

2009 HOUSE JUDICIARY

HB 1544

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1544

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8682, 8689

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1544.

Rep. Wes Belter: Sponsor, support, explained the bill. This bill would require that the identity of persons trying to get on your property or in your residence need to identify themselves. My intent with this bill would be that in the event that a party is foreclosing on a piece of property that they at least identify themselves to the person in that house. I understand that there is some concern found in line 12, "that the person shall post a notice in a conspicuous location" and I don't have any new language for you right now.

Rep. Klemin: I'm not entirely sure what you're talking about there, because I know now that if you are going to evict somebody from a residence or an apartment, an eviction notice is served and if there isn't anyone to get it; you can post that eviction notice on the door. It sounded like this was doing something similar.

Rep. Belter: That may be the case, it was just brought to my attention that this was the banking industry was uncomfortable with this language but maybe that is the standard procedure.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition or neutral.

Dana Bohn, Executive Director, ND Farm Credit Council: Opposed (attachment).

Rep. Klemin: In a foreclosure proceeding, when does a creditor take control of the property?

Dana Bohn: I don't know.

Chairman DeKrey: Thank you. Further testimony in opposition.

Marilyn Foss, ND Bankers Association: I think that it can come anytime during a foreclosure process, but it would certainly come after the period of redemption is up. There are certainly circumstances in which people who are foreclosed upon have abandoned the property and so it could come at any point.

Rep. Klemin: Ordinarily, unless the debtor has turned the keys over to the lender, isn't it correct that during the period of redemption, that the borrower is entitled to the possession and use of the property.

Marilyn Foss: Yes, that's why we wait until after the period of redemption is up.

Rep. Klemin: There are also procedures set out in the NDCC already for eviction of someone who remains in possession or holds over after their redemption period has expired, isn't that correct.

Marilyn Foss: Yes, there is a chapter on evictions.

Rep. Klemin: I think what this bill is talking about is someone attempting to take possession of the property before any of those events have occurred. It seems like what Rep. Belter was doing, was he just wanted to make sure that whoever was there before the expiration of the redemption period had expired, is who they say they are.

Marilyn Foss: I think that there aren't any assumptions that aren't obvious from the bill, but I certainly think I did hear Rep. Belter was concerned about the people who were renting property from apparently someone who was in foreclosure and didn't tell the renters. We are also not concerned about the requirements that Rep. Belter was talking about. Our primary

concerns, in addition to that, are in posting the property, when it is vacant. We don't want property that is vacant to be posted due to vandalism and other damage that can occur when someone isn't living on the property.

Chairman DeKrey: Thank you. Further testimony in opposition.

Jack McDonald, Independent & Community Banks of ND: Opposed, for much the same reasons that we heard earlier. There is no difficulty in a person representing a bank or a lending institution to carry identification. The other questionable thing is preventing a chain of agencies and that is essential. There can be several agencies involved in a foreclosure action, and they aren't always in the same state or even the same parts of the country. This can be a cumbersome process to be involved in for the banks and mortgagees, etc. It appears to us that this will be putting a lot of burden on trying to protect the property and trying to get it resold. That's the whole idea, is to keep it protected so it can be resold. By posting a notice, you are going to be advertising that the property is under foreclosure and may be vacant. It is just inviting trouble.

Rep. Koppelman: If the bill was simpler, and just required ID, would your organization have a problem with that.

Jack McDonald: I believe not. I don't think that would be an unreasonable requirement, in case there is such an event.

Rep. Koppelman: Would it be feasible in the bill, to do something a lot simpler than what the bill currently calls for, but something like a notary statement that said ABC Bank has the mortgage on the property at (such and such address) and this property is under foreclosure and signed by a bank officer and notarized, plus ID, would that be feasible.

