2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1405

# 2009 HOUSE STANDING COMMITTEE MINUTES

**Bill/Resolution No. 1405**

**House Industry, Business and Labor Committee**

☐ Check here for Conference Committee

**Hearing Date:** January 20, 2009

**Recorder Job Number:** 7361

| Committee Clerk Signature | Ellen LeTang |
|---|---|

**Chairman Keiser: Opened the hearing on HB relating the use of credit scores by credit issuers & provide for application.**

Vice Chairman Kasper: I had a constituent where her interest rates on her credit card were to anabsorbent rate simply because her credit score decreased. It had nothing to do with the credit card that she owned. I want a bill that won't let credit card companies to increase your interest rate because of your credit score. Goes on to explain the bill.

Representative Schneider: Do you know if credit card companies can increase interest rates.

Vice Chairman Kasper: They can increase it on existing balances.

Representative Clark: How did your constituent know that the interest rate was increased solely on the basis of the credit score.

Vice Chairman Kasper: They check their credit score. I really can't tell.

Anyone here to testify in opposition?

Rick Clayburgh~President & CEO of the DN Bankers Association. See testimony attachments and opposes HB 1405.

Representative Ruby: Is it true that your credit score is reduced because it is checked often. If you were going to use a credit score to change somebody's interest rate, you would have to check it how often?

Clayburgh: Institutions usually don't look at credit score but credit history. It is computer generated.

Representative Clark: Under item three on your testimony (see attachment). Could that credit card company be charged with a crime?

Clayburgh: Mr Tschider can answer that answer for you.

Representative Schneider: This doesn't affect the membership?

Clayburgh: It is limited impact but the credit scores are very valid.

Representative Schneider: No member adjusts rates based on credit scores.

Clayburgh: We are not aware of anyone.

Chairman Keiser: One of the unintended consequences potentially is cancellation? There a right of a cancellation?

Clayburgh: Yes it is.

Marilyn Foss~North Dakota Banker's Association. This is actually an uncertainty in the bill and our banks told us that we don't do this because another third party provider of credit card services.

Vice Chairman Kasper: Is there any state chartered bank in North Dakota involving or owning credit cards that the interest rate is based solely on the credit cards score increase/decrease?

Foss: They told us that they did not do it solely on credit score. There was an item of uncertainty in my mind what is a credit card score. What we do our own up with our own model not solely on credit card score.

Vice Chairman Kasper: Would a bigger bank want a credit report?

Foss: I would assume they would get national date somehow.

Greg Tschider~Represent the Credit Union Association. I would like to clear a few things.

Representative Schneider asks about future whether or not increases a rate on credit card whether or not it applies to the balances or not. No credit issuer need raise interest rates on existing balances which is a law that will take effect 2010. There is a notice period of 45 days can they raise the interest rate and it only applies to future purchases. Representative Clark inquired what the penalty is if you violate this purposed bill, it is in fact a violation and the penalty of a $500 imposed. Credit Union generally rely on credit scores and check on it at renewal time. This bill would prohibit you from solely deciding on whether or not to remove the card. What Vice Chairman Kasper presents is not reality. If you go to court, the question is what the jury will believe. There is a certain credibility issue here.

Tim Karsky~Department of Financial Institutions. See attachment. Tim Karsky explains the attachment. This bill is discriminatory to state chartered financial institutions.

Don Forberg~Executive Vice President of Independent Community Banks of North Dakota. We oppose this HB 1405.

**What are the wishes of the committee?**

**Vice Chairman Kasper: Moves a Do Not Pass.**

**Representative Clark: Second.**

**Roll call was taken on HB 1405 Do Not Pass with 12 yea's, 0 nay's, 0 absent and Representative Schneider is the carrier.**

Date: Jan 20-2009
Roll Call Vote # 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**
**BILL/RESOLUTION NO.** 1406

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 Vice Chair Kasper Seconded By Rep Clark

| Representatives | Yes | No | Representatives | Yes | No |
|---|---|---|---|---|---|
| Chairman Keiser | x | | Representative Amerman | x | |
| Vice Chairman Kasper | x | | Representative Boe | | |
| 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 | | | | |
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AB

