

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1273

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1273

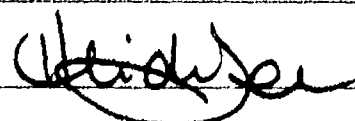
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1273

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 7, 2001

Tape Number	Side A	Side B	Meter #
1	X	X	A0-B15.2
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Ron Carlisle: Sponsoring bill **Written testimony**

Rep George Keiser: This is an unregulated industry and because of that it's gotten out of hand. It requires a specific amount of \$25,000 in assets in order to be licensed. There is a \$250 annual fee for registration and a penalty clause has been added to make non-abiders fall into a class C felony. We want this to be revenue neutral so there is a \$550 application fee.

Jay Couture: *President NDPA* **Written testimony in support of bill.**

Rep Ekstrom: How do payday loans work?

Couture: With computers we do a check scan and charge \$20/ \$100 given. The max is \$500 loan.

Bob Rude: (23.7) *VP NDPA* **Written testimony in support of bill.**

Jamie & Nicole Schurhamer: This is an easy, non- embarrassing way to borrow money.

Page 2  
House Industry, Business and Labor Committee  
Bill/Resolution Number HB 1273  
Hearing Date Feb. 7, 2001

Ladd Erickson: *Morton Co. State's Attorney's Office*. **Written testimony and amendments opposed.**

Gary Preszler: *Dept. of Banking and Financial Inst.* **Written testimony in neutral.** Forty licenses are expected but that's probably underestimated. I'm unsure of the banks specific duties with that. The 640 hours for exam is about half a day per lender. The annual fee covers administration costs.

Rep Koppang: Are there any federal regulations?

Preszler: Yes, truth and lending laws apply.

Rep Severson: Why don't banks offer this service?

Preszler: National banks are starting this for up to \$300 at 10% interest but you need direct dep.

Perrell Grossman: *Attorney General* neutral.

Chairman Berg: We'll hold this bill for amendments.



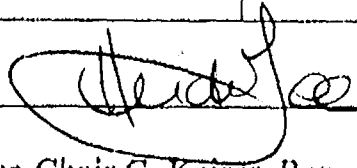
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1273(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 14, 2001

Tape Number	Side A	Side B	Meter #
2	X		23.7-35.4
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Severson: Payday loans, information and amendments provided and explained. Fiscal note is larger than actual expectance.

Rep Keiser: I move the amendments.

Rep M. Klein: I second.

Rep Severson: I move a do pass as amended.

Rep M. Klein: I second.

12 yea, 3 nay, 0 absent    Carrier Rep Severson

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1273(C)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 14, 2001

Tape Number	Side A	Side B	Meter #
2		X	43.6-47.0
Committee Clerk Signature <i>Heidi Lee</i>			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Severson: I move to reconsider HB 1273

Rep Johnson: I second.

Rep Severson: I move to reconsider the amendments.

Rep Keiser: I second.

Rep Severson: I move a do pass as amended.

Rep Johnson: I second.

10yea, 3 nay 2 absent

Carrier Rep Severson

## FISCAL NOTE

Requested by Legislative Council  
02/19/2001

Bill/Resolution No.:

Amendment to: HB 1273

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$61,978		\$61,978
Expenditures				\$138,144		\$138,144
Appropriations				\$138,144		\$138,144

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Revenue will be generated by the number of license fees, investigation fees and examination fees collected from licensees. The Department anticipates licensing approximately 40 companies.

Expenditures will consist of the cost to add an FTE to the Department to handle licensing, examinations, and complaints. Additional expenditures will be travel involved in investigating these and unlicensed companies; due to the nature of this business, and based on the experiences of other states who have licensed such companies, we have included costs for potential administrative enforcement.

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.*

### Revenue

\$450 License Fees - 40: \$36,000.00  
\$400 Investigation Fees - 30: \$12,000.00  
Exam hours - 640: \$13,977.60

**Total Revenue** \$61,977.60

**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.*

**Expenses**

*Salary/Benefits* \$93,176.00

General Operating	\$ 7,266.65	
Travel	\$ 7,200.00	
Training	\$ 2,000.00	
Legal hours - 192	\$10,523.52	
Exam hours - 640	\$13,977.60	
<i>Total Operating</i>		<i>\$40,967.77</i>

*Equipment* \$ 4,000.00 (every 4 years per IT Plan)

**Total Expense** **\$138,143.77**

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The department would need an appropriation of **\$138,143.77** in order to administer and enforce the requirements of this statute. The expenditures exceed the revenue by **\$76,166.17**.

<b>Name:</b>	Gary D. Preszler	<b>Agency:</b>	Banking and Financial Institutions
<b>Phone Number:</b>	328-9933	<b>Date Prepared:</b>	02/20/2001

## FISCAL NOTE

Requested by Legislative Council  
01/16/2001

Bill/Resolution No.: HB 1273

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$42,978		\$42,978
Expenditures				\$138,144		\$138,144
Appropriations				\$138,144		\$138,144

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Revenue will be generated by the number of license fees, investigation fees and examination fees collected from licensees. The Department anticipates licensing approximately 40 companies.

Expenditures will consist of the cost to add an FTE to the Department to handle licensing, examinations, and complaints. Additional expenditures will be travel involved in examining and investigating these companies; and due to the nature of this business, and based on the experiences of other states who have licensed such companies, we have included costs for potential administrative enforcement.

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.*

### Revenue

\$250 License Fees - 40                      \$20,000.00

\$300 Investigation Fees - 30      \$ 9,000.00

Exam hours - 640      \$13,977.60

**Total Revenue      \$42,977.60**

**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.*

**Expenses**

Salary/Benefits      \$93,176.00

General Operating      \$ 7,266.65

Travel      \$ 7,200.00

Training      \$ 2,000.00

Legal hours - 192      \$10,523.52

Exam hours - 640      \$13,977.60

*Total Operating      \$40,967.77*

*Equipment      \$ 4,000.00 (every 4 years per IT Plan)*

**Total Expense      \$138,143.77**

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The department would need an appropriation of \$138,143.77 in order to administer and enforce the requirements of this statute. The expenditures exceed the revenue by \$95,166.17.

**Name:** Gary D. Preszler      **Agency:** Dept. of Banking and Financial

Institutions

Phone Number: 328-9933

Date Prepared: 01/24/2001

Date: 2-14-01  
Roll Call Vote #: 2

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1273

House Industry, Business and Labor Committee

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

Action Taken do pass as amended

Motion Made By Severson Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein		
Rep. Mary Ekstorm		✓	Rep. Myron Koppang	✓	
Rep. Rod Froelich		✓	Rep. Doug Lemieux	✓	
Rep. Glen Froseth			Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe		✓

Total (Yes) 10 No 3

Absent 2

Floor Assignment Severson

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



**REPORT OF STANDING COMMITTEE**

**HB 1273: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (10 YEAS, 3 NAYS, 2 ABSENT AND NOT VOTING). HB 1273 was placed on the Sixth order on the calendar.**

Page 2, line 18, after the period insert "A deferred sentence or federal pretrial diversion must be considered a conviction for purposes of this section."

Page 3, line 5, replace "five" with "eight"

Page 3, line 8, replace "two" with "four"

Page 4, line 9, replace "indictment" with "charges"

Page 5, after line 13, insert:

"f. No property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process."

Page 5, line 17, replace "preferred" with "deferred" and after "service" insert ", and no property, titles to any property, or mortgages may be received or held directly or indirectly by the licensee as a condition of a deferred presentment service transaction or as a method of collection on a defaulted deferred presentment service transaction without proper civil process"

Page 6, line 21, after "who" insert "has authority to make the check and"

Page 7, after line 26, insert:

"16. A licensee or any agent of a licensee who willfully violates this section is guilty of a class A misdemeanor."

Page 8, line 24, replace "Any" with "Except as otherwise provided in this chapter, any"

Renumber accordingly

2001 HOUSE APPROPRIATIONS

HB 1273

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1273

House Appropriations Committee

☐ Conference Committee

Hearing Date February 21, 2001

Tape Number	Side A	Side B	Meter #
02-21-01 tape #1		1517 - 3310	
Committee Clerk Signature <i>Michael L. Bell</i>			

Minutes:

The committee was called to order, and opened committee work on HB 1273, which was referred to the committee yesterday from the floor.

Rep. Carlisle: The bill that just came off the floor deals with payday loans. There is a fiscal note on it of \$138,144. All the pawn brokers that have business are going to raise just about \$62,000, so there is actually about a \$76,144 fiscal note. He hopes the bill will send the bill back up, and our subcommittee has the banking budget (SB 2008) coming up soon, and if the bill comes up on the floor we will address the spending from the special fund agency. What we would like to do, if the bill passes on the floor, when we are working on the banking budget is to question the need for the FTE that is in their fiscal note. I would like to just send the bill back to the floor, and Rep. Syvertson will carry it, and then if it passes we can deal with money in the banking budget.

Ken Tupa, registered lobbyist for ND Pawn Brokers Association: HB 1273 is actually a result of meetings that have taken place for the last 6 months between the ND office of Attorney General, the Banking Dept., and the ND Pawn Brokers Association, as well as some of the pawn brokers themselves. The bill addresses the regulation and licensing of payday loans in ND. These began and were offered in ND in January 1998, at that time the Dept. of Banking had indicated that payday loans were legal in ND to the extent that city ordinances allowed such loans. The cities were licensing the pawn brokers. In August 2000, the Dept. of Banking redefined what a pawn broker is ND and therefore made payday loans off limits. You may have seen some newspaper articles. The pawn brokers organized in the summer of 2000, and no members currently offer payday loans. The organization welcomes the regulation. The bill licenses and regulates payday loan businesses in ND. There would be an \$850 fee for examinations, and then every year after \$450 per year for the license. They would be subject to inspections, and other regulatory acts. They would need to maintain \$25,000 in unencumbered assets for each location, and allow for review of business records, establish that the payday loan provider not be convicted of a felony. Also have to provide notice to customers of the fees and schedule, and accompany each transaction with a written signed agreement, and make no charge exceeding 20% of the amount of the check, and would be limited to \$500 capped in terms of the payday loan. There would be a 5 day time period before entering into another transaction. (He explains how the transaction would transpire).

Rep. Skarphol: If this doesn't pass, can you no longer have this business?

Ken Tupa: Well, there is litigation in the process, and it is questionable at this time whether it is legal in ND to do payday loans. What we support is the regulation of this type of

service. If this bill does not pass, there is the possibility that the loans would still be legal, but unregulated.

Chairman Timm: This bill came out of the IBL committee with a vote of 10-3-2, and the fiscal note prepared by the banking commissioner shows \$76,000 revenue differences. Is this what you are disputing Rep. Carlisle

Rep. Carlisle: Yes. He wants more time to discuss this during the banking budget. Reviews the points that Mr. Tupa went over. This is not just a Bismarek problem, it's Fargo, Grand Forks, Minot; a potential of 26 businesses who want to do this. Really wants the service regulated.

Chairman Timm: The bill has had a hearing in IBL, and they passed it out.

Rep. Skarphol: Moves WITHOUT COMMITTEE RECOMMENDATION. Seconded by Rep. Delzer.

Rep. Gulleason: Questions the cap on interest that can be charged.

Ken Tupa: The cap on the service is 20%, and there is no additional interest. In Watertown, SD they charge 10%, and there is a cap of 20%. They have competition bringing the price down, which is good for the customer. The APR is around 400-500%. However, if a person writes an NSF check, the APR can become 1300% (NSF charges, bank charges, etc). Explains the renewal process.

Vote on Without Committee Recommendation: 16 yes, 3 no, 2 absent without voting. Motion passes.

Rep. Carlisle is assigned to carry this bill to the floor.

Date: 2-21-01  
Roll Call Vote #: 1

**2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HR 1073**

House APPROPRIATIONS Committee

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

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

Action Taken NO Recommendation

Motion Made By Rep Skarphol Seconded By Rep Delzer

Representatives	Yes	No	Representatives	Yes	No
Timm - Chairman	✓				
Wald - Vice Chairman	✓				
Rep - Aarsvold		✓	Rep - Koppelman	✓	
Rep - Boehm	✓		Rep - Martinson		✓
Rep - Byerly	✓		Rep - Monson	✓	
Rep - Carlisle	✓		Rep - Skarphol	✓	
Rep - Delzer	✓		Rep - Svedjan	✓	
Rep - Glassheim	✓		Rep - Thoreson	✓	
Rep - Gulleason	✓		Rep - Warner		✓
Rep - Huether	✓		Rep - Wentz		
Rep - Kempenich	✓				
Rep - Kerzman					
Rep - Kliniske	✓				

Total (Yes) 16 No 3

Absent 2

Floor Assignment Rep Carlisle

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

2001 SENATE FINANCE AND TAXATION

HB 1273

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1273

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date 3/19/01

Tape Number	Side A	Side B	Meter #
1	x		0-45.3
3/19/01 - 1		x	49.4-end
2	x		0-3.5
3/20/01 - 1	x		0-41.8
3/21/01 - 1	x		0-9.7
Committee Clerk Signature <i>Synellia H. Kragel</i>			

Minutes:

Senator Urlacher: Opened the hearing on HB 1273, relating to the licensing of deferred presentment service providers.

Senator Stenejem: Co-sponsored the bill, testified in support. Presented for Representative Carlisle.

Representative Dale Severson: Carried the bill in the House, testified in support. Explained situation of one of his employees in which payday loans would have helped. This is a good opportunity to provide the legislation to regulate these.

Ken Tupa: Lobbyist for ND Pawnbrokers Assoc., testified in support. Introduced other testifiers.

Jay Couture: President, ND Pawnbrokers Assoc., testified in support. Written testimony attached.



Senator Christmann: Has there been a comparison done about licensing fees with other states?

Jay Couture: I believe we're near the top of the pile as far as cost of fees. I think the other that will be testifying can answer that better.

Ken Tupa: The proposed fees in 1273 are among the highest of all states. A lot of the highest are capped at around \$500 for an annual license fee. There are some that are based on grossed or net revenue. Relative to ND's size and number of anticipated payday loan lenders, we're among the highest at \$450.

Robert Rood: Vice President of ND Pawnbrokers Assoc., testified in support. Written testimony attached.

Jamie Schurhamer: From Reagan, ND, testified in support. It's a convenient way to get money for me when I run a little short. The nice thing about a payday loan is if I can't pay it off right away, I have two weeks or sometimes four weeks if I pay an extension on it, I can make it through the rest of the month.

Senator Wardner: Do you ever feel that sometimes you dig yourself deeper into the hole or have you always been able to manage it so that you got out and got squared up financially.

Jamie Schurhamer: It's always worked out for me. I feel I am responsible enough with it that there are some times when I run into a little bit of a bind but I always end up paying it off. If used responsibly, a person can get through it and not dig themselves into a deeper hole. NSF fees will dig a deeper hole than this will.

