

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1226

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1226

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7249

Committee Clerk Signature

*Ellen LeTang*

**Chairman Keiser:** Opened the hearing on HB 1226 relating to escrow account treatment of receipt of insurance payments for damage to residences & provide a contingent effective date.

**Lisa Wolf~Representative for District 3.** See testimony attachment 1.

Representative Amerman: Did they collect some benefits off the \$17,000.

**Wolf:** No

Anyone in opposition of HB 1226?

Tim Karsky~Commissioner, Department of Financial Institutions. See testimony attachment 2.

Representative N Johnson: Is there another way to seeing this resolved.

Karsky: Usually people sign off on the check. You are picking on state chartered institutions and I don't think that is fair.

Vice Chairman Kasper: I'm trying to see where the damage would be to the state chartered institutions.

Karsky: First you would have to go to the expense of setting up those individual accounts and there will be so much expense.

Vice Chairman Kasper: Federal banks to comply?

**Karsky:** It's a disadvantage for state banks.

Vice Chairman Kasper: Again, where is the disadvantage?

Karsky: If I opened an account and have to pay a 2% interest but only make a .025%, so I'm losing money on that deposit.

Vice Chairman Kasper: Couldn't we have language that the institution makes the interest rate upon what's fair?

Karsky: I would be all for taking out the word state banking. That might make a lot of sense.

Chairman Keiser: Opinion, if we had a law that required state chartered banks to pay something. Do you think state charter banks would market that? Do state charter banks market interest bearing accounts?

Karsky: Last question is easy, they all want to.

Chairman Keiser: All banks do market interest accounts, in this application, and they get some interest, couldn't that create an incentive?

Karsky: You are probably right.

Chairman Keiser: If she deposited it, wouldn't taken the check and held it or cashed it and used the dollars.

Karsky: I'm sure they would have invested.

Chairman Keiser: They would make money.

Karsky: Financial Institutions make money but not consumer.

Chairman Keiser: The co signer wasn't her state chartered bank was the holder of the mortgage. That's the group we can't force to regulate. Is that your issue?

Karsky: You shouldn't put in escrow for damage.

Chairman Keiser: This is for every transaction over \$5000.

Greg Tscheider~Represent Mid America Credit Union Association. Credit Union is that the majority of the time it automatically goes into an interest bearing account. I have a problem

with the 2% interest rate. They shouldn't received a wind fall, we don't want to be regulated.

We want the interest rate be comparable to others. I also, request some time period. I'm willing to talk to Representative Wolf. I don't think this is workable or fair.

Marilyn Foss~North Dakota Banker's Association. See testimony attachment 3.

Chairman Keiser: Some institutions prefer to make a payment on itself, is that using the interest earning or the settlement.

Foss: Sometime the loss is so large that they want to apply it to the loan or customers do not want to fix. It is the banks collateral that is damaged and remains damaged.

Don Porsborg~ICBND. We are in opposition. You have heard all the arguments.

Closes hearing on HB 1226. We have heard concerns and Representative Gruchalla, would you meet with concerned parties?

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1226

**House Industry, Business and Labor Committee**

☐ Check here for Conference Committee

**Hearing Date:** January 26, 2009

**Recorder Job Number:** 7696

Committee Clerk Signature

*Ellen LeTang*

**Chairman Keiser:** Opened the committee work session on HB 1226 relating to escrow account treatment of receipt of insurance payments for damage to residences and provide a contingent effect date.

Representative Gruchalla: Goes over amendments attachment. These amendments would not have covered Representative Wolf's issue. It would not have fixed it because she was covered. Bank can only cover in state banking and her's was an out of state bank.

Chairman Keiser: That is correct. Representative Wolf has attempted to correct concerned raise by the financial. One, the 2% was too high and was corrected to an interest bearing account. The reality is that most of these mortgages are resold or there are with federally chartered banks. This law doesn't apply to her case or most other cases.

Representative Gruchalla: There is a lot of these little accounts around, there is a lot of room for miss appropriation, who really owns the money.

