

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

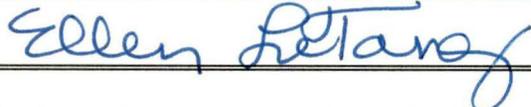
HB 1346

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1346
1/26/2015
1346

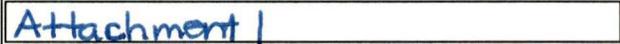
- Subcommittee
 Conference Committee



Explanation or reason for introduction of bill/resolution:

Retail installment sales contracts & provide a penalty.

Minutes:



Chairman Keiser: Opens the hearing on HB 1346.

Parrell Grossman~Director, Consumer Protection & Antitrust Division Office of Attorney General: (Attachment 1).

6:15

Representative Ruby: Technical item, line 9, the second "the" seems to be in there incorrectly.

Grossman: Yes, we will fix that.

Representative Kasper: Did you discover that it was just one business causing all the problems or are there multiply businesses in North Dakota causing problems like this?

Grossman: This is the first time that we noticed this error. We are aware that in another instances, there may be a few of these outliers of small car dealerships that are not complying with all the requirements. It isn't a statue that caused a great deal of problem in the past.

Representative Kasper: What is the penalty for the violation in this section of the new bill?

Grossman: It would make a violation for the entity to fix, correct it's procedures, comply with the law, provide the necessary disclosures and then the court can impose civil penalties up to \$5,000 as well as reimburse the Attorney General for the attorney fees incurred.

Representative Kasper: No criminal penalties, just civil action?

Grossman: There are criminal penalties and I don't recall if it's a class A or B.

Representative Kasper: Can you provide the penalties that clearly spell out the penalties are?

Grossman: Yes, it's on page 5.

Representative Frantsvog: The 2nd paragraph in your testimony, was someone acting as a used car dealer?

Grossman: That's correct.

Representative Frantsvog: How did you determine that there was something not correct?

Grossman: There was an unusual complaint made about some inappropriate sexual activity of the particular car dealer and the police department looked in depth to the situation and shared that with us.

Marlyin Foss~Appearing on behalf of the Banker's Association: Mr Grossman did run this by our association and this is a drafting glitch that occurred because the time the law was originally enacted. A people complied with it but times have changed. We support this piece of legislation.

Bob Entringer~Commission for the Department of Financial Institutions: We support this bill. We don't have regulatory authority over this particular statute, we get all the questions. This helps us clarify the statute does do and should do.

Matthew Larsgaard~New Cars Dealers Association of North Dakota: In support of HB 1346.

Chairman Keiser: Is there anyone else here to testify on HB 1346 in support, opposition, neutral. Closes the hearing, what are the wishes of the committee?

Representative Ruby: Move the amendment by striking the last "the" on line 9.

Representative Beadle: Second.

Voice vote, motion carried.

Representative Ruby: Move a Do Pass as Amended.

Vice Chairman Sukut: Second.

Roll call was taken for a Do Pass as Amended on HB 1346 with 15 yes, 0 no, 0 absent and Representative Kasper is the carrier.

15.8176.01001
Title.02000

Adopted by the Industry, Business and Labor
Committee

January 26, 2015

sl
1-26-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1346

Page 1, line 9, remove the second "the"

Renumber accordingly

Date: Jan 26, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES 1346
BILL/RESOLUTION NO. _____

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.8176.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Beadle

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

second "the" removed
voice vote
motion passes

Date: Jan 26, 2015

Roll Call Vote: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1346

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	X		Representative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	X		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Rep Kasper

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

REPORT OF STANDING COMMITTEE

HB 1346: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1346 was placed
on the Sixth order on the calendar.

Page 1, line 9, remove the second "the"

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1346

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

HB 1346 Engrossed
3/4/2015
Job Number 24284

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to retail installment sales contracts

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Parrell D. Grossman, Director of the Consumer Protection and Antitrust Division for the Office of the Attorney General: In support. Written Testimony Attached (1). (:55-7:20)

Senator Sinner: Asked what happened with that case.

Parrell D. Grossman: He was running his business informally and selling a lot to low income purchasers who could not finance any place else and when they didn't make their payments he came and repossessed the vehicles. (7:48-8:31)

Chairman Klein: Isn't that fraud?

Parrell D. Grossman: Yes it really is fraud and we thought it was a good time to clarify the statute.

Chairman Klein: The last section is clarifying the attorney generals power?

Parrell D. Grossman: That is correct. It's enforcing the authority we already have. (9:55-10:37)

Senator Burckhard: Who would be opposed to this legislation?

Parrell D. Grossman: No one is opposed.

Senator Miller: Will this limit your ability to investigate?

Parrell D. Grossman: I don't think so it is just clarifying the existing authority we already have. (11:30-13:05)

Senator Campbell: Are there other states that have had this issue as well?

