

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2218

2007 SENATE POLITICAL SUBDIVISIONS

SB 2218

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2218**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 1, 2007**

Recorder Job Number: **2656**

Committee Clerk Signature

Shirley Borg

Minutes:

Chairman Cook called the Senate Political Subdivisions to order. All members (5) present.

Chairman Cook opened the hearing on SB 2218 relating to title insurance.

Malcolm Brown, North Dakota Bar Association, representing the Real Property Section, introduced SB 2218 and introduced Mr. Dean Rindy who will offer testimony.

Dean Rindy, Attorney, ND State Bar Association and ND Dakota Land Title Association testified in support of SB 2218. (See attachment 1A and 1B)

Phyliss Sutherland, Carrington, ND, President of ND Land Title Association, testified in support SB 2218 as amended by Dean Rindy. (See attachment #2)

Howard Malloy, President of Bismarck Title Company, Bismarck, ND testified in support of SB 2218. (See attachment #3)

Opposed to SB 2218

Steve Tomac, Executive Director, North Dakota Farm Credit testified in opposition to SB 2218. (See attachment # 4)

Greg Tschider, Attorney, representing Mid-America Credit Union Association testified in opposition of SB 2218. (See attachment # 5)

Senator Hacker: What change would it take to straighten some of this out?

Greg Tschider: If it were up to me I would delete the requirement that there even has to be an attorney's opinion. We don't tell the insurance companies that they need a title opinion whether or not they are going to sell you casualty insurance or disability insurance or life insurance. That is an issue between the purchaser and the insurance company. I don't see why this has to be any different. I think we are clogging all the requirements in and what are we really accomplishing? The fact of the matter is someone is going to issue an insurance policy and that insurance company has to be monitored or is monitored by the insurance department. They have to have reserves and things of that nature. If they are willing to sell the policy shouldn't that be sufficient? Title insurance is no different than other insurance. The consumer relies on the issuer and ND has done a nice job on insurance companies. So why do we need to do this and why do we need to pay. We are not getting any extra guarantees.

Claus Lemke, North Dakota Association of Realtors testified in opposition to SB 2218. We see this as an additional cost.

No further testimony on SB 2218.

Chairman Cook closed the hearing on SB 2218.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2218**

Senate Political Subdivisions Committee

Check here for Conference Committee

Hearing Date: **February 9, 2007**

Recorder Job Number: **3258**

Committee Clerk Signature

Shirley Long

Minutes:

Chairman Cook called the committee to order. All members (5) were present.

Chairman Cook asked the committee to go to SB 2218.

Senator Hacker made a motion to **Do Not Pass**.

Senator Olafson seconded the motion.

Discussion:

Chairman Cook said he thinks the important thing, before we start trying to fix a little problem here and there, that the study will help us understand and find out what needs to be changed.

Roll call vote: Yes 5 No 0 Absent 0

Carrier: **Senator Warner**

REPORT OF STANDING COMMITTEE

SB 2218: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO NOT PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2218 was placed on the Eleventh order on the calendar.

2007 TESTIMONY

SB 2218

TESTIMONY OF DEAN A. RINDY SUPPORTING SENATE BILL 2218

Mr. Chairman and members of the committee:

My name is Dean Rindy, and I am here today to testify in support of Senate Bill 2218.

I have been practicing law in the State of North Dakota for over 20 years. During the past 10 years I have practiced primarily in the area of real estate. I am also licensed to practice law in Minnesota and have obtained my Real Property Specialist designation from the Minnesota State Bar Association. In addition to being a licensed attorney I am licensed in the State of North Dakota and Minnesota to issue title insurance, and am a licensed abstracter in the State of North Dakota. I am a partner of McConn & Rindy Law Office, Agassiz Title & Escrow Company in Fargo, and Innovative Abstract & Title Company in Wahpeton.

As a member of both the North Dakota State Bar Association and the North Dakota Land Title Association, I strongly support the protections offered North Dakota consumers in the present version of Section 26.1-20-05, and can state with certainty that these protections allow the consumers in North Dakota some of the lowest title insurance premium rates in the Nation. For instance, the premium for a loan policy insuring \$100,000.00 on a residence in North Dakota is \$225.00. In Minnesota, that premium is \$300.00. In Florida, the premium is \$575.00 and in Texas the premium is \$843.00. The premium for \$1 million of coverage is \$1,900.00 in North Dakota, \$2,275.00 in Minnesota, \$5,575.00 in Florida and \$5,649.00 in Texas.

