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ROLL NUMBER

DESCRIPTION

1328

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1328

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1328

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 22, 2007

Recorder Job Number: 1608

Committee Clerk Signature

Stephanie N Thomas

Minutes:

Chair Keiser opened the hearing on HB 1328.

Rep. Gil Herbel, District 16: What this bill does basically is it allows creditors to assign their accounts receivable to financial institutions, and give them the authority to collect a late payment fee.

Marilyn Foss, ND Bankers Association: See written testimony #1.

Rep. Dosch: Is it subject to the same disclosure requirements, for example, in order to charge for sign and billing of an account, you have to disclose that up front. If the original merchant did not disclose any interest charges or anything, are we now enabling the assignee in this case to charge that, even though the original vendors did not disclose that?

Marilyn: That's not my intention. I think that is covered in the language that's in the bill on Line 9. The original creditor doesn't have the right to charge it if he doesn't follow the rules for disclosing, and if you don't pay it within 30 days, the late payment charge might be imposed.

Rep. Ruby: Traditionally, banks use their collection if it's on loans that we have secured or possibly not secured. Is this a whole new addition to them taking over duties of collection agencies with smaller accounts like this?

Marilyn: These would be unsecured loans, and I honestly don't know if collection agencies do a lot of collection for these types of accounts, but if they do, this would clarify for them to that they can continue to charge the late charge.

Rep. Ruby: I've used collection agencies where I had to sign just to buy my customers and my customers debt over to them, and whatever fees normally I guess, that's what's taken out of what I receive from the transaction. I just wonder now if financial institutions are going to get into that type of business.

Marilyn: The financial institutions that I talked to about this weren't interested in doing that. They had an emergent in their local community who was caring the delinquent accounts receivable and who wanted to liquidate them, and the bank agreed to buy them. There was not this you get 70% and I get 30%, that wasn't the arrangement. The bank was buying them and taking over the whole account. Essentially, the emergent, after they negotiated whatever the price was wasn't going to have any role in it any longer.

Rep. Thorpe: As I understand this would say the banks could buy these delinquent accounts, so what's the discounted rate they normally contract those at?

Marilyn: It's not limited to banks, and secondly, it's negotiated.

Rep. Clark: What happens if there's a dispute between the merchant and the creditor, how does that affect the bank? Would the bank have the authority to simply deduct these payments out of the veteran's account that might be at the same bank?

Marilyn: If there is a dispute between the bank and the creditor, the bank is in the middle of that dispute, but they're not in any better shoes than the creditor would be, because they're only taking over the creditor's right. So, this is not a situation where promissory notes are being sold or that kind of thing where there's a holder and do course doctrine in businesses selling and buying promissory notes. You could buy the promissory note and take it free if

some of the defenses that the person who owned the money might have against paying the note. That doesn't apply here, because there is no promissory note, there is not a written contract, and the agreement and the deal between the creditor and the customer originally was I'll pay you within 30 days, it wasn't a financing arrangement. So, there isn't a negotiable piece of paper that trades hands here.

Rep. Kasper: On this banking rule to take the money out of the customers account, this does not allow right of offset, it would be a simple transaction?

Marilyn: In ND right of offset is contractual, not a common law right. I guess it would be a matter of interpretation. All I am trying to do here is give the bank the same right as the creditor, and I guess from the language in the statute, I think you would have a pretty good argument that the bank didn't do it, because the creditor couldn't do it.

Rep. Amerman: Before this might happen with a creditor, or a bank taking an assignment from the creditor, is there anything in the statute about notification to the person that owes the money that this is going to happen, or this happens, or does he just get this from the bank one day?

Marilyn: The companion statute to this, which is 13.01.50, sets out their requirement for the billing statement and that sort of thing. It doesn't say that this might be assigned to another creditor. When things are assigned, the person who owes the debt isn't responsible to pay it, unless they get notice of it.

Tim Karsky, ND Department of Financial Institutions: The language in HB 1328 would also help with the collection agencies, which is the industry we supervise. Over the years we have said that you could assign the late payment fees to other creditors, and we would support this language not only for the bank side, but also just for the collection agency industry. On a discount rate, from the collection agency side it depends when the collection agency gets that

account. If it's 300 days old, it's not a very good deal for the original creditor, but if it's only 30 days old it could be like 80%-20% split.