**Representative Ruby:** Move a Do Not Pass on HB 1226.

**Representative Gruchalla:** Second.

**Chairman Keiser:** Representative Ruby has it right, this isn't right but we can't fix it at the state level. The Feds have messed this up.

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House Industry, Business and Labor Committee

Bill/Resolution No. 1226

Hearing Date: January 26, 2009

**Voting roll call was taken with a Do Not Pass on HB 1226 with 10 yea's, 2 nay's, 1 absent  
and Representative Gruchalla is the carrier.**

Date: Jan 26, 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1226

House House, Business & Labor Committee

☐ Check here for Conference Committee

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

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

Motion Made By Ruby Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman <u>Kasper</u>	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider		✓
Representative Nottestad	✓		Representative Thorpe		✓
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) ~~10~~ 10 No 2

Absent 1

Floor Assignment Gruchalla

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

**REPORT OF STANDING COMMITTEE (410)**  
January 26, 2009 12:14 p.m.

**Module No: HR-15-0913**  
**Carrier: Gruchalla**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1226: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO NOT PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).  
HB 1226 was placed on the Eleventh order on the calendar.



2009 TESTIMONY

HB 1226

# House Bill 1226

Attachment 1

Good Afternoon Chairman Keiser and Members of the Committee. For the record, my name is Lisa Wolf, Representative from District 3 in Minot.

It is my pleasure to introduce to you House Bill 1226. What this bill does is to require mortgage companies that hold your insurance proceeds to pay you interest that accrues while they hold those insurance proceeds on your behalf. This has nothing to do with escrow accounts, just on the occasion that a mortgage company would be in a position to hold onto insurance proceeds (for example, until work is completed.)

Let me share with you why I was made aware that current North Dakota law does not require this.

We had a hail storm in May of 2007. My husband went up on the roof, looked around, didn't see any damage, and we didn't think any more of it. Towards fall, a lot of our neighbors started getting new roofs on their homes, so we called our insurance agent, an adjustor was sent out, the roof on our home and our shop were totaled, and a few weeks later we received a check in excess of \$17,000.00 to have both roofs repaired. This was October. You don't put new roofs on homes in North Dakota this late in the season, so we needed to wait till spring.

The check was made out to my husband and myself and our mortgage company. Our first thought was this was a large sum of money, that we would be

holding onto the funds for 6 months, and that we may as well earn a little interest off the proceeds until they would be needed. So I called around to various banks and credit unions, received CD rate quotes for a 6-month CD and then I called our mortgage company. I explained to them what was going on, asked if they would endorse the check so that I could deposit the money into a CD to earn interest. They said no—so I asked them what their current interest rate was and how that would be applied to this money. The mortgage company had to check on something and call me back.

Well, they called me back and informed me that North Dakota law does not require them to pay interest on insurance proceeds they are holding on behalf of their mortgagees, so they would not pay me any interest on this sum of money.

Well, here's the bill that will require them to pay consumers interest on consumer's insurance proceeds that mortgage companies hold on behalf of a consumer.

Thank you for your attention, I respectfully request your favorable consideration of House Bill 1226 and I will stand for any questions that you may have.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1226

Page 1, line 2, replace "escrow account" with "financial institution"

Page 1, line 11, remove "covered under this section"

Page 1, line 12, after "residence" insert "for which the banking institution or credit union holds a mortgage"

Page 1, line 13, after "account" insert "or other interest bearing account"

Page 1, remove lines 14 and 15

Page 1, line 16, remove "interest required under this section"

Page 1, line 23, remove "covered under this section"

Page 1, line 24, after "residence" insert "for which the savings and loan association holds a mortgage"

Page 2, line 1, after "account" insert "or other interest bearing account" and replace "at a rate that is the higher of at least" with an underscored period

Page 2, remove lines 2 through 4

Page 2, line 13, remove "covered under this section"

Page 2, line 14, after "residence" insert "for which the mortgagee holds a mortgage" and after "account" insert "or other interest bearing account"

Page 2, line 15, replace "at a rate that is the higher of at least two percent per annum or a rate" with an underscored period

Page 2, remove lines 16 and 17

Renumber accordingly

1-19-2009

TESTIMONY FOR HOUSE BILL NO. 1226

House Industry, Business and Labor Committee

Testimony of Timothy J. Karsky, Commissioner, Department of Financial Institutions in opposition of House Bill No. 1226

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Tim Karsky, Commissioner for the North Dakota Department of Financial Institutions. I am here today to testify in opposition and give you information on House Bill No. 1226.