Initially, I would like to offer a revision to Senate Bill 2218. This revision is in response to comments I received from members of both the North Dakota State Bar Association and the North Dakota Land Title Association. The purpose of the proposed amendment, as revised, is not to change the law in any significant manner, but to clarify the existing statute.

The first clarification is to amend the statute to apply to all persons, as that term is used in the North Dakota Century Code. As presently written, the statute applies only to foreign or domestic corporations, and with the advent of numerous other business entities, I believe the statute should be amended to apply to all entities issuing title insurance.

The second clarification is to bring the statute in line with the terminology used in the title insurance industry. Although various other types of insurance may include the issuance of binders or certificates, this is a term that is foreign to the title insurance industry. An insurance binder is a product that will bind insurance for a relatively short period of time until the final policy is in place. Binders are often used when someone purchases a vehicle, and wants insurance on that vehicle the minute he or she drives the vehicle off the lot. A certificate is a product issued by insurance companies as evidence that insurance is in place. This product may be issued to a bank financing a vehicle or home to demonstrate that the collateral is insured. I would submit that neither is applicable to the title insurance industry.

Rather, title insurance companies issue commitments to insure real property, which, if the requirements on the commitment are met, require the title insurance

company to issue a policy. Accordingly, the terms binder and certificate in the statute have been replaced by the term commitment.

The third clarification concerns the phrase "title evidence." As this term is used in North Dakota, it commonly means obtaining an abstract of title from a person holding a certificate of authority under chapter 43-01. However, as title insurance becomes more prevalent in North Dakota, numerous entities have interpreted this phrase to include the last deed of record, the name on the County Treasurer's mailing, or any other "evidence" that would support the applicants assertion that he or she is the record title holder. In the title insurance industry, this type of insurance is commonly referred to as "risk insurance" rather than title insurance. I am personally aware of foreign companies issuing title insurance policies in North Dakota based upon a review of the most recent county property tax statement and a current credit report. Neither of these reviews is legally sufficient to determining whether title to the real property is marketable.

Because of the dual safeguards of an abstract being prepared by a person holding a certificate of authority under chapter 43-01, and that abstract being reviewed by an attorney licensed under chapter 27-11 contained in Section 26.1-20-05, title to real property in North Dakota contains very few defects. Foreign entities are willing to write such "risk insurance," knowing that the risk of title defects is minimal. They may be correct, at the present time. However, allowing this practice to continue will undoubtedly erode the quality of titles in North Dakota, and once the status of titles in North Dakota has eroded to the point these entities are paying out more in claims than they are receiving in premium, they will either cease to operate in the state, leaving the problem behind, or raise their premiums.

Thus, I propose to clarify that "title evidence" is a certified abstract of title continued to the date on the commitment to insure. This clarification will not change the day to day practice of most title insurance companies in North Dakota.

The reason the commitment date was chosen rather than the policy date is because in most residential closings, title insurance companies issue what is called a "short form policy," which is issued at the closing table. The title insurance company then insures the "gap" between the time of the closing and the time the documents are recorded, typically between one to five days. Tying the certification of the abstract to the policy date would therefore be practically impossible.

The next clarification is in the nature of the entity punished for a violation. As presently written, my national underwriter must have its certificate of authority revoked across the entire state if I violate the statute. I believe this is both unfair and unwarranted. Accordingly, the reference to revocation under chapter 26.1-02 dealing with domestic corporations, and chapter 26.1-11, dealing with foreign corporations, has been replaced with a reference to chapter 26.1-26, dealing with insurance producers. In the event I violate the statute, I may suffer the consequences. However, there are many insurance producers across North Dakota who issue insurance for the same national underwriter, and it would be inequitable if these insurance producers were prohibited from writing for this national underwriter just because one producer violated the statute.

The last clarification is to recognize that in certain limited circumstances, following the statute may be impractical. For example, if the consumer has lost his or her abstract and needs to meet a closing date or interest rate lock date, the title insurance company should not have to risk losing its producers license for attempting to meet this

deadline. Accordingly, this revision will allow for situations when following the statute will be impractical. However, if violating the statute is the common practice of a title insurance producer, the statute will allow for the revocation of the insurance producers license.

For these reasons, I ask for a DO PASS vote on Senate Bill 2218.

Thank you for your time and consideration in this matter.