John Risch, United Transportation Unit: The main reason I showed up today was in reference to medical accounts. Certainly, medical bills are so high now days that people who have them can have surgery up to \$50,000 or more, and they find it impossible to pay the account, let alone interest on it, or late fees. So, we're opposed to it if it applies to any type of medical account.

Hearing Closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1328

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 01-29-2007

Recorder Job Number: 2125

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Keiser allowed committee discussion on HB 1328. HB 1328 relates to late payment charges on medical accounts. Rep. Dosch was absent.

Rep. Keiser: When merchants sell their accounts receivable, it was not clear, whether or not the ability to charge a late fee would transfer to the new owner. This clarifies it. It says that a creditor may assign not only their accounts receivable, but also they may transfer their charging of a late payment charge, where legal.

Rep. Johnson moved to adopt the amendment. Rep. Vigesaa seconded.

Voice vote: Unanimous. Amendments were adopted.

Rep. Vigesaa moved a DO PASS AS AMENDED.

Rep. Johnson seconded.

Rep. Keiser: If this is not clarified, a lot of retailers are going to have significant problems in selling their accounts receivable and banks are not going to want to take them if they can't charge for that late fee, cuz why would you buy it? Retailers some times need cash flow.

Sometimes one of the ways to generate cash flow is to sell your accounts receivable. This is a problem.

Rep. Thorpe: That was the reason why in committee I asked how much they have to discount those receivables to sell them to this agency and they gave me a figure that I would assume they would be charging considerably more than what she told me.

Rep. Zaiser: Was this held last week?

Rep. Keiser: It was held last Monday.

Roll Call Vote: 11 yes. 2 no. 1 absent.

Carrier: Rep. Dosch

78286.0101
Title.0200

Adopted by the Industry, Business and Labor
Committee

January 29, 2007

**House Amendments to HB 1328 (78286.0101) - Industry, Business and Labor
Committee 01/30/2007**

Page 1, line 2, remove "medical" and after "accounts" insert "receivable"

Renumber accordingly

Date: 1-29-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1328

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS, as Amended

Motion Made By Rep. Vigesaa Seconded By Rep. Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich		X	Rep. Thorpe		X
Rep. Dosch			Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 11 No 2

Absent 1

Floor Assignment Rep. Dosch

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

REPORT OF STANDING COMMITTEE

HB 1328: Industry, Business and Labor Committee (Rep. Kelsner, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1328 was placed
on the Sixth order on the calendar.

Page 1, line 2, remove "medical" and after "accounts" insert "receivable"

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1328

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1328

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 13, 2007**

Recorder Job Number: **4979**

Committee Clerk Signature



Late payment charges on accounts receivable:

Representative Gil Herbel – District #16 – Grafton - In Favor

Simple bill, it allows Creditors to assign their accounts receiving to a financial aid institution for collection and allows them to collect a fee.

Marilyn Foss – ND Bankers Association - In Favor

TESTIMONY # 1 *Explains testimony*

1. A merchant or service provider who is carrying delinquent accounts receivable may liquidate and may sell the account to a 3rd party including a local bank.
2. The 3rd party who acquires the delinquent accounts receivable may charge late payment fee that is permitted to be charged. Since 1981 the section of law has allowed late charges when customer don't pay their bills within 30 days.

Section 1301.14 and companion 1301.15 apply when a merchant or service vendor sells a product or service with the understanding that the customer is going to pay in full within 30 days of the date of obligation is incurred. *Continues with written testimony*

S Hacker: This allows the banks to get into the collection industry and do collecting on accounts receivable?

Marilyn F: Yes, the banks can collect these accounts after they have purchased them. This also is method of merchants to liquidate delinquent accounts receivable.

S Hacker: Is there a LACK of companies that do accounts receivable collections in the state of ND?

Marilyn F: Apparently so. The statute didn't make it clear that you could assign accounts receivable and that the person doing the collecting can charge the same late payment fee. It's not only a question for banks, but also collection agencies.

S Potter: When a bill is turned over to the collection agency, the bill is frozen and they cannot charge these late fees. That's the change in here. You can already assign accounts receivable to somebody else, can't you?

