2009 SENATE FINANCE AND TAXATION

SB 2160

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2160

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 01/26/2009

Recorder Job Number: 7677

Committee Clerk Signature	

Minutes:

Chairman Cook: Committee attendance was taken.

Chairman Cook: Opened hearing on SB 2160. No testimony was present.

Postponed hearing until 01/27/2009 2:30 PM due to testifiers not being present.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2160

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 01/27/2009

Recorder Job Number: 7901

Committee Clerk Signature	

Minutes:

Chairman Cook: Opened hearing on SB 2160.

Timothy J. Karsky, Commissioner, Department of Financial Institutions: See attachment #1 for testimony in support of bill and explanation of the bill. (The testimony goes until 29.45 with questions posed intermittently)

13.07 **Chairman Cook:** Loan originators, those are individual who work in a bank?

Timothy Karsky: Loan originators would be for mortgage companies, not banks, savings and loans and credit unions. They are specifically exempted under our state law and the FDIC, the office of? supervision will register their own loan originators through a system that is going to be compatible with the national mortgage licensing system. We are specifically talking just about independent mortgage companies and those known originators affiliated with those companies.

Chairman Cook: Do we have one of those individuals here?

Timothy Karsky: Yes

Chairman Cook: This sounds a lot like streamlined sales tax but driven from the top down.

Timothy Karsky: That is correct. This is federal legislation that has been implemented, but they have allowed the states to oversee, but if we don't, HUDD will take over that. (Continues with bill explanation.) 14.37

21.20 **Senator Hogue:** I understand what a mortgage loan originator is, but are they issuing payday loans as well as originating loans that are secured by mortgages?

Timothy Karsky: The provision in this section is dealing with the consumer finance company, that language we took out, that is going into section 13-04.1 for money brokers. Pay day lenders are not involved in that. They are in their own title 13-08, and loan originators are strictly under 13-10.

23.10 **Senator Hogue:** I read the payday loan chapter, and that basically deals with somebody who is accepting a check from the customer and agreeing to negotiate it at a later date, this provision is talking about amount loan – why would a pay day loan person be subject to that as well?

Timothy Karsky: You are correct in how a payday loan works, it is a post dated check and it is a loan that goes from 0 – 15 days and interest is not charged. You charge the percentage rate or a fee. Pay day loaning is a form of lending, but it is a whole different concept than a traditional finance company. Continues with bill explanation and references Attachment #2. 29.45

Chairman Cook: It sounds like this is all about loan originators, individuals, so we are saying this housing crisis is all because of the loan originators? It has nothing to do with mortgage company policy.

Timothy Karsky: Fortunately in North Dakota we have not had a lot of abuse with loan originators, but in other states it was tremendous. In Florida there were over 10,000 loan originators that had felony convictions and criminal records. There is no database to track them. I think a lot of the problems start with them. From now on, they should be able to answer all of your questions regarding your loan.

Chairman Cook: Does any of this make any changes in the leeway that a mortgage company has in offering a loan? As far as money down, collateral you have to have, or income you have to earn to get a loan?

Timothy Karsky: The federal government has passed some basic rules now that will require you to make sure that the loan is in the best interest of the consumer. You have to document the loans. You have to verify the information on the forms. It is tough to get a loan, now you need a down payment to get a loan.

Chairman Cook: What changes would a consumer see in North Dakota if this bill passes?

Timothy Karsky: They will be able to go on a website and make sure the person they are getting a loan with is reputable, and that they have passed the minimum tests, and that he is somewhat knowledgeable of the product he is selling.

32.55 **Senator Hogue:** I wanted to make sure I understood the consequence of the legislature not adopting this. I understood you to say if it is not adopted by June-July of this year, HUD will require anyone who is going to originate a loan to be guaranteed by HUD, to follow their federal requirement, which may or may not be more stringent than what you are proposing?

Timothy Karsky: If HUD takes over then the requirements I have stated, they will implement. We will still license the company, but the loan originator will now go to HUD, and the state will be out of the picture. I just think that it makes more sense on a local level to have the state making some of those decisions. We are more responsive and more accessible.

Senator Triplett: Do you know of any abuses in North Dakota that would justify any of this?

Timothy Karsky: There is some, not a big problem with it. This will really help, and they will be much more knowledgeable.

35.00 **Senator Dotzenrod:** In the past have we required money brokers and loan originators to be licensed by state?

Timothy Karsky: The companies have always been licensed. We were up to about 370 during 2008, and then when the mortgage crisis started we had a lot of non-renewals. I think we have 310 today. Anyone that does business needs to be licensed with our department. The majority of the 310 are out of state companies.

Senator Dotzenrod: Your amendment here for Section 3, does this fee and bond cover the pay day loan people?

Timothy Karsky: That would be just for loan originators.

Senator Anderson: Have you seen the fiscal note?

Chairman Cook: Where is the $186,000 lost revenue coming from?

Timothy Karsky: We licensed 310 companies, and 80% of those do residential real estate margins. Some of the money brokers just do commercial loans. So do be accurate, we took the 80% x 80% x 3 for loan originators. We figure about 3 loan originators per company. We did not want to double count the money for those.

38.09 **Senator Anderson:** I am looking at revenues and expenditures in two different places; in both cases it is over $100,000 difference where the revenues exceed expenditures. What happens to the money?

Timothy Karsky: Part of the loss of revenue is because we are extending 310 money brokers out 6 months to balance things out. Everyone basically got a free six months.

Senator Anderson: Reserves are good; I just want to know what is going to happen to the money.

Timothy Karsky: We will get that to you.

Chairman Cook: So the loan originated in the state, what are all the new things that they will have to do? What will they have to do to be licensed?

Timothy Karsky: Twenty hours of pre-education before they take the test, and then test to become licensed, and then after they are licensed they have to have yearly continuing education. On the first time around they also have to pass a background check.

Chairman Cook: Fingerprint? Yes. Bonded under net worth? Yes.

41.00 **Senator Triplett:** On the twenty hours of education before testing, is there any way you can wave that for existing loan originators.

Timothy Karsky: I wish we could. HUD gave us no leeway. I think most people will already have the hours. I will push for prior classes to count.

42.20 **Claus Lembke, North Dakota Association of Realtors:** We have discussed this issue in meetings throughout the state and there has been not one single objection to this legislation. We don't see the education to be a problem. The major reason that we support this legislation is to see relief for North Dakota residents. We support this bill.

44.45 **Senator Triplett:** Do you support the amendments?

Claus Lembke: I have not seen them, but yes I have spoken to Mr. Karsky and have no problem with it.

Dana Bohn, Farm Credit Services: We ask for your support of the amendments. On page 2 you can see that Farm Credit Administration was replaced with Farm Services Agency, and we are not administrated with Farm Service Agency, we are with Farm Credit Administration. We are happy to see that change.

Senator Hogue: Question for Tim Karsky. I heard the term money brokers, money loan originators, pay day loan folks, and I know there are the people who charge a fee to transfer money, where does a money broker fall into this?

47.00 **Timothy Karsky:** This has nothing to do with money transmitters, deferred presentment providers, or pay day loan arrangers. There were a few places that we needed to keep but rearrange. The majority of the bill deals with loan originators.

Senator Hogue: In terms of the federal safe act, does that begin with section 6 of the bill, on page 6?

Timothy Karsky: Yes, 13-10 section 6 that is where it starts.

49.30 **Senator Dotzenrod:** Did I hear you say in your testimony, that there were in the statute some provisions that cover loans from 0-250, and then another separate coverage for loans from 250-500, and then 500-, and that you would move that into this?

Timothy Karsky: On page 3, line 3 that are actually in currently in the consumer finance section of the century code.

Senator Dotzenrod: That is existing language?

Timothy Karsky: Yes.

Chairman Cook: Hearing closed on bill.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2160

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/02/2009

Recorder Job Number: 8391

Committee Clerk Signature	Carrie Winings

Minutes:

Chairman Cook: Reopened discussion on SB 2160. Reminds that there are amendments.

Senator Anderson: Would like information from Mr. Karsky from the Department of Financial Institutions.

Senator Hogue: I have one concern. I understand what the safe act is all about, and I understand on page 6, beginning with section 6 where we are implementing a new chapter to deal with that issue, but I did not get clarity why we have sections 4 and 5. They don't seem to relate to the safe act at all.