PROPOSAL FOR THE AMENDMENT TO SECTION 26.1-20-05

26.1-20-05. Title Evidence – Examination. Any domestic ~~corporation~~ organized for the purpose of ~~person~~, issuing title insurance to real property in this state or of insuring against loss by reason of defective titles to real property, or encumbrances on real property, may not issue any commitment or a ~~foreign corporation authorized to do business in this state, may not issue any policy, binder, or certificate unless it that person~~ has secured from a person, ~~firm, or corporation~~ holding a certificate of authority under chapter 43-01 ~~the record~~ a certified abstract of title evidence of continued to the date on the commitment to insure the title to be insured the real property, and the this abstract of title evidence, as continued, has been examined by a person duly admitted to the practice of law as provided by chapter 27-11. The ~~certificate of authority~~ insurance producers license of any ~~corporation~~ person violating this section ~~must~~ may be revoked as provided by ~~chapters~~ under chapter 26.1-02 or 26.1-11.

Political Subdivisions Committee Hearing
RE: S.B. 2218

February 1, 2007

Mr. Chairman and Committee Members -

My name is Phyllis Sutherland, of Carrington, North Dakota. I am the President of the North Dakota Land Title Association, which is composed primarily of abstracters and abstract and title companies. On behalf of my association, I am here to support Senate Bill No.2218. Even though this bill refers to the insurance code, it is pertinent to the abstracting of land titles.

Abstracters, as holders of certificates of authority under the abstracting code, are charged by this insurance statute with the duty of providing "evidence of title" to title insurance companies as one of the prerequisites for issuing title insurance. That would seem like a simple directive – except for that term "evidence of title." The vagueness of the term "evidence of title" has been an increasing problem concerning out of state entities attempting to attain title insurance in North Dakota. "Evidence of title" as it relates to our industry, especially in the early years, probably referred to a type of certified abstract of title, which is the primary product of abstract and title companies. Besides the full abstract of title, there are other forms of certified abstracts, such as pencil abstracts, stub abstracts, partial abstracts, surface abstracts and mineral abstracts. These different forms of certified abstracts of title are used for a variety of specific needs. For example, a stub abstract is commonly used when a farmer has several existing abstracts covering land in adjoining sections. To save time and short-term abstracting expense, all those abstracts could be updated, or stubbed, under one certificate.

The purpose of this amendment is to strengthen the original intent of the insurance code, whereby the abstract and title companies would continue to protect consumers by providing their traditional first line of defense to good title – a properly certified abstract of title. Under this bill, “evidence of title” would be more accurately defined as a *certified abstract of title*, prepared by a holder of a “certificate of authority.”

To conclude, Mr. Chairman and committee members, this bill is not only consumer friendly, but maintains the high standards expected of the North Dakota land title industry. Therefore, I wholeheartedly encourage a “yes” vote on Senate Bill No.2218.

Thank you for giving me the opportunity to offer this testimony. I would now be happy to answer any questions.

Phyllis Sutherland, President
North Dakota Land Title Association
Manager of Foster County Abstract and Title Company
Carrington, N.D.

Political Subdivisions Committee Hearing
RE: S.B. 2218

Mr. Chairman and Committee Members-

My name is Howard Malloy. I am President of Bismarck Title Company. Bismarck Title Company is a business located in Bismarck, ND, which provides abstracting, title insurance and real estate closings in Burleigh County, ND. I am also the chairman of the legislative committee for the North Dakota Land Title Association, and a registered lobbyist for that association.

I am testifying today in support of Senate Bill 2218, which purports to amend Section 26.1-20-05 of the NDCC. I believe this bill would clarify the language in NDCC 26.1-20-05, which currently requires, in order to issue a title insurance policy in North Dakota, title evidence from an abstract company licensed in the county in which the property is located, and an examination of that title evidence by an attorney licensed to practice law in North Dakota. I can only assume that the legislature, which enacted this legislation, intended that this procedure be followed for each title insurance policy issued, but that is not always the case. The practice of relying on title evidence and/or title opinions that are not current to the present transaction occurs because the existing statute does not specify that the title evidence and/or title opinion be current, merely that a person have such title evidence and title opinion. Senate Bill 2218 clarifies this language and, I believe, strengthens the statute to accomplish its original intent.

Furthermore, with the advent of the Internet and cable television advertising, much lending occurs to North Dakotans from lenders outside our borders. Many of these loans require the issuance of a title insurance policy. Unfortunately, many of these

lenders operating outside our state don't understand or follow the procedure as prescribed in NDCC 26.1-20-05. This practice is being compounded by the introduction of online real estate records provided by some of the County Recorders in the state. National lenders are currently able to search real estate records online in many counties and issue title insurance policies without obtaining title evidence from the local abstract company or an examination from an attorney licensed in this state. This practice will only increase as more real estate records are available online unless the vagaries in the current language in NDCC 26.1-20-05 are remedied. Senate Bill 2218 accomplishes that and I feel will not only help the state insurance department enforce the statute, but will aid them in educating lenders doing business in our state.

