

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2182

2005 SENATE JUDICIARY

SB 2182

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2182

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 17, 2005

Tape Number	Side A	Side B	Meter #
1	X		3430 -3800
Committee Clerk Signature <i>Maria L Solley</i>			

Minutes: Relating to validity of certain conveyances by an estate trust.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen Holmberg - Dis #17 Introduced the bill. This bill is a result of the work of the real property division of the Bar Assoc. One of the segments of the bar have been studying specific issues.

We are constantly making changes in the statute. We are "up dating" this bill.

Malcolm Brown - Probate Attorney in Bismarck, and a member the Titles Standard Committee.

I have a short amendment Att #1. Described bill. This bill will legalize what is being done already with the conveyance of a trust. The title people still have to do there work. Sen. Traynor asked if any law suits have been brought forth yet? No, but it is only a matter of time. This is more of a time issue then a litigation issue.

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Senate Judiciary Committee
Bill/Resolution Number SB 2182
Hearing Date January 17, 2005

Testimony in Opposition of the Bill:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Nelson made the motion to move the amendment Att. #1 seconded by **Senator Hacker**.

All were in favor.

Sen. Nelson made the motion to Do Pass as amended in Att. #1 seconded by **Senator Hacker**.

All were in favor.

Carrier: **Sen. Traynor**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Roll Call Vote #:

BILL/RESOLUTION NO. SB 2182

Senate Judiciary

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded By

[illegible]

Total (Yes)

6 No

0

Absent

0

Floor Assignment

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

Date: 1/17/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 218 Z

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen Nelson Seconded By Sen Hacker

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment Sen Traynor

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

REPORT OF STANDING COMMITTEE

SB 2182: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2182 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "may" with "is" and remove "be"

Renumber accordingly

2005 HOUSE JUDICIARY

SB 2182

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2182

House Judiciary Committee

☐ Conference Committee

Hearing Date 3/1/05

Tape Number	Side A	Side B	Meter #
1	xx		29-29.6
1	xx		34.7-38.3
1		xx	44-end
Committee Clerk Signature <i>Naun Penrose</i>			

Minutes: 14 members present.

Chairman DeKrey: We will open the hearing on SB 2182.

Sen. Tom Trenbeath: This is an age old favorite. I am also licensed, although inactively, to practice law in Colorado, and this has been the law in Colorado for as long as I have had knowledge of that law. In this state, it has always been improper to transfer property to a trust or to accept transfer from a trust. Trusts don't hold property, trustees hold property. This would amend this, this would alter that situation to make it much more logical so that the trust itself becomes the entity that can hold title to property and transfers.

Malcolm Brown, Real Property Section of the State Bar Association: As Sen. Trenbeath said, current title standards in law in ND, is that a conveyance to a trust, is not a valid conveyance, because it should have been to XX, as trustee of the XX trust. As Sen. Trenbeath said, we're kind of an anomaly with regard to states. It creates title problems where, perhaps an attorney from another state, has drafted a trust instrument and records it in ND, and what this

amendment would do, would simply say a conveyance is not void or voidable simply because the grantee is a trust, rather than a trustee, or an estate rather than a personal representative; if the identity is ascertainable from the conveyance or from other information of public record or from both. We're just trying, even here in the Bismarck area, I know there are lands that are platted now, that were conveyed years ago to a trust, rather than to the trustee, and constantly people are doing affidavits in trying to correct that. This would simply avoid that problem in the future.

Representative Klemin: I'm familiar with the issue you are talking about, does this arise out of a title standard.

Malcolm Brown: We have a title standard now that says the conveyance to a trust, in order to be effective, must be to the trustee. Of course, that title standard would change if this were to pass.

Representative Klemin: That title standard is based on case law.

Malcolm Brown: It's based on 59.02-04 of the NDCC, which really doesn't say that, Section 59.02-04 of the NDCC talks about property being held by a trustee; but it doesn't deal with a conveyance. There's a case, Western Life Trust vs. The State of ND, not too many years ago, that I was going to look up this morning and ran out of time. But I remember looking at it years ago, and I think the Supreme Court had interpreted 59.02-04 to suggest that the conveyance must be to the Trustee. So it's case law and statutory law currently in ND.

Representative Kretschmar: If this bill becomes law, would it be for conveyances it had after it, or would it be retroactive for conveyances that happened years ago.

Malcolm Brown: I'm not an expert on statutory law interpretation. I'm not sure. It would seem to me that you could apply a law like this to a conveyance that occurred prior to the time of its passage.

Chairman DeKrey: Thank you. Further testimony in support of SB 2182, testimony in opposition to SB 2182, we will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: Let's take up SB 2182.

Representative Delmore: You asked a question about when this would go into effect, Representative Kretschmar, is there going to be a cost to the consumer, as we change these funds from the property going to a trust or to a trustee, or to an estate or personal representative. Would current things that are already filed, have to be redone.

Representative Kretschmar: I'm going to propose an amendment that I hope not.

Representative Delmore: Thanks. I didn't think of it when we were discussing the bill.

Chairman DeKrey: You have an amendment.

Representative Kretschmar: I move that after the word conveyance on line 3, insert "whether executed before or after the enactment of this statute,". The reason for doing that is to make sure that it is retroactive.

Representative Meyer: Do we need this piece of legislation.

Representative Kretschmar: Yes.

Representative Koppelman: Seconded.

Chairman DeKrey: Motion carried.

Representative Maragos: I move a Do Pass as amended.

Representative Delmore: Seconded.

Chairman DeKrey: Discussion on the bill.

Representative Meyer: Will the land now, that will be held in a trust, it should be a trustee.

Representative Kretschmar: If there's a deed somewhere in the courthouse that deeds land to the John Jones trust, right now according to the statute, that deed is void. But if we enact this statute, that deed will be good.

Representative Meyer: I understand that part, but my question is, then as the years go on, who is responsible for that trust land, because a trust isn't a person. So the trustee is responsible for anything that happens with that trust into perpetuity. Well as long as the trust lasts. Some trusts end and some last longer.

Chairman DeKrey: Seeing no further discussion, the clerk will call the vote.

11 YES 0 NO 3 ABSENT DO PASS AS AMENDED CARRIER: Rep. Kretschmar

Date: 3/1/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2182

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Passes Amended

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	A				
Representative Galvin	A				
Representative Kingsbury	✓				
Representative Klemin	A				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep Kretschmar

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

REPORT OF STANDING COMMITTEE

SB 2182, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2182 was placed on the Sixth order on the calendar.

Page 1, line 1, after "trust" insert "; and to provide for application"

Page 1, after line 7, insert:

"SECTION 2. APPLICATION. This Act applies to any conveyance regardless of when executed."

Renumber accordingly

2005 TESTIMONY

SB 2182

50408.0100

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2182

1

Introduced by

Senators Holmberg, Trenbeath

amended version

1 A BILL for an Act to provide for the validity of certain conveyances by an estate or trust.

2 , BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

3 **SECTION 1. Validity of conveyance by trust or estate.** A conveyance ^{is not} ~~may not be~~
4 void or voidable solely because the grantee in the conveyance is a trust, rather than the trustee
5 of the trust, or is an estate, rather than the personal representative of the estate, if the identity
6 of the grantee is reasonably ascertainable from the conveyance or from other information of
7 public record, or from both.