

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1319

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1319

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7358

Committee Clerk Signature

Ellen K. Tang

Chairman Keiser: Opened the hearing on HB 1319 relating to rescission periods for mortgages.

Dwight Wrangham~Representative from District 8. A constituent was charge interest during a rescission periods. See attachments.

Representative Amerman: How many states?

Wrangham: No, I do not know.

Anyone here to testify on HB 1319 in opposition?

Marilyn Foss~General Counsel of the North Dakota Bankers Association. See testimony attachment 2.

Representative Thorpe: Inaudible

Foss: It would be my view that if this bill passes, restricts the ability to charge interest in the rescission period.

Representative Clark: The regular rescission gives the buyer the opportunity to change his mind?

Foss: Yes, that is the purpose.

Representative Clark: If he changes his mind, that is no funds advanced?

Foss: If there is a rescission because the borrower has changed his mind, he is not paying interest, principle & etc., the borrower is restored under Federal Law that would have been if he had not applied for the loan.

Representative Clark: If you don't advance these funds, don't they have this money off somewhere else earning interest while they are in the rescission period.

Foss: I would hope banks have adequate funds manager's policies to be trying money every second they possibly can. I presume yes.

Grag Tschider~Representing Mid America Credit Union Association. These disclosures are required under state law, how do we sell this secondary market? Any secondary market looks at this, it will be the area they will be concerned about. Are we also following North Dakota law and they don't want to be experts in North Dakota law. My concern is how are we going to satisfy these people if we have these unusual requirements that no other in the state in the union has and where are we going with this? I think this creates a lot of problems and therefore I request the committee vote Do Not Pass.

Representative Amerman: What's the concern on the secondary mortgage?

Tschider: If everything isn't done correctly, they send the whole thing back and say "we want our money back". Most North Dakota financial institutions don't carry long term fixed interest rate mortgages because it's too much of a gamble.

Chairman Keiser: Heart of this bill is really the last part and that is the finance charge.

Don Forsberg~Representing the Independent Community Banks of North Dakota. Concern is the form would have to comply with and how is that going to be perceived on the secondary market.

Dana Bohn~North Dakota Farm Credit Council Executive Director. See testimony attachment 3.

Berdett Howe~Director of Credit Services in Mandan. We are in opposition of this bill. Our concerns are more consumer regulation than before, delays to getting funds won't work well with time period & lock fee rate.

Claus Lembke~North Dakota Association of Realtors. We oppose the bill.

Closes the hearing on HB 1319. What are the wished of the committee?

Vice Chairman Kasper: Move to Do Not Pass.

Representative Thorpe: Second.

Roll call taken on HB 1319 for a Do Not Pass with 13 yea's, 0 nay's, 0 absent and

Representative Clark is the carrier.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1319

Page 1, line 7, after "extended" insert "for the refinancing of the obligor's principal dwelling"

Renumber accordingly

Date: Jan 26 2009
Roll Call Vote # _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1319

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 Kasper Seconded By Thorpe

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

Total (Yes) 13 No 0

Absent 0

Floor Assignment ~~Clark~~ Clark

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

REPORT OF STANDING COMMITTEE (410)
January 21, 2009 12:00 p.m.

Module No: HR-12-0640
Carrier: Clark
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1319: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1319 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1319

TESTIMONY OF MARILYN FOSS
OPPOSING HOUSE BILL 1319

Chairman Keiser, members of the IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association ("NDBA"). NDBA opposes this bill because it: 1) is inconsistent with and in our view actually conflicts with the federal Truth in Lending Act as implemented by Federal Reserve Board Regulation Z, 2) is confusing, 3) legislates product features and costs which should be left subject to and addressed by competition and the free market, and 4) places many North Dakota state chartered banks at a competitive disadvantage to federally chartered lenders which operate throughout North Dakota and elsewhere and to any state agency that acts as mortgage lender.

The Right of Rescission, the Truth in Lending Act , Regulation Z and Potential for Confusion:

Consumers' rights to rescind residential mortgage transactions originate in the federal Truth in Lending Act, a federal law which has been in place for more than 30 years. State laws that conflict with TILA are preempted.

House Bill 1319 is broader than federal law

TILA and Reg Z do not extend the right of rescission to all residential mortgage transaction. Consumers do not have a right to rescind a purchase money mortgage transaction, refinancing transactions with the same creditor in which new money is not advanced, or mortgage transactions where the security is a residence, but not a consumer's principal dwelling. Because House Bill 1319 does not incorporate these exemptions it conflicts with TILA.

House Bill 1319 is also narrower than federal law.

House Bill 1319 also appears to conflict with federal TILA and Regulation Z because it gives the right of rescission to only to obligors while, under TILA and Reg Z the right of rescission belongs to any consumer who has an ownership interest in the principal dwelling that secures a covered mortgage transaction. The conflict is that, in this respect,

HB 1319 is narrower than federal law which gives a right of rescission to any consumer who has an ownership interest in the principal dwelling that will secure the covered transaction. This discrete, but material difference will also be confusing to banks and customers.