Cheryl Pond: From Bismarck, ND, testified in support. Used a payday loan for down payment on a car. I've never had any problems with this.

1

**2705 Twin City Dr  
Mandan, ND 58554  
701-663-8930**

Senator Christmann: Has there been a comparison done about licensing fees with other states?

Jay Couture: I believe we're near the top of the pile as far as cost of fees. I think the other that will be testifying can answer that better.

Ken Tupa: The proposed fees in 1273 are among the highest of all states. A lot of the highest are capped at around \$500 for an annual license fee. There are some that are based on grossed or net revenue. Relative to ND's size and number of anticipated payday loan lenders, we're among the highest at \$450.

Robert Rood: Vice President of ND Pawnbrokers Assoc., testified in support. Written testimony attached.

Jamie Schurhamer: From Reagan, ND, testified in support. It's a convenient way to get money for me when I run a little short. The nice thing about a payday loan is if I can't pay it off right away, I have two weeks or sometimes four weeks if I pay an extension on it, I can make it through the rest of the month.

Senator Wardner: Do you ever feel that sometimes you dig yourself deeper into the hole or have you always been able to manage it so that you got out and got squared up financially.

Jamie Schurhamer: It's always worked out for me. I feel I am responsible enough with it that there are some times when I run into a little bit of a bind but I always end up paying it off. If used responsibly, a person can get through it and not dig themselves into a deeper hole. NSF fees will dig a deeper hole than this will.

Cheryl Pond: From Bismarck, ND, testified in support. Used a payday loan for down payment on a car. I've never had any problems with this.

Nicole Schurhamer: From Reagan, ND, testified in support. Payday loans have helped us out with moving expenses. In order for me to ask my family for the money, it would take a couple days for them to send it to me, plus the embarrassment of asking.

Gary Preszler: Commissioner of ND Dept. of Banking and Financial Institutions, testified in opposition. Written testimony and proposed amendment attached.

Senator Stenehjem: Under your proposed amendments, where do the fees that are collected for investigation and license fees go?

Gary Preszler: The intent is that it goes to the cities.

Senator Stenehjem: Are you referring to the fiscal note on the amendment?

Gary Preszler: Yes.

Senator Stenehjem: The investigation fee in the amendment appears to have gone from \$550 to \$850. Is that correct?

Gary Preszler: Yes.

Senator Stenehjem: It's not reflected in the fiscal note.

Gary Preszler: The \$400 investigation fee and \$450 license fee is a first time fee. The applicant would pay \$850 the first year, \$50 annually thereafter.

Senator Christmann: If we had 30 or 40 operators doing these, how often do you plan on investigating that it would take \$138,000 for doing it?

Gary Preszler: First of all for Senator Stenehjem, the amendments would eliminate the annual license fee. It would be up to the city to set their own license fee. For Senator Christmann, investigation would take approximately half a day, and we've allowed half a day for travel. So what we've projected in our fiscal note is about a day per license. We also have to deal with the processing of the original application, that FTE would also be responsible for doing that. Before

the bill was even introduced, the proposal was to limit the department to no more to than frequent examinations once every 12 months. I would say that is probably pretty close to what would be necessary. I would say an annual examination.

Senator Christmann: Would it be necessary for an FTE?

Gary Preszler: There would be a number of things that the FTE would do. They would do more than just the investigation. Explains duties.

Senator Christmann: You've talked about the ones that have operated unlawfully and dealing with them. Won't we incur these costs whether or not we pass this?

Gary Preszler: If you pass the bill as is, yes, that's puts the licensing responsibilities in my office and also puts the responsibility to deal with those who are not licensed. If the bill fails, we're status quo.

Senator Stenehjem: With the case of the pawnbroker making payday loans unlawfully, how does your office get stuck with the bill if the Attorney General's Office is doing the work?

Gary Preszler: We pay the AG Office based on an hourly rate. We also did some of the investigation, we did it together jointly.

Senator Nichols: Is there ever any security from the borrower on these loans?

Gary Preszler: The bill would not allow the taking of additional collateral.

Senator Urlacher: Closed the hearing. Action delayed.

Absentee testimony was submitted. Others signed the roster in support.

Discussion held later. Meter number 49.4-end, Tape 1, Side B & 0-3.5, Tape 2, Side A.

Senator Stenehjem: Explained amendment numbered 10166.0402.

Senator Nichols: Are there any kind of standard fees?

Senator Stenehjem: It says in the bill that it can't exceed 20% of the amount paid.

Senator Christmann: There's still the high fiscal note for the investigation costs.

Action delayed.

Discussion held 3/20/01. Meter number 0-41.8.

Discussion of amendments

Senator Stenehjem: Amendment 10166.0402 would limit it to one rollover.

Senator Christmann: If we were to adopt this, the total time period could not exceed 45 days.

How long do they usually do these? Should the 45 days include the initial one and the renewal or should it be just each initial loan?

Tim Karski: Dept. of Banking, answered the question. I'd say the average payday loan is probably 14-15 days. The reason for this language with the 30-45 days, is so the borrower only has to pay the fee once.

Senator Christmann: Would it be wise to change this to 60 days so they could do two 30 day loans or is that not necessary?

Tim Karski: If you were going to do it with no rollovers, you could do it in 30 days and not have to do a rollover.

Senator Christmann: Is the fee 20% of the check you write or 20% of what they give you?

Tim Karski: The rate varies but it's on what you get back.

Ken Tupa: Appeared to explain amendment.

AMENDMENT ACTION:

Motion made by Senator Christmann, Seconded by Senator Stenehjem, to move amendment numbered 10166.0402.. Roll Call vote taken. Vote was 6 yeas, 0 nays, 0 absent and not voting.

Bill Delmore: Kelsch Law Firm, Explained second proposed amendment. It would allow the borrower to come in after one day and rescind the transaction and make it five days before they could make another transaction at the same facility.

Senator Stenehjem: There's another concern about the loan facility having the right to check and see if the borrower's account is open at the time of the loan.

Gary Preszler: Considers the 5 day period as a cooling off period. Explains renewal fees can go on forever without the borrower ever paying off the original loan. If you eliminate the cooling off period, a new loan will pay off the old loan.

Senator Christmann: What's the ultimate outcome of most of these cases?

Gary Preszler: It is favorable for payday lenders to roll them over. There are some agreements with collection agencies that guarantee checks. So ultimately, when the lender has a check guaranteed, they know when they deposit it, they will get their check amount.

Committee decides to make three days in between transactions.

Senator Stenehjem: To get amendments drafted into one.

Discussion held 3/21/01. Meter number 0-9,7.

Senator Stenehjem: Explained the amendment numbered 10166.0403.

Senator Christmann: Concerned about the language that says lender can check if the account is open. If they don't do it, are they guilty of an infraction?

Senator Stenehjem: The language doesn't say how they have to verify the account. It leaves some room.

Page 7  
Senate Finance and Taxation Committee  
Bill/Resolution Number 1273  
Hearing Date 3/19/01

AMENDMENT ACTION:

Motion made by Senator Stenehjem, Seconded by Senator Christmann, to move amendment numbered 10166.0403. Roll call vote taken. Vote was 6 yeas, 0 nays, 0 absent and not voting.

COMMITTEE ACTION:

Motion made by Senator Stenehjem for a DO PASS AS AMENDED & REREFFERED TO APPROP., Seconded by Senator Christmann. Vote was 4 yeas, 2 nays, 0 absent and not voting. Bill carrier was Senator Stenehjem.



**PROPOSED AMENDMENTS TO  
ENGROSSED HOUSE BILL NO. 1273**

Page 6, line 1, after "within", remove "five" and insert "one"

Page 7, line 20, after "within", remove "five" and insert "one"

Page 7, line 22, after "subsection", insert "14. The maker of a check has the right to rescind the transaction at no cost until the close of the following business day."

Renumber accordingly

10166.0402  
Title.

Prepared by the Legislative Council staff for  
Senator Stenehjem  
March 14, 2001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1273

Page 7, line 10, after "may" insert "not" and after "transaction" insert "more than once"

Page 7, line 12, replace "any renewals" with "one renewal"

Renumber accordingly

Date: 3/20/01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1213

Senate Finance and Taxation Committee

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

Legislative Council Amendment Number 10166.0402

Action Taken Move Amendment

Motion Made By Christmann Seconded By Stenehjem

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

Total (Yes) 10 No 0

Absent 0

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

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

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1273

Page 6, line 1, replace "five" with "three business"

Page 6, line 21, after "licensee" insert "; however, the maker may rescind the transaction by the close of the following business day at no cost"

Page 7, line 2, after the period insert "At the time of entering a transaction, a licensee shall verify that the account on which the check is written is open."

Page 7, line 20, replace "five" with "three business"

Page 9, line 4, after "who" insert "willfully"

Renumber accordingly

Date: 3/21/01  
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1273

Senate Finance and Taxation Committee

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

Legislative Council Amendment Number 10166-0403

Action Taken Move Amendment

Motion Made By Stenehjem Seconded By Christmann

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

Total (Yes) 6 No 0

Absent 0

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

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

Date: 3/21/01  
Roll Call Vote #: 3

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1273

Senate Finance and Taxation Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

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

Action Taken DO PASS AS AMENDERS (two) 's, Referred to App

Motion Made By Stenehjem Seconded By Christmann

Senators	Yes	No	Senators	Yes	No
Senator Urlacher-Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Wardner-Vice Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Christmann	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Stenehjem	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Senator Kroeplin	<input type="checkbox"/>	<input checked="" type="checkbox"/>			
Senator Nichols	<input type="checkbox"/>	<input checked="" type="checkbox"/>			

Total (Yes) 4 No 2

Absent 0

Floor Assignment Stenehjem

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

**REPORT OF STANDING COMMITTEE**

**HB 1273, as engrossed: Finance and Taxation Committee (Sen. Urlacher, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1273 was placed on the Sixth order on the calendar.

Page 6, line 1, replace "five" with "three business"

Page 6, line 21, after "licensee" insert "; however, the maker may rescind the transaction by the close of the following business day at no cost"

Page 7, line 2, after the period insert "At the time of entering a transaction, a licensee shall verify that the account on which the check is written is open."

Page 7, line 10, after "may" insert "not" and after "transaction" insert "more than once"

Page 7, line 12, replace "any renewals" with "one renewal"

Page 7, line 20, replace "five" with "three business"

Page 9, line 4, after "who" insert "willfully"

Renumber accordingly

2001 SENATE APPROPRIATIONS

HB 1273



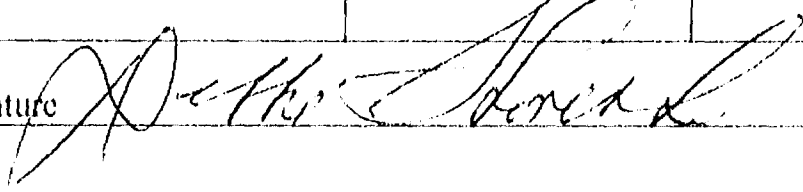
2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1273

Senate Appropriations Committee

☐ Conference Committee

Hearing Date March 30, 2001

Tape Number	Side A	Side B	Meter #
I		X	9.2-32.6
Committee Clerk Signature 			

Minutes:

Senator Solberg opened the hearing on HB 1273.

Representative Ron Carlisle, District, #30, testified in support of the bill and gave copies of handouts (attached) explaining what HB 1273 does from Jennifer S.N. Clark, Counsel, from ND Legislative Council and proposed amendments to SB 2008 on fiscal part. Explained that the bill is deferred presentment service which is a payday loan which is another name for it. Anybody who engages in this business has to be licensed by the commissioner of Banking and Financial Institutions and would submit a \$450 annual license fee. The amendment is for an additional FTE and costs. There are current 24 people in the Pawnbroker's Association that would like to do business and may be as many as 40 if the bill is passed, the number is uncertain. He went on to explain status of these payday loan brokers and actions taken.

Senator Solberg: So the appropriation is basically taken care of in the Banking Bill on the House side. This is strictly enabling legislation so we really don't have anything to do with it now.

Representative Carlisle: That is correct. If the bill does not pass in the Senate we would pull that fiscal note back off.

Senator Lindaas: This is the first I have seen of this, is there a regulation in regard to the interest rates that are selected or charged on these loans?

Kent Tupa, Lobbyist for ND Pawnbrokers Association, and the interest for these loans is capped at 20% and no higher than this.

Senator Robinson: That 20% factor to me is not an accurate statement because you looking at a 15 day period, are you not?

Kent Tupa: The APR on a loan like that would be 521%. It might seem high but when you look at other alternatives like NSF fees and bank fees, they are 1300% APR and as well as credit card charges.

Senator Andrist: Do we need a whole FTE position to do this, seems over regulated; the 24 in the industry are satisfied to pay the \$450 a year for his regulation?

Representative Carlisle: This will raise in the neighborhood of \$60,000 with those fees. The banking commissioner has asked for this FTE. Not sure how many will participate, we will know a lot more in two years if the bill passes for a better observation.

Senator Grindberg: The fiscal impact for an FTE, should it take the additional FTE to do this?

Gary Preszler, Commissioner, Department of Banking and Financial Institutions (testimony attached). To answer Senator Grindberg's question, the fiscal note attached to HB 1273 amendment requests the additional FTE and expenses, total \$138,000. This FTE is necessary with the projected 40 applications, denial of licenses, going to hearing, conduct examinations of licenses, and annual type examinations, etc.

Senator Grindberg: How many FTEs are in your department? and vacant?

Gary Preszler: We have 22 full time FTEs with 2 vacant FTEs.

Senator Grindberg: You couldn't absorb this work in your department and gauge it over the next two years and come back if FTE is needed. If we give it now we won't get it back.

Gary Preszler: We have given up FTEs in the past. The two vacant right now are due to bank examination position just occurred with resignation and one occurred this week, both to be filled and are need in examination. The money brokers are creating this and I don't have the staff to handle payday lenders. I will give the committee news on the nature and profile of the payday borrower.

Senator Tallackson: What are your suggestions on this short fall?

Gary Preszler: The license fee to \$1,400 which I know is steep and to lower this if it is not needed.

Senator Grindberg: Would you be agreeable to discuss delaying the start date of the FTE? Maybe 6 to 9 months into the biennium.

Gary Preszler: We had to go to the Emergency Commission to handle the action we have taken to date on this issue. Rules to be in place by August 1, 2001. I really need to fill this position quickly.

With no further testimony the hearing was closed.

Tape #1, Side B, meter 32.6

Senator Solberg: The appropriation situation will be taken care of in two areas, in the banking commission budget or OMB and I understand there is an amendment through OMB, then I would just as soon move this bill out.