Senator Triplett: It is not new language and it was moved here from the consumer finance act as a way of getting this all together in the same place.

Chairman Cook: That is what I understand. Mentions the amendments and everyone is looking into them as well as sections 4 and 5; also whether it was a fee increase. Asks intern to call Mr. Karsky and find out why he was offering amendments on his own bill; then decided to e-mail himself.

Senator Dotzenrod: Asked if Mr. Karsky could come in.

Chairman Cook: I will see if I can get him here. Suspended the bill until Tuesday afternoon.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2160

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: 02/03/2009

Recorder Job Number: 8511

Committee Clerk Signature

Minutes:

Chairman Cook: Reopened discussion on SB 2160.

Tim Karsky, Commissioner, Department of Financial Institutions: Returns to go through fiscal note, and points out a few things to committee. Noted that they had some extra money carried over from prior biennium used and they figured that it would be a wash in the end and then will be able to sustain position going forward with charges. It looks like we are making money off this, but in reality we are not.

Chairman Cook: We have amendments here?

Tim Karsky: See Attachement # 1 for amendments proposed and reviewed them.

Senator Triplett: Motioned for the amendments.

Senator Oehlke: Seconded.

A voice vote was taken on the amendments. 7 yeas, 0 nays.

Senator Oehlke: Moved a Do Pass As Amended, and re-referred to appropriations.

Vice Chairman Miller: Seconded.

A Roll Call vote was taken. Yea 7, Nay 0, Absent 0.

Senator Oehlke will carry the bill.

FISCAL NOTE
Requested by Legislative Council
02/13/2009

Amendment to: Engrossed SB 2160

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues		$0		$209,400		$211,000
Expenditures		$0		$96,510		$62,000
Appropriations		$0		$0		$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

Regulate real estate brokerage activity and registering mortgage loan originators. This Senate Bill will require mortgage loan originators to be licensed and register thought the nationwide mortgage licensing system and registry. This will have no fiscal impact to the general fund.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Department of Financial Institutions is a self-funded regulatory agency and the revenue from the licensing will be deposited into the regulatory fund. The Expenditure will include salary and operating expense for one Administrative Assistant I FTE. This FTE will be responsible for 792 licenses for mortgage loan originators.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Mortgage Lenders 264 per year @ $400	211,200
Loan originators Fee 792 per year @ $50	79,200
Less Revenue in budget	(186,600)
Fee Examine	105,600
Total	209,400

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Salary	Pay Grade 6 Admin Asst I	
Gross for 24 months		43,175
Benefits for 24 months		17,702
Total Salary		60,877

Expenditure

Computer	2,185
Desk	635
Chair	365
Office Supplies	640
Office Space	4,900
Remodel (one time)	2,700
IT Telephone	2,093
Insurance	915
Printing	3,225
IT Data Processing	8,050
IT Software	1,450
Postage	975
Operating Fees & Ser	7,500

Total Operating 35,633

Total Expenditure 96,510

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This bill does not include any appropriation.

Name:	Joan Becker	**Agency:**	Dept of Financial
Phone Number:	701-328-9958	**Date Prepared:**	02/13/2009

FISCAL NOTE

Requested by Legislative Council
02/06/2009

Amendment to: SB 2160

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
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Revenues		$0		$209,400		$211,000
Expenditures		$0		$96,510		$42,000
Appropriations		$0		$0		$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

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This bill does not include any appropriation.

Name:	Joan Becker	**Agency:**	DFI
Phone Number:	328-9958	**Date Prepared:**	02/06/2009

FISCAL NOTE
Requested by Legislative Council
01/08/2009

REVISION

Bill/Resolution No.: SB 2160

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This bill does not include any appropriation.

Name:	Joan Becker	**Agency:**	Dept of Financial Institutions
Phone Number:	328-9958	**Date Prepared:**	01/06/2009

FISCAL NOTE

Requested by Legislative Council
01/02/2009

Bill/Resolution No.: SB 2160

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This bill does not include any appropriation.

Name:	Joan Becker	**Agency:**	Dept of Financial Institutions
Phone Number:	328-9958	**Date Prepared:**	01/06/2009

Date: 02/03/09

Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2160

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Amendment

Action Taken ☐Do Pass ☐Do Not Pass ☐Amended

Motion Made By Triplett Seconded By Oehlke

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman			Sen. Arden Anderson		
Sen. Joe Miller – Vice Chairman			Sen. Jim Dotzenrod		
Sen. David Hogue			Sen. Constance Triplett		
Sen. Dave Oehlke					

All in favor

Total: Yes 7 No 0

Absent

Floor Assignment

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

Date: 02/03/09

Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. : 2160

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Re-Referred to Appropriations

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By Oehlke Seconded By Miller

Senators	Yes	No	Senators	Yes	No
Sen. Dwight Cook - Chairman	✓		Sen. Arden Anderson	✓	
Sen. Joe Miller – Vice Chairman	✓		Sen. Jim Dotzenrod	✓	
Sen. David Hogue	✓		Sen. Constance Triplett	✓	
Sen. Dave Oehlke	✓				

Total: Yes 7 No 0

Absent 0

Floor Assignment Senator Oehlke

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

REPORT OF STANDING COMMITTEE

SB 2160: Finance and Taxation Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2160 was placed on the Sixth order on the calendar.

Page 1, line 4, after "13-04.1-02.1" insert ", 13-04.1-04,"

Page 1, line 7, after the comma insert "annual license fees,"

Page 2, line 3, replace "Entities" with "Individuals"

Page 2, line 6, remove the overstrike over "~~credit administration~~" and remove "service agency"

Page 2, after line 14, insert:

"**SECTION 3. AMENDMENT.** Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of ~~three~~ four hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty-five thousand dollars. In addition, the applicant must pay a fifty dollar annual fee for each branch location within the state. Fees must be deposited in the financial institutions regulatory fund."

Page 8, line 15, replace "service agency" with "credit administration"

Page 11, line 21, after "3." insert "a."

Page 11, line 25, replace "a." with "b."

Page 18, line 9, replace "of fifty thousand dollars" with "as determined by the commissioner by rule. The amount must be reflective of the dollar amount of loans originated as of the previous yearend"

Page 24, line 29, replace "5" with "6"

Page 25, line 1, replace "5" with "6"

Renumber accordingly

2009 SENATE APPROPRIATIONS

SB 2160

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2160

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 12, 2009

Recorder Job Number: 9367

Committee Clerk Signature	Rose Laning

Minutes:

Chairman Holmberg called the committee hearing to order at 8:30 AM in regards to SB 2160 relating to licensing of residential mortgage brokers and regulation of loans.

Tim Karsky, Commissioner, Department of Financial Institutions

(Written attached testimony # 1)

Explained the fiscal note that is attached to SB 2160.

Senator Christmann asked if all banks and credit unions are exempt, who are the people we are licensing?

Tim Karsky: Banks and credit unions are not exempt from loan origination registering. That will be handled by the Federal Deposit Insurance Corporation and the National Credit Union Administration. The ones that do loan originations with the mortgage companies will now have to be registered on this mortgage system. That is a nationwide mandate and if not implemented, Housing and Urban Development (HUD) would take over that requirement for us in the state.

Senator Christmann asked if banks and credit unions will not impacted and was informed that they would not be impacted by SB 2160, but under the Safe Act, all employees that do mortgages, banks, credit unions or savings and loans will have to be registered in some sort of national data base, but we will collect not collect the fees, or conduct the testing or licensing or educational requirements.

Claus Lembke, North Dakota Association of Realtors

Testified in favor of SB 2160. (No written testimony)

Senator Robinson asked if there is any finger printing and background checks.

Tim Karsky: Yes and goes thru FBI.

Tim Karsky - Has one copy of amendment.

Read amendment which takes care of their issues with the auditor's office.

Senator Mathern asked if the amendment applied to any other state agency or are they specific to your department.

Tim Karsky said they apply only to this department.

Senator Mathern motion to amend the bill – amendment .0201.

Senator Fischer seconded.

Voice vote approval.

Senator Warner moved Do Pass on SB 2160.

Senator Krebsbach seconded.

A Roll Call vote was taken. Yea: 14 Nay: 0 Absent: 0

The bill goes back to Finance and Taxation.

