

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1140

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1140

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1140

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-10-05

Tape Number

1

Side A

x

Side B

Meter #

0-15.6

Committee Clerk Signature



Minutes:

Chairman Keiser: opened the hearing on HB 1140. All committee members were present.

Bob Entringer: appeared in support of HB 1140 and provided written testimony (SEE ATTACHED TESTIMONY.) I am aware of some proposed amendments, and we don't have a problem with those amendments.

Representative Ekstrom: this would not forbid Great Plains Food Bank from using the word "bank" in its name?

Bob Entringer: technically they should not be using that right now.

Marilyn Foss: appeared in support of HB 1140, and provided written testimony with amendments. (SEE ATTACHED TESTIMONY with AMENDMENTS.)

Representative Kasper: Can you define what an affiliate would be of a bank or a bank holding company?

Marilyn Foss: It is a bank or a bank holding company that shares common ownership, the bank holding company has to have a controlling ownership interest in it.

Representative Keiser: What about the food bank, who would make that exemption?

Marilyn Foss: The statute is enforce either by the commissioner, or a party is agreeing by the misuse of the word bank. I think that is highly unlikely the commissioner is going to sue the food bank, the commissioner has discretion about he acts to enforce the statute just as the prosecutor has discretion.

Chairman Keiser: The intent of this legislation is that Credit Unions cannot use the word "bank", your not putting in specifically, credit unions as an exemption, do you have any concerns about that?

Marilyn Foss: I'm not putting in Credit Unions as an exemption because Credit Unions are not banks.

Don Forsberg, Executive Vice-President, Independent Community Banks, ND: Our membership is strongly in support of the amendment to HB 1140, and then to HB 1140 as amended.

Representative Ekstrom: Made a motion to adopt amendments of HB 1140.

Representative Nottestad: Second the motion.

Representative Ruby: Made a **DO PASS AS AMENDED** motion on HB 1140.

Representative Ekstrom: SECOND the Motion on HB 1140.

Motion pass. VOTE: YES-13 NO-1 0-ABSENT

Meeting adjourned.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1140 *updated*

Page 1, line 10, after ""companies," insert "their affiliates,"

Page 1, line 16, after the period remove "Upon written request, the commissioner may grant an exemption to this"

Page 1, remove lines 17 through 20

Page 2, line 2, after the second "banks" insert "or trust companies"

Page 2, line 3, after "state," insert "their affiliates,"

Page 2, line 28 remove "Upon written"

Page 2, remove lines 29 through 31

Page 3, remove lines 1 and 2

Renumber accordingly

January 10, 2005

VR
1/10/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1140 IBL 1-11-05

Page 1, line 10, after the second underscored comma insert "their affiliates."

Page 1, line 16, remove "Upon written request, the commissioner may grant an exemption to this"

Page 1, remove lines 17 through 20

HOUSE AMENDMENTS TO HB 1140 IBL 1-11-05

Page 2, line 2, after "banks" insert "or trust companies"

Page 2, line 3, after the underscored comma insert "their affiliates."

Page 2, line 28, remove "Upon written"

Page 2, remove lines 29 through 31

HOUSE AMENDMENTS TO HB 1140 IBL 1-11-05

Page 3, remove lines 1 and 2

Renumber accordingly

Date: 1-10-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1140

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

58166. 0101

Action Taken

Adopt Amendments

Motion Made By

Rep. Ekstrom

Seconded By

Rep. Nottestad

Representatives	Yes	No
G. Keiser-Chairman	X	
N. Johnson-Vice Chairman	X	
Rep. D. Clark	X	
Rep. D. Dietrich	X	
Rep. M. Dosch	X	
Rep. G. Froseth	X	
Rep. J. Kasper	X	
Rep. D. Nottestad	X	
Rep. D. Ruby	X	
Rep. D. Vigasaa	X	

Representatives	Yes	No
Rep. B. Amerman	X	
Rep. T. Boe	X	
Rep. M. Ekstrom	X	
Rep. E. Thorpe	X	

Total (Yes)

14

No

0

Absent

-0-

Floor Assignment

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

Date: 1-10-06
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1140

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass As Amended

Motion Made By

Rep. Ruby

Seconded By

Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe		X
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes)

13

No

1

Absent

0

Floor Assignment

Rep. Ruby

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

REPORT OF STANDING COMMITTEE

HB 1140: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1140 was placed on
the Sixth order on the calendar.