Jack McDonald: I don't know if a piece of paper would work or not, because foreclosure law is already very cumbersome in the process for a bank. The foreclosure is not the bank's first

step. Banks bend over backwards to try and work with people before foreclosure, simply because it is very cumbersome, expensive and long process, because you have to pay those attorney fees. You also have to give federal notice; you have to give a notice before foreclosure, a notice in court, a notice again after you start the foreclosure proceeding, then this would be yet another document that has to be notarized and somehow clarified and gotten to the contractor. I just feel that this would be burdensome. I don't have a problem identifying a person with an agency, but then to try and establish his credentials with the lending bank or agency that may be located out of state.

Rep. Boehning: If you rent a property that someone is being foreclosed on, is there some way that the bank can send out a letter to the property in addition to sending it to the owner.

Jack McDonald: Actually it is illegal to sublet your property without written permission from the bank. So in this situation, the bank wouldn't even know that there was someone renting to send a letter to, because it wasn't legal for them to rent the property to someone else. The reason they send people out to the property in the first place is to check out and see that everything is okay that the water is turned off, etc. The name on the bank's papers would be the original owner, so the post office probably wouldn't even deliver a letter to the property since the owner was no longer living there to receive it.

Rep. Boehning: Couldn't the bank send out a notice to the owner at both addresses.

Jack McDonald: The person that owns the mortgage has to be notified one way or the other. That's proof of notice for the legal action to continue on. So the person holding the mortgage, who in effect owns that building, he or she has already been notified one way or another. Sometimes an address is a box number.

Rep. Wolf: How would you ever arrest or even find those two people that came to that constituent's door, since they didn't have an ID card.

Jack McDonald: I don't know how to go about finding those people.

Rep. Klemin: I'm not exactly sure what the circumstances were that Rep. Belter was talking about, but it sounded like it was a residence. It wasn't agricultural property or undeveloped property. I thought that during the foreclosure, until the expiration of the redemption period, the borrower is entitled to use and possession of the property. That would be the general rule under the law as I understand it.

Jack McDonald: Yes, that's correct.

Rep. Klemin: So I guess I understood this situation was that the foreclosure in that particular case that he was describing had not yet been completed; there wasn't a sheriff's deed that vested title in the mortgagee, so we were either still in the redemption period or whatever. I do not understand the circumstances under which a lender would somebody out there to a residence to do something on it, before the redemption period had expired unless they thought the property had been abandoned. Now we have a statute already, 32-19-19, dealing with how to handle property that is claimed to have been abandoned before the redemption period expires. So we already have a procedure in law that sets out how you have to petition the court to take possession before the redemption period expires on the grounds that it has been abandoned. There are notice requirements, and so forth. So it sounds to me like we're talking about a situation where whoever went out to this residence, did so before the redemption period had expired and without having gone through the petition procedure for the court to take possession on the grounds of abandonment before the redemption period expired. I'm just having a difficult time understanding how any lender would authorize that kind of action. They should all know this.

Jack McDonald: First of all, there was no indication that the procedure in Rep. Belter's example, that the redemption period had not expired. A lot of times people stay on until they

are forced out, and because of the timeframe it sometimes takes months for them to move out.

Nevertheless, the law also does allow the bank or mortgage holder to check on the condition of the property. There are instances where property is trashed and the people staying on after the foreclosure procedure proceed to take out all the fixtures, etc. from the property. The bank that is bringing the foreclosure procedure has the right on the mortgage to check on the property and see if it is being kept up okay. Sometimes people just up and leave and the bank doesn't know that. They are allowed to verify what is going on with the property.

Rep. Klemin: Do you think a mortgage document; say on my house that gives the lender the right to enter anytime to see if I'm still there.

Jack McDonald: It gives the lender the right to inspect the property upon going and knocking on the door and checking to see that you're there.

Rep. Klemin: While they are there, do they have the right to change the locks.

Jack McDonald: No.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.
(Reopened later in the afternoon).

Chairman DeKrey: We will take a look at HB 1544. What are the committee's wishes?

Rep. Griffin: I move a Do Not Pass.

Rep. Wolf: Second.

11 YES 2 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Griffin

Date: 2/4/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1544

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☒ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Griffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Vig		✓
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 2

Absent 0

Floor Carrier: Rep. Griffin

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

REPORT OF STANDING COMMITTEE (410)
February 5, 2009 7:30 a.m.