Total (Yes) 12 No 0

Absent 1

Floor Assignment Rep Schneider

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

**REPORT OF STANDING COMMITTEE**

**HB 1405: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1405 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1405

TESTIMONY OF RICK CLAYBURGH
OPPOSING HOUSE BILL 1405

Chairman Keiser, members of the Committee, I am Rick Clayburgh, President and CEO of the North Dakota Bankers Association ("NDBA"). I appear before you to oppose House Bill 1405. NDBA is concerned about this bill for reasons that are entirely unrelated to the conduct of our members. We surveyed our membership regarding this bill and across the board they said either: 1) they are not credit card issuers, or 2) they noted they are federally chartered and comfortable that this legislation is subject to preemption by a federal bank regulator acting under federal law. Across the board, bankers said they do not increase the interest rate on a credit card solely because of a decreased credit score. Given this, you may be wondering why NDBA is bothering to oppose the bill.

Our membership is concerned with this legislation for a number of reasons.

1) It seems "counterintuitive" to prohibit the use of credit scores for the purpose of managing credit risk and setting credit terms when credit is being granted, extended over a period of time, or changed. A credit score does predict the likelihood that a borrower will repay a loan on time.

According to the Consumer Federation of America and Fair Isaac Corporation (in a document that has been reviewed and distributed by the federal consumer information center in Pueblo, Colorado), a credit score is a number that helps lenders and others predict how likely a person is to make credit payments on time. The scores are based on information that is included in a person's credit report. As a matter of federal law, a credit score may not consider race, color, religion, national origin, sex, marital status, or whether a person receives public assistance or exercises any right under the federal Equal Credit Opportunity Act or Fair Credit Reporting Act.

2) The use of credit scores was developed as a way to remove the subjectivity in the credit process by providing an objective tool to be used in determining an individual's credit worthiness.

3) The fact that a creditor who uses a credit score as a tool to manage the interest rate risk can be charged with a crime.

4) The concern that everyone's cost of credit will go up because a lender will not be able to adjust the interest rate of an individual whose credit score has declined.

Mr. Chairman, it is for these reasons that the North Dakota Bankers Association is opposed to HB 1405.

# Your Credit Scores

Consumer Federation of America
Fair Isaac Corporation

## Credit Scores Are Vital to Your Financial Health

A credit score is a number that helps lenders and others predict how likely you are to make your credit payments on time. Each score is based on the information then in your credit report.

## Why Do Your Scores Matter?

Credit scores affect whether you can get credit and what you pay for credit cards, auto loans, mortgages and other kinds of credit. For most kinds of credit scores, higher scores mean you are more likely to be approved and pay a lower interest rate on new credit.

Want to rent an apartment? Without good scores, your apartment application may be turned down by the landlord. Your scores also may determine how big a deposit you will have to pay for telephone, electricity or natural gas service.

Lenders look at your scores all the time. They look at your scores when deciding, for example, whether to change your interest rate or credit limit on a credit card, or whether to send you an offer through the mail. Having good credit scores makes your financial dealings a lot easier and can save you money in lower interest rates. That's why they are a vital part of your financial health.

**Consider a couple who is looking to buy their first house.**

Let's say they want a thirty-year mortgage loan and their FICO credit scores are **720**. They could qualify for a mortgage with a low 5.5 percent interest rate*. But if their scores are **580**, they probably would pay 8.5 percent* or more -- that's at least 3 full percentage points more in interest. On a $100,000 mortgage loan, that 3 point difference will cost them $2,400 dollars a year, adding up to $72,000 dollars more over the loan's 30-year lifetime. **Your credit scores do matter.**

*Interest rates are subject to change. These rates were offered by lenders in 2005.

## What is a Good Score?

When lenders talk about "your score," they usually mean the FICO® score developed by Fair Isaac Corporation. It is today's most commonly used scoring system. FICO scores range from 300-850, and most people score in the 600s and 700s (higher FICO scores are better). Lenders buy your FICO score from three national credit reporting agencies (also called credit bureaus): Equifax, Experian and TransUnion.