Marilyn F: We have a bank that was cited for possible violation of law because of the assignment. The charges were reversed. There was a citation over the late payment charge.

S Potter: In that instance, were they cited because we have to REGISTER to be collection agencies, or is there some requirement they be certified or licensed by the state?

Marilyn F: Collection Agencies need to be registered, banks are not required to license as collection agencies, however.

S Wanzek: As I see it, it's not necessarily turning over the accounts receivable for COLLECTION, being a collection service I MAINTAIN accounts receivable and pay the collection service a fee. In this case, I'm imagining a business person would sell their accounts receivable and then assign them, they basically BUY them and take full ownership of that. You want the rights to pass on that the original business person had.

Marilyn F: We actually do see this as a service to merchants and vendors. It is done on a recourse basis. If the customer who failed to pay originally, if not paying the bank, they are assigned right back to the merchant. So it is a service for collecting accounts receivable for

people who didn't plan to be carrying them in the first place. Under this section, a late payment, the customer, the arrangement was that the bill would be paid within 30 days, so the person who provided the product or the service wasn't planning on being in the finance business, wasn't planning on sending out monthly bills, wasn't making the sale to make the late payment charge; they were making the sale to make the sale, and not holding accounts receivable.

S Behm: It's always been a problem with late payments. Elevator Board – whenever we wanted to turn one account over the collection agency, we took an awful lickin' on that bill. They would take almost half the bill if they could collect it. You're still going to lose a lot if you turn over that bill and someone buys that bill from you.

Marilyn F: I asked an institution what they charged for this and it was about 2% where a collection agency would charge 30 – 50%.

S Klein: So the elevator could go to the bank and have receivables and ask if they would like to buy them.

Marilyn F: That is one application if the elevator's arrangement with the customer was that they had to pay in 30 days.

S Klein: ...and then their bank could do it.

Marilyn F: Before the authority, the law was silent. The merchant or vendor could charge. Part of the value of the assignment for customers is that you're not charging the vendor much for it, you can collect the late fee. With the customer it's not any different because the purchaser has the same right as the merchant did in charging the late fee.

S Hacker: So some are already doing it? You know the law is silent in doing it.

Marilyn F: I know of 2 banks that are doing this with merchants, the issue is the late fees.

S Hacker: Don't they have to be licensed as a collection agency?

Marilyn F: That's right, because it would be duplicated. They're still collection agencies and banks are both regulated by the department of financial institutions now.

S Hacker: What is the statute of limitations on what you can charge and what is the current rate? Is the rate like 1% per month?

Marilyn F: Merchants can request 1.75 per month as of 1981 .

S Hacker: That's what the banks can charge currently.

Marilyn F: That's the amount the merchants can charge.

S Hacker: What about the banks?

Marilyn F: There is some question about that. The banks said their position was the judgment greater, 12%.

S Hacker: So what we're going is allowing the banks to bump up the amount they can charge from 1% - 1.75% just parallel to those collection agencies with this bill. You said 1% per month that is 12% annual rate, now we would allow the banks to come into the collection business and even though, they were able to charge 1%. But now by putting it under this subsection 2 of the code allows for 1.75% to be charged.

Marilyn F: It allows the bank to charge 1.75% and that's what people are being charged currently.

S Potter: Is this strictly about banks? The works sound like I could assign it to anybody, anywhere, I can sell my debt to an international collection agency and the difference is about them continuing to charge the late fees and penalties of 21% as opposed to what they can do now.

Marilyn F: That's correct. There is nothing in the bill that limits the purchasing entity. It could be YOU.

S Potter: That's what scares me, Marilyn. It seems to me that it's a little bill, but a BIG opening, it is not just a nose under the tent, it just opens things wide open. We've put everybody into the collection business – licensed, unlicensed and we've allowed something to take place that doesn't happen now that once it's turned over to the collection agency, those fees end, and this is the amount that the person owes, now we're saying 21% on top of that.

Marilyn F: I don't think that is correct. It allows anyone to purchase these, there's no restraint on that, but if you are going to be in the collection business, you are going to be licensed as a collection agency in the state. There is nothing in this bill that alters the requirements of the law that says, "if you're in the collection business, you will be licensed." As far as changing rates, or allowing the banks to charge more, 1.75 is a limitation and is applied to banks. It is usury limited.

