ASSET MAY BE A CAR, A DAVENPORT OR A TRACTOR. ATTACHED IS A COPY OF NDCC 51-13-02 FOR YOUR REVIEW.**

**THE GIST OF THE AMENDMENT IS FOUND ON PAGE 4 OF THE BILL.**

**SUBDIVISION "e" OF SECTION 2 CURRENTLY SAYS THAT WHEN A BUYER UNDER A RETAIL INSTALLMENT CONTRACT IS DELINQUENT OR IN DEFAULT ON A LOAN, THE SELLER OR OWNER OF THE CONTRACT MAY ONLY CHARGE 10%,**

OR \$10, WHICHEVER IS THE LESSER, AS A LATE PAYMENT FEE. THIS BILL PROPOSES A CHANGE TO THIS STATUTE.

AS THE PROPOSED AMENDMENT TO THE CURRENT LAW STATES AT PAGE 4 OF THE BILL, THE LATE PAYMENT FEE FOR EACH LATE PAYMENT WOULD BE UP TO \$50 OR 10% OF THE DELINQUENT PAYMENT OF \$2,000 OR UNDER, WHICHEVER IS THE LESSER, OR FOR PAYMENTS OF OVER \$2,000, THE FEE WOULD BE UP TO \$100. A LITTLE HISTORY MIGHT BE HELPFUL.

TWO SESSIONS AGO (1997) THE LEGISLATURE AMENDED NDCC 47-14-05. THAT LAW IS CURRENTLY FOUND ON PAGE 1 OF THE BILL. THAT AMENDMENT IN 1997 PERMITTED COMMERCIAL LOAN AND AGRICULTURAL LOAN LATE PAYMENT FEES TO BE SET BY CONTRACT BETWEEN THE BORROWER AND THE LENDER. ALSO, IN 1997, THE LEGISLATURE APPROVED AMENDMENTS TO 51-14-02 REGARDING THE SETTING OF LATE PAYMENT FEES BY CONTRACT IN REVOLVING CHARGE ACCOUNTS. THOSE CHANGES IN THE LAW IN 1997 WERE SUPPORTED BY THE CREDIT UNIONS, NDBA, AND OTHER LENDERS.

IN 1999 A BILL WAS INTRODUCED (HB 1414) TO ELIMINATE THE DOLLAR AND PERCENTAGE AMOUNT OF LATE PAYMENT FEES IN RETAIL INSTALLMENT CONTRACTS AND TO SIMPLY ALLOW THE PARTIES TO AGREE ON THE CHARGE FOR DELINQUENCIES. AFTER PASSING THE HOUSE, THE SUPPORTERS OF THAT BILL PROPOSED A FURTHER MODIFICATION AND SOUGHT TO AMEND IT IN THE SENATE TO HAVE REINSERTED 15% AS THE MAXIMUM AMOUNT OF A DELINQUENT PAYMENT, BUT ELIMINATE THE DOLLAR AMOUNT. BECAUSE

THERE WAS CONCERN THAT THIS AMOUNT MAY RESULT IN A HIGH DELINQUENT PAYMENT FOR SOME LOANS WITH LARGER ANNUAL PAYMENTS, THE BILL DID NOT PASS WITH THESE AMENDMENTS, WITH THE UNDERSTANDING WE WOULD RETURN THIS SESSION AND PROPOSE LEGISLATION WITH A CAP ON LATE FEES. WE HAVE DONE THAT WITH SENATE BILL 2228.

CURRENTLY THE LAWS FOR CREDIT CARDS, AGRICULTURAL LOANS AND COMMERCIAL LOANS, ALL HAVE PROVISIONS THAT PERMIT THE LATE PAYMENT FEES TO BE SET AS A MATTER OF CONTRACT. THE ONLY EXCEPTION NOW IS CONSUMER RETAIL INSTALLMENT LOANS.

