

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2240

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2240

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7721

Committee Clerk Signature

Eva Liebelt

Minutes:

Chairman Klein: Opened the meeting on SB2240.

Marilyn Foss, General Counsel for the ND Bankers Association. Written Testimony Attached.

Chairman Klein: Do we have a problem in North Dakota yet or are we just trying to get ahead of that?

Marilyn: I would say that we are trying to get ahead of that at this point.

Chairman Klein: So we don't have a major issue with industrial bank coming in to Bismarck or Fargo.

Marilyn: We haven't had an industrial bank establish a physical branch here but we do have entities operating in North Dakota that do own industrial banks in their larger commercial structure. This is a matter of fair competition for our banks and industrial banks. What has given concern is the explosive growth of the industrial banks. In twenty years they have become the biggest twenty depository's institution in the United States and they don't have the same kind of supervision and examinations that other banks do.

Senator Horne: You mentioned that this should be resolved at the national level but so far it hasn't been. Are there other states trying to do what we are here?

Marilyn: Yes, the last big effort at the national level was in 2007. The bill got through the house and approximately fifteen other states have adopted legislation to address the industrial bank problem. This bill is modeled on a Colorado piece of legislation and that was adopted two years ago.

Senator Nodland: The biggest difference here is strictly prudent lending practices.

Discussion to follow of the differences between industrial banks and banks and credit unions.

Greg Tschider, Mid- America Credit Union: We support this bill. We ask for a level playing field.

They should be subject to the same federal regulations as everybody else. We need control, regulations and proper supervision. Are we trying to prohibit competition? No.

Jack McDonald, Independent Community Banks of ND: We do support the bill.

Chairman Klein: Close hearing on 2240.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2240

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7856

Committee Clerk Signature

Em Lebelt

Minutes:

Chairman Klein: Do we need any more discussion on SB 2240?

Motion made by Senator Andrist for a do pass. Seconded by Senator Wanzek.

Roll Call Vote: Yes:7 No:0 Absent:0

Floor Assignment: Senator Nodland

REPORT OF STANDING COMMITTEE

SB 2240: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2240 was placed on the Eleventh order on the calendar.

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2240

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2240

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10552

Committee Clerk Signature

Ellen Letang

Chairman Keiser: Opened the hearing on SB 2240 relating to the powers of an industrial bank and declare an emergency.

Rick Clayburgh~President & CEO of the North Dakota Bankers Association. See testimony attachment.

Representative Nottestad: Give me an example of two or three industrial banks in North Dakota.

Clayburgh: Target, Home Depot, Wal-Mart, I'm trying to think of others. There aren't any of those that are doing business as a bank in the state of North Dakota.

Representative Vigesaa: Could you give us an example of a point of sale device?

Clayburgh: If you go up to a cash register to do your check out, you will see a unit where you swipe your credit card through. It may ask you for a pin number to make a transaction if you want to pay your bill, that's the point of sale device. They could be established as an opportunity to make loans or make deposits. This particular legislation is modeled after the state of Colorado who looked extensively at that and it could be potentially, a way to get around of banking and commerce. We are not aware if that's occurring yet but this is an opportunity to shut this down.

Chairman Keiser: Following up on a question, if the swiping device was owned and operated by Wal-Mart and they ran it through instead of contracting with a financial institution, would that be an issue?

Clayburgh: No, this is an issue where the industrial owned bank could use that point of sale to take the deposits & loans and not run the transactions, but the purchases. That's the concern that we have with the whole separation of commerce is the ability for someone to come in. The way this language is written, that if there is an industrial loan bank, you must be held by a financial holding company. That insures that both the bank and entity that owns the industrial institution would be subject to Federal oversight and regulation. Right now that doesn't happen. It is not the transaction that's occurring; it's the potential for making loans or taking deposits.

Representative Amerman: Why the emergency clause?

Clayburgh: It's good public policy and lets make it a law. There is nothing that I'm aware of that is occurring in the next three or four months that would require it.

Representative Boe: How does this affect Cenex Harvest States making operating loans? Will this affect them?