For these reasons, I respectfully request your committee give Senate Bill 2218 a do pass.

Thank you. I would be happy to answer any questions.

Howard L. Malloy
 President, Bismarck Title Company
 Chair, Legislative Committee, North Dakota Land Title Association



North Dakota Farm Credit Council

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**Testimony by Steve Tomac
Executive Director, NDFCC**

HB 2218

February 1, 2007

Mr. Chairman and members of the Senate Political Subdivisions Committee, on behalf of the four (4) Farm Credit associations in North Dakota, I appear in opposition to SB 2218. If we invented a method of title assurance today – February 1, 2007 – it would be very different than what it is. With the ability to digitize, duplicate, and download, one has to wonder why we do what we do. With services like NDRIN and products like title insurance, how is it that the method of title assurance hasn't changed in North Dakota. Forty eight other states have gone to title insurance as a method of assuring title transfer.

SB 2218 takes us a step backward by requiring an updated abstract before title insurance can be purchased. In the case of all home financing, SB 2218 will increase the costs to the consumer because it requires an updated abstract before title insurance can be purchased. In our opinion, consumers should have the choice between abstracting or title insurance and should not be required to do both.

The abstractors in North Dakota provide a good service but we need to find a way to modernize. If we re-invented our approach to title assurance today, requiring an updated abstract before one can purchase title insurance would not be in our approach. Let the insurance companies decide what kind of title evidence they need before issuing a policy, and let the Insurance Commissioner regulate the insurance companies.

This is a bill looking for a problem. Has the number of title insurance claims increased in the past two years? What is the benefit to the consumer of having the updated abstract before they bought the title insurance?

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TESTIMONY IN OPPOSITION TO SENATE BILL NO. 2218

GREG TSCHIDER, MID-AMERICA CREDIT UNION
ASSOCIATION

Mr. Chairman and Members of the Senate Political Subdivisions Committee,
I am Greg Tschider and I represent the Mid-America Credit Union Association.

If you purchased the Empire State Building or the Trump Tower in New York or the Sears Tower in Chicago, you would purchase and receive a title insurance policy. Under this proposed bill, if you purchased a \$20,000 vacant lot, you would need an abstract, an attorney's opinion, and a title insurance policy.

This bill raises the issue of whether North Dakota will continue to support the outmoded concept of abstracts or whether North Dakota will join the rest of the United States in supporting the concept of title insurance without abstracts. In this day and age of technology, business and government are attempting to restrict or in many cases, eliminate paper. This bill embraces unnecessary paper requirements with the consumer (being you and I) paying the bill.

This bill accomplishes two things:

1. It generates more income for abstracters.
2. It generates more income for attorneys.

This bill is anti-consumer and is not good for nor needed to protect the citizens of North Dakota. This bill does not directly affect Credit Unions. Title costs are simply passed through by financial institutions from the abstract company to the consumer. However, Credit Unions are concerned about the negative financial impact this bill has on Credit Union members.

Abstracts are dinosaurs. Forty-eight (48) states do not use abstracts – title insurance is the exclusive devise used to protect consumers. All mortgages generated in North Dakota that are sold on the secondary market must have title insurance – neither abstracts nor abstract opinions are not accepted in the rest of the United States.

Title insurance is insurance that is purchased like life, casualty, or disability insurance. North Dakota does not require an attorney's opinion every time one of those policies is sold in North Dakota – so why should title insurance be any different?

If the title insurance company does not determine that an abstract and/or attorney's opinion is necessary, that should be determined by the underwriters for title insurance company.

If a title policy has been recently issued and the owner desires another policy, why should the owner pay for another certificate and attorney's opinion if there are no additional entries or just a fee? This bill could add \$150 to \$250 to the cost of title insurance and accomplish nothing. In addition, there are many residential developments in North Dakota where the consumer/developer has provided title

insurance. If the residential owner desires to sell their house, the homeowner will have to pay for the cost of preparing an abstract if this bill is approved. Preparing an abstract from scratch can cost as much as \$500 to \$1,000. Who benefits from this? Certainly not the consumer.

Credit Unions submit that this bill is not only unnecessary, but worse yet, it imposes higher and unnecessary fees on the consumers in North Dakota.

These unneeded additional costs will be assessed against consumers regardless of whether the value of the real estate is \$20,000 or \$2,000,000. This bill is a step backwards. Therefore, Credit Unions respectfully request that this Committee give this bill a "DO NOT PASS".

Thank you.