98196.0201

title .0300

Adopted by ~~the~~ Senate Appropriations ~~Committee~~
2/12/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2160

Page 1, line 4, replace "subsection" with "subsections" and after "1" insert "and 3"

Page 1, line 6, after second comma, insert "the financial institutions ~~valuation of~~ regulatory fund balance,"

Page 1, line 12, replace "Subsection" with "Subsections" and after "1" insert "and 3"

Page 1, line 13, replace "is" with "are"

Page 1, after line 18, insert:

> "3. Any cash balance in the financial institutions regulatory fund after all current biennium expenditures are met must be carried forward in the financial institutions regulatory fund for the next succeeding biennium. The balance in this fund at the end of the current biennium, excluding fees collected for use in the next succeeding biennium, may not exceed twenty percent of the department's next succeeding biennial budget."

Page 25, line 29, replace "Section" with "Sections 1 and" and replace "becomes" with "become"

Page 25, line 30, remove "its"

Page 26, line 1, replace "Section" with "Sections 1 and" and replace "is" with "are" ~~and remove "an"~~

~~Page 26, line 2, replace "measure" with "measures"~~

Renumber accordingly

Date: 2-12-09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2160

Senate ______________________ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______________________

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ Amended Amendment

Motion Made By Sen Mathern Seconded By Fischer

Representatives	Yes	No	Representatives	Yes	No
Senator Krebsbach			Senator Seymour		
Senator Fischer			Senator Lindaas		
Senator Wardner			Senator Robinson		
Senator Kilzer			Senator Warner		
V. Chair Bowman			Senator Krauter		
Senator Christmann			Senator Mathern		
V. Chair Grindberg					
Chairman Holmberg					

Total Yes 14 No 0

Absent 0

Floor Assignment ______________________

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

Voice Vote approved

Date: 2-12-09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2160

Senate ______________________________ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______________________

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ as Amended

Motion Made By Sen. Warner Seconded By Sen Krebsbach

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner	✓		Senator Robinson	✓	
Senator Fischer	✓		Senator Lindaas	✓	
V. Chair Bowman	✓		Senator Warner	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Christmann	✓		Senator Seymour	✓	
Chairman Holmberg	✓		Senator Mathern	✓	
Senator Kilzer	✓				
V. Chair Grindberg	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment back to Finance + Tax

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

REPORT OF STANDING COMMITTEE

SB 2160, as engrossed: Appropriations Committee (Sen. Holmberg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2160 was placed on the Sixth order on the calendar.

Page 1, line 4, replace "subsection" with "subsections" and after "1" insert "and 3"

Page 1, line 6, after the second comma insert "the financial institutions regulatory fund balance,"

Page 1, line 12, replace "Subsection" with "Subsections" and after "1" insert "and 3"

Page 1, line 13, replace "is" with "are"

Page 1, after line 18, insert:

"3. Any cash balance in the financial institutions regulatory fund after all current biennium expenditures are met must be carried forward in the financial institutions regulatory fund for the next succeeding biennium. The balance in this fund at the end of the current biennium<u>, excluding fees collected for use in the next succeeding biennium,</u> may not exceed twenty percent of the department's <u>next succeeding</u> biennial budget."

Page 25, line 29, replace "Section" with "Sections 1 and" and replace "becomes" with "become"

Page 25, line 30, remove "its"

Page 26, line 1, replace "Section" with "Sections 1 and" and replace "is" with "are"

Renumber accordingly

2009 HOUSE FINANCE AND TAXATION

SB 2160

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2160**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9931

Committee Clerk Signature

Minutes:

Chairman Belter: We will open the hearing on SB 2160.

Timothy J. Karsky, Department of Financial Institutions: (Testimony 1)

Representative Kelsh: You said that mortgage brokers are not currently licensed by your department, but are supervised. Does that mean they were previously required to register with you or can anyone hang out a shingle and call themselves a mortgage broker?

Tim Karsky: We license the company so I will just take one in Fargo, FM Mortgage Company. Their company is licensed with us and they are bonded. We do not license any of the loan originators that work for them. The SAFE act is going to require now that even the loan originators be licensed and registered.

Representative Kelsh: Then whose jurisdiction is it (federal or state) for online mortgage brokers? You see a lot of these Countrywide ads quoting you the best rate or the best mortgage they can. Does that fall under federal jurisdiction or is that under your department?

Tim Karsky: Anybody that wants to make a loan in North Dakota has to be licensed and bonded and registered with us. We have 310; I think at the peak in 2007-08, we had 382 companies. When you try to license or examine most companies, we have three full-time investigators that examine consumer finance companies, election agencies, pay day lending and mortgage companies. We only do the big companies; and usually if there are a lot of complaints. We have asked for an additional position and we do plan to do the mortgage companies now on a routine basis if that is granted.

Representative Kelsh: Does your department regular usury laws on consumer financing institutions like City Financial which does almost instantaneous loans to consumers and yet charges them 30% interest?

Tim Karsky: The way ND usury laws are is they apply to non-regulated lenders. So if you are a regulated lender, the statute for banks, credit unions, consumer finance companies, it sets forth interest rates that they can or cannot charge. Now for banks and credit unions, it is unlimited savings and loans. Consumer finance companies—right now the only limitation is for loans less than $1000 so from $1 to $1000, they are very specific and we carry that language from the consumer finance act over to protect those. Deferred percent(?) providers and payday lenders, we also license. Those companies can charge 20% of the amount financed; it is not an interest rate. It is just a percent.

Representative Schmidt: I noticed there is a certain section in this bill where there is an emergency measure on. Was that at your department's request or at the federal government's request?

Tim Karsky: Part of that was both. One emergency provision or measure pertains to the fees that we collect that go into the fund right away. Our attorney from the Attorney General's office did the other section. That was a requirement so we were ready to go by August 1. So if the Governor would sign it, the law doesn't become effective until August 1 and we needed it before then so just those provisions (inaudible). Then to extend the license, we are extending the industry's license for money brokers from June 30 to December 30. We needed to have the emergency provisions put on those sections.

Representative Pinkerton: On page 10 of your written testimony, item a says "a mortgage call report". I don't know what a mortgage call report is.

Tim Karsky: That is going to be what the banks and the credit union file quarterly. When they file their call report, it is a complete list of their assets and liabilities and a detailed income statement. We want just an annual call report from the mortgage industry and I believe it will be a financial statement and how many loans originated in North Dakota and the types of loans that originated in ND. Then when we examine, even though some companies are not very active, we don't need to get out there right away. But if it was a Countrywide that did $10-15 million worth of loans and they were all sub-prime, we would probably want to be in those types of companies more often. So it will be a detailed financial statement for those companies operating in ND(?) (26:25)

Representative Pinkerton: Does your agency regulate credit cards when people get cash advances?

Tim Karsky: If it is a bank or a credit union ATM, we have some oversight of that. If it is an independent ATM as some gas stations put in their convenience stores, we don't have anything to do with the fees they charge or those types of issues, but we do regulate the ones for banks and credit unions, for state charter institutions.

Representative Winrich: Looking at the emergency clause, it says that sections 1 and 6 are declared to be emergencies; section 7 is the new chapter that I thought had to be in effect also. Shouldn't section 7 be included?

Tim Karsky: Some of these numbers got changed on the second engrossment....section 1 definitely needs to be in and you think section 7?

Representative Winrich: It starts on page 6.

Chairman Belter: Since it is one bill, it is either all in or it is all out, isn't it, the emergency clause.

Aaron Web, Attorney General's Office: I am assigned to work with the Department of Financial Institutions. The reason section 1 was put in under the emergency clause was because that was at the request of the auditor and that was dealing with funds currently under an audit, those funds accepted for the next biennium were being included in the carryover for the previous biennium; that was an auditor issue. Section 6 was brought into the emergency clause to be put in place so that those that with the extension of the licenses that the fees would not be accepted and would be put on a different schedule, so they would go on a yearly schedule updated on January 1 instead of July 1. The body of the bill itself relating to mortgage originator licensing does not need to go into effect until it the current bill normally would so it wasn't necessary to do that under the emergency clause.

Chairman Belter: If we pass this bill, it is either all or none under the emergency clause.

Aaron Web: I guess I understood you could do it by section, but I would have to look back and see if that is how.

