

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1152

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1152

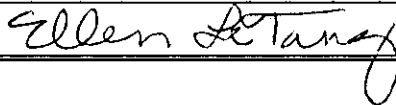
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6860

Committee Clerk Signature



**Chairman Keiser:** Opened the hearing on HB 1152 relating to removal of officers, directors, & employees of financial corporations or institutions.

**Tim Karsky~Commissioner, Department of Financial Institutions.** See attachment 1.

**Chairman Keiser:** On subsection five, it takes the period from three years to unlimited.

**Karsky:** If they are convicted of a crime, it goes on forever.

**Representative Ruby:** Does this applies to banks or banks and credit unions.

**Karsky:** This will apply to state chartered bank, credit union, & all of the licensees.

**Representative Clark:** What is the driver for this bill?

**Karsky:** I would say two to three times in last years, we have had banks call us. Now we can keep them out.

**Representative Clark:** Have you had instances where you wanted someone out and you couldn't do it?

**Karsky:** That's correct because of the reading of the law.

**Chairman Keiser:** There are times when the states attorney or attorney general chooses not to bring the charges forward.

**Karsky:** They don't want to make public that the things that happen, they want to keep it private. It's nice to get the removal out there for other institutions.

**Representative N Johnson:** They could have a black mark. Is this a possibility?

**Karsky:** We would do a thorough investigation with due process.

**Representative Clark:** If someone got in trouble in another state, would you be able to apply this to keep them out of North Dakota?

**Karsky:** I have no authority. Mine will apply only to a ND state chartered institution.

**Representative Boe:** Removal, is that more than what I think it is?

**Karsky:** Yes

**Representative Boe:** If we left the law the way it is, you would have authority over them again?

**Karsky:** Inaudible.

**Vice Chairman Kasper:** Theoretically, you could have a charge inside the financial institution and a person is accused and is fired or resigns; with this law amended the way it is, he does not admit guilt, just leaves. That judges that person guilty forever without any due process.

**Karsky:** Before we can issue the order, we would still have an administrative hearing to remove someone permanent.

**Vice Chairman Kasper:** Are you required to be notified of any of these types of activity in a financial institution or can a financial institution inside their own doors, make a decision about that this employee is gone without notifying you.

**Karsky:** They do notify us if when something happens like that.

**Representative Amerman:** If you had an administrative hearing, how binding is that?

**Karsky:** Correct, district court would be next.

**Representative Vigesaa:** In subsection five, it talks about the suspension of terminated about getting rid of the three year. Is there every a time when the suspension is terminated in less than three years and they can come back?

**Karsky:** We have never had one.

**Chairman Keiser:** Under this change, that person would not be allowed to come back.

**Karsky:** That's correct.

**Vice Chairman Kasper:** In this administrative hearing result is not a criminal prosecution, is it? It's just a finding of the hearing.

**Karsky:** That is correct.

**Chairman Keiser:** Subsection five again, that only refers to officers and directors. That's not employees?

**Karsky:** Number three talks about employees and number four (didn't finish sentence).

**Chairman Keiser:** Removing the three year in subsection five.

**Karsky:** That's the way it looks to me.

**Chairman Keiser:** So that doesn't happen to employees?

**Karsky:** As number three, we talk about the hearing of director or employee.

**Representative N Johnson:** On five on the end of line eleven, say, it says remove from office. Employee wouldn't be considered an officer.

**Karsky:** Inaudible

**Representative Vigesaa:** In that subsection five it does refer to reelection, so I think that section is for officer and directors. Mr. Karsky may want to include employees.

**Chairman Keiser:** We will hold the bill until you look it over some more. Any more in support.

**Jack McDonald~Representing the Independent City Banks of North Dakota.** They support HB 1152. It's protection for both the banks, consumers, and the general public.

**Rick Claybough~CEO President of the Banker's Association.** We are in support.

**Anyone in opposition of HB 1152? Neutral?**

**We will just wait until tomorrow morning when Mr. Karsky has the amendment.**

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1152

## House Industry, Business and Labor Committee

Check here for Conference Committee

**Hearing Date:** January 14, 2009

**Recorder Job Number:** 6946 Starting at digital recorder at 3:23 minutes

Committee Clerk Signature

*Ellen Letang*

**Chairman Keiser:** Opens the working session with HB 1152 relating to the removal of officers, directors, & employees of financial corporations or institutions. I will give you a second to review them.

Chairman Keiser: Again as you recall we had the discussion had the discussion of officers, director, & employees and these amendments attempt to incorporate employees into restricted application.

Representative N Johnson: As I read the amendment, it tells me that a director who has been suspended or removed from office, could become a director in another financial institution. Isn't a director considered to be employed by the institution? Can the employee be reelected to an employment position?

