

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2167

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2167

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2167

Senate Industry, Business, and Labor Committee

Conference Committee

Hearing Date January 17, 2005

Tape Number	Side A	Side B	Meter #
2	X		0.0 - 7.0
Committee Clerk Signature <i>Lisa Van Berke</i>			

Minutes:

Senator Duane Mutch Chairman of the Senate Industry, Business and Labor Committee opened the hearing on SB 2167 relating to the definition of security account for purposeses of the uniform probate code.

All committee members were present.

Marilyn Foss representing the North Dakota Bankers Association testified in support of SB 2167 (See attached testimony).

Senator Mutch asked if this bill would but the bank on equal footing as a brokerage firm.

Marilyn Foss confirmed this.

Senator Dave Nething asked if an IMA account has a designation of who the account is transferred to.

Page 2

Senate Industry, Business, and Labor Committee

Bill/Resolution Number SB 2167

Hearing Date 1-17-05

Marilyn Foss clarified that at this point it is not effective, but with the passage of SB 2167 the IMA is considered to be a securities account and then would be under all the rules applied to securities accounts including the designation of a beneficiary.

Ann Kling, Trust Officer with Wells Fargo testified in support of SB 2167, saying this problem has been more of an oversight and sees no problem with the changes made by SB 2167.

Senator Mutch asked for opposing testimony and hearing none closed the hearing on SB 2167.

Senator Karen Krebsbach made a motion for a Do Pass of SB 2167.

Senator Duaine Espgaard second the motion.

Roll call vote of SB 2167 was taken indicating 7 YEAS, 0 NAYS AND 0 ABSENT OR NOT VOTING.

Senator April Fairfield will carry SB 2167.

REPORT OF STANDING COMMITTEE (410)
January 17, 2005 12:47 p.m.

Module No: SR-10-0534
Carrier: Fairfield
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2167: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2167 was placed on the Eleventh order on the calendar.

2005 HOUSE JUDICIARY

SB 2167

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2167

House Judiciary Committee

Conference Committee

Hearing Date 3/2/05

Tape Number	Side A	Side B	Meter #
1	xx		46.2-end
1		xx	0-6.9
1		xx	12.4-14.7 /20.1 -25.7

Committee Clerk Signature *Dawn Penrose*

Minutes: 13 members present, 1 member absent (Rep. Zaiser).

Chairman DeKrey: We will open the hearing on SB 2167.

Sen. Duaine Espgaard: Sponsor of bill, explained the bill (see written testimony).

Chairman DeKrey: Thank you. Further testimony in support.

Marilyn Foss, ND Bankers Association: (see written testimony).

Representative Koppelman: On line 12, you use the term "bank", could we unintentionally overlooking some other entity which might offer a similar product like an IMA, you used the term financial institution in your testimony, and you implied that there are a lot of entities that are called financial institutions, including banks. Is that something we should be doing.

Marilyn Foss: I would be fairly surprised if the Uniform Probate Code did not define the word "bank" in a larger sense, so that that would not be necessary. For example the Uniform Commercial Code defines bank in a manner which includes credit unions and savings bank and trust companies. So I assume that the Uniform Probate Code also does that.

Representative Koppelman: We can check on that.

Marilyn Foss: I don't happen to have the definition part of the code with me. I would simply note that these are trust services and the credit union group was aware of the bill. So if they felt that they needed to change...

Representative Koppelman: Savings and loans?

Marilyn Foss: Savings and loans are under thrifts, such as Gate City and American Federal are in our larger chapter of the code, and the bank section referred to as banks.

Representative Koppelman: Are there other entities that offer IMA's too, you mentioned brokerage accounts.

Marilyn Foss: Brokerage firms offer security accounts, and those are already covered.

Representative Kretschmar: Today, one of these IMA accounts with the bank, could it be held in joint tenancy.

Marilyn Foss: They're either owned when the bank is acting as trustee, so the trust owns it, they are not listed, in this section of code is the multiparty account section of the code and they are not listed as a multiparty account so they aren't one of the kinds of accounts that are held as joint tenancy or tenants in common. This changes this, and they would come into that section, I believe. What we are doing is allowing them to name, just as with a POD bank account, Joe and Mary Smith, payable on death to and when, and the code already in dealing with those kinds of multiparty accounts, list an order of payout, when they are a joint tenancy. We're bringing IMA accounts into that section, that part of the code.

Representative Boehning: What happens when POD (payable on death) to whoever you are giving it to, what happens if the ones who die owe money, can they come back and collect, how does that process work.

Marilyn Foss: There is a section under which creditors can obtain access to payable on death accounts, and there is a specific section cover when people who have POD accounts die and owe money. So those creditor issues exist with POD accounts now and are addressed in other parts of the code. So this is not a device to avoid paying debts.

Representative Onstad: We're just looking to add additional items in what is currently allowed.

Marilyn Foss: Yes.

Chairman DeKrey: Thank you. Further testimony in support, testimony in opposition. We are going to close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to SB 2167.