Senator Tallackson made a motion for a Do Pass; seconded by Senator Grindberg.

Discussion followed. Vote taken 13 yes, 0 no, 1 absent.

Date: 3-30-01

Roll Call Vote #: \_\_\_\_\_

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1223**

Senate Appropriations Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

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

Action Taken

Do Pass Harvey Tallackson

Motion Made By

Senator

Tallackson

Seconded

By

Senator

Grindberg

Senators	Yes	No	Senators	Yes	No
Dave Nething, Chairman					
Ken Solberg, Vice-Chairman	✓				
Randy A. Schobinger	✓				
Elroy N. Lindaas	✓				
Harvey Tallackson	✓				
Larry J. Robinson	✓				
Steven W. Tomac	✓				
Joel C. Heitkamp	✓				
Tony Grindberg	✓				
Russell T. Thane	✓				
Ed Kringstad	✓				
Ray Holmberg	✓				
Bill Bowman	✓				
John M. Andrist	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Senator Schobinger

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

REPORT OF STANDING COMMITTEE (410)  
March 30, 2001 11:28 a.m.

Module No: SR-56-7274  
Carrier: Stenehjem  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1273, as engrossed and amended: Appropriations Committee (Sen. Nething, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1273, as amended, was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1273

## TESTIMONY FOR HOUSE BILL NO. 1273

House Industry, Business, and Labor Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions neither in support of nor in opposition to House Bill No. 1273.

The Legislature must balance whether deferred presentment service transactions (payday loans) are a needed fringe banking service or whether existing usury statutes should prevent predatory lending\*.

Approximately 26 states have currently allowed payday lending to evolve through either existing small loan license entities (usury limitations do not apply in these states), check cashing laws, or specifically authorized payday loan authority. The evolution and proliferation of the payday industry has raised a significant number of compliance issues in a number of states, particularly usury laws. Extremely lucrative rates of return to the lender have resulted in over 10,000 payday lenders operating in the United States.

*PAYDAY LOAN CHARACTERISTICS*

- Loan to be repaid from salary
- Loan amount \$100 to \$500
- Term up to 15 days

- 10% to 20% fee (results in an annual percentage rate (APR) of 300 to 3,000%)
- Postdated or promise to hold personal check
- No credit background approval
- Some lenders have a NSF check "guarantee" provided by a collection agency
- Associated with frequent loan renewals or rollovers
- Two-thirds of the borrowers are women\*\*

Payday lenders have argued that it is inappropriate to disclose the cost of a payday loan as an APR. However, the APR is a common standard used so that customers can compare the financing cost of loan transactions. The Federal Reserve now requires payday lenders to disclose the APR under Truth in Lending.

The most egregious aspect of payday lending is the fact that the borrower is in a perpetual debtor's prison. The payday lender has tremendous leverage then to collect the rollover fee, as the increased costs of NSF checks and possible collection action puts many of the borrowers in situations that the consequences are far greater than paying another steep rollover fee.

#### *HOUSE BILL NO. 1273 RESTRICTIONS*

Page 5, line 14      The loan fee cannot exceed 20 percent (521.4 APR on a loan for 14 days) of the amount paid to the maker. States that have authorized payday loans have typically limited the maximum fee from 10 to 20 percent, with 15 percent the more common fee\*\*\*.



Page 5, line 16

It is important that the law establish that no other fee or charge may be levied in addition to the 20 percent fee limit. Other states have found payday lenders have been cleverly avoiding fee restrictions by adding disguising additional fees.

Page 6, line 17

The bill prohibits a NSF check collection fee to not exceed \$20 per customer per year. Other states have identified payday lenders that have threatened to pursue criminal prosecution or place NSF checks in a recovery mode that initiates bank and collection fees in addition to the payday loan fee. Since House Bill No. 1273 does not limit the number of payday checks that could be accumulated up to the \$500 total, my concern expressed to the proponents was that there must be a limit as to a collection fee, if at all permitted.

Page 7, line 4

Renewals are limited to a maximum of 45 days. Each renewal must be at least 15 days. The Indiana Department of Financial Institutions discovered in an investigation that payday lenders were charging the service fee for as short a period as a two-day renewal. Other states that have attempted to limit renewals have found payday lenders doing "touch and go" loans to avoid the restrictions by claiming a rollover as a new loan. **The Legislature should consider whether House Bill No. 1273 should be amended to not allow any renewals.** The States of Ohio and Washington have provided for no renewals\*\*\*. In doing so, the states recognized that by definition a payday loan is to provide money until the borrower receives the payroll check. Therefore, when the payroll check is deposited, the loan should be repaid and there is no reason to renew it. Other states are expected to similarly limit

renewals as again the rollovers have created the most controversy associated with payday lending.

Page 7, line 12      A cooling off period of 5 days is provided. This is to provide for the elimination of "touch and go" loans.

### *ENFORCEMENT ACTIONS*

The State of Tennessee reported that nearly one-half of all the payday lenders were in noncompliance with existing laws\*. Other states have also found enforcement with existing laws has been extremely difficult.

For example, the Indiana Attorney General in a January 20, 2000, letter to payday lenders warned lenders of usurious rates of interest violating the state's loan sharking statutes.

Additionally, the states of New York, Texas, Florida, Kentucky, Maryland, and Ohio have either warned payday lenders of usury violations, or taken civil action resulting in penalties awarded to payday borrowers in several states.

It is therefore imperative, that if the North Dakota Legislature authorizes payday lending, adequate enforcement authority and department resources be available to monitor this activity.

The Indiana investigation also reported that 3 of 4 payday loans were rolled over and fewer than 1 in 10 customers had no loan rollovers\*. The Department of Banking and Financial Institutions and the Attorney General's Office investigated Bob's Pawnshop in Bismarck on October 5, 2000 and found 177 checks

outstanding. Of those 177, 174 (or 98.3%) were checks that contained one or more rollovers.

In August 2000, the Attorney General's Office Consumer Fraud Division Director, several state attorneys, and myself sent a letter to all suspected payday lenders. The letter warned lenders about unauthorized lending activity and usury violations. Following the letter, several payday customers called the Department. One Mandan borrower complained that in February 2000 he provided a \$200 personal check to a local pawnshop. He received \$160 in cash. He was required to pay \$34 every two weeks to avoid the check being deposited. When he called in September, he stated that he has paid between \$500-\$600 in rollover fees, but has never been able to accumulate \$160 to pay back the original loan balance. This same story was given by several other payday borrowers.

#### *FISCAL NOTE*

The Department Fiscal Note has estimated as many as 40 licenses expected to be issued under House Bill No. 1273. The number of potential licensees is supported by the fact that approximately 26 payday lenders were operating illegally in North Dakota when the August 2000 letter was sent out. Additionally, I determined the numbers validity by reviewing the number of licenses issued in Wisconsin, which has now increased to approximately 200, and Montana with 90 outstanding.

The fiscal note requests an additional FTE to administer and investigate license applications and conduct examinations. The FTE is in addition to the FTE already requested under the Department's appropriation request, Senate Bill No. 2008.

Since the Department is a fully self-supporting agency, the \$95,166 revenue shortfall can only be made up in one of two ways:

1. The license fee must be increased sufficient to cover expenses. The Department's proposed amendments increase the fee to \$1,450.
2. Reduce the transfer from the Department Regulatory Fund to the General Fund by \$95,166. The Office of Management and Budget has suggested a transfer of \$300,000 to the General Fund. Reducing the transfer to the General Fund in essence means state taxpayers will subsidize payday loan supervision.

Thank you.

\* Fedgazette, Volume 12, No. 4, October 2000, "A helping hand, or new age loan sharking?"  
\*\* The Midwestern Office of the Council of State Governments, Volume 7, No. 10, November 2000  
\*\*\* Consumer Federation of America, September 1999, Appendix A  
\*\*\*\* State Government News, January 2001, "The Cost of Cash"

DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1273

Page 3, line 5, replace "five" with "one thousand seven"

Page 3, line 8, replace "two" with "one thousand four"

Page 5, line 17, replace "preferred" with "deferred"

Renumber accordingly

Testimony on HB 1273

February 7, 2001

House Industry, Business, and Labor Committee  
Chairman Berg

Chairman Berg and members of the House Industry, Business and Labor Committee: good morning. My name is Daryn Kapaun, President-elect of the ND Pawnbrokers Association and owner of Mister Money USA of Fargo and Jamestown. I'm testifying in support of HB 1273 and ask for your favorable recommendation.

I grew-up on a small family farm southeast of Valley City, graduated from Fingal High School, attended and graduated from NDSSS and went to work for a John Deere Implement store in Casselton for 18 years. In January, 1998 I decided to franchise with Mister Money USA, a small business dealing in pawn loans and the sale of new and used merchandise. Through my business I was introduced to Payday Loans.

In October of 1998 I received a letter from the ND Dept. of Banking and Financial Institutions which stated: "It has come to the attention of the ND Dept. of Banking and Financial Institutions that Mister Money USA may be engaged in the business of check cashing and what are commonly referred to as payday loans." "As you know North Dakota Century Code (NDCC) 40-05-01 (26) authorizes municipal governments to license, tax and regulate pawnbrokers. Additionally, NDCC 13-03.1-02 (2) exempts any person conducting a bona fide pawnbroking business transacted under a pawnbroker's license for loans in the amount no to exceed one thousand dollars from the licensing requirements of the Consumer Finance Act. Accordingly, to the extent that the enabling ordinances concerning pawnbroker activities enacted by the city of Fargo permit the making of payday loans, such activity would be lawfully authorized. However, I would encourage you to consult with the city attorney's office to verify that payday loans are authorized under the city's enabling ordinances."

I was naturally concerned so I contacted my attorney who in turn contacted the attorney for the city of Fargo, Mr. Stewart. The intention was to have Mr. Stewart rule on this matter of payday loans done within Fargo which was pointed out from the letter I received from the Department of Banking and Financial Institutions - I have handed out to the committee a copy of this letter. As you can see from the letter, Mr. Stewart did not see where Mister Money USA was breaking any laws when it came to payday loans:

1. Mister Money USA is a bona fide pawnbroker
2. Makes loans under \$1000.00
3. Charges minimum interest charge allowed by 47-14-09
4. Meets the disclosure requirements by Reg. Z

Then, in August of 2000, I and other members of the North Dakota Pawnbrokers Association stopped providing payday loans when we received the letter from the Dept. of Banking indicating to that extent. The North Dakota Pawnbrokers Association agrees that regulating these types of loans is necessary and that is what HB 1273 will do.

Thank you Chairman Berg and members of the Committee. I respectfully ask for a Do Pass recommendation on HB 1273. I will be happy to answer any questions you may have.

*Craig M. Richie*  
**RICHIE & ASSOCIATES**

*Attorney at Law*

*Office (701) 235-5513*

*CRAIG M. RICHIE*

*203 South Eighth Street  
P.O. Box 2172  
Fargo, North Dakota 58107*

*FAX (701) 235-1703*

November 25, 1998

Daryn Kapaun  
Mister Money USA  
303 Broadway  
Fargo, ND 58102

Dear Daryn,


I have now had an opportunity to review the North Dakota Century Code and the statutes of the city ordinances, as well as talked to Gary Stewart who is the city attorney. Section 25-1001 of the City Code defines pawnbrokers, and I am enclosing a copy of that statute for you. Gary seems to believe, as do I, that "other valuable thing" would be a pledge that you could do payday loans based upon a note, which I assume you take from them borrowers. Thus, it would appear to me that you could do payday loans.

It is far more problematic whether you could cash checks. As you can see from the North Dakota Century Code, it looks like that is a banking function. Gary is under the opinion that it does not seem to be a crime. They could fine you, but who does the fining? The state would have to do it. I really do not know how that procedure would be handled, nor did Gary. The argument could be that this section would govern how they would regulate banks, but how would they be regulating a pawnbroker through this section? That may only be an argument to the Courts, but it is something to think about. However, as you can see, a hundred dollars a day can obviously be very detrimental.

In essence, I do not know if there is a way I can give you a definite answer. I think this is somewhat up in the air, and I cannot say that you are in the clear totally. I am certainly willing to send a letter to the state, and you may be sending your own letter as the one that I reviewed per your request which is from Mr. Wolfe. I do think that letter makes a pretty good argument. I will reiterate that Gary Stewart believes that you clearly could

do payday loans, it is just a matter of cashing checks. Whether anybody else agrees, I do not know, but that was Gary's opinion as well as mine. Who knows what a court would do under these circumstances. We could just hope for the best. I am sorry to be so vague, but this is vague. Please call me if you have any questions.

Sincerely,



Craig M. Richie  
CMR/lk  
Enclosure



#### ARTICLE 25-06

##### SOLICITORS FOR SUBSCRIPTIONS, PHOTOGRAPHS, OR SERVICES

Note: Article 25-06 of chapter 25 of the Revised Ordinances of 1965 (sections 25-0601 to 25-0608) was repealed by Ord. No. 1282, § 2, 1968. For present provisions see article 25-05.

#### ARTICLE 25-07

##### TRANSIENT MERCHANTS

Note: Article 25-07 of chapter 25 of the Revised Ordinances of 1965 (sections 25-0701 to 25-0704) was repealed by Ord. No. 1282, § 2, 1968. For present provisions see article 25-05.

#### ARTICLE 25-08

##### EMPLOYMENT AGENCIES

Note: Article 25-08 of chapter 25 of the Fargo Municipal Code was repealed by Ord. No. 2305, 1987.

#### ARTICLE 25-09

##### FORTUNETELLING, SPIRITUALISM, PHRENOLOGY

Note: Article 25-09 of chapter 25 of the Revised Ordinances of 1965 (sections 25-0901 and 25-0902) was repealed by Ord. No. 1617, § 1, 1974, effective October 8, 1974.

#### ARTICLE 25-10

##### PAWNBROKERS AND SECONDHAND GOODS DEALERS

Section	
25-1001	"Pawnbroker" defined.
25-1002	License required.
25-1003	Licenses--Fees for.
25-1004	Bond--Conditions of. Repealed.
25-1005	Licenses--Expiration of.
25-1006	Licenses--Revocation of.
25-1007	City auditor to keep register of licenses.
25-1008	Record of goods pawned or consigned--Duty of licensee.
25-1009	Record of goods pawned or consigned--Copy to chief of police.
25-1010	Repealed by omission.
25-1011	Description of property, when unnecessary.
25-1012	Licensees not to sell property within forty-eight hours.

- 25-1013 Licensees--Notice not to sell property--Sale or redemption of property not allowed.  
25-1014 Transactions with minors--Consent of parents required.