Representative Clark: I don't think a director is considered an employee. I'm a director and I don't get a pay check and I am not an employee of the company.

Chairman Keiser: I'm not sure. I'm a director, I get paid, but I don't get a paycheck.

Representative Clark: That mean you are not an employee?

Chairman Keiser: I would guess so because they are not withholding anything.

Representative Vigesaa: I would agree with Representative N Johnson, that the way that's going to read is for reelection to any employment position.

Chairman Keiser: So if we strike employment, does that do it?

Representative Vigesaa: That's what they are adding.

Chairman Keiser: I know, but if we take that out of the amendment.

Representative Vigesaa: The reelection to any employment. It's the reelection doesn't match up with employment.

Representative Schneider: Would it make sense to add a new subsection to define employee?

Chairman Keiser: Representative Schneider has the right idea.

Representative Clark: The new language starting on 15 & 16, could it just be added to the end of line seven?

Chairman Keiser: That's a hearing.

Vice Chairman Kasper: I agree with Representative Schneider.

Chairman Keiser: This is the clear approach. We will just hold that and call Tim Karsky.

Closes the working session.

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1152

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 7021

Committee Clerk Signature *Ellen Litton*

**Chairman Keiser:** Opened the work session on HB 1152 relating to removal of officers, directors, & employees of financial corporations or institutions. Representative Representative Vigesaa, could you walk us through this bill.

Representative Vigesaa: This was brought forth by the Department of Financial Institutions

and what they want to do is include former officers, directors & employees they can bring action against. They had a problem with page two subsection five to get that all to work together including employee. The amendment you have before you and also on the page two written the way it will appear.

Chairman Keiser: That will be a new five?

Representative Vigesaa: That would replace subsection five on the bill. Reads new five.

Representative N Johnson: I don't think it's going to be a substitution.

Representative Vigesaa: Right, but the result will look like this.

Chairman Keiser: Representative N Johnson & Representative Vigesaa met and this does what it intends in a nice clean fashion.

Representative Vigesaa: Motion to amend

Representative Ruby: Second

**Representative Vigesaa: Do Pass as amended**

**Representative Nottestad: Second**

**Committee Roll Call on a Do Pass as Amended with 13 yea's, 0 no's, 0 absent and**

**Representative Vigesaa is the carrier.**



January 19, 2009

VR  
1/19/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1152

Page 2, line 11, overstrike the first "or" and insert immediately thereafter an underscored comma, after "director" insert ", or employee", and overstrike "office" and insert immediately thereafter "any position"

Page 2, line 12, after "suspension" insert "or removal", overstrike "for reelection", and after the second "to" insert "occupy"

Page 2, line 13, overstrike "official"

Renumber accordingly

Date: Jan 19-2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1152

House House, Business & Labor Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  As Amended

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

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser          | x   |    | Representative Amerman   | x   |    |
| Vice Chairman            | x   |    | Representative Boe       | x   |    |
| Representative Clark     | x   |    | Representative Gruchalla | x   |    |
| Representative N Johnson | x   |    | Representative Schneider | x   |    |
| Representative Nottestad | x   |    | Representative Thorpe    | x   |    |
| Representative Ruby      | x   |    |                          |     |    |
| Representative Sukut     | x   |    |                          |     |    |
| Representative Vigesaa   | x   |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |
|                          |     |    |                          |     |    |

Total (Yes) 13 No 0

Absent 0

Floor Assignment Vigesaa

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

**REPORT OF STANDING COMMITTEE**

**HB 1152: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1152 was placed on the Sixth order on the calendar.

Page 2, line 11, overstrike the first "or" and insert immediately thereafter an underscored comma, after "director" insert ", or employee", and overstrike "office" and insert immediately thereafter "any position"

Page 2, line 12, after "suspension" insert "or removal", overstrike "for reelection", and after the second "to" insert "occupy"

Page 2, line 13, overstrike "official"

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1152

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1152

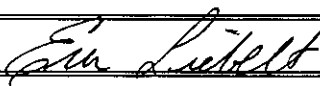
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 16, 2009

Recorder Job Number: 9513

Committee Clerk Signature



Minutes:

Timothy Karsky, Commissioner, Department of Financial Institutions: Written testimony in support of House Bill 1152.

Chairman Klein: In reference to the three years verses six. Do you want to explain that?

Tim: Once in awhile when somebody commits a crime they steal a small amount of money and we can't get a prosecution from the states' attorney the person has even agreed to pay the money back after they've left the institution. Under the current law if there's no conviction that removal is good for only three years. We would like to have that extended permanently and keep them out of the institution forever or until the state banking board would lift that order at a future bank.

Chairman Klein: So if they committed a crime you don't feel that three years, they will still be viewed as someone whose trust has been compromised by what they did to commit that crime.