Chairman Belter: Right now that is not how it works. Either the whole bill either gets the required votes for the emergency clause or it doesn't. The emergency clause would deal with the entire bill.

Timothy Karsky: We wouldn't have a problem with that.

Representative Weiler: Tim, as I see the fiscal note on this, the first line on the fiscal note says "Regulate real estate brokerage activity", and I am just wondering if that was some language that was amended out in the Senate because I don't see anything in the whole bill about real estate brokers. I was just wondering what that pertains to.

Tim Karsky: I think that was language actually put on by legislative council. Money brokers are the true sense of 1304.1that is the chapter. You are talking about loan originators with the residential real estate market and that is why. Mr. Chairman, I have an explanation of that fiscal note if you would like me to go over it. It looks like we are making money off the fiscal note and we're not. If you look at the fiscal note, it says that the revenues for 2009-2011 are $209,400. There is a $186,600 which was classified as less revenue in our budget. We have approximately 310 or 311 money brokers that are currently licensed with the department. Regardless of what happens with this bill, those companies would still be licensed with us and they are going to pay renewal fees. So if you take 311 times $300 which is the current licensing fee, you get $93,300 per year or $186,600 for the biennium. This amount is already included in the budgets and we didn't want to double count it so we reduced the revenue by that amount. I just wanted to go over that question because that came up before. A loan originator—we figured that there are going to be three loan originators for every company that we license so right now, there are 311. We guessed about 85% of those are just strictly residential mortgage companies. It came up that we are going to have approximately 792 estimated originators times $50 or $39,600 a year or $79,200 for the biennium. We will have $211,200 in mortgage company fees, $79,200 in loan originator fees, then we subtract out that $186,000 income I just talked about that we already have in the budget regardless of what happens to the bill, we will still collect those fees. Then we estimate examining those companies doing one a month right now and going on the road with all the fees and everything, it will be $105,600. That is how we came up with the total revenue of $209,400. The expenditures of $96,510 because of keeping track of the 792 peoples' educational requirements, testing requirements, we are estimating that we will need a half-time position right now to keep track of those, monitor them and keep them in the system. That was a computer, a desk, and the salary and benefits. That was how we came up with that for the biennium. We also have in our budget another full-time mortgage person that is going to come out of the general revenues for licensing. Even though we have some surplus built up, we think going forward in 2011 and on, that with the additional person and the other half-time person, we will be operating pretty much at the breakeven point thereafter. We also have in our budget, which is not in the fiscal note, a $134,000 record management fee to get us in synch with the national mortgage date base, which will be a one-time fee. We are going to pay that out of the funds we have right now. We are not going to make money off this; we are hoping to break even. If we can't, we will probably have to eliminate a half-time position or something going forward. We will have to play that by ear and see how many people we actually need.

Representative Weiler: On the first page of that fiscal note, it says gross for 24 months $43,000. Is that the full-time position or is that the part-time position or both?

Tim Karsky: That is only the half time for twenty four months, $43,000. That is just an administrative assistant helping us out so that is the salary for 24 months. It is not a really profitable position for someone to take. The full time is in Budget 2008.

Representative Drovdal: I have to admit I am frustrated by this bill, basically because I don't understand the mortgage business and real estate business. My interpretation was that what made the problem we are having with the national economy was caused by the home mortgage crisis, which was caused by the dealing with the sub-prime loan, which was facilitated by Congress weakening the laws that were passed after the 1930's crash. Instead of going back and fixing that, they are taking our sovereignty from us (and I wish the Attorney General would work on that issue) by demanding that we pass the SAFE act which is the result of the national crisis. My question here is on page 13 you made a statement that we have not proposed any more stringent requirements for licensing; but when I go back to page 9 and 10, I read number 4 which starts out with "require", number 5 starts out with "require", number 6 starts out with "require", 7 and 8—this whole thing is more stringent rules for licenses, is it not?

Tim Karsky: When I made that reference about not being more stringent than other states, some states have increased their educational requirements like Nevada or Arizona, where they have some real issues. Instead of 20 hours of prelicensing education, they went with 40. North Dakota is just going to adopt the minimum. What we are proposing in our department is the minimal requirements. I am not saying there aren't going to be some new things that they follow; there will be. There are ten of them for sure that they have to follow. I would just like to make the statement that our industry has acted way above the line. When we look now, we made very few sub-prime loans in ND. We have made very few alternative mortgage loans in ND so we don't have most of the issues. When you look at the foreclosure rates for all the U.S., North Dakota has been consistently 47th, 48th, 49th or 50th in the nation. Our ratio is pretty small. Sometimes we jump down because one or two foreclosures in a month compared with our total outstanding amount does make a pretty good percentage climb. Overall our industry has operated very well. I think our people in ND are very conservative; we didn't go out and leverage our homes and buy homes that we couldn't afford. The other thing on some of the loans that were made where there were prepayments and adjustable rate mortgages made, our values have held. When people got into problems, they could sell those homes and get out of them unlike some other places. I am not pleased with the mandate, but I would rather see at least the state be able to control some of the licensing and regulation process, rather than having to deal with a federal government agency in Washington, D.C. They can get an answer from me today or tomorrow. It could take weeks or months to get it out of Washington. I think we can be more responsive at the state.

Representative Headland: I share the frustration. Just to simplify this for me so I have an understanding, can you give me an example of a problem that is occurring here that this is going to affect?

Tim Karsky: We do have some companies we license that have people working for them that are not very knowledgeable. When we take action, we usually have to take it against a company. It would be a lot simpler if that loan originator, and that is where most of the problems happen when we do get complaints, it is because the borrower doesn't understand the product they are buying and the loan originator and the person working with that borrower can't explain it. At least, you are going to have to know what a mortgage is, how it is filed, what a prepayment penalty is, what points are, those type of things. Believe it or not, we have people even here, we have people who can't answer (inaudible), where people sign it and then go ahead. This law will create at least a level playing field that everyone has to pass that test.

Representative Headland: I understand that point, but how does this help the person who is getting the mortgage? If the licensed mortgager didn't understand the mortgage before, he will now. That is what you are saying? This is going to insure that the person receiving the mortgage is going to understand it.

Tim Karsky: We licensed 310 companies; I think 44 or 45 of those are in the state of ND. A lot of people use the online thing. At least if you were going online and you were doing business with ABC Mortgage Company in California, you will be able to go on this data base and see that they are a legitimate company and that that individual loan originator is licensed and legit. That will help some of those things. Most of our people still do business face to face in ND and maybe they have known that person for 25 years and it is not going to conflict their lives; but it does start that data base and everybody is on the same playing field.

Representative Weiler: In response to Representative Drovdal and Headland's concerns, largely this is required of us by the federal government. That is one of the reasons we basically have to do this. I work with mortgage lenders every day and I think that they are very good in ND; but I have talked to several of them that want to be licensed and feel they need it in their organization to be licensed. Ultimately the consumer is the one that benefits from it because if the person that is helping them with the loan has more knowledge of all the details of everything that has to go on, they are going to be able to pass that down to the consumer. Right now the mortgage lenders do not have to go to education; I really see the need for the bill. There is a lot of information here but it is well needed.

Claus Lembke, North Dakota Association of Realtors: We have about 1500 individual members statewide located in 8 (inaudible). We also have 500-600 affiliates statewide. I would say that 90% of people who make the loan processes are members of our local organizations. Last fall as we do prior to every session, we held round-table discussions to get feedback and input from our members and affiliate members on proposed legislation. We knew about this legislation and we took this around the state. Mr. Chairman, there was not one single objection from a single mortgage originator. They were all comfortable with that and you see that there is nobody here. They are comfortable with this proposed legislation. Our big concern for our industry is what Mr. Karsky mentioned earlier is that if we have to be regulated (which the feds are saying we have to be regulated), we would rather have regulation in the state instead of if there is a problem with the consumer, they have to go to Chicago or Denver or some other regional bureaucrat where you would not get any satisfaction. We would rather deal with the Department of Financial Institutions right here in Bismarck. Mr. Karsky and the staff have an excellent track record of consumer protection. I can testify to that first hand. I know more regulation hurts, but we appreciate your passing this bill.

Representative Kelsh: One quick question that came to mind is in your estimation, do you think that the regulations on this bill will lengthen the closing time or affect consumers in any way?