IF A CONSUMER BORROWER IN A RETAIL INSTALLMENT CONTRACT HAS AN OUTSTANDING ANNUAL \$1,000 PAYMENT, FOR EXAMPLE, THERE IS CURRENTLY LITTLE INCENTIVE FOR THE BORROWER TO MAKE THAT PAYMENT WITH A \$10 MAXIMUM LATE PAYMENT FEE UNDER THE CURRENT LAW. THE RESULT IS THAT DELINQUENT BORROWERS WHO ABUSE THE SYSTEM CAUSE INCREASED CHARGES FOR ALL OTHER RESPONSIBLE BORROWERS. IT IS UNFAIR FOR THE CONSCIENTIOUS BORROWER TO ABSORB HIGHER INTEREST RATES OR LOAN COSTS BECAUSE OF DELINQUENT BORROWERS. DELINQUENT PAYMENTS WITH SUCH LOW CHARGES REALLY BECOME NOTHING MORE THAN FREE ADDITIONAL BORROWING AT THE OPTION OF THE BORROWER. THIS BILL IS INTENDED TO PLACE THE RESPONSIBILITY FOR LATE PAYMENT FEES ON THE SHOULDERS OF THE DELINQUENT BORROWER AND NOT ON ALL OTHER BORROWERS.

IT IS NOT UNCOMMON FOR LOANS TO FARMERS FOR AGRICULTURAL MACHINERY UNDER RETAIL INSTALLMENT CONTRACTS TO HAVE LARGE ANNUAL PAYMENTS. THERE HAVE BEEN OCCASIONS WHEN BORROWERS, OWING THE LENDER \$15,000 ON AN ANNUAL PAYMENT FOR A TRACTOR, WILL SIGNIFICANTLY DELAY PAYMENT KNOWING THEY MAY CURRENTLY BE CHARGED NO MORE THAN \$10 FOR THAT LATE PAYMENT. UNDER THIS BILL, THERE WOULD AT LEAST BE A MAXIMUM LATE PAYMENT FEE OF \$100, OR 3/4 OF 1% ON A \$15,000 PAYMENT.

RETAIL INSTALLMENT LENDING IS HIGHLY COMPETITIVE AND CONSUMER LENDERS WILL MARKET THEIR PRODUCT WITH COMPETITIVE LATE PAYMENT FEES IN MIND.

CONTRARY TO WHAT IS DONE IN OTHER STATES, UNDER CURRENT NORTH DAKOTA LAW, LENDERS CANNOT RAISE INTEREST RATES WHEN A BORROWER DEFAULTS ON A PAYMENT. IT IS INTERESTING TO NOTE THAT FARM CREDIT SERVICES MAY DO SO BECAUSE THEY ARE REGULATED BY FEDERAL LAW. THE NORTH DAKOTA BANKERS ASSOCIATION BELIEVES IT IS BETTER PUBLIC POLICY TO NOT PERMIT LENDERS TO RAISE INTEREST RATES DURING THE COURSE OF THE LOAN.

NDCC 47-14-05 IS A SEPARATE COMPANION STATUTE REGULATING LATE PAYMENT FEES AND INTEREST CHARGES AFTER MATURITY ON ALL LOANS GENERALLY. THE AMENDMENTS TO SECTION 47-14-05, FOUND ON PAGE 1 OF THE BILL, WERE ADDED BY THE ATTORNEY FOR THE LEGISLATIVE COUNCIL

REVIEWING THIS BILL. THEY APPEAR APPROPRIATE. THE FIRST SENTENCE OF THE UNDERSCORED LANGUAGE FOUND ON LINES 13-15 OF PAGE 1 IS MERELY A STYLE CHANGE THAT CONFORMS TO THE CURRENT LAW. THE SECOND SENTENCE OF THE UNDERSCORED LANGUAGE FOUND ON LINES 15-18 OF PAGE 1 IS INTENDED TO CONFORM TO THE MAIN AMENDMENTS FOUND ON PAGE 4 OF THE BILL. IN OTHER WORDS, THE GIST OF THE BILL IS THE AMENDMENTS FOUND ON PAGE 4. HOWEVER, IT IS ALSO NECESSARY TO AMEND 47-14-05 AS FOUND ON PAGE 1 OF THE BILL.

YOU MIGHT WISH TO NOTE THAT THE CURRENT LAW THAT CALLS FOR 10% OR \$10, WHICHEVER IS LESS, FOR DELINQUENT INSTALLMENT PAYMENTS HAS BEEN IN PLACE SINCE 1979. THE NORTH DAKOTA BANKERS ASSOCIATION AND OTHER LENDERS SUPPORTING THIS LEGISLATIVE CHANGE HAVE BEEN PATIENT AND RESPONSIVE IN SEEKING THIS CHANGE.

ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION, I URGE YOUR FAVORABLE CONSIDERATION OF SENATE BILL 2228.



**51-13-02. Requirements as to retail installment contracts.**

1. A retail installment contract must be dated and in writing, and must contain all the agreements of the parties with respect to the cost and terms of payment for the personal property, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction.
2. a. If the retail installment sale for which the retail installment contract is made is not subject to the Truth in Lending Act (15 U.S.C. 1601-1667e), this subsection applies. The printed portion of the contract must be in at least eight-point type. The contract must contain printed or written in a size equal to at least ten-point bold type:
  - (1) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALLMENT CONTRACT".
  - (2) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.
  - (3) The following notice: "NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled-in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others: (a) to pay off in advance the full amount due and to obtain a partial refund of the finance charge; (b) to redeem the property if repossessed for a default within the time provided by law; (c) to require, under certain conditions, a resale of the property if repossessed. 4. If you desire to pay off in advance the full amount due, the amount of the refund you are entitled to, if any, will be furnished upon request."
- b. The seller shall deliver to the buyer a legible copy of the contract or any other document the seller has required or requested the buyer to sign. Until the seller does so, a buyer who has not received delivery of the personal property has an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a copy of the contract must be printed or written in a size equal to at least ten-point bold type and, if contained in the contract, must also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment of delivery of a copy of a contract is conclusive proof of such delivery and of compliance with this subdivision in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when the assignee purchases the contract.

**c. The contract must contain:**

- (1) The names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the personal property including its make, year model, model and identification numbers or marks, if any, and whether it is new or used.
- (2) The cash price of the personal property which is the subject matter of the retail installment sale.
- (3) The amount of the buyer's downpayment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.
- (4) The difference between paragraphs 2 and 3, which is the unpaid balance of cash price.
- (5) The amount, if any, included for insurance, specifying the coverages.
- (6) The amount, if any, of official fees.
- (7) The amount financed, which is the sum of paragraphs 4, 5, and 6.
- (8) The amount of the finance charge, if any.
- (9) The total of payments, which is the sum of paragraphs 7 and 8, payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.
- (10) The deferred payment price, which is the sum of the amounts determined in paragraphs 2, 5, 6, and 8.
- (11) If any installment substantially exceeds in amount any prior installment other than the downpayment, the following legend printed in at least ten-point bold type or typewritten: "THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS", followed, if there be but one larger installment, by: "AN INSTALLMENT OF \$ \_\_\_\_\_ WILL BE DUE ON \_\_\_\_\_", or, if there be more than one larger installment, by: "LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: \_\_\_\_\_", in such latter case inserting the amount of every larger installment and its due date.
- (12) Any balloon payments. If any payment under a contract is more than twice the amount of an otherwise regularly scheduled equal payment, the seller shall identify the amount of such payment by the term "balloon payment".

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the calculations involved in determining the amount to be paid by the buyer.

d. If the cost of any insurance is included in the contract and a separate charge is made to the buyer for the insurance:

- (1) The contract must state whether the insurance is to be procured by the buyer or the seller.
- (2) If the insurance is to be procured by the seller or holder, the seller or holder shall within thirty days after execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state and sold by a licensed insurance agent.

If any such policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract must be credited to the final maturing installments of the retail installment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.

e. A contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of more than ten days in an amount equal to ten percent of the delinquent installment payment or ten dollars, whichever is less; provided, that only one such delinquency and collection charge may be collected on each installment in addition to interest accruing thereon.

f. No retail installment contract may be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the personal property is not made at the time of the execution of the contract, the identifying numbers or marks of the property or similar information and the due date of the first installment may be inserted in the contract after its execution.

3. If a retail installment sale is also subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], the seller may, instead of complying with the disclosure requirements of subsection 2, comply with all requirements of the Truth in Lending Act. A seller who complies with the Truth in Lending Act still must comply with the provisions of this section governing matters other than disclosure.