Mr. Chairman and members of the Committee, House Bill No. 1226 relates to escrow accounts and crediting those accounts with the proceeds of insurance payments due to damage to homes.

Mr. Chairman, I did not have an opportunity to speak with the sponsors of this bill but, I do have some concerns. First of all, it appears in section 1 of the bill, it will only apply to State Chartered Banks and Credit Unions. If I read line 11 of the bill correctly, it states a banking institution or credit union covered under this section....6-08-29; in title 6 Banking institutions means any bank, trust company or bank and trust company organized under the laws of this state. Therefore, I do not think this will apply to national banks, federal credit unions or state chartered institutions located in other states doing business in North Dakota.

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I am also concerned that the Board, and I believe it would be the State Banking Board or Credit Union Board is required to adopt rules on the method or basis of computing any minimum rate of interest required under this section. It seems if the minimum rate was used today, 2 percent, that would be a high rate of interest considering the market conditions at this time. The actual Federal Fund rate that banks receive on overnight loans is approximately 0.25%. The rule making process takes some time to change and is costly to do so, and I am concerned if the boards can act in a timely manner.

It is not clear to me if a banking institution has to deposit an insurance check for damages into an escrow account if the borrower currently does not have one, or if they have an escrow account will the financial institution be required to comply with these new provisions? Not every loan requires an escrow account, as some borrowers pay taxes and insurance themselves, and I would be one of those borrowers. If I have an insurance check for damages, would my bank be required to establish an escrow account?

I also believe NDCC 47-10.2 Escrow accounts apply to only the payment of taxes and insurances and how payment can be made. This section applies to secondary mortgages, which means a successor mortgagee not residing or

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domiciled in this state who purchased the interest originally belonging to the mortgagee who originated a loan, under which an escrow is required to assure payment of obligations including property taxes, special assessments and insurance premiums, if that loan is secured by a first lien real estate mortgage or equivalent security interest in a dwelling that the borrower uses as a principal place of residence in this state, not including a mobile home. Again, this section does not apply to a national bank or its subsidiaries, which can be a mortgage company.

Mr. Chairman, I thank you for your time and would be happy to answer any questions you or the committee may have.

TESTIMONY OF MARILYN FOSS  
OPPOSING HOUSE BILL 1226

Chairman Keiser, members of the IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association ("NDBA.") NDBA must oppose this bill:

1. **Not All Banks Offer Escrow Accounts for Mortgage Loans.** Many banks have concluded it is too expensive and too administratively difficult to offer escrow accounts to their mortgage customers.
2. **The Minimum Interest Provision of the Bill Does Not Reflect Current Market Conditions or Competition .** Every bank that responded to NDBA's inquiry noted the 2% minimum interest rate requirement of the bill does not reflect current market conditions. Currently, financial institutions are paying rates in the 2% range only on certificates of deposit with maturities of at least a year.
3. **The Language of the Bill is Ambiguous.** Our bankers can't tell whether the interest mandate of the bill applies only to insurance proceeds or is broader than that.
4. **The Bill Will Leave State Chartered Banks at a Competitive Disadvantage to Federally Chartered Mortgage Lenders.** NDBA's national bank members noted the bill places state chartered banks at a competitive disadvantage to national banks; the bill addresses the types of matters that are within the exclusive ambit of the national bank act for national banks. Accordingly national banks don't expect to be affected and will retain their ability to determine whether to pay interest on insurance proceeds which are held by the bank and, if so, what rate to pay.