Clayburgh: It does not. They are operating as a financial institution already in the state of North Dakota and they are not an industrial bank. Gives the example of an industrial bank chartering in the state of Utah, they are a different entity than a bank. Where the concern comes out is because of our Federal branching legislation, the industrial bank could apply for FDIC insurance coverage and then could apply for interstate branching. They would have less restrictions and oversight. Plus the fact that they are involved in commerce, they can bring the financial service and commerce together. One of the arguments that come out of this is that

they can entice customers with "if you get a home equity from us, we will give you 25% of all home ware department in our store".

Representative Thorpe: We don't have what is classified as an industrial bank in North Dakota, presently? Could you give an example of an operating industrial bank in the United States?

Clayburgh: Target is an industrial bank and operates a credit card operation and they are chartered in the state of Utah. I don't have a specific industrial bank that does direct business in North Dakota but there are many who could be qualified to do business. What do you mean by an example?

Representative Thorpe: Just an operating industrial bank.

Clayburgh: An industrial bank allows a commercial entity to be able to run a banking operation within their organization for their own banking needs. It was originally establish as a means of providing some assistance specific to a particular industry. What this is allowing now, the loop hole, in what we are closing caused in the nation is the industrial bank plays a purpose so you are not going to get around the rules that separate banking and commerce. You cannot get into general banking for the general population.

Representative Ruby: This doesn't affect the credit card company that does some purchases that goes into savings accounts?

Clayburgh: No it does not.

Representative Ruby: How does something like GM, Ford or Chrysler financial work? Are they considered industrial banks?

Clayburgh: They are not because they are actually FDIC insured bank. They are chartered as a bank. This bill has no impact on auto financing.

Representative Vigesaa: For example, Wal-mart, could they bank, outside of their main building, on their property separate and that would be ok?

Clayburgh: In North Dakota law requires they be no closer than one mile.

Representative Vigesaa: So in North Dakota, if Wal-mart did want to establish an industrial bank, they could do so as long as they are one mile from their main store.

Clayburgh: If I could clarify that, they couldn't establish because we don't have that in our statute but what they could utilize their branch banking from the state of Utah through reciprocal agreements. In that case it could come into North Dakota, establish a bank, but it could not be within the (inaudible).

Representative Gruchalla: The difference between GMAC and an industrial bank would be the point of sale device.

Clayburgh: Target is an industrial loan bank that grandfathered into the part of the restrictions. They utilize their industrial loan operation to run their credit card operation.

GMAC has a bank charter and is licensed as a traditional bank that has oversight of federal regulators. It has nothing to do with the point of sale activity of this legislation. All this bill says is that if you are an industrial bank involved in the commercial side, you cannot utilize the point of sale terminal.

Representative Nottestad: Going back to the Wal-mart situation, they pay their employees with a debit card, could this be done in North Dakota even though they have no industrial bank here?

Clayburgh: Yes they can utilize that area, this bill has nothing with paying their employees with debit cards.

Jack McDonald~Independent Banks of North Dakota.

Chairman Keiser: Is there anyone here to testify in opposition of SB 2240, neutral. Closes the hearing, what are the wishes of the committee?

Representative Boe: Moves a Do Pass.

Representative Amerman: Second.

Chairman Keiser: Further discussion?

Voting roll call was taken on SB 2240 for a Do Pass with 12 ayes, 0 nays, 1 absent and Vigessa is the carrier.

Date: Mar 10- 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2240

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 Boe Seconded By Amerman

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

Total (Yes) 12 No 0

Absent 1

Floor Assignment Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2240: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2240 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2240

TESTIMONY OF THE NORTH DAKOTA BANKERS ASSOCIATION
IN FAVOR OF SENATE BILL NO. 2240

Chairman Klein, members of the IBL Committee, I am Marilyn Foss, General Counsel for the North Dakota Bankers Association. I am here to testify in favor of SB 2240 and to urge a Do Pass recommendation for the bill.

This bill is about applying generally the same rules and supervisory process to every bank which takes deposits and makes loans in North Dakota. It is about trying to close loopholes – or to at least shrink them. It is about upholding North Dakota's longstanding and well founded policies for maintaining the separation between banking and commerce, as set forth, for example, in section 6-03-38, which generally prohibits bank assets from being used for commercial enterprises and section 6-08.4-06(3) which prohibits a bank branch from being located on the premises of an affiliate that engages in commercial activities..