Module No: HR-23-1686
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1544: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1544 was placed on the
Eleventh order on the calendar.

2009 TESTIMONY

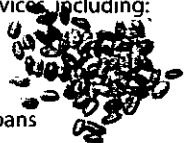
HB 1544

PRODUCTS AND SERVICES

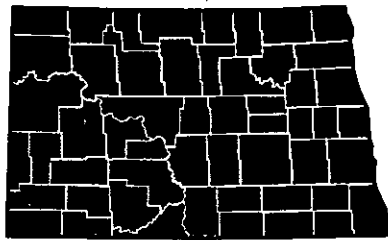
North Dakota Farm Credit associations provide \$5.3 billion in credit and financial services to nearly 18,000 customers. Approximately 5,170 Farm Credit borrowers are young and beginning farmers.

We have been meeting the needs of agricultural producers for more than 90 years with a full spectrum of products and services including:

- Real estate loans
- Operating loans
- Equipment and facility loans
- Facility, vehicle and equipment leases
- Agribusiness loans and services
- Equity stock financing
- Tax planning and preparation
- Record keeping services and software
- Multi-peril crop insurance
- Crop hail insurance
- Life and disability insurance
- Producer education
- Farm cash management
- Electronic commerce
- Young and beginning farmer support



CORPORATE OFFICE LOCATIONS



AgCountry Farm Credit Services

1900 44th Street South
Fargo, ND 58108
701-282-9494 or 800-450-8933
www.agcountry.com



Farm Credit Services of Mandan

1600 Old Red Trail
Mandan, ND 58554
701-663-6487 or 800-660-6487
www.farmcreditmandan.com



Farm Credit Services of North Dakota

3100 10th Street SW
Minot, ND 58702
701-852-1265 or 800-264-1265
www.farmcredittnd.com



NORTH DAKOTA FARM CREDIT COUNCIL



NORTH DAKOTA FARM CREDIT COUNCIL

The North Dakota Farm Credit Council (NDFCC) is comprised of three independently owned associations that provide credit and financial services to farmers, ranchers and agribusinesses of every size and income range.

The three associations that make up the North Dakota Farm Credit Council are:

- AgCountry Farm Credit Services (headquartered in Fargo)
- Farm Credit Services of Mandan
- Farm Credit Services of North Dakota (headquartered in Minot)

Structured as farmer-owned cooperatives, we work to maintain and improve the quality of life in rural America and on the farm through a constant commitment to competitive lending, expert financial services and advice, and a feeling of partnership with our customers.

Loan funds are obtained through bonds and discount notes sold in the national securities market, thereby enabling North Dakota Farm Credit to infuse capital from outside sources into rural North Dakota.

2009 LEGISLATIVE POSITIONS

AgCountry Farm Credit Services
Farm Credit Services of Mandan
Farm Credit Services of North Dakota

2009 LEGISLATIVE POSITIONS

The North Dakota Farm Credit Council supports legislative action that: enhances the success for farmers, ranchers and agribusinesses by allowing greater access to credit; strengthens the well-being of rural North Dakota; and protects the safety of our food supply.

AGRICULTURAL LENDING

The financial sector of the United States economy is very integrated and highly competitive. This results in the most efficient delivery of financial services to our business and consumers. Anything that limits competition ultimately reduces the services available or increases the cost to consumers.

Agriculture must compete with all other sectors of the economy for capital and loan funds. Financial regulations that make agriculture less competitive in credit markets ultimately hurt farmers through higher costs and reduced availability of credit. The delayed collection or partial repayment of loans results in additional costs that are passed on to other farmer borrowers.

In order to ensure agriculture's ability to compete for credit and financial services, we believe legislative actions are appropriate when the efforts modernize current legislation that improves the ability to provide service and reduce costs to the consumer yet protects the financial stability of the lending institution. Examples of actions that could accomplish this are:

- Having all Uniform Commercial Code liens and statutory liens receive priority by the time of filing.
- Modernizing the title assurance process for real estate transactions to improve service and reduce costs.
- Dedicating the user fees paid to the North Dakota credit reporting system to maintain and improve the system.