Source: S.L. 1957, ch. 322, § 2; R.C. 1943, 1957 Supp., § 51-1302; S.L. 1959, ch. 352, § 1; 1979, ch. 517, § 2; 1983, ch. 532, § 1.

**Collateral References.**

Late charge, validity and construction of

provision imposing "late charge" or similar exaction for delay in making periodic payments on note, mortgage, or installment sale contract, 63 A.L.R.3d 50.

**TESTIMONY BY**  
**CALVIN N. ROLFSON, LEGISLATIVE COUNSEL**  
**NORTH DAKOTA BANKERS ASSOCIATION**  
**REGARDING**  
**SENATE BILL 2228**

My name is Cal Rolfson. I am the Legislative Counsel for the North Dakota Bankers Association. I appear on behalf of the North Dakota Bankers Association in support of Senate Bill 2228.

The gist of Senate Bill 2228 proposes to amend Subdivision "e" of Subsection 2 of Section 51-13-02. That section states what must be included in retail installment contracts in consumer loan settings. Retail installment contracts are loan agreements used by implement dealers and other main street businesses to allow their consumers to take possession of the property before it is paid for and to buy the asset through periodic payments. The asset may be a car, a davenport or a tractor.

The gist of the amendment is found on page 4 of the Bill, so I would like to begin there.

Subdivision "e" of Section 2 currently says that when a buyer under a retail installment contract is delinquent or in default on a loan, the seller or owner of the contract may only charge 10% of the payment due, or \$10, whichever is the lesser, as a late payment fee. This Bill proposes a change to this statute.

As the Bill states at page 4, the fee for each late payment would be up to \$50 or 15% of the delinquent payment if the payment is \$2,000 or under, whichever is the lesser, or for payments of over \$2,000, the fee would be up to \$100, but no more. A little history might be helpful.

Two sessions ago (1997) the legislature amended NDCC 47-14-05. That law is currently found at Section 1 on page 1 of this Bill. That amendment in 1997 permitted commercial loan and agricultural loan late payment fees to be set by contract between the borrower and the lender. The legislature concluded that in commercial and agricultural loans, the borrower and lender could negotiate late payment fees and set them out in the loan agreement. Also, in 1997, the legislature approved amendments to 51-14-02 regarding the setting of late payment fees by contract in revolving charge accounts. Again, all those late payment fees were then and are now allowed to be set by contract. Those changes in the law in 1997 were supported by the credit unions, NDBA, the Independent Community Banks of North Dakota and other lenders.

In 1999 a Bill was introduced (HB 1414) to eliminate the dollar and percentage amount of late payment fees in retail installment contracts and to simply allow the parties to agree by contract on the amount of the late payment charge just as the legislature had previously done for agricultural loans, commercial loans and revolving charge accounts. After passing the House in 1999, the supporters of that Bill proposed a further modification and worked to have it further amended in the Senate to have 15% reinserted as the maximum amount of a delinquent payment, but

to eliminate the dollar maximum. Because there was concern that this amount may result in a high delinquent payment for some loans with larger annual payments, the Bill did not pass with these amendments, with the understanding by leadership that we would return this session and propose legislation that would increase the fees, but with a monetary and percentage cap on late fees. We have done that with Senate Bill 2228.

Currently the law for credit cards, agricultural loans and commercial loans, all have provisions that permit late payment fees to be set as a matter of contract. The only exception now in the law is consumer retail installment loans.

Here are some examples that point out our concerns. If a borrower in a retail installment contract has an outstanding annual \$1,000 payment, for example, there is currently little incentive for the borrower to make that payment on time with only a \$10 maximum late payment fee under the current law. The result is that delinquent borrowers who abuse the system cause increased charges for all other responsible borrowers. It is unfair for the conscientious borrower to absorb higher interest rates or loan costs because of delinquent borrowers. Delinquent payments with such low charges really become nothing more than free or unapproved additional borrowing at the option of the borrower. This Bill is intended to place the responsibility for late payment fees on the shoulders of the delinquent borrower and not on all other borrowers.

It is not uncommon for loans to farmers for agricultural machinery under retail installment contracts to have large annual payments. There have been occasions

when borrowers, owing the lender \$15,000 on an annual payment for a tractor, will significantly delay payment knowing they may currently be charged no more than \$10 for that late payment. Under this Bill, in that case, there would at least be a maximum late payment fee of \$100 on a \$15,000 payment.