Industrial banks are state chartered banks that were originally designed to make loans to industrial workers. Because of their narrow and specialized purpose, manufacturers and retail companies were allowed to own industrial banks. Over time, most states stopped chartering industrial banks or imposed moratoria on new industrial bank charters. Those that existed were relatively small, localized institutions because their chartering states' laws limited their powers while federal and state laws limited their locations. Then, things changed: in 1987 industrial banks were allowed to obtain FDIC insurance; industrial bank powers were made virtually indistinguishable from those of other banks; and, interstate banking and branching restrictions were eliminated. But, one thing didn't change. The federal Bank Holding Company Act ("BHCA") definition of "bank" didn't include industrial banks. That meant and means industrial banks may be owned by commercial companies (while "ordinary" banks may not) and that the commercial companies that own industrial banks are neither examined nor supervised by the Federal Reserve (which does supervise and examine other bank holding companies.)

By 2000 numerous large commercial companies had discovered the loophole and acquired industrial banks, mostly in Utah, which, in 1997, started promoting the charters for economic development purposes. The industrial bank industry literally exploded. In 1987, the average industrial bank had less than \$45 million in assets while the largest had about \$415 million in assets. Between 1997 and 2006, industry assets grew by 750% while the largest industrial bank had more than \$67 Billion in assets. With changes in technology and branching laws, industrial loan banks now conduct banking business throughout the United States, without physical branches, through the internet and arrangements with other affiliated or unaffiliated entities. While the individual banks are examined, the commercial parents for the industrial banks are free of banking supervision and examination oversight by the Federal Reserve.

Numerous members of the Federal Reserve board have decried this situation as being unsafe and unsound, unwise policy, and unfair. The safety and soundness issues are centered on the inability of the Federal Reserve to examine and assess the financial soundness of an industrial bank's parent company and the parent's ability to serve as a source of strength for the industrial bank as other bank holding companies must do. The growth of industrial banks has also undermined the separation of banking and commerce. Simply stated, the concern is about the willingness of a bank that is owned by a commercial enterprise, such as Ford, will be objective and willing to loan money to say, the local GM dealer. . . or, whether a bank that is owned by, Circuit City, for example will be adversely affected by the financial difficulties of the parent. For our banks, the issue is one of fairness and fair competition. We believe that all banks that take deposits and make loans in North Dakota should, as a matter of state law, be subject to generally the same degree of supervision and rules. That is what SB 2240 generally accomplishes.

Specifically, SB 2240 prohibits an industrial bank from taking deposits or making loans from a commercial location, unless the industrial bank is owned by a "financial holding company" as defined by federal banking laws. Financial holding companies are holding companies that own banks and have also received permission to engage in broader range of commercial activities than are generally authorized for bank holding companies.

Who was that hedge bank

Financial holding companies may engage in various financial activities as approved by the Board of Governors for the Federal Reserve, while bank holding companies are restricted to engaging in activities that are "closely related to banking" as defined by the Federal Reserve. Under GLBA, financial holding companies are examined and supervised a consolidated basis just as bank holding companies are examined on a consolidated basis. This means that the overall condition of the parent company is examined, not only the subsidiary bank.

I would like to point out one additional feature of the bill. It does not involve bank branching or restrictions on bank branching. Although it is not readily apparent on the face of the bill, its purpose is to address situations in which commercial enterprises, such as Home Depot, for example, use electronic terminals located at their retail locations to take deposits (via funds transfers) or to make loans (via funds transfers or such techniques as loading stored value cards). Electronic terminals are not branches and are not subject to federal rules for bank branching.

Should have same federal regulations

SB 2240 represents the latest thinking about how states can continue to uphold policies for the separation of banking and commerce, safety and soundness and fair banking competition by shrinking the industrial bank loophole. This is an effort North Dakota began in 2005. We respectfully urge you to continue the effort by giving SB 2240 a Do Pass recommendation.

Supervision - regulation

*8- Banks
60% of Deposits
Fair + Objective*



TESTIMONY OF THE NORTH DAKOTA BANKERS ASSOCIATION
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