In the eyes of most lenders, FICO credit scores above 700 are very good and a sign of good financial health. FICO scores below 600 indicate high risk to lenders and could lead lenders to charge you much higher rates or turn down your credit application.

## Not Just One Score

There are many types of credit scores. They are developed by independent companies, credit reporting agencies, and even some lenders. As a rule, the higher the score, the better.

- **Each credit reporting agency calculates your score** and each score may be different because the credit history each agency has about you may be different. Lenders may make a credit card or auto loan decision based on a single agency's score, although others such as mortgage lenders often will look at all three scores.

- **Your credit score changes** when your information changes at that credit reporting agency. This is good news! It means you can improve a poor score over time by improving how you handle credit.

- **Many insurance companies use something similar** when setting your insurance rates, called a "credit-based insurance score." You may be able to improve your insurance score by improving how you handle credit, which in turn may lower your premium payments on auto or homeowners insurance.

- **Some credit scores offered to consumers are just estimates** and are different from the credit risk scores lenders actually use, although they may appear similar. Consumer reporting agencies and other companies sometimes use an estimated score to illustrate a consumer's general level of credit risk. How might you tell whether a score is estimated? Ask the company if the score is used by most lenders. If it isn't, it is likely to be an estimated score.

## Five Parts to Your FICO Credit Scores

As a rule, credit scores analyze the credit-related information on your credit report. How they do this varies. Since FICO scores are frequently used, here is how these scores assess what is on your credit report.

1. **Your payment history – about 35% of a FICO score**
   Have you paid your credit accounts on time? Late payments, bankruptcies, and other negative items can hurt your credit score. But a solid record of on-time payments helps your score.

2. **How much you owe – about 30% of a FICO score**
   FICO scores look at the amounts you owe on all your accounts, the number of accounts with balances, and how much of your available credit you are using. The more you owe compared to your credit limit, the lower your score will be.

3. **Length of your credit history – about 15% of a FICO score**
   A longer credit history will increase your score. However, you can get a high score with a short credit history if the rest of your credit report shows responsible credit management.

4. **New credit – about 10% of a FICO score**
   If you have recently applied for or opened new credit accounts, your credit score will weigh this fact against the rest of your credit history. FICO scores distinguish between a search for a single loan and a search for many new credit lines, in part by the length of time over which inquiries occur. If you need a loan, do your rate shopping within a focused period of time, such as 30 days, to avoid lowering your FICO score.

**5.** **Other factors – about 10% of a FICO score**
Several minor factors also can influence your score. For example, having a mix of credit types on your credit report – credit cards, installment loans such as a mortgage or auto loan, and personal lines of credit – is normal for people with longer credit histories and can add slightly to their scores.

| What's NOT In Your Scores |
|---|
| By law, credit scores may not consider your race, color, religion, national origin, sex and marital status, and whether you receive public assistance or exercise any consumer right under the federal Equal Credit Opportunity Act or the Fair Credit Reporting Act. |

## Learn Your Scores Soon

It's now easy to get your credit scores to check your financial health. Different sources provide credit scores to consumers via the Internet, telephone or U.S. Mail. For most scores, you will need to pay a small amount. You also will be asked to prove your identity to make sure your financial information isn't given to the wrong person.