S Klein: This isn't something that all banks are going to dive into. Why would they want to dabble in accounts receivable in trying to collect, unless they're foreclosing on that business.

Marilyn F: Their customers have asked them to do this. The customers don't want to collect, they're not set up to be in that business. They have come to the bank and want to have a way to liquidate the accounts.

S Wanzek: I personally relate to this. We have a business that sells supplies, farmers and ranchers. I've always said it's frustrating to be in the banking business. In the rural areas it's difficult. If those people don't want to pay those interest rates, they could go to the bank and got a loan and paid off the loan in the first place. When I see the word "assigned," to me that means changing ownership. I don't personally feel that in case of a collection, I can continue to charge the 1.75%, can I now, while somebody's trying to collect it?

Marilyn F: You can hire someone to act as an agent, just as you can have an employee spend their time collecting on your accounts. I don't really see that this bill affects that ability of you

as a merchant to hire somebody to collect as your employee or agent in accounts receivable. If they are in the independent business of collecting, they have to be licensed as a collection agency.

S Hacker: Referencing the comment made earlier. Would you underwrite a risk if someone had a collection and they didn't like that interest rate and they said, "can I get a loan from you to pay my accounts receivable (AR), because you'll give me a loan at 7%?"

Marilyn F: More of a DFI issue. They'll be small. I think banks do make loans to people who want to refinance to take advantage of the lower interest rate.

S Hacker: This is an accounts receivable situation.

Marilyn F: From the customer's perspective, the customer is the one who is coming to the bank and applying for the loan. To the customer, it is a debt.

S Hacker: DFI says you're limited to 12% per year. You also mentioned that if you own, or assigned the AR, that you're not regulated by ANY interest rate?

Marilyn F: You misunderstood me. Banks currently in ND and in all states are not subject to usury limit. Banks are not subject to state laws on usury limits.

S Hacker: You could charge 30 percent.

Marilyn F: If you can operate the bank with those fees, you're not in the competitive market.

S Hacker: Couldn't you do a "bang up" job by collecting a pile of interest?

Marilyn F: Other collection agencies might be limited to charging the 12%, but 18 or 21 or whatever, but the reality they don't make their money from that. They make their money from saying "I owe you \$1000." If you're bonded by a contract with a collection agency, you won't get \$1000, you might get \$500.

S Hacker: I understand that side of the business. On the consumer who owns the money and currently they are paying 20% per year, point is, does the bank have the ability to charge 30 or 40%?

Marilyn F: Not under this bill. The bank or anyone else who the account, has only the same rights as the merchant who assigned it at the limited 1.75%.

S Andrist: *Grammar question to Marilyn:* I've never seen the term "debtor to pay." Is that a legal term? Curious about the difference between "debtor to pay" and a "debtor."

Marilyn F: On the bill?

S Andrist: Yes, it's either poor grammar or there is such a thing as a "debtor to pay."

Marilyn F: I think it's the obligation of the debtor, it's the debtor's obligation to pay. It might be poor grammar, but it's in the existing statutes.

S Andrist: It's very poor grammar.

S Wanzek: Contrary to S Hacker's comments, personal experience, customers drag out 4-5-6 months and pay 18% interest until you put enough pressure on them to go to the bank and get a loan, pay back their credit. It seems in that environment, they will put off the local merchant to the point they have to go to the bank and get the money. I don't understand why they're paying a lot of money when the local banks have said they would have given them the loan.

Marilyn F: We see this as a service to help accounts receivable.

S Heitkamp: Why are banks doing this? Will you hire a firm to do it? I understand the need and reasoning. If my local bank becomes a collection agency for Tracy's Furniture and he's getting after me because I've got a dispute with Tracy's Furniture, they're going to tick me off and then I'm not going to bank there. I'm looking at it from the business standpoint. Why are you sticking your note into it?

Marilyn F: Banks said they started being interested when their merchants came to them and asked them to perform this service.

S Heitkamp: There's so much on the books, or what?