25-1001. "Pawnbroker" defined.--As used in this article, unless the context or subject matter otherwise requires, the term "pawnbroker" shall mean any person who:

- A. Loans money on deposit or pledge of personal property, or other valuable thing;
- B. Deals in the purchasing of personal property or other valuable thing, on condition of selling the same back again at a stipulated price; or
- C. Loans money, secured by chattel mortgage on personal property, taking possession of the property or any part thereof so mortgaged.

Source: 1952 Rev. Ord. 25-1001.

25-1002. License required--Exception.--Every person before engaging in the business of pawnbroker, as defined in section 25-1001, or dealer in secondhand goods in the city shall first obtain a license from the city which license shall be approved by the police chief with the license to be issued and fee collected by the city auditor's office. Provided, that any person dealing exclusively in secondhand or used books shall be exempt from the provisions of this ordinance.

Source: 1965 Rev. Ord. 25-1002, 1489 (1973), 1496 (1973), 2156 (1984), 2306 (1987).

25-1003. Licenses--Fees for.--Every pawnbroker, and every dealer in secondhand goods, before commencing business shall pay into the city treasury the required fee which shall be established by resolution of the board of city commissioners.

Source: 1965 Rev. Ord. 25-1003, 1489 (1973), 1496 (1973).

25-1004. Bond--Conditions of.--Repealed by Ord. No. 2306, 1987.

25-1005. Licenses--Expiration of.--Each license granted and issued under this article shall expire at the expiration of one year next following the granting and issuing of the same, unless sooner revoked as hereinafter provided.

Source: 1952 Rev. Ord. 25-1005.

25-1006. Licenses--Revocation of.--Every license issued under the provisions of this article shall be issued upon the distinct understanding that such license may be revoked by the board of city commissioners at any time, or by the court upon the conviction of the holder of a violation of this article. If the person so convicted shall have a license under the provisions of this article and said license is revoked, a new license shall not be issued to

the same person within six months thereafter, except by consent of four-fifths of the board of city commissioners.

Source: 1952 Rev. Ord. 25-1006.

25-1007. City auditor to keep register of licenses.--The city auditor shall keep a register of all the licenses granted under this article, in which he shall record the name of the person licensed, the time of issuing the license, and the place of business of such person.

Source: 1952 Rev. Ord. 25-1007.

25-1008. Record of goods pawned or consigned--Duty of licensee.--Every person who shall be engaged in the business of pawnbroker as defined in section 25-1001 or dealer in secondhand goods shall keep a book in which shall be clearly written in ink at the time of each loan, purchase, or consignment an accurate account or description, in the English language, of the goods, articles, or other things pawned, pledged, received, deposited, purchased, or placed on consignment, the amount of money loaned or paid therefor, the time of the receipt of the same, the name, residence, and description of the person pawning, pledging, selling, or consigning the same, which book, as well as the article pawned, purchased, or consigned, shall, at all reasonable times, be open to the inspection of the board of city commissioners, the police commissioner, the city attorney, or any member of the police force.

Source: 1952 Rev. Ord. 25-1008, 993 (1957).

25-1009. Record of goods pawned or consigned--Copy to chief of police.--It shall be the duty of every pawnbroker or dealer in secondhand goods to make out and deliver to the chief of police, every day before the hour of twelve M., a legible and correct copy from the book required to be kept in section 25-1008 of all personal property or other valuable things received, deposited, purchased, or placed on consignment during the preceding day, together with the time when received, deposited, purchased, or consigned, a description of the person or persons and an impression of the right thumbprint of the person or persons by whom such articles were left in pledge or from whom the same were purchased or taken on consignment.

Should the right thumb be amputated or crippled then the left thumb may be used and the copy of the print should be so marked.

Source: 1952 Rev. Ord. 25-1009, 990 (1957).

25-1010. Record of goods pawned or consigned--To exhibit books, property, to whom.--Repealed by omission.

Note. This section is repealed by omission from the 1965 Revised Ordinances. The subject matter is covered in section 25-1008.

25-1011. Description of property, when unnecessary.--No person shall be required to furnish the description of any property purchased from private residences, manufacturers, or wholesaler

dealers having an established place of business or of goods purchased at open sale from any bankrupt stock or from any other person doing business and having an established place of business in the city. Such goods, however, must be accompanied by a bill of sale or other evidence of open or legitimate purchase and must be shown to the board of city commissioners, the police commissioner, the city attorney, or any member of the police force when demanded.

Source: 1952 Rev. Ord. 25-1011.

25-1012. Licenses not to sell property within forty-eight hours.--No personal property received on deposit or purchased by any pawnbroker or dealer in secondhand goods shall be sold or permitted to be redeemed from the place of business of such person for the space of forty-eight hours after the copy and statement required to be delivered to chief of police shall have been delivered as required by section 25-1009.

Source: 1952 Rev. Ord. 25-1012.

25-1013. Licenses--Notice not to sell property--Sale or redemption of property not allowed.--Whenever the chief of police or any member of the police force designated by the chief of police shall notify any dealer or dealers not to sell any property received on deposit or purchased by them or permit the same to be redeemed, such property shall not be sold or permitted to be redeemed until such time as may be determined by the chief of police or member of the police force designated by the chief of police who required them to be held.

Source: 1952 Rev. Ord. 25-1013.

25-1014. Transactions with minors--Consent of parents required.--No person granted a license under the provisions of this article shall purchase or receive any article or thing of value from, or transact any business as provided herein with, any person who has not reached the age of eighteen years, without the written consent of such minor's parent or guardian.

Source: 1952 Rev. Ord. 25-1014.

#### ARTICLE 25-11

#### SALVAGE DEALERS

##### Section

25-1101	"Salvage dealer" defined.
25-1102 to 25-1104	Repealed.
25-1105	Purchase from minors prohibited.
25-1106	Nuisance prohibited.
25-1107	Fencing of salvage yard required.
25-1108	Records required.
25-1109	Purpose of article.

25-1101. "Salvage dealer" defined.--The term "salvage dealer" when used in this article shall be defined to be any person,



GARY J. NELSON  
State Senator  
Chairman

JOHN D. OLBRUD  
Director

JAY E. BURKHARD  
Assistant Director

JIM W. SMITH  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

## North Dakota Legislative Council

STATE CAPITOL 600 EAST BOULEVARD, BISMARCK, ND 58505-0001 (701) 328-2016 TTY: 1-800-368-6855

January 15, 2001

*Filed*  
*17-7-3*

Honorable Ron Carlisle  
State Representative  
P.O. Box 222  
Bismarck, ND 58502-0222

Dear Representative Carlisle:

This letter summarizes the enclosed bill draft regarding licensure of deferred presentment service providers.

The bill draft provides that any person who engages in the business of deferred presentment services must be licensed by the Commissioner of Banking and Financial Institutions. The commissioner may adopt rules for implementation and enforcement of the licensure law. In addition to the authority to suspend or revoke a license, if the commissioner determines there has been a violation of the deferred presentment service law, the commissioner may order the person to cease and desist violating the law or rule, may require the refund of any fees collected by the person in violation of the law, and may impose a civil penalty. Additionally, the bill draft provides any person who provides deferred presentment services without a license is guilty of a Class C felony.

In order to meet the initial licensure and renewal requirements, an applicant shall:

- Maintain \$25,000 in unencumbered assets for each licensed location;
- Allow the commissioner to review relevant business records and capital adequacy of the applicant to determine the applicant's business will be conducted lawfully and fairly;
- Establish the applicant has not been convicted of a felony;
- Maintain and submit proof of a \$20,000 bond;
- Submit a \$500 application and background investigation fee for the initial license which, if the application is granted, satisfies the license fee for the first year; and
- Submit a \$250 annual license fee.

A license is not transferable or assignable. The prior written approval of the commissioner is required for the continued operation of a deferred presentment service business if a change in control of a licensee occurs.

A licensee shall report to the commissioner if any of the following occur:

- Filing for bankruptcy or reorganization by the licensee;
- Institution of revocation or suspension proceedings by any governmental authority;
- Felony indictment of the licensee or any licensee's member, director, officer, or shareholder; or
- Any other event the commissioner identifies by rule.

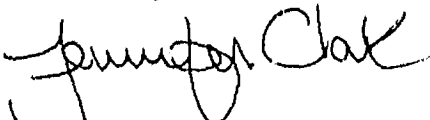
The commissioner may examine a licensee's relevant business, books, and records. An examination or visitation fee and the costs of any such examination are paid by the licensee. Every licensee shall preserve required books, accounts, and records for at least six years.

In running the deferred presentment services business, a licensee:

- Shall provide printed notice to every maker of a check which must include information required under federal law and which must include a schedule of fees charged;
- Accompany each deferred presentment service transaction with a written agreement signed by the maker of the check;
- May not charge a fee or charge for the deferred presentment service an amount exceeding 20 percent of the amount paid to the maker of the check;
- May not pay more than \$500 to the maker of a check and the aggregate face value of all outstanding checks from any one maker payable to all licensed locations may not exceed \$500;
- May not enter a new deferred presentment service transaction with a customer within five days of a previously completed transaction;
- Shall allow the maker of a check to redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee;
- Has all civil remedies available for insufficient fund checks, closed account checks, and for stop payment orders;
- May contract for and collect a returned check charge not exceeding \$20 per customer, per year;
- May pursue criminal prosecution if a check was written on an account that was closed on the original date of the transaction;
- Shall pay a maker of a check in cash or check;
- May allow renewal of a deferred presentment service transaction for a period of at least fifteen days, for a fee not exceeding 20 percent of the amount being renewed;
- May not allow the total period of deferral to exceed 45 days;
- May not allow renewal, repayment, refinance, a consolidation with the proceeds of another deferred presentment service transaction; and
- May not conduct another business other than a bona fide pawnbroking business within the same business as the deferred presentment service unless the commission has given prior written authorization.

Please do not hesitate to contact this office if you would like additional information on this issue.

Sincerely,



Jennifer S. N. Clark  
Counsel

JSNC/MRD  
Enc.

## **TESTIMONY FOR HB 1273**

**By Jay Couture  
President, NDPA**

Chairman Berg & Members of the Committee, I want to thank you for this opportunity to speak before you and ask for a "DO PASS" recommendation for HB 1273. This bill will authorize the licensing and operation of deferred presentment service providers or, what have commonly come to be known as "Payday Loans."

I am Jay Couture. I am the President of the North Dakota Pawnbrokers Association. My wife, Georgia and I also operate Jay's Pawn Shops in the Bismarck / Mandan area... we've done so for the past 15 years.

In August of '98, I learned about a new service called "Payday Loans" that was growing nationally and was already being offered in Fargo. That's when I began to check into the business.

In the following weeks and months, I contacted professionals in the field, I sought out legal advice from my private attorney who also checked with the city attorney while I checked with the local police. We drove into SD and NE to physically see how they were done and I signed contracts with a company to process my credit cards with a check verification option. Finally, I saw a letter concerning Payday Loans from the Department of Banking & Financial Institutions dated October of '98 which stated, "such activity would be lawfully authorized." We began offering Payday Loans in November '98.

Because of their ease & convenience, as opposed to having to subject a tv, stereo or other property to the wear & tear of physically carrying them back & forth to the pawn shop as collateral or, because of the "red tape" of having to go through the Federal NICS background check when you redeem your own weapon off pawn, Payday Loans quickly grew to become the "loan of choice" and a big part of my business.

As the business grew and others began to offer the service, we recognized that being unregulated did not provide for a solid foundation upon which to grow. As a businessman, the last thing I want to do is to spend thousands of dollars advertising and promoting a good product and a positive image only to have some customer come along and, for whatever reason, mis-use the system or, get caught up in an unregulated program and create a negative headline. So, being pro-active, in May of 2000, my wife and I sought out our Representative, Ron Carlisle to learn more about the legislative process and, through our attorney, made contact with the ND Banking Commissioner's office.

Now, it would be an understatement to say that we were surprised & disappointed when, in early August of last year, all Pawnbrokers, Title Lenders & Payday Lenders received a letter which essentially redefined the term "pawnbroker" and dis-allowed all Payday Loans in the state.

When we got that letter, as a matter of professional responsibility, I immediately closed our stores. I got legal instruction and re-opened the next day. We have not done a single Payday Loan since. It has been hard. It's been hard on our business... I'll admit, our #'s are way down. It's been hard on our employees who've had to say "no" to customers in need and, it's been hard on our customers who no longer had access to this convenient line of credit. "Regulating pawnbrokers out of the Payday Loan business has not eliminated the need or demand for the service."

In the 2 weeks following the Banking Commissioner's letter, I collected over 500 signatures and statements in support of Payday Loans in ND. Other pawnbrokers have done the same and more.

In late August, several pawnbrokers from Fargo & Grand Forks and my wife & I, met with the Attorney General & Banking Commissioner to seek a compromise as we developed this legislation. There was no compromise and Payday Loans remain off limits in ND to this day.

Next, we officially organized as the North Dakota Pawnbrokers Association. We registered with the ND Secretary of State, drafted and adopted a Constitution, By-Laws and a Code of Ethics. All ND pawnbrokers were invited to join... not all did. At this time, I need to point out that we are well aware of recent headlines that have been in the Bismarck Tribune. I want to assure you that these headlines do not reflect the actions of any member of the NDPA.

Now, I'm very proud of HB 1273. I think it's a very good and fair bill for all... the consumer, the provider & the state. ND actually has the advantage of being a "Johnny-come-lately" to Payday Loan legislation. We have the advantage of being able to pick and choose from effective legislation that works and by learning from the mistakes of those who've gone before. HB 1273 reflects that advantage. There are currently 31 states with legislation allowing Payday Loans, including all the states surrounding ND... MN, SD, MT. Payday Loans, or services that effectively satisfy the same need, are essentially available in nearly all 50 states. In those few states which specifically prohibit Payday Loans (states which are mainly in the NE part of the US) such services are provided through "lease-back" agreements or, through companies that rent out-of-state bank charters or, through ATM systems. Prior to August of 2000, there were approximately 25 locations providing Payday Loans in ND. Nearly half of those providers are represented here in this room today. The need is here... We have customer support... the business is growing.

As I said, I'm proud of this bill. It sets definite restrictions and establishes perimeters within which we must operate... we must be established, reputable & licensed (as described in pages 2 & 3 of this bill)... we must retain records and be examined (as stated in page 4)... we must very clearly inform our customers about what we offer (as stated in page 5) and then the actual limits & procedures are very clearly spelled out in pages 5 through 7 of this bill... No more that \$500 can be loaned per customer. Also, with limited rollovers, that loan can go no longer than 45 days and there is a built-in 5 day cooling off period between loans. These restrictions & rules serve as a guide to providers & consumers and provide a needed and very convenient line of credit for those who, for whatever reason, occasionally come up short between paydays.

Then, as seen on pages 7 through 9, HB 1273 also gives the state some serious teeth with which to enforce this law. An applicant can be denied... the license can be suspended or revoked... and, violators can be prosecuted and punished.