Claus Lembke: No, it will not affect it at all. The competition out there is so strong that if you don't get an answer the same day, you are going to be out of business.

Vice Chairman Drovdal: Thank you for your testimony. Anyone else want to testify in favor of 2160? Any opposition to 2160? Any neutral testimony on SB 2160? If not, I will close the hearing on SB 2160.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2160**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10028

Committee Clerk Signature

Minutes:

Representative Weiler: Just a question; we don't have to take it up now, but I have a question on SB 2160. That is the mortgage loan officer 15 page, my question is the emergency clause on page 12...

Chairman Belter: We can take that up unless somebody has a hold on it; I don't have it marked.

Representative Weiler: The question I have, Mr. Chairman, is the emergency clause says emergency for sections 1 and 6 of this act. Do we have to change that to say the whole bill is an emergency clause? Can you put an emergency clause on just certain sections?

Representative Grande: Our intern is telling us yes.

Chairman Belter: Yes you can.

Representative Weiler: How would that affect it? I know he doesn't want to take it up now, but I will ask it when you bring it up.

Chairman Belter: No we can bring it up.

Representative Weiler: I guess my question is how does that affect 1 and 6?

Chairman Belter: Jonathan, if we don't get a two thirds vote...

Jonathan Godfread: Then the emergency will fail, but you can still go on with the bill.

Representative Weiler: So what are the sections 1 and 6?

Representative Grande: Mr. Chairman, sections 1 and 6 deal with issues that came up during their audit and the auditor must have stated they needed to get this fixed and quickly so that is why the emergency clause is on those issues. It was just an audit issue and the rest could come in when they would naturally roll into law. That's what he said during the testimony.

Representative Drovdal: Section 6 gives an automatic six-month extension during the calendar year. My guess is that they need that six months to get all the other stuff in place and get ready to roll with it so without the emergency clause, they wouldn't have it ready to roll. That is my guess as to why they didn't put the whole bill under the emergency clause.

Chairman Belter: I guess I would entertain a motion on this.

Representative Wrangham: Mr. Chairman, I would appreciate if we could hold this for another day.

Chairman Belter: We will hold this one more day.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2160**

House Finance and Taxation Committee

☐ Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10639

Committee Clerk Signature

Minutes:

Chairman Belter: Let's look at SB 2160. Can anyone refresh the committee on what this is all about.

Representative Grande: Rewrite of Chapter 13-10 dealing with the minimum requirements of licensing mortgage brokers..

Chairman Belter: What are your wishes on this?

Representative Grande: I move a "do pass".

Chairman Belter: We have a motion for a "do pass" from Representative Grande and a second from Representative Weiler. I don't believe that this has to be rereferred to appropriations. Any discussion? **(We have a "do pass" on SB 2160 resulted in 12 ayes, 0 nays, 1 absent/not voting. Representative Grande will carry the bill.)**

Date: March 10, 2009

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2160

House FINANCE AND TAXATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ______

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Grande Seconded By Weiler

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Representative Froelich		
Vice Chairman David Drovdal	✓		Representative Kelsh	✓	
Representative Brandenburg	✓		Representative Pinkerton	✓	
Representative Froseth	✓		Representative Schmidt	✓	
Representative Grande	✓		Representative Winrich	✓	
Representative Headland	✓				
Representative Weiler	✓				
Representative Wrangham	✓				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Representative Grande

If the vote is on an amendment, briefly indicate intent: ~~Rerefer to Approp.~~

REPORT OF STANDING COMMITTEE

SB 2160, as reengrossed: Finance and Taxation Committee (Rep. Belter, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Reengrossed SB 2160 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2160

#1

1-27-2009

TESTIMONY FOR SENATE BILL NO. 2160

Senate Finance and Taxation Committee

Testimony of Timothy J. Karsky, Commissioner, Department of Financial Institutions in support of Senate Bill No. 2160

Chairman Cook and members of the Senate Finance and Taxation Committee, I am Tim Karsky, Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify and urge your support of Senate Bill No. 2160 which deals with the licensing of loan originators.

Mr. Chairman this is a long bill and if I may I would like to give you some background information and then we will go through the bill in detail with the Committee. In addition to regulating state-chartered banks and state-chartered credit unions our Department also supervises money brokers and the large majority of money brokers in North Dakota originate residential real estate mortgages. Over the past 10 – 15 years the Department has seen rapid growth in the number of mortgage companies that we license and overall the mortgage industry has grown across the United States.

The Department is a member of a professional association called the Conference of State Bank Supervisors (CSBS) and this is an association of state officials responsible for chartering, supervising and regulating the nations six thousand state chartered commercial and savings banks. For more than a century CSBS has given state supervisors a national forum to coordinate supervision of the regulated entities, to develop regulatory policy, to provide training to state officials, and to represent state officials before Congress and the Federal Financial Regulatory Agencies. In the past few years, CSBS has expanded its mission beyond traditional commercial bank supervision and has been working closely with the American Association of Residential Mortgage Regulators (AARMR) to enhance state supervision of the mortgage industry. All 50 states and the District of Columbia provide regulatory oversight of the residential mortgage industry. As of October of 2008 states were currently managing 77,000 mortgage company licensees, 50,000 branch licensees and 410,000 loan officer licensees. In North Dakota we currently do not license mortgage loan originators but we do license approximately 310 mortgage companies as of this date. I will try to give you a brief history of some new legislation that is requiring the licensing and registration of mortgage loan originators as required under Title 5 of the Housing and Economic Recovery Act of 2008 titled the Secure and Fair Enforcement for Mortgage Licensing. The acronym for this legislation is also known as the SAFE Mortgage Licensing Act. On July 30, 2008, President Bush signed Public Law 110-289, the Housing and Economic Recovery Act of 2008. Title 5 of this law is known as the Secure and Fair Enforcement for Mortgage Licensing Act or the SAFE Act. The purpose of the SAFE Act is to increase uniformity, reduce regulatory burden, enhance consumer protection and reduce fraud. The SAFE Act has 10 key objectives:

1. Provide uniform license applications and reporting requirements for state licensed mortgage loan originators;
2. Provide a comprehensive licensing and supervisory database;
3. Aggregate and improve the flow of information to and among regulators;
4. Provide increased accountability in tracking of loan originators;
5. Streamline the licensing process and reduce regulatory burden;
6. Enhance consumer protection and support antifraud measures;
7. Provide consumers with easily accessible information utilizing electronic media regarding employment history

and public adjudicated disciplinary and enforcement actions against loan originators;

8. Establish a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interest of the consumer;

9. Facilitate responsible behavior in a subprime mortgage marketplace and provide comprehensive training and examination requirements related to subprime mortgage lending; and,

10. Facilitate the collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.

Mr. Chairman and members of the Committee I believe passage of the SAFE Act provides states with a tremendous opportunity: the residential mortgage market has widely been described as "unregulated" and many have blamed state supervisors for the poor practice and exotic products that characterize the mortgage industry in the past few years. For example, in the March 2008 policy statement on financial market developments, the President's working group on financial markets blamed "weak government oversight" of state licensed mortgage brokers and originators for the rise in unsound underwriting practices that triggered current financial turmoil. The extensive requirements of the SAFE Act demand immediate and broad action by states and yet, the SAFE Act allows the states the opportunity to preserve our authority by enhancing and coordinating supervision with our state and federal colleagues. As congress takes on the issue of regulatory restructuring, all eyes will be on the states to judge how quickly and effectively we are able to implement the requirements of the SAFE Act. I fear that if states do not act in a coordinated manner, our ability to supervise all financial services will be called into question and could have a devastating effect for our states officials' ability to protect consumers in our state.

The requirements of the SAFE Act at the state level begin with the licensing of mortgage loan originators. There are additional requirements as well, and a simultaneous implementation of the SAFE Act in over 50 state jurisdictions is somewhat complex. At the crux of the SAFE Act is the idea of uniformity among the independent states, not unlike what was established for the securities industry in the early 80's. Uniformity and standardization provide the framework for streamlining license processes, advanced tracking and increased accountability, information exchanges among regulators, best practices and responsible behavior, and ultimately the protection of consumers and a more stable market place.

Among the important provisions of the SAFE Act are requirements for mortgage loan originators to successfully pass a qualified written test and complete approved education. While some states have already implemented testing or pre-licensure education requirements, the SAFE Act will set minimum requirements across all states, assuring a minimum competency level for all mortgage loan originators.