Marilyn F: It's either small enough they don't want to do it, or they want to liquidate and want to collect it and hope that it's out of their hair. If the customer stops paying the bank, the account goes back to the business that presented it.

S Heitkamp: So there is an "out."

S Behm: This doesn't make sense. If the people can't collect their own bill, I would gladly let someone else try to collect it for me at 2%. Financially it "don't" make sense

Marilyn F: Banks are set up to collect monthly payments, that is how loan payments are made. It is less of a burden, and they can probably do it without hiring additional staff.

S Behm: This is good for the merchant. Wish it would have happened years and years ago. We had bills we couldn't collect, and by the time we sent it out to the collection agency, it's half gone. It's common sense. Go ahead, you've got my blessing.

S Potter: Question – if the banks could perform this service for merchants. That has been ruled that they CAN. The real question in this bill is "can they collect the late payment fees, the interest charges, can they charge 21% on those collections?" Isn't that correct?

Marilyn F: Yes

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1328 B

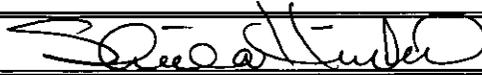
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 14, 2007**

Recorder Job Number: **5037**

Committee Clerk Signature



Deals with assignments of accounts:

S Klein: Question about how the banks are going to be gouging the consumers and whether or not they can. For clarification, we've asked the Dept. of Financial Institutions, Tim Karsky to visit with us.

Tim Karsky – Commissioner for the ND Dept. of Financial Institutions.

HB 1328 did nothing to change the amount of the interest rate that anyone can charge and mainly pertains to creditors who do not plan to extend to credit to anybody else and expect the credit to be paid within 30 days. If you don't pay the debt, you have to send a statement you will charge a late payment charge, you can charge up to 1.75% on that bill as long as it's not a medical bill, because there's a lesser amount for those bills. It's simple, it pertains to debtor-creditor relationship.

ND Bankers added that a creditor can assign these debts to someone else including a financial institution and the financial institution would have the same right as the original creditor to charge that late payment charge.

S Hacker: They can already assign those to creditor companies, such as collection agencies under current law. This will allow financial institutions to take a role in collecting those debts, correct?

Tim K: The language added just clarifies that this has been done in the past and been illegal.

S Hacker: On the old law they were able to charge a different rate than 1.75, correct?

Tim K: The Bank or the Creditor?

S Hacker: The bank.

Tim K: The 1.75 pertains to the creditor, on any type of loans that a bank makes, they're exempt from the usury rate under the ND Century Code and that is for extending credit, that's really not a regulated lender. A bank is considered to be a regulated lender so when you talk about rates that they can charge, they can charge anything. That would be if the bank originally gave credit.

Example: S Klein's grocery store offered accounts receivable and wants to be paid and needs the money NOW and takes them to the bank and assigns them to the bank, the bank will - If it is \$100, the bank may give him \$90 for that and they would collect at 1.75.

S Klein: The bank could not go beyond what I would have charged that customer.

Tim K: That's correct.

S Hacker: They can charge the 1,75, but they won't be able to go beyond that because the bill wasn't originated with bank.

Tim K: Just like a mortgage. If you originate it with the bank and the mortgage gets sold 10 or 14 times down the road, whoever owns that mortgage HAS to follow the original mortgage contract.

S Hacker: They can't go above the 1.75. Does that go back to the creditor?

Tim K: One you sell it and assign it, the bank would have right to that charge.

S Potter: We talk about banks, is there anything that limits what we're talking about assigning accounts here to BANKS.

Tim K: I don't believe the new language, it just says "creditor" which is anybody, they assign accounts receivable and don't see where the bank shows up. You can assign it to me, I can collect and get your 1.75.

S Potter: Don't we license collection agencies in some way? Isn't this a way around the licensing and collection agencies to make it so anyone can collect?

Tim K: Our dept. licenses collection agencies and that's where you collect a third-party debt. There might be a question on accounts receivable, would I have to be licensed as a collection agency, but there is language now that you passed on mortgages, that issue could arise, but the bank would be exempt from collecting that debt because that's their business.

S Potter: So the bank could do it, by anybody else, if I want to do this, I would have to get licensed?

Tim K: I'd have to look at that. There might be a possibility.