In our December meeting with the Banking Commissioner and Attorney Generals representative, it was very clear that their primary concern was to protect the consumer. This bill does that.

The Banking Commissioner's secondary concern was that this bill be self-funding. You will notice (on page 3 - lines 3 through 11) that application and background investigation fees are established. Next, on page 4 (lines 21-24) you will note that, "the licensee shall pay an examination or visitation fee, and the commissioner shall charge the licensee for the actual cost of the examination or visitation at an hourly rate set by the Commissioner which is sufficient to cover ALL reasonable expenses associated with the examination or visitation." This is a good thing and provides positive incentive. If a business is well run and organized, the inspections will be simpler, quicker & cheaper. If a business is poorly



run or dis-organized, the inspections will be more difficult, time consuming and more costly, not to the Department of Banking, but to the licensee. In our December discussions, we were concerned about costs such as travel but, the Commissioner assured us that he has examiners strategically placed throughout the state... therefore, travel is minimized. As I mentioned earlier, there were approximately 25 locations providing Payday Loans prior to August of 2000. The Banking Commissioner anticipates that that number could grow, in time, to possibly 40 throughout the state... assuming that all applicants are approved and, that power lies with the Commissioner. The Commissioner also suggested that there would be costs associated with investigating consumer complaints. However, as facts & statistics from other states have demonstrated, this has not been the case. For example, according to the Wisconsin Department of Financial Institutions, a state in which there are 184 registered Payday Lenders, a state where Payday Loans are well established, in 1999 there were 850,000 Payday Loans written for a total of about \$200 million. According to the 6/19/2000 issue of the Milwaukee Journal Sentinel, the DFI had received 0 complaints.

Finally, as a conscientious professional, I would be remiss in my duties if I failed to take note of the complaints and concerns of those philosophically opposed to Payday Lending. I've read the criticisms of social workers and financial counselors who extrapolate the fees into an annual percentage rate. They repeat horror stories of mis-use by both the consumer & the provider... horror stories which are both rare and extreme... horror stories which should not occur under HB 1273 because of the limits & restrictions imposed. They claim that consumers are desperate... that our customers don't know what they're doing. The facts simply don't support those claims. Should this legislation pass, all providers are required to comply with Federal Reg. "Z" which requires full disclosure of all costs. That being said, I do respect the services provided by the social workers & financial counselors. I really do know where they're coming from. I have a degree in Sociology & Criminal Justice. My wife is a licensed social worker. They see individuals in crisis. We see people who occasionally come up short between paydays. For those people who may need more help than I can offer, I do care and I do have cards & brochures from numerous social service agencies on display in my stores. The members of our Association take their customers, their needs and what we offer very seriously. In the end, the overwhelming majority of our customers don't need a social worker or financial counselor... they just need a short term advance until payday. In the end... I know who I am and I'm proud of what we do. My customers tell me time and again, "Thanks! You helped me when no one else would."

HB 1273 is a strong, good & fair bill. I respectfully ask for your full support.

## **NORTH DAKOTA PAWNBROKERS ASSOCIATION**

# **NORTH DAKOTA PAWNBROKERS ASSOCIATION**

## **CODE OF ETHICS**

- We will deal with our customers and the general public with honesty and courtesy, making service and integrity our constant goal.**
- We will maintain high standards for employees, demanding integrity, confidentiality and courtesy in their dealing with the public.**
- We will strive to encourage our members to maintain their business premises in a manner which will reflect credit upon the profession.**
- We will exercise reasonable care to protect the goods of our customers from fire, theft, burglary and other hazards and will return redeemed goods in the conditions in which they were received.**
- We will cooperate to the full extent of our ability with the proper and reasonable efforts of all law enforcement agencies.**
- Any member charged with violating any ordinance or law may be called before the officers and members for a hearing.**
- We further agree that we will strive to go beyond this Code of Ethics, and will make every effort to insure that this Code of Ethics is followed by every member.**

To: Gary Preszler  
North Dakota Banking Commissioner  
2000 Schafer Street, Suite G  
Bismarck, ND. 58501-1204

Dear Mr. Preszler:

I, as a citizen of the State of North Dakota, want to continue to have the option and right of receiving a "Payday Loan" in the state.

Please do not take away my rights and freedom of choice to receive money that I may need in my time of emergency.

I understand and freely accept the fees involved in providing this service.

Thank you for your time and serious consideration.

Respectfully,

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY, ST: Bis. N.D.

PHONE: \_\_\_\_\_

DATE: 8-14-2000

Please make comments below:

Husford ~~only~~ only gets paid once month  
from State job. - need money when something  
unexpectedly opens.

To: Gary Preszler  
North Dakota Banking Commissioner  
2000 Schafer Street, Suite G  
Bismarck, ND. 58501-1204

Dear Mr. Preszler:




I, as a citizen of the State of North Dakota, want to continue to have the option and right of receiving a "Payday Loan" in the state.

Please do not take away my rights and freedom of choice to receive money that I may need in my time of emergency.

I understand and freely accept the fees involved in providing this service.

Thank you for your time and serious consideration.

Respectfully,

  
  
Sis 

*This is ridiculous! This has been a very good thing for me and has helped me out of medical emergencies with my disabled son, helped me stay mobile when my vehicle breaks down. Who does this hurt? \$20 for 2 weeks is nothing now a days - Cost more to fill up the gas tank.*

To: Gary Preszler  
North Dakota Banking Commissioner  
2000 Schafer Street, Suite G  
Bismarck, ND. 58501-1204

Dear Mr. Preszler:

I, as a citizen of the State of North Dakota, want to continue to have the option and right of receiving a "Payday Loan" in the state.

Please do not take away my rights and freedom of choice to receive money that I may need in my time of emergency.

I understand and freely accept the fees involved in providing this service.

Thank you for your time and serious consideration.

Respectfully,

NAME: [Signature]

ADDRESS: [Signature]

CITY/ST. Bismarck ND

DATE: Aug 17, 2000

PLEASE MAKE COMMENTS BELOW:

Dear Mr. Preszler,  
Sometimes people have financial struggles for many reasons, this loan helped me to get on my feet and at least have groceries in my home. I am forever grateful for this service. Sincerely,

To: Gary Preszler  
North Dakota Banking Commissioner  
2000 Schafer Street, Suite G  
Bismarck, ND. 58501-1204

Dear Mr. Preszler:

I, as a citizen of the State of North Dakota, want to continue to have the option and right of receiving a "Payday Loan" in the state.

Please do not take away my rights and freedom of choice to receive money that I may need in my time of emergency.

I understand and freely accept the fees involved in providing this service.

Thank you for your time and serious consideration.

Respectfully,

NAME: [REDACTED]

ADDRESS: [REDACTED]

CITY, ST:

New Salem, ND

PHONE: [REDACTED]

DATE:

17 Aug 2000

Please make comments below:

Payday Loans help people who have  
emergency that arise and they know  
how to budget their money the next month.  
We need Payday Loans.

To: Gary Preszler  
North Dakota Banking Commissioner  
2000 Schafer Street, Suite G  
Bismarck, ND. 58501-1204

Dear Mr. Preszler:

I, as a citizen of the State of North Dakota, want to continue to have the option and right of receiving a "Payday Loan" in the state.

Please do not take away my rights and freedom of choice to receive money that I may need in my time of emergency.

I understand and freely accept the fees involved in providing this service.

Thank you for your time and serious consideration.

Respectfully,

NAME: [REDACTED]

ADDRESS: [REDACTED]

CITY, ST: Sioux Falls ND 58508

PHONE: [REDACTED]

DATE: 8-14-06

Please make comments below:

Let's see - overdraft fees - ~~\$10000~~  
for 4 checks at \$1300 each \$10800

cost of loan to cover checks - \$2000?

You do the math!

To: Gary Preszler  
North Dakota Banking Commissioner  
2000 Schafer Street, Suite G  
Bismarck, ND. 58501-1204

Dear Mr. Preszler:

I, as a citizen of the State of <sup>MINNESOTA</sup> ~~North Dakota~~, want to continue to have the option and right of receiving a "Payday Loan" in the state.

Please do not take away my rights and freedom of choice to receive money that I may need in my time of emergency.

I understand and freely accept the fees involved in providing this service.

Thank you for your time and serious consideration.

Respectfully,

East Grand Forks, MN  
56721

This is a greatly appreciated service during a time when people are trying to recover from flood loans + businesses closing down. please reconsider what you are trying to do.

Thankyou



February 7, 2001

Testimony before the Industry, Business, and Labor Committee in the House on HB1273

Chairman Berg and members of the Committee, my name is Robert Rood. I appreciate the opportunity to testify before you this morning and I respectfully request a DO PASS recommendation on House Bill 1273.

I am the Vice President of the ND Pawn Brokers Association and owner of Used-A-Bit Sales in Fargo. I am also a Past President of the ND Home Builders Association and Past President of the Fargo-Moorhead Home Builders Association. We have two stores in Fargo and have been the Pawn and Loan business for 8 years. We looked into the Pay Day Advance industry in 1998. We received a letter from a Mr. Clinton in the Banking Commissioner's office in October of 1998 telling us to check with our city attorney to see if pay day loans are authorized under the city ordinances. This letter was also sent to the Fargo City Attorney Mr. Gary Stewart. We followed his directions and consulted with our city Attorney and proceeded to offer the Pay Day Advance Service (otherwise know in this bill as Deferred Presentment Services). We did stop this service when notified to do so by the ND Attorney General's office this past year. Since then several customers each day inquire as to when this service will be available again.

I want to highlight some of the information I handed out to you:

**Why do Consumers Choose Payday Advance Services?**

- ⓐ To bridge a short-term cash need between paydays
- ⓑ To cover unexpected expenses, like car repairs, medical expenses, or household emergencies.
- ⓒ To avoid bounced check fees or late payment penalties that can be quite expensive.

**Who is the Payday Advance Customer?**

- ⓐ They average 35.6 years old with average income of \$33,187
  - ⓑ They all have an income and an active checking account
  - ⓒ 32.8 percent own their own home
- These statistics are from the Consumer Financial Services Association  
- a trade association for payday lenders.

**The fee charged is a cost effective alternative:**

- ⓐ To NSF check fees, Retailer Bad Check Fee, and late payment fees
- ⓑ To not being able to repair your vehicle to get to work
- ⓒ To not being able to pay your utility bill on time and being charged a late fee or a reconnect fee that can be over \$30.
- ⓓ To a wide variety of other emergencies.

**Pay Day Advances provide a service that banks and credit unions choose not to offer:**

- ① One reason is the small amount of the advance (\$500 or less)
- ① A bank would have to charge a larger fee than Pay Day Advance Companies to cover their cost for a small one month loan.
- ① Pay Day Advances are almost immediate and customers appreciate the convenience.

**There is Overwhelming Consumer Satisfaction and Articles from various parts of the US support this:**

- ① A record 850,000 payday loans totaling about \$200 million were taken out last year in Wisconsin...the department [of Financial Institutions] had yet to receive a complaint about payday lenders. Milwaukee Journal Sentinel, June 19, 2000.
- ① Of the 1.22 million payday advance transactions conducted since October 1997 when the law was enacted, only 23 consumer complaints have been filed. Statistics from the Tennessee Department of Financial Institution's 1999 Report to the 101<sup>st</sup> General Assembly.
- ① I called the Montana Division of Banking and Financial Institutions and was told they don't feel they have a problem with consumer complaints. They had four last year and so far this year they have one on the books. This information from Sheri in their office.
- ① U.S. Senator Orrin Hatch, chairman of the U.S. Judiciary Committee, stated on February 1, 2000 that payday loans are "a legitimate service that many honest consumers use".

**Why the Demand?**

- ① More than half of all Americans occasionally lack funds needed to cover all their expenses. Ten percent say they would have to sell personal possessions to get through a short-term financial crisis. Another 10 percent say they do not know what they would do.
- ① Even those with reasonably high incomes experience temporary cash-flow problems. (8 million American families earn above \$45 thousand annually)
- ① More than 24 million Americans (10 percent of the population) say they are somewhat or very likely to obtain a payday advance.

Thank you for this opportunity to testify and I respectfully urge you to recommend a DO PASS on House Bill 1273.

If there are questions, I would like to try and answer them.

## Why do Consumers Choose Payday Advance?

- To cover unexpected expenses, like a car repair or household emergency
- To bridge a short-term cash need between paydays
- To avoid bounced check fees, late payment penalties or pawning personal possessions

## Who is the Payday Advance Customer?

The customer demographics are broad and varied. The typical payday advance customer is a responsible, hard-working, middle-class American. Below is national customer data (for nearly 500 branches during the 12-month period ending June 1999) from an industry leader and CFSA founding member company:

- Average age is 35.6 years
- Average annual household income is \$33,187
- Average time in current residence is 4.5 years
- Average time in current employment is 4 years
- 32.8 percent own their own homes
- All have a job (or regular income) and an active checking account

## Consumer Demand Fuels Industry Growth

An industry analyst estimates that as many as 10,000 payday advance branches across America are extending \$10 billion in short-term credit to middle-class consumers who have a temporary cash shortfall between paydays.<sup>1</sup>

## Why the Demand?

Consumers need short term credit.

- More than half of all Americans occasionally lack funds needed to cover all their expenses. Ten percent say they would have to sell personal possessions to get through a short-term financial crisis. Another 10 percent say they do not know what they would do.
- Even those with reasonably high incomes (8 million American families earning above \$45 thousand annually) experience temporary cash-flow problems.<sup>2</sup>
- More than 24 million Americans (10 percent of the population) say they are somewhat or very likely to obtain a payday advance.<sup>3</sup>

Traditional financial institutions are not meeting this need.

- "Commercial banks generally do not make unsecured loans for less than \$3,000 to \$5,000 and then only to high credit-quality consumers."
- "The availability of small-sum, short-term credit has been severely curtailed...a large number of consumers [are] without sufficient credit card limits or bank overdraft protection to meet their needs for relatively small unsecured loans, and...no longer have access to traditional sources of small loans."<sup>4</sup>

Payday advances offer a convenient, less costly solution to consumers with short-term credit options.

- Payday advances are a sound economic alternative to high-priced bounced check fees and late fees charged by credit card, mortgage/rental and utility companies.<sup>5</sup>
- "...consumers can access [payday advances] in a quick, simple format for a fee that is less than the cost of getting caught floating a check."

---

<sup>1</sup> *The Developing Payday Advance Business*, Stephens Inc., September 28, 1999, Member NYSE, NASD, SIPC.

<sup>2</sup> Poll results are based on interviews conducted from February 12-14, 1999, by Bruskin Goldring Research, an independent third-party pollster based in Edison, NJ.