ECONOMIC DIVERSIFICATION

Agriculture is the most important sector of North Dakota's economy and diversification of the agricultural economy will benefit the overall economy of the state.

Public partnering with private industry should encourage and promote diversification, including new or specialized crops, expansion of animal agriculture, in-state processing of agricultural commodities, and alternative energy production.

As such, NDFCC supports:

- Expanding new or specialized crop research.
- Creating storage and transportation facilities to allow more identity-preserved production and marketing.
- Enacting practical statewide environmental regulations that encourage expansion of animal agriculture.
- Providing a stable source of funding to the Ag Products Utilization Commission to encourage diversification.
- Providing loan guarantee programs to leverage state resources in encouraging the development of agricultural processing.

LANDOWNER CONCERNS

Agricultural producers in North Dakota understand and support regulations for clean air and water, soil erosion reduction, wildlife protection and the beauty of the landscape.

As such, NDFCC supports:

- Considering the economic impact on landowners when developing regulations that deal with the above issues. Environmental regulations that limit the landowner's ability to convert property to its highest and best economic use also limit the property owner's ability to make a living from the property and to repay debt. When environmental regulations limit the economic value of farmland, the owner should be compensated.
- Basing farm real estate taxes on the land's production value for agricultural purposes to keep non-agricultural uses from raising taxes beyond what agriculture can support.
- Continuing favorable tax treatment for real estate improvements used for agriculture production.

ENERGY

Agriculture uses have the potential to produce energy from non-traditional sources. As such, NDFCC supports:

- Expanding production and consumption of ethanol, bio-diesel and wind energy to supplement traditional energy sources. This would benefit farmers and the state's economy.
- Organizing and promoting these new energy sources as well as providing tax incentives and loan guarantees.
- Continuing to support a rural electric cooperative's ability to generate and deliver electricity to its existing service areas at reasonable prices.

AG EDUCATION AND PROMOTION

Agriculture is North Dakota's most important industry. As such, NDFCC supports:

- Including agriculture in the statewide curriculum for all phases of our educational system.
- Providing grassroots direction through an organization such as the State Board of Agricultural Research and Extension to help set priorities for agricultural extension.
- Engaging general farm and agricultural commodity organizations and check-off groups in important educational and promotional activities for agriculture.



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1544
February 4, 2009**

Chairman DeKrey and members of the House Judiciary Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) in opposition to HB 1544, which would impose excessive punishment and additional burdens on lenders.

NDFCC is comprised of three farmer/rancher-owned independent Farm Credit associations that provide credit and financial services to farmers, ranchers and agribusinesses of every size and income range. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about \$5.3 billion in credit and financial services to nearly 18,000 customers.

In the event Farm Credit Services (FCS) would acquire property through foreclosure, the bill requires a FCS representative to carry and display their identification and "credentials," including their relationship to FCS, while on the property. Further, a FCS representative would be required to post a notice in a conspicuous location listing the name and contact information of the person controlling the property and that person's relationship to FCS as the foreclosing creditor. Posting your name and contact information in a conspicuous location when there may be many acres involved that may not be contiguous would be very challenging. In addition, what we may consider a conspicuous location may not be viewed as conspicuous by someone else.

Our main concern is not the identification issue, but the fact that if this statute is violated, the person who does not comply is guilty of a class B misdemeanor. This is a criminal sanction in a foreclosure proceeding, and we do not understand the attempt to impose a criminal sanction for violation of a civil process.

We have no objection to creditors having appropriate identification as to their affiliation with the foreclosing creditor, but we strongly oppose the concept of a criminal sanction for an individual who fails to carry an identification badge or fails to post a notice in a conspicuous place. Additionally, we oppose due situations where acres may be involved which may or may not be contiguous, and we are concerned about the lack of definition of conspicuous location.

NDFCC asks you to give HB 1544 a do not pass recommendation.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

AgCountry FCS

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