Representative Delmore: I move a Do Pass on SB 2167.

Representative Charging: Representative Koppelman did discover that in the definition of banking, did not include credit unions, so can we resist the motion.

Chairman DeKrey: We didn't get a second to the motion, so if he wants to look into that, we'll give him time to do that.

Representative Maragos: Well, I would move that we amend in credit unions, then right after banks.

Representative Charging: On line 12, say division of a bank...

Chairman DeKrey: After division of a bank, we should put in other financial institution.

Representative Maragos: I would accept that. I move it.

Chairman DeKrey: Representative Maragos moved after bank or other financial institution..

Representative Charging: Seconded.

Chairman DeKrey: Motion carried.

Representative Delmore: I move a Do Pass as amended on SB 2167.

Representative Maragos: Seconded.

11 YES 0 NO 3 ABSENT DO PASS AS AMENDED CARRIER: Rep. Maragos

(Reopened later in the same session)

Representative Koppelman: I understand that we voted on SB 2167. I have something to add, so I move to reconsider our action on SB 2167.

Representative Maragos: Seconded.

Chairman DeKrey: It was moved and seconded that we reconsider our actions on a Do Pass on SB 2167. Discussion.

Representative Koppelman: When I checked on with Jay Buringrud, in LC, who is familiar with the Uniform Codes, he indicated there is a definition in law regarding banks, he said there is not in that section of law, and I understand what the committee did was to change to other financial institution. I asked him about that, he said that the correct way to do it would be to say bank or credit union, and the reason is, I also asked about savings and loans, and essentially there are no savings and loans in the state anymore, they have become federal savings banks, and they are covered by banks, but credit unions are not. I guess there's not a definition of a financial institution either, so he said to say bank or credit union.

Chairman DeKrey: Representative Koppelman moves we strike our amendment to change it to “or credit union”. Is there a second.

Representative Delmore: Seconded.

Chairman DeKrey: Seconded by Representative Delmore.

Representative Delmore: I will do it for those purposes, but again, are we including someone who is not heard at the hearings. Is it the credit union’s intent that they want to be included in this, and do they offer this type of service.

Representative Koppelman: I have not talked with the credit unions at all, but I think our responsibility in making good public policy is to look at what a bill says and see if it, the reasons the banks are for it, their intent is to say that brokerage companies and mutual fund companies, etc. have this and we don’t as banks and we want it. I’m sure if we do this, two years from now the credit unions are going to be saying why did you let banks do this and we can’t. If we allow financial institutions, if they don’t offer it, there’s no harm done. But if they do offer it, or plan to offer it in the future, they are covered.

Representative Delmore: When you asked her, the credit unions were fully aware of this bill, and they do have lobbyists down here and I’d be surprised if they wanted this, that they weren’t in committee, whether on the Senate side or this side.

Representative Koppelman: Again, while I appreciate the contribution lobbyists make for the legislative process, and I think they do a lot of good for us, I don’t think we should hang our hat, so to speak, on legislation, on whether a lobbyist has talked to us or not. Ms. Foss also indicated that there was a definition in the law which indicated that banks included all financial institutions, I checked that with Mr. Buringrud, and that’s not correct. I think this is a good bill.

Representative Maragos: I would like to further amend the amendment, what was the actual amendment.

Representative Koppelman: The amendment was for credit unions.

Representative Maragos: I would like to further amend that to say bank, credit union, or any other financial institution.

Representative Koppelman: Second that. It is my intent to include all financial institutions, I'm not targeting credit unions, or any specific type of institution.

Chairman DeKrey: Voice vote. Motion carried.

Representative Delmore: I move a Do Pass as reamended on SB 2167.

Representative Maragos: Seconded.

13 YES 0 NO 1 ABSENT DO PASS AS REAMENDED CARRIER: Rep. Maragos

Date: 3/2/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	A	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	A				
Representative Koppelman	A				
Representative Kretschmar	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Maragos

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

Brought back for reconsideration.

Date: 3/2/05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Recommended

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	A	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE

SB 2167: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2167 was placed on the Sixth order on the calendar.

Page 1, line 12, after "bank" insert ", credit union, or any other financial institution"

Renumber accordingly

2005 TESTIMONY

SB 2167

TESTIMONY OF MARILYN FOSS IN SUPPORT OF SB 2167

Chairman Mutch, members of the IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. ("NDBA"). We asked Senator Espgaard to be the prime sponsor for SB 2167.

The bill addresses and corrects an anomaly in NDCC Chapter 30.1-31 which relates to nonprobate transfers on death. This chapter of the uniform probate code defines the types of financial accounts that, on the death of an owner, may be transferred directly to a beneficiary who has been named by the account owner. No will or probate proceeding in court is needed before a transfer of the account to a beneficiary. Examples of the types accounts which are commonly transferred under Chapter 30.1-31 are bank deposit accounts which are set up by the account owner to be payable to a beneficiary on the death of the account owner ("POD" or "payment on death" accounts) and security accounts which held by brokerage firms. and set up by the account owner to be transferred on death to a third person who the account owner has designated as the beneficiary. ("TOD" or "transfer on death" accounts).