<sup>3</sup> *Extended Missions of Well-Being: Meeting Basic Needs*, U.S. Census Bureau, June 1999.

<sup>4</sup> A national survey conducted in March 1999 by Worldwin Worldwide, one of the nation's leading opinion research firms, headquartered in McLean, VA.

<sup>5</sup> *The Emerging Business of Deferred Disbursement*, Stephens Inc., April 1, 1999.

<sup>6</sup> *The Cost of Credit: Regulation and Legal Challenges*, National Consumer Law Center, 1999 Supplement.

<sup>7</sup> *Payday Loan Companies: Like Bank Customers - And Profit? - At Will*, Raymond James & Associates, February 2000, Member NYSE, SIPC.

<sup>8</sup> *The Developing Payday Advance Business*, Stephens Inc., September 28, 1999.

## A Cost-Effective Alternative

Given the alternatives, such as bounced check fees, late payment fees or pawning personal possessions, payday advances can represent a sound financial decision.

## Less Costly Than Failing to Make Household Payments

Consider fees incurred when utility payments are late. Typical re-startup costs for electricity and phone service begin at \$30, and many providers also demand a \$50 to \$100 deposit.

## Less Costly Than Bouncing a Check

While a payday advance involves a single fee, a bounced check can result in two or more fees -- the bank's non-sufficient funds (NSF) fee plus the retailer's bad check fee. And cash shortfalls often result in multiple bounced checks, thereby dramatically increasing costs.

Last year 19 percent of all Americans bounced at least one check and the majority of them bounced more than one. In fact, of the 173 million checks processed any working day, 1.3 million are overdrafts that banks either honor or return unpaid—that's 325 million bounced checks annually.

### A Payday Advance Can Help Consumers Avoid More Costly Penalties

	PAYDAY ADVANCE	BOUNCED CHECK	CREDIT CARD LATE PAYMENT
Bank NSF fee <sup>1</sup>	\$0	\$20	\$0
Typical retail bad check fee	\$0	\$25	\$0
Average payday advance fee	\$18	\$0	\$0
Late fee <sup>2</sup>	\$0	\$0	\$30
<b>Total fees</b>	<b>\$18</b>	<b>\$45</b>	<b>\$30</b>
Original amount	\$100	\$100	\$100
<b>Total cost</b>	<b>\$118</b>	<b>\$145</b>	<b>\$130</b>

<sup>1</sup>According to a national survey conducted in March 1999 by Wirthlin Worldwide, one of the nation's leading opinion research firms, headquartered in McLean, VA. *How Banks Make the Most of Bounced Checks*, Wall Street Journal, February 25, 1999.

<sup>2</sup>*Annual Report to the Congress on Retail Fees and Services of Depository Institutions*, Federal Reserve System Board of Governors, June 1999, reported that in 1998, the average NSF fee assessed by large, medium and small banks was \$22.10, \$19.78 and \$15.48, respectively.

*Living on the Edge: So Banks Boost Card Fees, Risking an Earnings Backlash*, Barron's, December 13, 1999, reported that, according to Standard & Poor's, credit card late fees have risen to nearly \$30 from \$18 five years ago.

## Overwhelming Consumer Satisfaction

- *"A record 850,000 payday loans totaling about \$200 million were taken out last year in Wisconsin - the department [of Financial Institutions] had yet to receive a complaint about payday lenders."*  
--Milwaukee Journal Sentinel, June 19, 2000
- *"Of the complaints involving credit practices received January 1 through August 10, 1999, only four involved payday lenders."*  
--2000 Consumer Lending Study Report, New Mexico Financial Institutions Division
- *"North and South Carolina consumers have filed only 18 complaints since October 1997 and 5 since September 1998 respectively."*  
--Letters from the North Carolina Office of the Commissioner of Banks, December 21, 1999, and the South Carolina Board of Financial Institutions, November 18, 1999
- *"Of the 1.22 million payday advance transactions conducted since October 1997 when the law was enacted, only 23 consumer complaints have been filed. [Only a fraction of one percent of transactions resulted in a complaint.]"*  
--Statistics from the Tennessee Department of Financial Institutions' 1999 Report to the 101st General Assembly
- *"Richard Keck, Ohio's chief examiner for consumer finance, confirmed that his office has not had many complaints about the [payday advance] companies. He said the lenders provide a valid service, offering easy access to products but charging higher prices. 'They are the financial equivalent of convenience stores,' Keck said... 'some people are willing to pay more for a gallon of milk [at a convenience store] because the store has made it so easy for you to go get it.'"*  
--Cincinnati Post, June 19, 1999
- *"While payday loan businesses charge a lot of money for a loan, we are not seeing many complaints.... That's because consumers understand what they are doing and are willing to use the service even if it costs more."*  
--Mark Thomson, Washington assistant director of state consumer services, *The Columbian*, May 2, 1999

## Fees Perceived as Reasonable

According to regulators, payday advance companies are making a fair profit for the service provided and the risk assumed

- The Tennessee Department of Financial Institutions' 1999 Report to the General Assembly on the Deferred Presentment Services Act said that the average payday advance branch made an annualized profit of \$19,067
- In his February 18, 1999, testimony to the Business and Industry Committee of New Mexico, Bill Verant, director, New Mexico Financial Institutions Divisions, noted, "The cost to make and administer a small loan is similar to a large loan and must be recovered either through a front-end fee or through a substantially higher interest rate. Otherwise, the loans are not financially viable."

## DEFERRED PRESENTMENT SERVICES OFFER CONSUMERS CHOICE

Deferred Presentment Services is the fastest growing financial service for consumers to address short-term cash flow needs. Commonly referred to as "payday advances" or "cash advances," this service fills a niche in the market that has been abandoned by traditional lending institutions. For a variety of reasons, consumers need a short-term, small dollar amount of cash to address their individual financial situations.

The service is quick and convenient. Consumers must present proof of employment and proof of an active checking account in good standing. They write a personal check in the amount of the advance that is needed plus a fee. The deferred presentment provider then agrees to hold the check until a date specified in writing. Typically, that date falls on the customer's next payday.

Although industry critics claim that the fee when translated as an APR is exorbitant, the actual dollar cost is significantly lower than competing short-term extensions of credit, (e.g. NSF fees and late charges on credit cards.) Critics further claim that consumers of these services are poor, elderly and uneducated. However, critics fail to compare the cost of the service to the consumer's alternatives and fail to provide customer demographics supporting their claim.

A review of actual customer data reveals that industry critics are wrong. Deferred presentment service customers are actually America's middle class with income ranging from \$20,000 to \$45,000 annually.

### The average customer...

- Is 35.6 years old,
- Earns an average household income of \$33,187,
- Has an active checking account,
- Has been employed in their current occupation for an average of 4 years,
- Resides in their current residence for an average of 53 months (4.4 years).
- And approximately 35.8 percent of customers own their own home.

### The benefits to consumers are numerous.

- Payday advances are cheaper than paying for a bounced check.
- Payday advances serve as a sound financial decision when faced with the fees charged for bounced checks charged by banks, credit unions and merchants.
- Payday advances are immediate and customers appreciate that convenience, especially when compared to the lengthy process required by banks and credit unions.
- Payday advance branches tend to have more flexible hours, taking into consideration the middle class working hours.
- Payday advances fill a void that banks and credit unions choose not to offer.

## THE INDUSTRY SETS THE RECORD STRAIGHT

### The Critics Claim...

Payday advance companies charge exorbitant interest rates.

### The Truth...

Payday advance companies charge customers a service fee that is less costly than other alternatives including bounced check fees or other vendors' late payment fees.

### The Critics Claim...

APR is an appropriate measure of the cost to the consumer.

### The Truth...

Since a payday advance is not designed to be renewed over and over again for a year, an APR is not an appropriate measure of its cost. If you hold other financial transactions to the same standard as some are suggesting for payday advances, you would find that on a 14-day term:

- A \$100 payday advance with a \$20 service fee would have a 521% APR,
- A \$30 late fee on a \$100 credit card balance would have an APR of 782%, and,
- A \$100 check with a \$25 NSF fee and a \$25 merchant fee would have an APR of 1,303%.

### The Critics Claim...

A "risk-based" lending program enables the credit union to make small loans to persons with marginal or no credit.

### The Truth...

Credit unions will refuse customers small loans and credit cards based on the customer's credit history, and will refuse to offer a loan until the customer has lived at the same address for one year.

### The Critics Claim...

Many people who get payday cash advances do not fully understand the cost they are paying for credit.

### The Truth...

Customers make informed decisions about our service and sign disclosure agreements, which indicate that they understand the terms and costs of the advance. These disclosure forms include the cost of the transaction as a dollar amount and as an annual percentage rate.

### The Critics Claim...

Payday lenders are not required to conform to regular banking rules and regulations so a borrower can get gouged with high interest.

### The Truth...

More than 30 states have specific laws and/or regulations that govern the payday advance industry.

# Used-A-Bit Survey

1. Do you feel Payday Advances are beneficial to you? Yes or no

If so please pick the reason that most applies to you.

A) To help avoid overdrafts at your bank.

B) In cases of financial emergency.

C) Other \_\_\_\_\_

2. Do you believe that Used-A-Bit Sales should continue this service? Yes or No

Why It is helpful when you have an emergency.

3. Do you feel the interest rate for a Payday Advance is acceptable? Yes or No

Name K

Initials KD

Address \_\_\_\_\_

City Fargo

State ND

Zip 58102

Thanks



# Used-A-Bit Survey

1. Do you feel Payday Advances are beneficial to you? yes or no

If so please pick the reason that most applies to you.

A) To help avoid overdrafts at your bank.

B) In cases of financial emergency.

C) Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Do you believe that Used-A-Bit Sales should continue this service? Yes or No

Why IT HELPS THOSE THAT NEED SMALL LOANS THAT  
BANKS WILL NOT DO.

3. Do you feel the interest rate for a Payday Advance is acceptable?  
Yes or No

Name U

Initials WKJ

Address \_\_\_\_\_

N.W. #2

City DILLWORTH

State MN

Zip 56529

Thanks

# Used-A-Bit Survey

1. Do you feel Payday Advances are beneficial to you? yes or no

If so please pick the reason that most applies to you.

A) To help avoid overdrafts at your bank.

B) In cases of financial emergency.

C) Other \_\_\_\_\_

2. Do you believe that Used-A-Bit Sales should continue this service? Yes or No

Why same time I need the help.

3. Do you feel the interest rate for a Payday Advance is acceptable? Yes or No

Name S

Initials G.

Address \_\_\_\_\_

110

City West Fargo

State N.D.

Zip 58078

Thanks

# Used-A-Bit Survey

1. Do you feel Payday Advances are beneficial to you? ☒ yes or no

If so please pick the reason that most applies to you.

A) To help avoid overdrafts at your bank.

☒ B) In cases of financial emergency.

C) Other \_\_\_\_\_

2. Do you believe that Used-A-Bit Sales should continue this service? ☒ Yes or No

Why

It's a service I need! ☒

3. Do you feel the interest rate for a Payday Advance is acceptable? ☒ Yes or No

Name f

Initials PAS

Address S

City fargo

State ND

Zip 58103

Thanks

# Used-A-Bit Survey

1. Do you feel Payday Advances are beneficial to you? yes or no

If so please pick the reason that most applies to you.

A) To help avoid overdrafts at your bank.

B) In cases of financial emergency.

C) Other \_\_\_\_\_

2. Do you believe that Used-A-Bit Sales should continue this service? Yes or No

Why It is an excellent service

3. Do you feel the interest rate for a Payday Advance is acceptable? Yes or No

Name V

Address \_\_\_\_\_

City Wimbleton State ND

Zip 58492

Thanks



### Legend

- States that have specific payday advance laws and/or regulations.
- States with loan laws that allow payday advances at rates similar to those in states with payday advance laws.
- States unfavorable to payday advances.
- Legislation pending as of June 2000.

### Recent Positive Trend in Enactment of Responsible Legislation

- 1996: California, Ohio, Wyoming
- 1997: North Carolina, Tennessee
- 1998: District of Columbia, Kentucky, Mississippi, Nevada, South Carolina
- 1999: Arkansas, Hawaii, Louisiana, Montana, Mississippi (re-enacted), New Hampshire (removed interest rate cap on small loans), Tennessee (re-enacted)
- 2000: Arizona, Colorado (improved law)



# North Dakota Legislative Council

GARY J. NELSON  
State Senator  
Chairman

JOHN D. OLBRUD  
Director

JAY E. BURINGRUD  
Assistant Director

JIM W. SMITH  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY 1-800-360-6888

March 1, 2001

Honorable Ron Carlisle  
State Representative  
P.O. Box 222  
Bismarck, ND 58502-0222

Dear Representative Carlisle:

This letter summarizes Engrossed House Bill No. 1273, regarding licensure of deferred presentment service providers.

The bill draft provides that any person who engages in the business of deferred presentment services must be licensed by the Commissioner of Banking and Financial Institutions. The commissioner may adopt rules for implementation and enforcement of the licensure law. In addition to the authority to suspend or revoke a license, if the commissioner determines there has been a violation of the deferred presentment service law, the commissioner may order the person to cease and desist violating the law or rule, may require the refund of any fees collected by the person in violation of the law, and may impose a civil penalty. Additionally, the bill draft provides any person who provides deferred presentment services without a license is guilty of a Class C felony and violation of the law by a licensed deferred presentment services provider is a Class A misdemeanor.

In order to meet the initial licensure and renewal requirements, an applicant shall:

- Maintain \$25,000 in unencumbered assets for each licensed location;
- Allow the commissioner to review relevant business records and capital adequacy of the applicant to determine the applicant's business will be conducted lawfully and fairly;
- Establish the applicant has not been convicted of a felony;
- Maintain and submit proof of a \$20,000 bond;
- Submit a \$850 application and background investigation fee for the initial license which, if the application is granted, satisfies the license fee for the first year; and
- Submit a \$400 annual license fee.

license is not transferable or assignable. The prior written approval of the commissioner is required for the continued operation of a deferred presentment service business if a change in control of a licensee occurs.

A licensee shall report to the commissioner if any of the following occur:

- Filing for bankruptcy or reorganization by the licensee;
- Institution of revocation or suspension proceedings by any governmental authority;
- Felony charges against the licensee or any licensee's member, director, officer, or shareholder; or
- Any other event the commissioner identifies by rule.

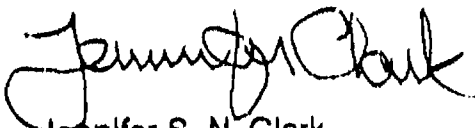
The commissioner may examine a licensee's relevant business, books, and records. An examination or visitation fee and the costs of any such examination are paid by the licensee. Every licensee shall preserve required books, accounts, and records for at least six years.