S Klein: We've tightened WHO is needs to be licensed. An attorney doesn't, but any of his staff NEED to be. That was clarified in 1062.

Tim K: I do support this bill, it allows clarity that the creditor can sign it over. I've always assumed you can do that, but this really clarifies the language. The reason it came up, we were doing an examination, and the bank had gotten some of his receivables and was actually put it into a revolving charge account which is a whole different statute and trying to do things, and they didn't have a contract and would have to come under this section.

S Hacker: What about just a simple money broker? Isn't that all I'm doing?

Tim K: A money broker talks about the right to find lenders or make loans. That's where you're getting licensed under that section. This transaction is already been completed.

S Andrist: Seems to me that it's letting banks get into the collection business, from a debtor standpoint, I would just as soon be sought after from a bank than I would a collection agency. Isn't that right?

Tim K: The collection agencies, 99% of the time with accounts past due. It's a normal business transaction for bank to buy accounts receivable because that's what they're in the business as. Buying receivables is in the power section of the bank. When businesses are growing, they don't have the money to keep those receivables on the books. The easy way is to go to the banker and have them buy the receivables, they buy them, and that gives you the end cash to continue to operate. It's a simple, every day transaction. They don't HAVE to be past due.

S Wanzek: I own a business and send supplies to farmers and ranchers. I see this as a tool. Our accounts receivables are an asset to us, this gives me the option of , if I need to generate or liquidate that asset, I can go to a bank and I can give out to pass out the same rights that I have with my accounts to the bank in exchange for cash. I don't see it as a collection agency, this case, we're assigning and selling off our accounts receivable.

S Potter: Banks can already do this, collect for their merchant customers, they can take the assignment and do the collection, but they can't get the same terms, contract terms for the 21% interest rate.

S Klein to T Karsky Is that true?

Tim K: The 21%, if I go into your business and you charge a policy that if you don't pay me within 30 days, you can charge me 1.75%, if you sell that to the bank, the bank can collect the 1.75.

S Potter: They can do that currently. Already.

Tim K: Yes.

S Potter: So they are confirming your opinion by putting it in statute? Why don't we say "Banks" in here, why are we leaving it to Ole & Sven's Legbreakers to put this up, or Guido Enunchio or whoever you want to do collections? Why don't we say "banks" in this bill?

Tim K: I don't know. I think you've given the creditors some additional options that there might be accounts receivable companies out there that would buy it for somebody else. It doesn't limit this to just banks, either.

S Klein: If I have your \$100 account and I go to the bank, they'll maybe give me \$98. If I go to the bone breakers, they'll probably give me \$50. There is a difference between the organizations that we deal with on these collections, whether we get the 1 3/4 percent or not, but I'm going to get a lot more working with banks up front. Honest statement?

Tim K: When the collection agencies get a past due account. If they have the ability to charge a fee, they'll try to collect it. Their efforts are in trying to get the principal back...

S Klein: Generally if you owed \$100 and I turned you over to the collection agency, I HOPE they break your legs.

Tim K: Only if they follow fair collection practices.

S Klein: All those folks are licensed through your agency with a specific set of rules as how they twist they before they crack.

Tim K: They are governed by our department.

S Wanzek: You're familiar with "Farm Plan". What is the nature of their business. I know they are out of state, but I know I've been in contact with Farm Plan a number of times about providing that service to our business, wouldn't this be something that falls in your...

Tim K: Farm Plan is a revolving account where the farmer can come in charge, pay down, pay, pay down, as a revolving charge account section. There there is a specific contract in place, the borrow signs a revolving charge account and it is governed by an agreement. In this

situation, you have an account, as Ace hardware, I charge, I'm supposed to pay at the end of the 30 days when I get my bill. If I don't, you can send me out a notice that you can charge 1.75% to the account. He's not funding a revolving charge account. Or a painter or carpet cleaner, they expect to be paid today or when they submit the bill. They do the service, they want their pay.

S Wanzek: As an agriculture business, I have filed some suppliers' accounts receivables, and didn't it say I cannot transfer to the bank?

Tim K: There you were talking about MEANS, of your priority. You could still collect the interest rate on the account. *Explains the contract terms.*

S Potter: You regulate collection agencies and banks and is there anything in here that would allow people to start collecting debts who are not licensed or regulated by you?