SB 2167 expands the definition of "security account" in Chapter 30.1-31 so that it includes "investment management accounts" ("IMA"). An IMA is a security account product which is offered by a bank, instead of a securities brokerage firm. An IMA is used as a vehicle to trade and hold securities for a bank trust customers. An IMA account may be used when the bank is serving as a trustee for its customer or acting as a custodian. An IMA has the same purpose as a securities account and functions in the same manner. The difference is that assets within an IMA are held for the customer by a bank, rather than a brokerage firm.

However, because the definition of "security account" does not now include a bank offered IMA, there must be a probate proceeding in order for an IMA account to be transferred to a successor owner when the original IMA owner dies. This is true whether the account owner has made a will or dies without having made a will. In either event, probate proceedings are inconvenient at best and costly at worst. As a practical matter the need for probate to transfer an IMA account also places this product at a competitive disadvantage to a securities account which is offered by a brokerage firm.

The only reason I have been to discern to explain why the definition for "security account" does not expressly include bank offered investment management accounts is oversight. Banks have long offered POD accounts that are transferred to the designated beneficiary or beneficiaries without the need for court oversight in the form of a probate proceeding. POD accounts are convenient for customers and are an efficient and inexpensive way of transferring a financial asset when the owner of an account dies.

North Dakota law now allows virtually all other types of financial assets to be transferred to a beneficiary without the need for probate. SB 2167 merely recognizes investment management accounts as a financial asset and accords an IMA "equal" treatment to IMA account owners. Several other sates have acted enacted legislation to do this. Among them are California, Colorado, Idaho, Iowa, Minnesota, South Dakota and Washington.

With that, I would urge a strong "Do Pass" for SB 2167. Thank you..

SB 2167
HOUSE JUDICIARY
Chairman Duane DeKrey
March 2, 2005

Mr. Chairman and members of the house Judiciary committee for the record my name is Sen. Duaine Espegard and I represent District 43 Which is in the Southwest section of Grand Forks.

I am here today to ask for your support of SB 2167.

SB 2167 is a bill that I bring forward at the behest of the North Dakota Bankers Association.

The bill addresses and corrects a anomaly in the code as it relates to nonprobate transfers on death.

It deals with a chapter of uniform probate code which defines the types of financial accounts that, on the death of an owner, may be transferred to a beneficiary who has been named by the account owner.

It expands the definition of "Security Accounts" to include "investment management accounts" (IMA)

This is a account that is offered by a bank, instead of a securities brokerage account. At the present time these types of accounts are not allowed to be transferred with out a probate. This bill allows for such a transfer in the event of death and places this account on an even basis with a securities account which is offered by a brokerage firm.

That is the bill and I ask for your support. I would be happy to answer any question but there are representatives of the Bankers Association here as well to testify.

Thank you.

Senator Duaine Espegard

TESTIMONY OF MARILYN FOSS IN SUPPORT OF SB 2167

Chairman DeKrey, members of the House Judiciary Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. ("NDBA"). This bill was introduced at our request.

The bill addresses and corrects an anomaly in NDCC Chapter 30.1-31, the part of the Uniform Probate Code that governs non probate transfers on death. Chapter 30.1-31 defines the types of financial accounts that, on the death of an owner, may be transferred directly to a beneficiary who has been named by the account owner. When a financial account is covered by Chapter 30.1-31, no will or probate proceeding in court is needed before a transfer of the account to a beneficiary. Examples of the types accounts which are commonly transferred under Chapter 30.1-31 are bank deposit accounts and CDs which are set up by the account owner to be payable to a beneficiary on the death of the account owner ("POD" or "payment on death" accounts) and security accounts which are held by brokerage firms and set up by the account owner to be transferred on death to a third person who the account owner has designated as the beneficiary. ("TOD" or "transfer on death" accounts).

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At present, because the definition of "security account" in 30.1-does not include a bank offered IMA, there must be a probate proceeding in order for an IMA account to be transferred to a successor owner when the original IMA owner dies. This is true whether the account owner has made a will or dies without having made a will. In either event, probate proceedings are inconvenient at best and costly at worst. As a practical matter the need for probate to transfer an IMA account also places this product at a competitive disadvantage to a securities account which is offered by a brokerage firm.

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North Dakota law now allows virtually all types of financial assets, other than an IMA, to be transferred to a beneficiary without the need to go through probate. SB 2167 merely recognizes investment management accounts as a financial asset and accords an IMA "equal" treatment to IMA account owners. Several other ~~st~~ates have acted enacted legislation to do this. Among them are California, Colorado, Idaho, Iowa, Minnesota, South Dakota and Washington.

With that, I would urge a strong "Do Pass" for SB 2167. Thank you.