**Here are recommended places you can get your scores:**

| Source | Cost | Description | Score range |
|---|---|---|---|
| **ANNUAL CREDIT REPORT SERVICE**<br>Congress recently established this outlet to make it easier for consumers to get their credit reports and credit scores from the three national credit reporting agencies.<br><br>**Web:**www.annualcreditreport.com<br>**Phone:** 1 877 322 8228<br>**U.S. Mail:**<br>Annual Credit Report Request Service<br>P. O. Box 105281<br>Atlanta, GA 30348-5281 | The price for credit scores is being determined by the Federal Trade Commission Credit Reports and Scoring.<br><br>One free credit report per year from each credit reporting agency. | Each credit reporting agency offers a different type of credit score to consumers. | FICO score via:<br>Equifax 300-850<br>Experian score 330-830<br>TransUnion score 150-934 |
| **MYFICO.COM**<br>The consumer Internet site of Fair Isaac Corporation which developed the FICO score.<br><br>**Web:** www.myfico.com | $14.95 for one FICO score and credit report.<br>$44.85 for all three FICO scores and credit reports from the three credit reporting agencies (2005 pricing). | This score is most often used by lenders. It lets you see how prospective lenders would evaluate your credit history. | FICO score from Equifax, Experian and/or Trans Union 300-850 |
| **INDIVIDUAL CREDIT REPORTING AGENCIES:**<br><br>Equifax | Prices for credit scores with credit reports vary from $14.95 to $34.95 | Each credit reporting agency offers a different type of credit | FICO score via:<br>Equifax 300-850 |

| | | | |
|---|---|---|---|
| **Web:** www.equifax.com<br>**Phone:** 1 800 685 1111<br><br>Experian<br>**Web:** www.experian.com<br>**Phone:** 1 866 200 6020<br><br>TransUnion<br>**Web:** www.transunion.com<br>**Phone:** 1 800-888-4213 | (2005 pricing). | score to consumers. | Experian score 330-830<br>TransUnion score 150-934 |
| **MORTGAGE LENDERS** | Credit Score is free when applying for mortgage or home equity loan. | This score will likely be the actual score used to evaluate your application. Ask your lender to be sure. | FICO score from Equifax, Experian or Trans Union 300-850 |

Want Examples?

**Meet Vera, A Single Mother**

| Behavior of action | Change in score | Vera's current FICO score |
|---|---|---|
| **March 2004**<br>Vera and husband Dave have been married for 10 years. They have one daughter April, age 4. Financially they are making payments on time for two car loans, one mortgage and four credit cards which have low balances. But sadly, their marriage has deteriorated and they agree to divorce. In the settlement Vera retains custody of April. Dave takes one of the cars and responsibility for its loan. He also takes two of their four credit cards, and agrees to pay 50 percent of the monthly mortgage payments. | --- | 780 |
| **May**<br>Dave struggles financially following the divorce and runs up his two credit cards to nearly their limit. Vera doesn't realize her name is still on the card accounts Dave is using. | -80 | 700 |
| **July**<br>Dave continues to struggle and misses payments on both cards. Both cards still are nearly maxed out. | -100 | **600** |
| **August**<br>Vera gets a call from her bank about the missed payments. Once she understands what has happened, she contacts Dave and asks him to roll over the balances on both cards to a new card that he opens in his name only, which he | +80 | 680 |

| | | |
|---|---|---|
| does. Paying off the two accounts improves her score. | | |
| **February 2005**<br>Vera continues to manage her money carefully, paying her bills on time and keeping her two card balances low. Meanwhile the two missed payments get older on her credit file and have less impact to her score. Dave lands a better job and makes his part of the mortgage payments on time. | +40 | 720 |
| **March**<br>Vera's car breaks down. Since she relies on it to get to work and to take April to preschool, she has no choice but to have it repaired. To pay the garage she maxes out one of her credit cards. | -80 | 640 |
| **April**<br>Since Vera needs a reliable car, she asks her bank about auto loan rates. They tell her that her credit score is too low to qualify her for their best rate. Since money is tight, she waits to buy a car. | --- | 640 |
| **July**<br>Vera has steadily paid down her high credit card balance and monitored her score. When her score has improved, Vera applies and is approved for an excellent rate on an auto loan. She buys a used car and feels good about how she has managed her credit. | +40 | 680 |