In running the deferred presentment services business, a licensee:

- Shall provide printed notice to every maker of a check which must include information required under federal law and which must include a schedule of fees charged;
- Accompany each deferred presentment service transaction with a written agreement signed by the maker of the check;
- May not charge a fee or charge for the deferred presentment service an amount exceeding 20 percent of the amount paid to the maker of the check;
- May not receive or hold title to property as a condition of a deferred presentment service transaction or as a method of collection on default, absent civil process;
- May not pay more than \$500 to the maker of a check and the aggregate face value of all outstanding checks from any one maker payable to all licensed locations may not exceed \$500;
- May not enter a new deferred presentment service transaction with a customer within five days of a previously completed transaction;
- Shall allow the maker of a check to redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee;
- Has all civil remedies available for insufficient fund checks, closed account checks, and for stop payment orders;
- May contract for and collect a returned check charge not exceeding \$20 per customer, per year;
- May pursue criminal prosecution if a check was written on an account that was closed on the original date of the transaction;
- Shall pay a maker of a check in cash or check;
- May allow renewal of a deferred presentment service transaction for a period of at least fifteen days, for a fee not exceeding 20 percent of the amount being renewed;
- May not allow the total period of deferral to exceed 45 days;
- May not allow renewal, repayment, refinance, a consolidation with the proceeds of another deferred presentment service transaction; and
- May not conduct another business other than a bona fide pawnbroking business within the same business as the deferred presentment service unless the commission has given prior written authorization.

Please do not hesitate to contact this office if you would like additional information on this issue.

Sincerely,



Jennifer S. N. Clark  
Counsel

JSNC/PG  
Enc.



## TESTIMONY FOR ENGROSSED HOUSE BILL NO. 1273

## Senate Finance and Taxation Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions  
in opposition to Engrossed House Bill No. 1273.

Before the House IBL Committee I appeared and offered neutral testimony. My commitment to the newly formed industry was conditional upon having the necessary resources to properly supervise the industry, provided that the industry will in good faith make efforts to comply with any restrictions imposed by the Legislature. Due to the failure of the Legislature to recognize the Department's Fiscal Note on the HB 1273 amendments, and the continued disregard for existing laws by payday lenders leaves me with no choice but to oppose the bill's enactment. Enactment of HB 1273 will only foster continued ongoing enforcement problems.

I am, however, offering amendments to remove the Department from all licensing responsibilities and place payday lending under the cities and counties pawnshop licensing authority rather than entirely vacating my previous position as to whether payday lending is a needed fringe banking service.

## AMENDMENT TO HB 1273 FISCAL NOTE

The Department's Fiscal Note to the HB 1273 Amendments requested an additional FTE and other related expenses totaling \$138,144 which must be included in the Department's appropriation. This amount is necessary to supervise payday activity. The Fiscal Note estimated licensing and supervision for over 40 licensed lenders. Equally important is the cost for administrative action against entities operating in the state without a license. The Legislature needs to recognize that although the Department is currently projecting excess revenue of

\$300,000 over projected expenses in the consumer license cost center (license and examination fees from collection agencies, money brokers, consumer finance companies and sellers of checks) the Department cannot use any of this revenue without an appropriation. Currently OMB has proposed under HB 1015 to transfer the \$300,000 to the General Fund. The Fiscal Note reveals a \$76,166 shortfall that, if adopted, will require an amendment to HB 1015 to reduce the transfer to the General Fund by the \$76,166.

#### PROPOSED AMENDMENTS

The Department's proposed amendments remove the Department as the licensing authority and places the authority under the city or county pawnbroking licensing. The amendments are offered given the failure of the House to adjust the Department's budget as requested in the Fiscal Note and due to payday lending activity that evolved in pawnshops. For approximately two years prior to August 2000, 24 of 26 pawnshops provided payday loans without authority and in violation of the state's usury laws. Therefore, allowing payday lending to occur within pawnshops is a viable option for the Legislature to consider.

#### LIMITING RENEWALS

In August 2000, the Attorney General's Office Consumer Fraud Division Director, several states attorneys, and myself sent a letter to all suspected payday lenders. The letter warned lenders about unauthorized lending activity and usury violations. Following the letter, several payday customers called the Department. One Mandan borrower complained that in February 2000 he provided a \$200 personal check to a local pawnshop for a two-week loan. He received \$160 in cash. He was required to pay an additional \$34 every two weeks to avoid the check being deposited. When he called in September, he stated that he has paid between \$500-

\$600 in rollover fees, but has never been able to accumulate \$200 to pay back the original loan balance. Several other payday borrowers gave this same story.

Indiana also reported that 3 of every 4 payday loans were rolled over and fewer than 1 in 10 customers had no loan rollovers.

Further, the Department and the Attorney General's Office investigated Bob's Pawnshop in Bismarck on October 5, 2000, and found 177 checks outstanding. Of those 177, 174 (or 98.3%) were checks that contained one or more rollovers.

The Department's proposed amendments also eliminate renewals. The most egregious and predatory aspect of payday lending is the perpetual debtor's prison most borrowers encounter. The States of Ohio and Washington have provided for no renewals. Florida is currently considering eliminating renewals. In doing so, the states recognized that by definition a payday loan is to provide money until the borrower receives the payroll check. Therefore, when the payroll check is deposited, the loan should be repaid and there is no reason to renew it. Other states are expected to similarly limit renewals as again the rollovers have created the most controversy associated with payday lending.

I urge the committee to approve the Department's proposed amendments, or if the amendments are not adopted, I strongly urge a "Do Not Pass" recommendation.

DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS  
PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1273

Page 1, line 1, replace "13" with "40"

Page 1, line 2, remove the semi-colon, and remove " and to provide a"

Page 1, line 3, remove "penalty"

Page 1, line 5, replace "13" with "40"

Page 1, remove line 10

Page 1, line 11, replace "3" with "2"

Page 1, line 15, replace "4" with "3"

Page 1, line 23, replace "5" with "4", after "licensed" insert "as a pawnbroker", and after "chapter" insert "or chapter 11"

Page 2, line 2, after the first "a" insert "pawnbrokers", remove "this chapter", and replace with "sections 40-05-01 and 11-11-14"

Page 2, remove lines 4 through 31

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 24

Page 4, line 26, replace "commissioner" with "municipalities and counties"

Page 7, line 10, replace "A licensee may renew" with "The term of" and after "transaction" insert "shall not exceed thirty days, and shall not be renewed or extended" and immediately after the period insert "After the term agreed by the parties, thirty days, or the first day of business after thirty days the renewed deferred presentment check must be paid off in cash, money order, or certified check by the maker or must be deposited by the licensee." and remove "A licensee's"

Page 7, remove lines 11 through 16

Page 7, line 19, remove "It is presumed that"

Page 7, delete lines 20 through 22

Page 7, line 26 replace "commissioner" with "municipalities and counties"

Page 8, remove lines 6 through 31

Page 9, remove lines 1 through 14

Renumber accordingly

March 19, 2001

Testimony before the Senate Finance & Taxation Committee in the House on HB1273

Chairman Urlecher and members of the Committee, my name is Robert Rood. I appreciate the opportunity to testify before you this morning and I respectfully request a DO PASS recommendation on House Bill 1273.

I am the Vice President of the ND Pawn Brokers Association and owner of Used-A-Bit Sales in Fargo. I am also a Past President of the ND Home Builders Association and Past President of the Fargo-Moorhead Home Builders Association. We have two stores in Fargo and have been the Pawn and Loan business for 8 years. We entered into the Pay Day Advance industry in 1998. In August of 2000 we discontinued this service at the request of the AG's office and the Banking Commissioner. Since then several customers each day inquire as to when this service will be available again.

I want to highlight some of the information I handed out to you:

**Why do Consumers Choose Payday Advance Services?**

- To bridge a short-term cash need between paydays
- To cover unexpected expenses, like car repairs, medical expenses, or household emergencies.
- To avoid bounced check fees or late payment penalties that can be very expensive.

**Who is the Payday Advance Customer?**

- They average 35.6 years old with average income of \$33,187
- They all have an income and an active checking account
- 32.8 percent own their own home

These statistics are from the Consumer Financial Services Association  
– a trade association for payday lenders.

**The fee charged is a cost effective alternative:**

- To NSF check fees, Retailer Bad Check Fee, and late payment fees
- To not being able to repair your vehicle to get to work
- To not being able to pay your utility bill on time and being charged a late fee or a reconnect fee that can be over \$30.
- To a wide variety of other emergencies.

**Pay Day Advances provide a service that banks and credit unions choose not to offer:**

- One reason is the small amount of the advance (\$500 or less)
- A bank would have to charge a larger fee than Pay Day Advance Companies to cover their cost for a small one month loan.
- Pay Day Advances are almost immediate and customers appreciate the convenience.

**There is Overwhelming Consumer Satisfaction and Articles from various parts of the US support this:**

- A record 850,000 payday loans totaling about \$200 million were taken out last year in Wisconsin... the department [of Financial Institutions] had yet to receive a complaint about payday lenders. Milwaukee Journal Sentinel, June 19, 2000.
- Of the 1.22 million payday advance transactions conducted since October 1997 when the law was enacted, only 23 consumer complaints have been filed. Statistics from the Tennessee Department of Financial Institution's 1999 Report to the 101<sup>st</sup> General Assembly.
- In North Carolina the Banking Commissioner reported to the General Assembly this February that there were 27 consumer complaints from the 1204 locations doing pay day loans in the year 2000.
- I have included several responses to a Survey we gave to our customers. In a short period of time we collected many that support the need for pay day advances.
- I called the Montana Division of Banking and Financial Institutions and was told they don't feel they have a problem with consumer complaints. They had four last year and so far this year they have one on the books. This information from Sheri in their office.
- On March 2, 2001, the US newswire reported that The National Taxpayers Union (UTU), on behalf of its 3500 Kentucky members, today urged the Kentucky State Senate to vote on and pass Senate Bill 142 to allow the deferred deposit check cashing business to be available to serve the Commonwealth's taxpayers.
- I included, in the information you received, a National Map showing where payday advances are allowed.

**Why the Demand?**

- More than half of all Americans occasionally lack funds needed to cover all their expenses. Ten percent say they would have to sell personal possessions to get through a short-term financial crisis. Another 10 percent say they do not know what they would do.
- Even those with reasonably high incomes experience temporary cash-flow problems. (8 million American families earn above \$45 thousand annually)
- More than 24 million Americans (10 percent of the population) say they are somewhat or very likely to obtain a payday advance. These statistics are from the Consumer Financial Services Association.

Thank you for this opportunity to testify and I respectfully urge you to recommend a DO PASS on House Bill 1273.

If there are questions, I would like to try and answer them.

**TESTIMONY FOR HB 1273**

**by Jim Bassett**  
**Secretary, NDPA**

Chairman Urlacher and members of the committee, my name is Jim Bassett. My wife, Fran and I own and operate the Silver Dollar Pawn Shop in Grand Forks, N.D.. I am also the Secretary of the North Dakota Pawnbrokers Association. I am writing to ask for your support of HB 1273, Deferred Presentment legislation (i.e. payday loans).

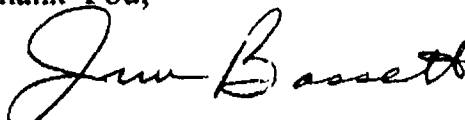
My business offered Payday Loans for about 10 months prior to receiving a letter from North Dakota Banking Commissioner, Gary Pressler, requesting all Payday loan transactions to halt in August of 2000.

During the time we offered Payday Loans, many customers initiated them who normally would not have considered doing a regular pawn loan. We have not been able to provide these customers Payday loans for almost 7 months and we still receive an average of 5 calls per day asking if we are able to offer them yet.

Our store and others in the state asked our customers if they were interested in signing a letter requesting the option of continuing Payday Loans. We received 150 signed letters. I am enclosing 2 of these letters for your review.

**HB 1273** is well written, with input from the N.D. Banking Commissioner, the Attorney Generals office and the sponsoring legislators. I ask for a **DO PASS** recommendation from your committee.

Thank You,

  
Jim Bassett



To: State Legislators of North Dakota  
Bismarck, North Dakota 58501

I, as a citizen of (City) Grand Forks (State) ND, request the State Legislature of North Dakota to allow me to have the OPTION and RIGHT of Initiating and receiving a "Pawn Loan" or "Payday Loan" in the State of North Dakota.

Please do not take away my rights and freedom of choice to receive Loan Money that I may need in my times of emergency.

I understand and freely accept the Interest Rate and Fees charged by the lenders involved in providing these services.

Thank You for your time and serious consideration in approving new legislation addressing these loans.

Name:

Address:

Date: 10-03-00

I am a local Electrician & Sometimes I Find Myself Strapped For Cash on Days that I don't work, such as Holidays, Sick Days & Personal Reasons. I do Not Get Paid For these Days & it is Nice to Be Able to get a Small Loan to make up for that. I am More than willing to pay the Interest rates Because it is Much Cheaper to pay that Instead of Several Overdraft Charges in My Checking Account. I have ~~Done it~~ Received Many Payday Loans in the Past & they have helped Me out Dramatically, & there has never Been a Problem.

Chairman Urlacher and members of the Finance and Taxation Committee,  
good morning. My name is Daryn Kapaun, President-elect of the ND Pawnbrokers  
Association and owner of Mister Money USA of Fargo and Jamestown. I'm testifying in  
support of House Bill 1273 and ask for your favorable recommendation.

I grew up on a small family farm south east of Valley City graduated from Fingal High  
School, Attended NDSSS graduated and went to work for a John Deere Implement store  
for 18 years. In January 1998 I decided to franchise with Mister Money USA a small  
business dealing in pawn loans and the sale of new and used merchandise. Through my  
business I was introduced to Payday Loans.

In October of 1998 I received a letter from the ND Dept of Banking and Financial  
Institutions which stated: "It has come to the attention of the ND Dept. of Banking and  
Financial Institutions that Mister Money USA may be engaged in the business of check  
cashing and what are commonly referred to as payday loans".

"As you know North Dakota Century Code (NDCC) 40-05-01(26) authorizes municipal  
governments to license, tax, and regulate pawnbrokers. Additionally, NDCC 13-03.1-  
02(2) exempts any person conducting a bona fide pawnbroking business transacted  
under a pawn broker's license for loans in the amount not to exceed one thousand  
dollars from the licensing requirements of the Consumer Finance Act. Accordingly, to the  
extent that the enabling ordinances concerning pawnbroker activities enacted by the city  
of Fargo permit the making of payday loans, such activity would be lawfully authorized.  
However, I would encourage you to consult with the city attorney's office to verify that  
payday loans are authorized under the city's enabling ordinances. I understand Mr.  
Garylle B. Stewart is current attorney for the city of Fargo".