Tim: I think so and I think three years is not enough. I think at some time you are rehabilitated but to let that individual back into the institution right away. I think is a mistake.

Senator Nodland: Have you had some cases like this?

Tim: We have had incidences in the last two to four years where a banker has called us up and said they had terminated an employee or put them on temporary suspension because of a

misapplication of funds, fictitious loans and those types of situations. They have occurred and then the employee resigns. The law says they have to be an employee to remove them and if they resigned does the department have the right to remove them if they are not employed. That's been the issue that has been the most problematic. Over the last few years. This will clarify that even if you're current or former, we can not only keep you out of that institution we but any other state chartered institution.

Senator Horne: You talk about if the department has encountered a problem where by an officer of an institution has resigned after being confronted with unethical or illegal behavior. Can you give us an example of unethical behavior?

Tim: It would involve loans to family members that benefit yourself. It could be illegal but it's probably more unethical. Or doing something that hurts someone else in the community.

Marilyn Foss, North Dakota Bankers Association: We have had this problem in state banks in North Dakota and I support the commissioners efforts because it is founded on his desire to protect are institution.

Jack McDonald, Independent Community Banks of North Dakota: We also support this bill. We can't have one bad apple going to different banks and infecting them all. This is could action.

Chairman Klein: We'll close the hearing on 1152.

Senator Wanzek: I move a do pass.

Senator Nodland: I will second that.

Roll Call Vote: Yes: 7 No: 0 Absent: 0

Floor Assignment: Senator Nodland

++

Date: 2/16/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1152

Senate

Committee

**Industry, Business and Labor**

Check here for Conference Committee

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

Action Taken  **Pass**  **Do Not Pass**  **Amended**

Motion Made By Senator Wanzek Seconded By Senator Nodland

| Senator                        | Yes | No | Senator                 | Yes | No |
|--------------------------------|-----|----|-------------------------|-----|----|
| Senator Jerry Klein - Chairman | ✓   |    | Senator Arthur H. Behm  | ✓   |    |
| Senator Terry Wanzek - V.Chair | ✓   |    | Senator Robert M. Horne | ✓   |    |
| Senator John M. Andrist        | ✓   |    | Senator Tracy Potter    | ✓   |    |
| Senator George Nodland         | ✓   |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |
|                                |     |    |                         |     |    |

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Nodland

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

**REPORT OF STANDING COMMITTEE**

HB 1152, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1152 was placed on the Fourteenth order on the calendar.



2009 TESTIMONY

HB 1152

*Same given  
to Senate.*

1-13-2009

TESTIMONY FOR HOUSE BILL NO. 1152

House Industry, Business and Labor Committee

Testimony of Timothy J. Karsky, Commissioner, Department of Financial Institutions in support of House Bill No. 1152

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Tim Karsky, Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify and urge your support in favor of House Bill No. 1152.

Mr. Chairman and members of the Committee, House Bill No. 1152 contains several amendments to North Dakota Century Code Section 6-01-04.1 regarding removal of officers, directors, and employees of financial corporations or institutions.

As you will note, the Department of Financial Institutions currently has the ability to remove officers, directors, and employees of financial corporations or institutions. However, over the last several years the Department has encountered a problem whereby an officer of an institution has resigned after being confronted with unethical or illegal behavior. When reading the current law under North Dakota Century Code Section 6-01-04.1, the Department has the ability to remove an officer, director, or employee of a financial corporation or institution; however, if that person

resigns or is no longer employed it is not clear whether or not that authority exists. By adding the word current or former to this Section would clarify that the Department can take the proper administrative action.

Also, Section 5 of the Bill contains additional language that is added "until the suspension or removal is terminated by the Department of Financial Institutions or Board", which in this case means the State Banking Board or the State Credit Union Board. Furthermore, the language "for a period not exceeding three years from the effective date of the suspension or removal" is deleted.

Mr. Chairman and members of the Committee, the Department believes that when an employee or officer of a bank has violated their financial trust or authority the Department should be able to keep these individuals out of North Dakota state-chartered institutions for a period longer than three years.

Again, Mr. Chairman I would urge your Committee's approval of House Bill No. 1152, and would welcome any questions that the Committee may have.

Thank you.

PROPOSED AMENDMENTS TO HOUSE BILL 1152

Page 2, line 11, replace the second "or" with ";"

Page 2, line 11, after "director", insert ", or employee"

Page 2, line 13, replace "official" with "employment"

Renumber accordingly

## **Proposed Amendments to House Bill 1152**

Page 2, line 11, after “officer” insert an underscored comma, overstrike the second “or”, after “director” insert “, or employee”, and overstrike “office” and insert immediately thereafter “any position”

Page 2, line 12, after “suspension” insert “or removal”, overstrike “for reelection”, and after second “to” insert “occupy”

Page 2, line 13, overstrike “official”