Page 1, line 10, after the second underscored comma insert "their affiliates."

Page 1, line 16, remove "Upon written request, the commissioner may grant an exemption to
this"

Page 1, remove lines 17 through 20

Page 2, line 2, after "banks" insert "or trust companies"

Page 2, line 3, after the underscored comma insert "their affiliates."

Page 2, line 28, remove "Upon written"

Page 2, remove lines 29 through 31

Page 3, remove lines 1 and 2

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1140

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1140

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 14, 2005

Tape Number	Side A	Side B	Meter #
1		X	3,070-3490

Committee Clerk Signature



Minutes: **Chairman Mutch** opened the hearing on HB 1140. All Senators were present, with the exception of Senator Espegaard.

Bob Entringer Assistant Commissioner of the Department of Financial Institutions, appeared in support of the bill. See written testimony.

Senator Fairfield- How does this legislation impact credit unions?

Bob- It does not affect credit unions, they have their own statutes in place.

Marilyn Foss, general counsel for the North Dakota Bankers Association, appeared in support of the bill.

Chairman Mutch closed the hearing on HB 1140.

Action taken:

Senator Klein moved for a Do Pass recommendation on the bill. Seconded by Senator **Krebsbach**. The vote was 6-0-1. The carrier of the bill is Senator **Heitkamp**.

Date: 3-14-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1140

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass*

Motion Made By *Klein*

Seconded By *Krebsbach*

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	X	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	A				
Senator Nething	X				

Total (Yes) *6* No *0*

Absent *1*

Floor Assignment *Heitkamp*

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

REPORT OF STANDING COMMITTEE (410)
March 15, 2005 1:08 p.m.

Module No: SR-47-5014
Carrier: Heitkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1140, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1140 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1140

TESTIMONY OF MARILYN FOSS ON HB 1140
(Proposing Amendments)

Chairman Keiser, members of the IBL committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association (NDBA). I am here this morning to suggest amendments to HB 1140.

Sections 6-02-01 and 6-05-02 have been part of the law of North Dakota since 1890 and 1931, respectively. These laws recognize the high degree of confidence that people place in banks and trust companies, the value of bank or trust company status, and how some who are not banks or trust companies or related to them may choose mischaracterize themselves or their status for commercial gain, or, increasingly for an improper purpose.

Our members endorse continued and stringent protection for words such as "bank", "banker" and "banking", "trust" and "trust company". These are not generic terms and are subject to misuse. However, at the same time the statute should incorporate contemporary bank organization structures, including holding companies as the commissioner proposes and affiliates. Accordingly, we ask that the bill be amended to specifically include affiliates as well as bank holding companies as the commissioner suggests.

As much as we accept the Commissioner's explanation as to the motivation underlying the proposed delegation to the Commissioner of discretion to grant exemptions from the statute, we oppose that idea. Exemptions from law should be determined by the legislators who make the laws, not the people who administer them. The administrator exercises his discretion by deciding how to enforce the law. We also are

concerned about the absence of a provision or standard for revocation of an exemption,
once granted.