Retail installment lending is highly competitive and consumer lenders will market their product with competitive late payment fees in mind.

Contrary to what is permitted in other states, under current North Dakota law, lenders cannot raise interest rates when a borrower defaults on a payment. It is interesting to note that Farm Credit Services can raise their interest rates when borrowers default on payments because they are regulated by federal law. The North Dakota Bankers Association believes it is better public policy to not permit lenders to raise interest rates during the course of the loan, but to use reasonable late payment fees as an incentive for timely payment.

Now let's go back to Section 1 of the Bill on page 1. NDCC 47-14-05 is a separate companion statute regulating late payment fees and interest charges on all loans generally. The amendments to Section 47-14-05 in this part of the Bill were added to be compatible with the current state of the law regarding all loans, and to introduce the late payment fee changes that Section 2 of the Bill sets out for retail installment contracts. The first sentence of the underscored language found on lines 13-15 of page 1 is a style change that merely conforms to the current law as it is now. The second sentence of the underscored language found on lines 15-18 of page 1 is intended to conform to the main amendments found on page 4 of the Bill

as to retail installment contracts that I described at the beginning of my testimony. In other words, the gist of the Bill are the amendments found on page 4. However, it is also necessary to amend 47-14-05 as found on page 1 of the Bill to avoid any conflicts or ambiguity, since that section is a general statute governing interest and late payment fees on all types of loans.

The current law that calls for 10% or \$10, whichever is less, for delinquent installment payments on retail installment contracts has been in place since 1979. The North Dakota Bankers Association and other lenders supporting this legislative change have been patient and responsive in seeking this change now 22 years later.

The Engrossed Bill version of the Bill reflects a correction by the Senate of a drafting error. The original Bill, on page 4, line 26, should have originally had 15% inserted there to conform with the 15% found on page 1, line 16, of the Bill. That's the only change made by the Senate.

On behalf of the North Dakota Bankers Association, I respectfully ask for your favorable consideration of Senate Bill 2228.



# TESTIMONY IN SUPPORT OF SENATE BILL NO. 2228

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GREG TSCHIDER, ND CREDIT UNION LEAGUE

Mr. Chairman and Members of the House Finance and Taxation Committee,  
I am Greg Tschider and I represent the North Dakota Credit Union League.

At issue with Senate Bill No. 2228 is whether the responsible consumers should pay more to offset the costs related to delinquent consumers.

Under present law, a consumer who is delinquent in his payments may be assessed a late payment penalty of 10% of the installment payment or \$10 whichever is the lower. It is submitted that a \$10 penalty is not an incentive for consumers to make their payments on time. Motor home installment contracts can be for \$50,000 to \$200,000 with a monthly payment of \$1,000 to \$2,000. A \$10 slap on the hands is no incentive for consumers to make their payments when due.

Last Legislative session, it was proposed that the late payment penalty be determined by contract between consumer and lender with no cap on the fees. The proposed legislation was not acceptable, however, many Legislators recommended that they would be open to an increase if there was a cap. It is submitted that a 10% penalty not to exceed \$50 is reasonable.

Delinquent consumers cause additional costs to financial institutions:

1. If the consumer does not pay the accrued interest when due, the financial institution loses the earnings it would have made after the receipt of the interest by reinvesting or loaning-out that money. Financial institutions are not permitted to charge interest on interest and therefore, the financial institution never recovers the lost earnings.

2. It costs money to pursue delinquent consumers. Credit unions not only send out notices reminding members of the delinquency, but credit union staff also attempt personal contact with delinquent members. These are nonproductive costs.

I was contacted by a credit union manager in regards to a continuing problem with a member who had a motor home loan with monthly payments of \$2,000. The member never paid on time but when he paid he always included the \$10 penalty which is all that can be assessed. When called about his perennial problem with late payments, the member said that he would pay whenever he pleased, since the credit union could only charge him \$10.

Raising the late payment fee on installment contracts will give consumers an incentive to make their payments when due and will also help offset the costs incurred by financial institutions in handling delinquent accounts.

Therefore, it is respectfully requested that this committee send this bill to the House floor with a "Do-Pass" recommendation.