**Now Meet Don and Doris**

| Behavior of action | Change in score | Don and Doris's current FICO score |
|---|---|---|
| **March 2004**<br>Don and Doris are married and in their 50s. They have twin sons who graduated from college a year ago, have good jobs and live in different states. Don and Doris have been managing their money carefully for 30 years. They are making payments on a mortgage, three credit cards with large balances, and a $50,000 bank loan that paid for their sons' college. Now that their sons are on their own financially, Don and Doris focus on paying down their credit card balances by making larger monthly payments and using their cards sparingly. | --- | 690 |

| | | |
|---|---|---|
| **March 2005**<br>After a year of steady payments, their credit card balances are significantly lower. They continue to manage their credit well and haven't opened any new accounts. | +50 | 740 |
| **June**<br>The couple decides to go on an extended vacation, taking leaves of absence from the jobs to so they can tour the U.S. in a motor home. They buy their motor home with help from a new bank loan at a favorable rate, thanks to their good credit scores. But opening the new loan lowers their scores a bit. Since their plans will keep them on the road for three months, they put one of their sons in charge of paying their monthly bills. | -20 | **720** |
| **September**<br>They have a wonderful vacation. When they return, they find they had neglected to tell their son about the bank loan. He didn't open the invoices they received from the bank thinking they were monthly account statements. Now their bank loan payment is 60 days late. | -75 | 645 |
| **October**<br>Doris calls the bank, explains the mix-up and sends in the overdue payments immediately. A couple of weeks later their bank conveys their new account information to the credit reporting agencies, where it is available to influence their credit scores. | +20 | 665 |
| **April 2006**<br>After six more months of on-time payments, their credit scores have steadily improved. Although the late payment will remain on their credit reports for seven years, it will impact their scores less as time passes. Don and Doris are on track once again to regain their good FICO credit scores in the 700s. | +30 | 695 |
| * Don and Doris have separate FICO score, but in this example, they would rise and fall together. | | |

## Helpful Tips

1. When you get your credit scores, make sure you also learn the highest and lowest scores possible, as well as the most important factors that influenced your scores. These factors can give you an idea of how you can improve your scores.
2. Getting your own credit scores or credit reports won't affect your scores, as long as you order them from one of the sources we list here.

3. Review your credit reports for accuracy. Mistakes and omissions on your credit reports probably will affect your credit scores. If you spot an error, contact the credit reporting agency and the creditor whose information is wrong.

4. If you have questions or problems with your credit scores, contact the company that provided them to you.

## Boosting Your Scores

Your credit scores change when new information is reported by your creditors. So your scores will improve over time when you manage your credit responsibly.

Here are some general ways to improve your credit scores:

- **Pay your bills on time.** Delinquent payments and collections can really hurt your score.
- **Keep balances low on credit cards.** High debt levels can hurt your score.
- **Pay off debt rather than moving it between credit cards.** The most effective way to improve your score in this area is to pay down your revolving credit.
- **Apply for and open new credit accounts only when you need them.**
- **Check your credit report regularly for accuracy** and contact the creditor and credit reporting agency to correct any errors.
- **If you have missed payments, get current and stay current.** The longer you pay your bills on time, the better your score.

**Improving your credit scores can help you:**

- Lower your interest rates
- Speed up credit approvals
- Reduce deposits required by utilities
- Get approved for apartments
- Get better credit card, auto loan and mortgage offers

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Tim Karsky

**§ 7.4008 Lending.**

**(a)** ***Authority of national banks.*** **A national bank may make, sell, purchase, participate in, or otherwise deal in loans and interests in loans that are not secured by liens on, or interests in, real estate, subject to such terms, conditions, and limitations prescribed by the Comptroller of the Currency and any other applicable Federal law.**

(b) *Standards for loans.* A national bank shall not make a consumer loan subject to this § 7.4008 based predominantly on the bank's realization of the foreclosure or liquidation value of the borrower's collateral, without regard to the borrower's ability to repay the loan according to its terms. A bank may use any reasonable method to determine a borrower's ability to repay, including, for example, the borrower's current and expected income, current and expected cash flows, net worth, other relevant financial resources, current financial obligations, employment status, ***credit history***, or other relevant factors.

(c) *Unfair and deceptive practices.* A national bank shall not engage in unfair or deceptive practices within the meaning of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), and regulations promulgated thereunder in connection with loans made under this § 7.4008.

**(d)** ***Applicability of state law.*** **(1) Except where made applicable by Federal law, state laws that obstruct, impair, or condition a national bank's ability to fully exercise its Federally authorized non-real estate lending powers are not applicable to national banks.**