Tim K: No

S Hacker: If we find that happening, I would suspect it will be in the next session to fix the problem.

Motion for a DO PASS by S Hacker

Second by S Wanzek

Roll call for DO PASS on Engrossed HB 1328 – 7-0-0 Passed

Carrier: S Andrist

REPORT OF STANDING COMMITTEE (410)
March 14, 2007 11:30 a.m.

Module No: SR-48-5278
Carrier: Andrist
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1328, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1328 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1328

TESTIMONY OF MARILYN FOSS
NORTH DAKOTA BANKERS ASSOCIATION
HB 1328

Mr. Chairman, members of the IBL committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am here this morning to support HB ~~1328~~¹³²⁸ which Representative Herbel has introduced on behalf of one of our member banks.

HB 1328 is offered with two purposes. . . to make it clear that a merchant or service provider who is carrying delinquent accounts receivable may liquidate them by selling them to a third party , such as a local bank, and to make it clear that the third party acquirer of the delinquent accounts has the same right to charge a late payment charge to the tardy customer as does the original creditor. HB 1328 accomplishes these goals by amending section N.D.C.C. 13-01-14, the section of our law that since 1981 has explicitly authorized merchants and service vendors to impose late charges when customers don't pay their bills within 30 days.

Section 13-01-14 (and its companion section 13-01-15) apply only to allow a late charge of up to 1.75% per month to be charged in cases where a merchant or vendor sold products or services with the understanding that the customer would pay in full within 30 days. No arrangements were made by the customer to finance payments over time or to cover the bill by a revolving charge or other financing plan and the customer's late payment was not anticipated by the merchant. Merchants and vendors who are carrying these accounts didn't plan to be doing so and didn't intend to be the finance company for the customer.

We expect that HB 1328 will make more banks willing to purchase the delinquent accounts of their local merchants and service vendors because it will make it clear that after they do so, they, too may charge the customer the same late payment charge as the merchant could charge. But, only under the same conditions. This means that the bank

will have establish that the accounts qualify for the late payment charge and comply with the requirements of section 13-01-15 for a monthly billing statement and disclosure of the rate and amount of the late payment charge, any payments, any additional account debits, and the unpaid balance. The customer will be able to pay his bill at any time, in full.

We see the bill as being positive for local businesses without impeding in any way the rights of their customers. Actually, we expect that banks which are highly compliance oriented will be extremely careful to follow the law because a failure to do so carries consequences for the bank.

One final observation: the title of the bill is incorrect. . . the bill relates to late payment charges on **accounts receivable**, not only medical accounts. (Section 13-01-14 is entitled, Late payment charge on accounts receivable.) I would offer an amendment to correct that problem.

With that, I thank you for your attention and am happy to answer questions.

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PROPOSED AMENDMENTS TO HOUSE BILL 1328
(Offered by Marilyn Foss on behalf of the North Dakota Bankers Association)

Page 1, line 2, replace "medical accounts" with "accounts receivable"

Renumber accordingly

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HB 1328 is offered with two purposes: 1) to make it clear that a merchant or service provider who is carrying delinquent accounts receivable may liquidate them by selling them to a third party, such as a local bank, and, 2) to make it clear that the third party acquirer of the delinquent accounts has the same right to charge a late payment charge to the tardy customer as does the original creditor. HB 1328 accomplishes these goals by amending section N.D.C.C. 13-01-14, the section of our law that since 1981 has explicitly authorized merchants and service vendors to impose late charges when customers don't pay their bills within 30 days.

Section 13-01-14 (and its companion section 13-01-15) apply when a merchant or vendor sells products or services with the understanding that the customer will pay the bill in full within 30 days. No arrangements were made by the customer to finance payments over time or to cover the bill by a revolving charge or other financing plan and the customer's late payment was not anticipated by the merchant. Merchants and vendors who are carrying these accounts didn't plan to be doing so and didn't intend to be the finance company for the customer. If all of these circumstances exist and the customer has been notified that a late payment charge may be imposed if there isn't payment within 30 days, and the customer doesn't still doesn't pay within 30 days, then the merchant may impose a late charge of up to 1.75% per month.

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