In order to be considered for mortgage loan origination license in any state, all mortgage loan originators will be required to take a standardized test which will include 3 subject areas: ethics, federal law and regulation, state law and regulation, and laws and regulations regarding fraud, consumer protection, nontraditional mortgages and fair lending issues. The SAFE Act obligates the CSBS-AARMR Nationwide Mortgage Licensing System (NMLS) to develop the test and approve a test provider to administer it. A second provision for licensing requires mortgage loan originators to successfully complete 20 hours of pre-licensure education which shall include federal law and regulations, ethics, fraud, consumer protection and fair lending and training related to the nontraditional mortgage product marketplace. The education requirements do not stop at initial licensure.

Once a mortgage loan originator receives a state license, he/she will be expected to complete 8 hours of continuing education annually as one of the requirements for license renewal. The SAFE Act obligates the NMLS to review and approve all pre-licensure and continuing education courses. Taken together, these testing and education requirements will promote a higher level of professionalism and encourage best practices and responsible behavior among all mortgage loan originators. In order to achieve its purpose the SAFE Act requires that all mortgage loan originators be licensed or registered through a national database. The database identified by Congress is a nationwide mortgage licensing system, which state mortgage regulators, through CSBS and AARMR, began developing in 2003 and launched in January 2008. There is a crucial requirement of the SAFE Act, however that North Dakota must accomplish prior to July 31, 2009; that requirement is legislation mandating the use of the nationwide mortgage licensing system in order to avoid the U.S. Department of Housing and Urban Development (aka HUD) from adding a federal overlay of loan originator licensing and enforcement that would be duplicative, more costly, increase the regulatory burden on licensees and will stymie state regulation and enforcement. I would like to take a moment to stress this point. Pursuant to the SAFE Act, if the secretary of HUD determines that a state does not have in place by law or regulation a system for licensing and registering loan originators by July 31, 2009, the secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the secretary of HUD of loan originators operating in North Dakota as state licensed loan originators.

In simple terms this means that a failure by a state legislature to implement all the requirements of the SAFE Act will force HUD to establish in that state an overlaying regulatory regime to both license and regulate, including enforcement authority, state licensees. In addition there is no requirement for HUD to coordinate with state regulators on supervision and enforcement, resulting in a more complex, confusing, and costly regulatory structure. If states demonstrate an unwillingness to act to meet the requirements of the SAFE Act it could set the stage for the future erosion of state authority. In fact Congress is already meeting to review the regulatory structure and many are looking to blame state authorities for current market conditions; again, this regulatory restructuring could easily result in a broad loss of state authority and all financial supervision and consumer protection. In addition to loan originator licensing and mandatory use of NMLS, the SAFE Act requires that states do the following:

1. Eliminate exemptions for mortgage loan originator licensing that currently exists in state law;
2. Screen and deny mortgage loan originator licenses for felonies of any kind within 7 years; in certain financially related felonies permanently;
3. Screen and deny licenses to individuals who have ever had a loan originator license revoked;
4. Require loan originators to submit personal history information on authorized background checks to determine the applicant's financial responsibility, character and general fitness;
5. Require mortgage loan originators to take 20 hours of pre-licensure education in order to enter the state system of licensure;
6. Require mortgage loan originators to pass a national mortgage loan originator test developed by NMLS;
7. Establish either a bonding requirement on companies employing mortgage loan originators or a recovery fund paid into by mortgage loan originators or their employing company in order to protect consumers;

8. Require companies licensed or registered through NMLS to submit a mortgage call report on at least an annual basis;

9. Adopt specific confidentiality and information sharing provisions; and,

10. Establish effective authority to investigate, examine and conduct enforcement with licensees.

Mr. Chairman I would like to stress the idea of greater uniformity across state borders. Through SAFE, Congress intended to provide the state with the opportunity to preserve our primary role in mortgage origination supervision and consumer protection. To this end, CSBS and AARMR have worked hard to reach agreement among the states on a model law providing standardization and effective regulation of the industry in compliance with the SAFE Act; the model law was created after seeking input from both industry and consumer groups. Through CSBS and AARMR, the states have consulted with HUD on the specific statutory language necessary to meet the minimum requirements set forth in the SAFE Act. In drafting minimal uniform standards for implementation of the SAFE Act the states have also created uniformity in standardization for a more comprehensive regulation of the mortgage industry, therefore the bill I am asking you to consider is similar in scope, coverage and application to bills being presented to other state legislatures all across the country.

Mr. Chairman and members of the Senate Finance and Taxation Committee, I would like to walk you through now some of the important provisions in Senate Bill 2160.

As you will note in Section 1, chapter 13-10 which is the new language for loan originators, has been added so that any fees collected would be deposited into the Financial Institutions regulatory fund. In the entities exempted from licensing requirements we have added those that are licensed under chapter 13-10 and eliminated consumer finance companies as we are deleting that chapter of the North Dakota Century Code. In section 3 of the bill we have changed the expiration date for the money broker license which will now expire on December 31 of each year and can be renewed thereafter. This will help the Department with the renewal of annual licensees which is approximately 810 at this time. By extending this license for money brokers and having the same license period for loan originators we will be able to spread the renewal process out and will give us more time in the Department to review applications. Section 4 of the bill takes language that is currently in the consumer finance act and moves it to this section. No additional language has been added and we continue to protect those consumers who borrow less than $1,000.00. On page 6 of the bill, section 6 is the new language known as chapter 13-10 for the loan originator license requirements. Again this language is taken from the model act prepared by CSBS and AARMR and is consistent with what all the other states are implementing. Therefore, the definitions as set out in lines 6 – 31 on page 6 and then all the definitions on pages 7 and 8 are consistent among the various states. Starting on page 8, line 27 of the bill sets forth the requirements on who needs to be licensed under this section. On page 9, line 13 of the bill sets forth who is exempt from licensing from this chapter. Page 10, line 5 sets forth the requirements for the application for license for loan originators. Subsection 2, beginning on line 10 states, to fulfill the purpose of this chapter the Commissioner may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the national mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter. Subsection 3 beginning on line 15 tells the applicants what they will need to furnish with their application such as fingerprints and a personal history and experience in a form prescribed again by the nationwide mortgage licensing system. On page 11, line 8 the bill sets the minimum findings that the commissioner must make before issuing a mortgage loan originator license. I talked about these requirements by the SAFE Act which were put into this section of the law. It should be noted the language we are proposing is the minimum requirements established by the SAFE Act; we have not proposed any more stringent requirements for licensing in North Dakota. On page 12 of the bill beginning on line 9, the requirements for pre-licensing and relicensing education for loan originators is set forth. Page 13 sets forth the requirements for the testing of loan originators.

On page 14 beginning on line 6, the standards for license renewal are set forth. The basic requirements are: the mortgage loan originator must continue to meet the minimum standards for license issuance under section 13-10-05; the mortgage loan originator has satisfied the annual continuing education requirements; the mortgage loan originator has paid all required fees for renewal of the license. Beginning on line 19 we talk about the continuing education requirements for the mortgage loan originators. On page 15 beginning on line 28 is the requirement set forth by the SAFE Act to require loan originators to be licensed and registered through the nationwide mortgage lending system. On page 16 beginning on line 19 is the enforcement authorities regarding violations and penalties that can be assessed by the commissioner for violations of this chapter. The surety bond requirements for loan originators begin on line 27 of page 17 and continue onto page 18. As you will note we are proposing to amend subsection 2 on page 18, lines 9-12 based on CSBS recommendation when they compared our proposed bill to the model legislation. The minimum net worth requirement beginning on page 18, line 17 states that a minimum net worth must be continuously maintained for mortgage loan originators in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter the net worth of such person subject to this chapter may be used in lieu of the mortgage loan originators minimum net worth requirement. The basic minimum net worth requirement is $25,000; however, the commissioner may increase this amount if he determines that such an increase is necessary to protect the public interest. The commissioner may also promulgate rules and regulations with respect to the requirements for the minimum net worth as are necessary to accomplish the purpose of this chapter. The confidentiality requirements begin on page 18 line 29 and continue through pages 19 and 20. On page 20 you will note that the Department has the authority to examine and conduct investigations of loan originators. On page 23 beginning on line 30 there is a requirement that each mortgage licensee shall submit to the nationwide mortgage licensing and registry reports of condition which will be in such form that they may require. Mr. Chairman and members of the committee, banks and credit unions currently submit call reports and this information is assembled and sent out to the general public and industry. We feel that it's important that the general public would have some knowledge of the financial condition of the mortgage company and the loan originators that they are doing business with.