House Bill 1319 creates real compliance problems

Requirements that banks distribute forms which are to be used to exercise the state right of rescission are also problematic. Appendix H to Regulation Z includes forms which bankers use to notify consumers of the federal right of rescission. The first question federal reserve examiners are told to check for compliance is whether the bank has changed the form. The federal forms may be used by a consumer to exercise the right of rescission. Notices must be given to consumer. The notices explain that "that the creditor has a security interest in the consumer's home, that the consumer may rescind, how the consumer may rescind, the effects of rescission, and the date the rescission period expires." (Copies of the federally approved notice forms are attached to my testimony.)

What I am about to say may give you some insight about what a nightmare regulatory compliance has become for bankers. Among the issues that are raised but not answered by the bill are:

- Does the bill require banks to give a Reg Z notice to a consumer and a separate notice of the state law right to rescind to an obligor?
- What is "clear and conspicuous"? Are the federal notices clear and conspicuous?
- Are obligors required to use the forms that bankers provide in order to rescind a transaction?

You may think that I am trying to obscure things by nitpicking. That is simply not correct. The federal right of rescission and detailed notice requirements have resulted in many, many lawsuits against lenders. A failure to follow the rules results in very harsh consequences for the lender. As a result lenders bend over backwards to get the minute details right.

Finally, what is supposed to happen if a bank is determined to have failed to meet the requirements of House Bill 1319? And for how long can it happen? These questions are answered under federal law, but left open in this bill. That is a serious gap that helps no one and only adds confusion to an already complex situation.

Charging Interest During the Period for Exercise of a Right of Rescission

I have to think that the central purpose of this bill is to prohibit lenders from charging interest during the rescission period. We asked our members about this. Some do. Some don't. Those who do charge interest do so because during the rescission period the lender's obligation to fund the loan is absolute and the transaction is consummated. The borrower can require the bank to fund the loan; the only reason the bank isn't disbursing proceeds is because the bank is prohibited from doing so under federal regulations.

There may be a misperception about what happens when a consumer does rescind a transaction. The bank is not left in a break even position. When a consumer rescinds a transaction, the consumer may not be liable for "any amount". That means the bank must repay the consumer for appraisals, credit reports and other out of pocket expenses the bank has incurred in order to process the loan application. When there is a rescission, the consumer is made whole, but the bank is left with out of pocket expenses it must absorb.

Overall, this bill won't save consumers money. Banks have to charge for their products, recover their costs and make a profit. This bill is contrary to that concept. If a customer doesn't like a particular bank's practice the remedy is for the customer to go to another bank for another option. This isn't a situation where all banks are doing the same thing and charging the same price in the same way. Consumers do have multiple options.

Competitive Inequity Between State Chartered Institutions and Other Mortgage Lenders

As much as I would prefer to avoid repeating this, in all likelihood, because of federal preemption, House Bill 1319 will not affect federally chartered financial institutions such as national banks, federal savings banks, and federal credit unions. These lenders will be

able to continue to charge or not charge interest during the rescission period as their business plans and competitive interests dictate. We object to state laws that impose competitive disadvantages on state banks.

In this vein, but on a slightly different note, I feel compelled to note that this bill will apply to every creditor, not only banks and others who are in the business of mortgage lending. Preemption may relieve state chartered banks of the burdens of the bill, but it won't invalidate the law as to, for example, parents who lend their children the money to buy a house and then take a mortgage on the house to secure the loan.

We would expect that this bill will also adversely affect consumers by interfering with closings, particularly for purchase money transactions.

North Dakota consumers are adequately and appropriately protected by the requirements of the federal Truth in Lending Act and its implementing regulation. There is no abuse by lenders that warrants adoption of this state "mini" right of rescission law. With respect to the bill sponsors, we ask the committee to give it a resounding DNP.

H-8—Rescission Model Form (General)

NOTICE OF RIGHT TO CANCEL

Your Right to Cancel

You are entering into a transaction that will result in a [mortgage/lien/ security interest] [on/in] your home. You have a legal right under federal law to cancel this transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of the transaction, which is _____; or
- (2) the date you received your Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel the transaction, the [mortgage/lien/security interest] is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the [mortgage/lien/security interest] [on/in] your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at _____

(creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, _____ or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of _____ (last) (or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature

Date

H-9—Rescission Model Form (Refinancing with Original Creditor)

NOTICE OF RIGHT TO CANCEL

Your Right To Cancel

You are entering into a new transaction to increase the amount of credit previously provided to you. Your home is the security for this new transaction. You have a legal right under federal law to cancel this new transaction, without cost, within three business days from whichever of the following events occurs last:

- (1) the date of this new transaction, which is _____; or
- (2) the date you received your new Truth in Lending disclosures; or
- (3) the date you received this notice of your right to cancel.

If you cancel this new transaction, it will not affect any amount that you presently owe. Your home is the security for that amount. Within 20 calendar days after we receive your notice of cancellation of this new transaction, we must take the steps necessary to reflect the fact that your home does not secure the increase of credit. We must also return any money you have given to us or anyone else in connection with this new transaction.