I was concerned so I contacted my attorney, Craig Richle, who in turn contacted Mr.  
Stewart, the attorney for the city of Fargo. The intention was to have Mr. Stewart rule  
on this matter of payday loans done within the city of Fargo which was pointed out from  
the letter that was mailed to me by Mr. David Clinton, Assistant Commissioner from the  
State of ND Dept. of Banking and Financial Institutions. I will pass out a copy of the  
letter my attorney sent to Mr. Clinton on this matter. As you can from the letter, Mr.  
Stewart didn't see where Mister Money USA was breaking any laws when it came to  
doing payday loans.

1. Mister Money USA is a bona fide pawnbroker
2. Makes loans under \$1000.00
3. Charges minimum interest charge allowed by 47-14-09, \$15.00
4. Meets disclosure requirements by Reg. Z

Then, in August of 2000, I and other members of the ND Pawnbrokers Association  
stopped providing payday loans when we received the letter from the Dept. of Banking  
indicating to that extent. The North Dakota Pawnbrokers Association agrees that  
regulating these types of loans is necessary and that is what HB1273 will do. Thank you  
Chairman Urlacher and members of the Committee I respectfully ask for a Do Pass  
recommendation on HB 1273. I will be happy to answer any questions you may have.

## **TESTIMONY FOR HB 1273**

**By Jay Couture  
President, NDPA**

**Chairman Urlacher & Members of the Committee, I want to thank you for this opportunity to speak before you and ask for a "DO PASS" recommendation for HB 1273. This bill will authorize the licensing and operation of deferred presentment service providers or, what have commonly come to be known as "Payday Loans."**

**I am Jay Couture. I am the President of the North Dakota Pawnbrokers Association. My wife, Georgia and I also operate Jay's Pawn Shops in the Bismarck / Mandan area... we've done so for the past 15 years.**

**In August of '98, I learned about a new service called "Payday Loans" that was growing nationally and was already being offered in Fargo. That's when I began to check into the business.**

**In the following weeks and months, I contacted professionals in the field, I sought out legal advice from my private attorney who also checked with the city attorney while I checked with the local police. We drove into SD and NE to physically see how they were done and I signed contracts with a company to process my credit cards with a check verification option. We began offering Payday Loans in November '98.**

**Because of their ease & convenience, as opposed to having to subject a tv, stereo or other property to the wear & tear of physically carrying them back & forth to the pawn shop as collateral or, because of the "red tape" of having to go through the Federal NICS background check when you redeem your own weapon off pawn, Payday Loans quickly grew to become the "loan of choice" and a big part of my business.**

**As the business grew and others began to offer the service, we recognized that being unregulated did not provide for a solid foundation upon which to grow. As a businessman, the last thing I want to do is to spend thousands of dollars advertising and promoting a good product and a positive image only to have some customer come along and, for whatever reason, mis-use the system or, get caught up in an unregulated program and create a negative headline. So, being pro-active, in May of 2000, my wife and I sought out our Representative, Ron Carlisle to learn more about the legislative process and, through our attorney, made contact with the ND Banking Commissioner's office.**

**Now, it would be an understatement to say that we were surprised & disappointed when, in early August of last year, all Pawnbrokers, Title Lenders & Payday Lenders received a letter which essentially redefined the term "pawnbroker" and dis-allowed all Payday Loans in the state.**

**When we got that letter, as a matter of professional responsibility, I immediately closed our stores. I got legal instruction and re-opened the next day. We have not done a single Payday Loan since. It has been hard. It's been hard on our employees who've had to say "no" to customers in need and, it's been hard on our customers who no longer had access to this convenient line of credit. "Regulating pawnbrokers out of the Payday Loan business has not eliminated the need or demand for the service."**

**Next, we officially organized as the North Dakota Pawnbrokers Association. We registered with the ND Secretary of State, drafted and adopted a Constitution, By-Laws and a Code of Ethics. All ND pawnbrokers were invited to join... not all did. At this time, I need to point out that we are well aware of some negative headlines that have been in the Bismarck Tribune. I want to assure you that these headlines do not reflect the actions of any member of the NDPA.**

Now, I'm very proud of HB 1273. I think it's a very good and fair bill for all... the consumer, the provider & the state. ND actually has the advantage of being a "Johnny-come-lately" to Payday Loan legislation. We have the advantage of being able to pick and choose from effective legislation that works and by learning from the mistakes of those who've gone before. HB 1273 reflects that advantage. There are currently 31 states with legislation allowing Payday Loans, including all the states surrounding ND... MN, SD, MT. Payday Loans, or services that effectively satisfy the same need, are essentially available in nearly all 50 states. In those few states which specifically prohibit Payday Loans (states which are mainly in the NE part of the US) such services are provided through "lease-back" agreements or, through companies that rent out-of-state bank charters or, through ATM systems. Prior to August of 2000, there were approximately 25 locations providing Payday Loans in ND. Nearly all of those providers are represented here in this room today. The need is here. We have customer support.

As I said, I'm proud of this bill. It sets definite restrictions and establishes perimeters within which we must operate... we must be established, reputable & licensed (as described in pages 2 & 3 of this bill)... we must retain records and be examined (as stated in page 4)... we must very clearly inform our customers about what we offer (as stated in page 5) and then the actual limits & procedures are very clearly spelled out in pages 5 through 7 of this bill... No more that \$500 can be loaned per customer. Also, with limited rollovers, that loan can go no longer than 45 days and there is a built-in 5 day cooling off period between loans. These restrictions & rules serve as a guide to providers & consumers and provide a needed and very convenient line of credit for those who, for whatever reason, occasionally come up short between paydays.

Then, as seen on pages 7 through 9, HB 1273 also gives the state some serious teeth with which to enforce this law. An applicant can be denied... the license can be suspended or revoked... and, violators can be prosecuted and punished.

In our December meeting with the Banking Commissioner and Attorney Generals representative, it was very clear that their primary concern was to protect the consumer. This bill does that.

Finally, as a conscientious professional, I would be remiss in my duties if I failed to take note of the complaints and concerns of those opposed to Payday Lending. I've read the criticisms of social workers and financial counselors who extrapolate the fees into an annual percentage rate. They repeat stories of mis-use by both the consumer & the provider... stories which are both rare and extreme... stories which should not occur under HB 1273 because of the limits & restrictions imposed. Those opposed claim that consumers are desperate... that our customers don't know what they're doing. The facts simply don't support those claims. Should this legislation pass, all providers are required to comply with Federal Reg. "Z" which requires full disclosure of all costs. That being said, I do respect the services provided by the social workers and financial counselors. I really do know where they're coming from. I have a degree in Sociology & Criminal Justice. My wife is a licensed social worker. They see individuals in crisis. We see people who occasionally come up short between paydays. For those people who may need more help than I can offer, I do care and I do have cards & brochures from numerous social service agencies on display in my stores. The members of our Association take their customers, their needs and what we offer very seriously.

HB 1273 is a strong, good & fair bill. I respectfully ask for a "DO PASS" recommendation.

In order to be licensed as a deferred presentment service provider, an applicant must meet initial licensure and renewal requirements by:

- Maintaining \$25,000 in unencumbered assets for each licensed location
- Allow the commissioner to review relevant business records to determine the applicant's business will be conducted lawfully and fairly
- Establish the applicant has not been convicted of a felony
- Maintain and submit proof of a \$20,000 bond
- Submit an investigation fee of \$400
- Submit an annual renewal fee of \$450
- The license is not transferable or assignable

Additionally, the licensee shall report to the commissioner if any of the following occur:

- Filing for bankruptcy or reorganization
- Revocation or suspension proceedings by any governmental authority
- Felony charges or any other event determined by rule by the commissioner

The commissioner may examine a licensee's business, books, and records. An examination fee and the costs of any such examination are paid by the licensee and every licensee must preserve books, accounts, and records for at least six years.

In operating a deferred presentment service, a licensee:

- Shall provide printed notice to customers of a schedule of fees charged
- Accompany each transaction with a written agreement signed by the check maker
- May not charge a fee exceeding 20 percent of the amount of the check
- May not pay more than \$500 to the maker of a check and the total amount outstanding of all checks by the maker may not exceed \$500 to all licensed locations
- May not enter into a new deferred presentment transaction with a customer within 5 days of a previous transaction
- Shall allow the maker of the check to redeem the check any time before the presentment of the check for deposit
- May contract for and collect a returned check fee not exceeding \$20 per customer per year
- May allow for renewal of a deferred presentment service transaction for a period of at least fifteen days, for a fee not exceeding 20 percent of the amount renewed and may not allow the total period of deferral to exceed 45 days
- May not allow consolidation with the proceeds of another transaction
- And may not conduct another business other than a bona fide pawnbroking business with the same business unless the commissioner has given prior written authorization



# North Dakota Legislative Council

GARY J. NELSON  
State Senator  
Chairman

JOHN D. OLSRUD  
Director

JAY E. BURINGRUD  
Assistant Director

JIM W. SMITH  
Legislative Budget  
Analyst & Auditor

JOHN WALSTAD  
Code Revisor

STATE CAPITOL, 600 EAST BOULEVARD, BISMARCK, ND 58505-0360 (701) 328-2916 TTY: 1-800-366-6888

March 29, 2001

Honorable Ron Carlisle  
State Representative  
House Chamber  
State Capitol  
Bismarck, ND 58505

Dear Representative Carlisle:

This letter summarizes Engrossed House Bill No. 1273 with Senate amendments, regarding licensure of deferred presentment service providers.

The bill draft provides that any person who engages in the business of deferred presentment services must be licensed by the Commissioner of Banking and Financial Institutions. The commissioner may adopt rules for implementation and enforcement of the licensure law. In addition to the authority to suspend or revoke a license, if the commissioner determines there has been a violation of the deferred presentment service law, the commissioner may order the person to cease and desist violating the law or rule, may require the refund of any fees collected by the person in violation of the law, and may impose a civil penalty. Additionally, the bill draft provides any person who willfully provides deferred presentment services without a license is guilty of a Class C felony and violation of the law by a licensed deferred presentment services provider is a Class A misdemeanor.

In order to meet the initial licensure and renewal requirements, an applicant shall:

- Maintain \$25,000 in unencumbered assets for each licensed location;
- Allow the commissioner to review relevant business records and capital adequacy of the applicant to determine the applicant's business will be conducted lawfully and fairly;
- Establish the applicant has not been convicted of a felony;
- Maintain and submit proof of a \$20,000 bond;
- Submit an \$850 application and background investigation fee for the initial license which, if the application is granted, satisfies the license fee for the first year; and
- Submit a <sup>450</sup>~~400~~ annual license fee.

A license is not transferable or assignable. The prior written approval of the commissioner is required for the continued operation of a deferred presentment service business if a change in control of a licensee occurs.

1 A licensee shall report to the commissioner if any of the following occur:

- Filing for bankruptcy or reorganization by the licensee;
- Institution of revocation or suspension proceedings by any governmental authority;
- Felony charges against the licensee or any licensee's member, director, officer, or shareholder; or
- Any other event the commissioner identifies by rule.

The commissioner may examine a licensee's relevant business, books, and records. An examination or visitation fee and the costs of any such examination are paid by the licensee. Every licensee shall preserve required books, accounts, and records for at least six years.

In running the deferred presentment services business, a licensee:

- Must provide printed notice to every maker of a check which must include information required under federal law and which must include a schedule of fees charged;
- Accompany each deferred presentment service transaction with a written agreement signed by the maker of the check;
- May not charge a fee or charge for the deferred presentment service an amount exceeding 20 percent of the amount paid to the maker of the check;
- May not receive or hold title to property as a condition of a deferred presentment service transaction or as a method of collection on default, absent civil process;
- May not pay more than \$500 to the maker of a check and the aggregate face value of all outstanding checks from any one maker payable to all licensed locations may not exceed \$500;
- May not enter a new deferred presentment service transaction with a customer within ~~five~~<sup>3</sup> days of a previously completed transaction;
- Must allow the maker of a check to redeem the check from the licensee at any time before the negotiation or presentment of the check by making payment to the licensee and must allow the maker to rescind the transaction by the close of the following business day at no cost;
- Has all civil remedies available for insufficient fund checks, closed account checks, and for stop payment orders;
- May contract for and collect a returned check charge not exceeding \$20 per customer, per year;
- May pursue criminal prosecution if a check was written on an account that was closed on the original date of the transaction;
- Must verify, at the time of entering a transaction, that the account on which the check is written is open;
- Must pay a maker of a check in cash or check;
- May allow a one-time renewal of a deferred presentment service transaction for a period of at least fifteen days, for a fee not exceeding 20 percent of the amount being renewed;
- May not allow the total period of deferral to exceed 45 days;
- May not allow renewal, repayment, refinance, a consolidation with the proceeds of another deferred presentment service transaction; and
- May not conduct another business other than a bona fide pawnbroking business within the same business as the deferred presentment service unless the commission has given prior written authorization.

Please do not hesitate to contact this office if you would like additional information on this issue.

Sincerely,



Jennifer S. N. Clark  
Counsel

JSNC/JFB  
Enc.



HB ~~10218~~  
1273

3-30-01

TESTIMONY FOR ENGROSSED HOUSE BILL NO. 1273

Senate Appropriations Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions.

The Department's Fiscal Note to the HB 1273 amendments requested an additional FTE and other related expenses totaling \$138,144 determined necessary to license and supervise payday lenders. The House Appropriations Committee has amended the Department's appropriations bill, SB 2008, to include the FTE and \$138,144 in additional expenses. The FTE is necessary in order for the Department to meet its responsibilities under HB 1273 as follows:

- Review and conduct background checks for all license applications, including those denied.
- Conduct periodic examinations of the 40 estimated approved licensed lenders.
- Draft enforcement action for noncompliance of laws for an estimated one-half of all examinations conducted.
- Draft enforcement action against payday lenders making loans without a license in ND.

A large problem, however, still exists with the Fiscal Note that must be addressed. The FN reveals a \$76,166 shortfall in revenue covering estimated expenses. Since the Department is a fully self-supporting special fund agency, revenue must be sufficient to cover all expenses. It is not possible to take money from the Bank's or Credit Union's cost centers as state law only allows for the Banking and Credit Union Boards to collect assessments sufficient to cover expenses related to the supervision of the respective industry. I have in my previous testimony proposed two options to consider:

- (1) raise the license fees sufficient to cover expenses (HB 1273 has already been amended to increase the fees); or,
- (2) amend HB 1015 to reduce the \$300,000 excess revenue transfer to the general fund from the consumer cost center by the \$76,166 shortfall.

By reducing the general fund transfer the effect is that taxpayers will subsidize supervisory costs associated with payday lending activity. Whether this is appropriate is a legislative decision that must be made until such time as payday lenders pay enough in fees to cover all supervisory costs, if ever.