Mr. Chairman and members of the committee, I thank you for your time and would urge your support of Senate Bill 2160. I will be happy to entertain any questions that the committee may have.

PROPOSED AMENDMENTS TO SENATE BILL 2160

Page 1, line 4, after "13-04.1-02.1" insert ", 13-04.1-04"

Page 1, line 7, after "statute," insert "annual license fees,"

Page 2, line 3, replace "Entities" with "Individuals"

Page 2, line 6, remove the overstrike over "~~credit administration~~" and remove "service agency"

Page 2, after line 14, insert:

SECTION 3. AMENDMENT. Section 13-04.1-04 of the North Dakota Century Code is amended and reenacted as follows:

13-04.1-04. Fee and bond to accompany application for money broker license. The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-04.1-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of ~~three~~ four hundred dollars for the annual license fee, and provide a surety bond in the sum of twenty-five thousand dollars. In addition, the applicant must pay a fifty dollar annual fee for each branch location within the state. Fees must be deposited in the financial institutions regulatory fund.

Page 8, line 15, replace "service agency" with "credit administration"

Page 18, line 9, replace "of fifty thousand dollars." with "as determined by the commissioner by rule. Such amount shall be reflective of the dollar amount of loans originated as of the previous yearend."

Renumber accordingly

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2-12-2009

TESTIMONY FOR SENATE BILL NO. 2160

Senate Appropriations Committee

Testimony of Timothy J. Karsky, Commissioner, Department of Financial Institutions in support of Senate Bill No. 2160

Chairman Hoberg and members of the Senate Appropriations Committee, I am Tim Karsky, Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify and urge your support of Senate Bill No. 2160 which deals with the licensing of loan originators.

Mr. Chairman when I testified in front of the Senate Finance and Taxation Committee I had 15 pages of testimony, which I have attached for your review. I will not review that entire testimony for you today, but would be happy to answer any questions that you may have on Senate Bill No. 2160.

It is my understanding that I am here today to discuss the fiscal note which has been provided to Senate Bill No. 2160. As indicated on the fiscal note, the 2009-2011 biennium, it shows revenues of $209,400. I will reconcile that number for you at this time. As of yearend the Department had 311 money brokers or mortgage lenders and we estimated that 85% or approximately 264 of those are mortgage lenders only. If you take the 264 licensees times $400, which would be the application fee, you will get $211,200. We also estimated that each mortgage company that does loan originating will have approximately three loan originators per company, or a total of 792, and if we charge a $50 application fee, that will equal $79,200. You will also note in the fiscal note that we subtract $186,600, which is classified as "Less Revenue in Budget". If you take the 311 current money brokers times the $300 current fee that we charge for annual licenses, that equals $93,300 per year, or $186,000 for the biennium. We did not want to count the revenue twice, so that revenue was subtracted. We also added an exam fee of $105,600, which includes travel costs such as plane tickets, hotels, and meals for 24 examinations during the biennium, totaling $209,400.

The expenditures for the same period of $96,510 are for a part-time FTE position with total salaries and benefits for the biennium of $60,877 plus the expenses associated with that position totaling $35,633, for a total of $96,510.

Although it looks like the revenue is greater than the expenses, it should be known that we have already budgeted expenses for our record management system, which will be a one-time fee of $134,000. Furthermore, we have also asked for an additional mortgage examiner in our budget and going forward we feel that the revenue and expenditures will be equal.

Mr. Chairman and members of the Committee, I would be happy to answer any questions you have regarding the fiscal note to Senate Bill No. 2160.

3-2-2009

TESTIMONY FOR SENATE BILL NO. 2160

House Finance and Taxation Committee

Testimony of Timothy J. Karsky, Commissioner, Department of Financial Institutions in support of Senate Bill No. 2160

Chairman Belter and members of the House Finance and Taxation Committee, I am Tim Karsky, Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify and urge your support of Senate Bill No. 2160 which deals with the licensing of loan originators.

Mr. Chairman this is a long bill and if I may I would like to give you some background information and then we will go through the bill in detail with the Committee. In addition to regulating state-chartered banks and state-chartered credit unions our Department also supervises money brokers and the large majority of money brokers in North Dakota originate residential real estate mortgages. Over the past 10 – 15 years the Department has seen rapid growth in the number of mortgage companies that we license and overall the mortgage industry has grown across the United States.

The Department is a member of a professional association called the Conference of State Bank Supervisors (CSBS) and this is an association of state officials responsible for chartering, supervising and regulating the nations six thousand state chartered commercial and savings banks. For more than a century CSBS has given state supervisors a national forum to coordinate supervision of the regulated entities, to develop regulatory policy, to provide training to state officials, and to represent state officials before Congress and the Federal Financial Regulatory Agencies. In the past few years, CSBS has expanded its mission beyond traditional commercial bank supervision and has been working closely with the American Association of Residential Mortgage Regulators (AARMR) to enhance state supervision of the mortgage industry. All 50 states and the District of Columbia provide regulatory oversight of the residential mortgage industry. As of October of 2008 states were currently managing 77,000 mortgage company licensees, 50,000 branch licensees and 410,000 loan officer licensees. In North Dakota we currently do not license mortgage loan originators but we do license approximately 310 mortgage companies as of this date. I will try to give you a brief history of some new legislation that is requiring the licensing and registration of mortgage loan originators as required under Title 5 of the Housing and Economic Recovery Act of 2008 titled the Secure and Fair Enforcement for Mortgage Licensing. The acronym for this legislation is also known as the SAFE Mortgage Licensing Act. On July 30, 2008, President Bush signed Public Law 110-289, the Housing and Economic Recovery Act of 2008. Title 5 of this law is known as the Secure and Fair Enforcement for Mortgage Licensing Act or the SAFE Act. The purpose of the SAFE Act is to increase uniformity, reduce regulatory burden, enhance consumer protection and reduce fraud. The SAFE Act has 10 key objectives:

1. Provide uniform license applications and reporting requirements for state licensed mortgage loan originators;
2. Provide a comprehensive licensing and supervisory database;
3. Aggregate and improve the flow of information to and among regulators;
4. Provide increased accountability in tracking of loan originators;
5. Streamline the licensing process and reduce regulatory burden;
6. Enhance consumer protection and support antifraud measures;
7. Provide consumers with easily accessible information utilizing electronic media regarding employment history

and public adjudicated disciplinary and enforcement actions against loan originators;

8. Establish a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interest of the consumer;

9. Facilitate responsible behavior in a subprime mortgage marketplace and provide comprehensive training and examination requirements related to subprime mortgage lending; and,

10. Facilitate the collection and disbursement of consumer complaints on behalf of state and federal mortgage regulators.

Mr. Chairman and members of the Committee I believe passage of the SAFE Act provides states with a tremendous opportunity: the residential mortgage market has widely been described as "unregulated" and many have blamed state supervisors for the poor practice and exotic products that characterize the mortgage industry in the past few years. For example, in the March 2008 policy statement on financial market developments, the President's working group on financial markets blamed "weak government oversight" of state licensed mortgage brokers and originators for the rise in unsound underwriting practices that triggered current financial turmoil. The extensive requirements of the SAFE Act demand immediate and broad action by states and yet, the SAFE Act allows the states the opportunity to preserve our authority by enhancing and coordinating supervision with our state and federal colleagues. As congress takes on the issue of regulatory restructuring, all eyes will be on the states to judge how quickly and effectively we are able to implement the requirements of the SAFE Act. I fear that if states do not act in a coordinated manner, our ability to supervise all financial services will be called into question and could have a devastating effect for our states officials' ability to protect consumers in our state.

The requirements of the SAFE Act at the state level begin with the licensing of mortgage loan originators. There are additional requirements as well, and a simultaneous implementation of the SAFE Act in over 50 state jurisdictions is somewhat complex. At the crux of the SAFE Act is the idea of uniformity among the independent states, not unlike what was established for the securities industry in the early 80's. Uniformity and standardization provide the framework for streamlining license processes, advanced tracking and increased accountability, information exchanges among regulators, best practices and responsible behavior, and ultimately the protection of consumers and a more stable market place.