You may keep any money we have given you in this new transaction until we have done the things mentioned above, but you must then offer to return the money at the address below.

If we do not take possession of the money within 20 calendar days of your offer, you may keep it without further obligation.

How To Cancel

If you decide to cancel this new transaction, you may do so by notifying us in writing, at

(Creditor's name and business address).

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of

_____(Date)_____(or midnight of the third business day following the latest of the three events listed above).

If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature



Date



conspicuous, but no minimum type size or other technical requirements are imposed. The notices in appendix H provide models that creditors may use in giving the notice.

3. *Content.* The notice must include all of the information outlined in Section 226.23(b)(1)(i) through (v). The requirement in §226.23(b) that the transaction be identified may be met by providing the date of the transaction. The creditor may provide a separate form that the consumer may use to exercise the right of rescission, or that form may be combined with the other rescission disclosures, as illustrated in appendix H. The notice may include additional information related to the required information, such as:

- A description of the property subject to the security interest.
- A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.
- The name and address of an agent of the creditor to receive notice of rescission.

4. *Time of providing notice.* The notice required by §226.23(b) need not be given before consummation of the transaction. The creditor may deliver the notice after the transaction is consummated, but the rescission period will not begin to run until the notice is given. For example, if the creditor provides the notice on May 15, but disclosures were given and the transaction was consummated on May 10, the 3-business day rescission period will run from May 15.

23(c) Delay of creditor's performance.

1. *General rule.* Until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded, the creditor must not, either directly or through a third party:

- Disburse loan proceeds to the consumer.
- Begin performing services for the consumer.
- Deliver materials to the consumer.

2. *Escrow.* The creditor may disburse loan proceeds during the rescission period in a valid escrow arrangement. The creditor may not, however, appoint the consumer as "trustee" or "escrow agent" and distribute funds to the consumer in that capacity during the delay period.

3. *Actions during the delay period.* Section 226.23(c) does not prevent the creditor from taking other steps during the delay, short of beginning actual performance. Unless otherwise prohibited, such as by state law, the creditor may, for example:

- Prepare the loan check.
- Perfect the security interest.
- Prepare to discount or assign the contract to a third party.
- Accrue finance charges during the delay period.



North Dakota Farm Credit Council

AgCountry Farm Credit Services Farm Credit Services of Mandan Farm Credit Services of North Dakota

**Testimony of Dana Bohn
North Dakota Farm Credit Council Executive Director
HB 1319
January 20, 2009**

Chairman Keiser and members of the House Industry, Business and Labor Committee, my name is Dana Bohn. I am here today on behalf of the North Dakota Farm Credit Council (NDFCC) in opposition to HB 1319. NDFCC is comprised of three farmer/rancher-owned independent Farm Credit Associations that provide credit and financial services to farmers, ranchers and agribusinesses of every size and income range. As one of the state's largest ag lenders, North Dakota Farm Credit associations provide about \$5.3 billion in credit and financial services to nearly 18,000 customers.

This bill would be a detriment to borrowers and lenders alike. Our farm customers would be subject to a three-day rescission delay in receiving their loan proceeds. Further, it would add a considerable amount of administrative burden to loan processing and tracking, increasing the risk of errors and the associated fees, and ultimately interest rates.

It also creates many uncertainties for both lenders and borrowers including:

- When the transaction is consummated (i.e., when the note and mortgage is signed or when the funds are received).
- Who would pay for closing fees, appraisals, credit check, etc. (lender or borrower). If the lender pays for it, it will be covered by additional fees or higher interest rates for other borrowers.
- How three business days is defined. Do you include Saturdays (federal law includes), day of consummation (federal law excludes), or holidays when a bank is open, etc?

In addition, we see this legislation as redundant because the federal Truth in Lending Act, Reg. Z, Right of Rescission (ROR) and associated regulations are already in place to protect consumers on mortgages of their principal residences. Creditors, including Farm Credit Services, are subject to these federal consumer credit laws. We would also like to point out that this legislation, if passed, could be held by courts to be ineffective due to federal pre-emption.

The bill would create issues for Farm Credit Services in timely processing of loans that include a primary residence as collateral. For example, an ag real estate loan on 480 acres with a home on it could be subject to the proposed policy, which is a problem because the value of the residence is a minor part of the loan and shouldn't drive the transaction. This would make an ag loan involving a principal residence more difficult, time consuming and costly.

Throughout the national mortgage crisis, North Dakota has been recognized for its responsible lending practices. This is an indication that our existing policies are effective in protecting the borrower and the lender.

In summary, we oppose HB 1319 because it would add unnecessary confusion, paperwork, delays and costs for all parties involved.

Independently owned and operated associations serving North Dakota and northwest and west central Minnesota.

AgCountry FCS
1900 44th Street South
Fargo, ND 58108
701-282-9494 • 800-450-8933
www.agcountry.com

FCS of Mandan
1600 Old Red Trail
Mandan, ND 58554
701-663-6487 • 800-660-6487
www.farmcreditmandan.com

FCS of North Dakota
3100 10th Street SW
Minot, ND 58702
701-852-1265 • 800-264-1265
www.farmcreditnd.com