I have prepared amendments to implement the changes we propose. They are
attached.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1140

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Page 1, remove lines 17 through 20

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Page 2, line 20 remove "Upon written"

Page 2, remove lines 29 through 31

Page 3, remove lines 1 and 2

Renumber accordingly

1-10-2005

TESTIMONY FOR HOUSE BILL NO. 1140

House Industry Business and Labor Committee

Testimony of Robert J. Entringer, Assistant Commissioner, Department of Financial Institutions in support of House Bill No. 1140

Chairman Keiser and members of the House Industry Business and Labor Committee, I am Bob Entringer, Assistant Commissioner of the Department of Financial Institutions. I am here to urge your support of House Bill No. 1140.

Over the last several years the Department has received numerous requests by entities asking for permission to register their company name with the ND Secretary of State's office and the name of their company includes either the word "bank", a derivation of the word "bank" such as "banc", and some requests to use the word "trust" in their registered name. The present statute does not grant the Department or the Commissioner the power to grant a waiver from these sections of the law and so our response is they must register the company using a trade name. Examples of the companies from whom we have received such requests are Deutsche Bank Bershire Mortgage, Inc., Bancnorth Investment Group, Inc., Banc of America Investment Services, Inc., and The Rural School Community Trust. The new language found on page 1, lines 16 through 20; page 2, lines 28

through 31 and page 3 of the bill gives the commissioner the ability to grant and exemption if the commissioner finds the use of the protected words is not likely to cause confusion or lead the public to believe the entity is a banking institution. A banking institution is specifically defined as a bank, trust company, or bank and trust company organized under the laws of this state. In order to determine there will be no confusion we would ask the company to identify there business activity; if it is closely related to the business of banking such a waiver would not be granted. Additionally, this legislative assembly may be asked to consider an industry bill allowing a credit union to use the word "banking". For the record, the intent of this bill is NOT to grant a credit union the ability to use the words bank, banker or banking.

The bill also amends the statute to allow a bank organized under the laws of another state or a bank holding company, domestic or foreign, to use the words bank, banker, or banking as well as trust or trust company. This issue has come to light in the past several years wherein a state-chartered bank from another state has tried to register as a foreign corporation and this statute prohibited the Secretary of State's office from accepting the registration and again the Department nor the Commissioner could grant a waiver. Additionally, when a bank holding company is formed, if the name

would include a derivation of the word bank, e.g. "Bancshares", they could not register with the Secretary of State either. This change will make it clear as to the ability of a foreign state-chartered bank and domestic and foreign and domestic bank holding companies can use the words bank, banker, banking, trust or trust company in their name in North Dakota.

Chairman Keiser and members of the Committee, I would urge your favorable consideration of House Bill No. 1140, and I would be happy to answer any questions you may have.

Thank you.

3-14-2005

TESTIMONY FOR ENGROSSED HOUSE BILL NO. 1140

Senate Industry Business and Labor Committee

Testimony of Robert J. Entringer, Assistant Commissioner, Department of Financial Institutions in support of Engrossed House Bill No. 1140

Chairman Mutch and members of the Senate Industry Business and Labor Committee, I am Bob Entringer, Assistant Commissioner of the Department of Financial Institutions. I am here to urge your support of Engrossed House Bill No. 1140.

This bill as amended is fairly simple; it amends the statute to allow a bank organized under the laws of another state or a bank holding company, domestic or foreign, and their affiliates to use the words bank, banker, or banking as well as trust or trust company. This issue has become known in the past several years wherein a state-chartered bank from another state has tried to register as a foreign corporation and this statute prohibited the Secretary of State's office from accepting the registration; the Secretary of State's office refers the call to us and these entities ask for a waiver of the statutory requirements which we cannot grant. Additionally, when a bank holding company is formed, if the name would include a derivation of the word bank, e.g. "Bancshares," they could not register with the Secretary of State either. This change will make it clear as to the ability of a foreign

state-chartered bank and domestic and foreign and domestic bank holding companies and their affiliates can use the words bank, banker, banking, trust or trust company in their name in North Dakota.

Chairman Mutch and members of the Committee, I would urge your favorable consideration of Engrossed House Bill No. 1140, and I would be happy to answer any questions you may have.

Thank you.