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Once a mortgage loan originator receives a state license, he/she will be expected to complete 8 hours of continuing education annually as one of the requirements for license renewal. The SAFE Act obligates the NMLS to review and approve all pre-licensure and continuing education courses. Taken together, these testing and education requirements will promote a higher level of professionalism and encourage best practices and responsible behavior among all mortgage loan originators. In order to achieve its purpose the SAFE Act requires that all mortgage loan originators be licensed or registered through a national database. The database identified by Congress is a nationwide mortgage licensing system, which state mortgage regulators, through CSBS and AARMR, began developing in 2003 and launched in January 2008. There is a crucial requirement of the SAFE Act, however that North Dakota must accomplish prior to July 31, 2009; that requirement is legislation mandating the use of the nationwide mortgage licensing system in order to avoid the U.S. Department of Housing and Urban Development (aka HUD) from adding a federal overlay of loan originator licensing and enforcement that would be duplicative, more costly, increase the regulatory burden on licensees and will stymie state regulation and enforcement. I would like to take a moment to stress this point. Pursuant to the SAFE Act, if the secretary of HUD determines that a state does not have in place by law or regulation a system for licensing and registering loan originators by July 31, 2009, the secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the secretary of HUD of loan originators operating in North Dakota as state licensed loan originators.

In simple terms this means that a failure by a state legislature to implement all the requirements of the SAFE Act will force HUD to establish in that state an overlaying regulatory regime to both license and regulate, including enforcement authority, state licensees. In addition there is no requirement for HUD to coordinate with state regulators on supervision and enforcement, resulting in a more complex, confusing, and costly regulatory structure. If states demonstrate an unwillingness to act to meet the requirements of the SAFE Act it could set the stage for the future erosion of state authority. In fact Congress is already meeting to review the regulatory structure and many are looking to blame state authorities for current market conditions; again, this regulatory restructuring could easily result in a broad loss of state authority and all financial supervision and consumer protection. In addition to loan originator licensing and mandatory use of NMLS, the SAFE Act requires that states do the following:

1. Eliminate exemptions for mortgage loan originator licensing that currently exists in state law;

2. Screen and deny mortgage loan originator licenses for felonies of any kind within 7 years; in certain financially related felonies permanently;

3. Screen and deny licenses to individuals who have ever had a loan originator license revoked;

4. Require loan originators to submit personal history information on authorized background checks to determine the applicant's financial responsibility, character and general fitness;

5. Require mortgage loan originators to take 20 hours of pre-licensure education in order to enter the state system of licensure;

6. Require mortgage loan originators to pass a national mortgage loan originator test developed by NMLS;

7. Establish either a bonding requirement on companies employing mortgage loan originators or a recovery fund paid into by mortgage loan originators or their employing company in order to protect consumers;

8. Require companies licensed or registered through NMLS to submit a mortgage call report on at least an annual basis;

9. Adopt specific confidentiality and information sharing provisions; and,

10. Establish effective authority to investigate, examine and conduct enforcement with licensees.

Mr. Chairman I would like to stress the idea of greater uniformity across state borders. Through SAFE, Congress intended to provide the state with the opportunity to preserve our primary role in mortgage origination supervision and consumer protection. To this end, CSBS and AARMR have worked hard to reach agreement among the states on a model law providing standardization and effective regulation of the industry in compliance with the SAFE Act; the model law was created after seeking input from both industry and consumer groups. Through CSBS and AARMR, the states have consulted with HUD on the specific statutory language necessary to meet the minimum requirements set forth in the SAFE Act. In drafting minimal uniform standards for implementation of the SAFE Act the states have also created uniformity in standardization for a more comprehensive regulation of the mortgage industry, therefore the bill I am asking you to consider is similar in scope, coverage and application to bills being presented to other state legislatures all across the country.

Mr. Chairman and members of the House Finance and Taxation Committee, I would like to walk you through now some of the important provisions in Senate Bill 2160.

As you will note in Section 1, chapter 13-10 which is the new language for loan originators, has been added so that any fees collected would be deposited into the Financial Institutions regulatory fund. In the entities exempted from licensing requirements we have added those that are licensed under chapter 13-10 and eliminated consumer finance companies as we are deleting that chapter of the North Dakota Century Code. In section 4 of the bill we have changed the expiration date for the money broker license which will now expire on December 31 of each year and can be renewed thereafter. This will help the Department with the renewal of annual licensees which is approximately 810 at this time. By extending this license for money brokers and having the same license period for loan originators we will be able to spread the renewal process out and will give us more time in the Department to review applications. Section 5 of the bill takes language that is currently in the consumer finance act and moves it to this section. No additional language has been added and we continue to protect those consumers who borrow less than $1,000.00. On page 6 of the bill, section 7 is the new language known as chapter 13-10 for the loan originator license requirements. Again this language is taken from the model act prepared by CSBS and AARMR and is consistent with what all the other states are implementing. Therefore, the definitions as set out in lines 27 – 31 on page 6 and then all the definitions on pages 7 and 8 are consistent among the various states. Starting on page 9, line 17 of the bill sets forth the requirements on who needs to be licensed under this section. On page 9, line 13 of the bill sets forth who is exempt from licensing from this chapter. Page 10, line 23 sets forth the requirements for the application for license for loan originators. Subsection 2, beginning on page 11 line 1 states, to fulfill the purpose of this chapter the Commissioner may establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the national mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter. Subsection 3 beginning on line 6 tells the applicants what they will need to furnish with their application such as fingerprints and a personal history and experience in a form prescribed again by the nationwide mortgage licensing system. On page 12, line 1 the bill sets the minimum findings that the commissioner must make before issuing a mortgage loan originator license. I talked about these requirements by the SAFE Act which were put into this section of the law. It should be noted the language we are proposing is the minimum requirements established by the SAFE Act; we have not proposed any more stringent requirements for licensing in North Dakota. On page 13 of the bill beginning on line 3, the requirements for pre-licensing and relicensing education for loan originators is set forth. Pages 13 and 14 sets forth the requirements for the testing of loan originators.

On page 14 beginning on line 29, the standards for license renewal are set forth. The basic requirements are: the mortgage loan originator must continue to meet the minimum standards for license issuance under section 13-10-05; the mortgage loan originator has satisfied the annual continuing education requirements; the mortgage loan originator has paid all required fees for renewal of the license. Beginning on line 11, page 15, we talk about the continuing education requirements for the mortgage loan originators. On page 16 beginning on line 20 is the requirement set forth by the SAFE Act to require loan originators to be licensed and registered through the nationwide mortgage lending system. On page 17 beginning on line 11 is the enforcement authorities regarding violations and penalties that can be assessed by the commissioner for violations of this chapter. The surety bond requirements for loan originators begin on line 18 of page 18 and continue onto page 18. The minimum net worth requirement beginning on page 19, line 10 states that a minimum net worth must be continuously maintained for mortgage loan originators in accordance with this section. If the mortgage loan originator is an employee or exclusive agent of a person subject to this chapter the net worth of such person subject to this chapter may be used in lieu of the mortgage loan originators minimum net worth requirement. The basic minimum net worth requirement is $25,000; however, the commissioner may increase this amount if he determines that such an increase is necessary to protect the public interest. The commissioner may also promulgate rules and regulations with respect to the requirements for the minimum net worth as are necessary to accomplish the purpose of this chapter. The confidentiality requirements begin on page 19 line 22 and continue through pages 19 and 20. On page 20 you will note that the Department has the authority to examine and conduct investigations of loan originators. On page 24 beginning on line 30 there is a requirement that each mortgage licensee shall submit to the nationwide mortgage licensing and registry reports of condition which will be in such form that they may require. Mr. Chairman and members of the committee, banks and credit unions currently submit call reports and this information is assembled and sent out to the general public and industry. We feel that it's important that the general public would have some knowledge of the financial condition of the mortgage company and the loan originators that they are doing business with.

Mr. Chairman and members of the committee, I thank you for your time and would urge your support of Senate Bill 2160. I will be happy to entertain any questions that the committee may have.