Parrell D. Grossman: I didn't check into that but I don't think our law was an original law. It was probably patterned after some other states. (13:18-13:43)

Chairman Klein: I guess anything we can do to help to make some of those guys go away.

Marilyn Foss, North Dakota Banker's Association: In support. We did check it out with bankers and no one thought it would cause any trouble. There was a gap and it should be filled. (14:36-15:59)

Bob Entringer, Commissioner of the Department of Financial Institutions: We don't enforce this statute but we get most of the questions. We have always interpreted it in the way it is being fixed. This makes it clear to us and fixes the loophole. (16:05-16:50)

Senator Murphy: Moved a do pass.

Senator Sinner: Seconded the motion.

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

Senator Sinner will carry the bill.

Date: 3-4-2015
 Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1346**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Murphy Seconded By Sinner

Senators	Yes	No	Senators	Yes	No
Chairman Klein	✓		Senator Murphy	✓	
Vice Chairman Campbell	✓		Senator Sinner	✓	
Senator Burckhard	✓				
Senator Miller	✓				
Senator Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sinner

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

REPORT OF STANDING COMMITTEE

HB 1346, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1346 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1346

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
GEORGE KEISER, CHAIRMAN
JANUARY 26, 2015

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
HOUSE BILL NO. 1346

Mr. Chairman and members of the House Industry, Business, and Labor Committee. I am Parrell Grossman, and it is my privilege to be the Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on behalf of the Attorney General in support of House Bill 1346.

During 2014 the Consumer Protection Division was involved in the investigation of a "used car dealer," using that term loosely. The individual was engaged in some niche marketing for buyers that could not obtain financing, and that, by itself, was not unacceptable. The auto sales contracts, however, were not in compliance with the federal Truth-in-Lending Act (TILA) or chapter 51-13, North Dakota's Retail Sales Installment Act. The contracts were not in compliance with any of the disclosure requirements. They did not include vehicle identification numbers, annual percentage rates, and cost of credit extended. The contracts did not include a payment schedule, the total of payments, the amount financed, or the total number of payments required.

The individual was criminally prosecuted and convicted for the violations. The Consumer Protection Division put its action on hold and, after the prosecution, also resolved the matter with a civil agreement in December, requiring civil penalties and reformation of the existing consumer contracts.

During the investigation, the Consumer Protection Division discovered a loophole in the law between the state and federal law. The transactions were subject to TILA, so they were not subject to the disclosures of chapter 51-13, even though the business was not actually complying with TILA.

1. Amending Subsection 2 to Section 51-13-02

The amendment to the Retail Installment Sales Act section 51-13-02 relates to disclosure requirements in retail installment contracts and seeks to close a loop-hole in the law created by the application of the Truth in Lending Act [15 U.S.C. 1601-1667f] (TILA). With the current law, the disclosure provisions in section 51-13-02(2) only apply if TILA does not apply. Under 51-13-02(3), in a retail installment sales contract subject to TILA, the seller may, instead of complying with the disclosure requirements of 51-13-02(2), comply with all requirements with TILA. This makes sense for a seller that is subject to TILA and is complying with TILA. 51-13-02(2)(a), however, only requires compliance with the disclosures in that subsection 2, if the contract is not subject to TILA. Therefore, the combination of 51-13-02(2) and 51-13-02(3) do not make any

sense, because they do not require actual compliance with TILA. The Retail Installment Sales Act fails to account for the situation where TILA applies and the seller is not in compliance with TILA.

Compliance with the disclosure requirements in section 51-13-02(2) also affects whether the seller is exempt from the usury law. Section 51-13-03 provides that a seller who complies with the disclosure requirements in the chapter is deemed a "regulated lender" and, therefore, exempt from the usury law. Unfortunately, it appears that a seller may be in compliance with the disclosure requirements just by being subject to TILA, even if the seller is not actually complying with the disclosure requirements of TILA. There is not a problem in exempting the seller from usury, if proper disclosures are made. However, because of the loophole in the statute, sellers subject to TILA are exempt from usury without complying with the disclosure requirements.

The amendment to the Retail Installment Sales Act would make the Retail Installment Sales Act apply to a seller who is not complying with TILA, as well as a seller who is not subject to TILA. The amendment to the Retail Installment Sales Act will fix the loophole and ensure that proper disclosures are required either through compliance with TILA or compliance with section 51-13-02.

2. Amending Section 51-13-07

The amendment also changes section 51-13-07 regarding remedies to specify that the Attorney General may enforce this law and that in doing so, the Attorney General has the powers set forth in 51-15. This authority to enforce and seek remedies is already provided for in chapter 51-15, commonly referred to as "the consumer fraud law" specifically in section 51-15-07. This is standard language in the consumer protection statutes. With this change, it now would be cross-referenced and properly reflected in chapter 51-13. This amendment will provide notice to sellers subject to chapter 51-13 that the chapter can and will be enforced through chapter 51-15. It is appropriate at this time to fix this omission and potential confusion.

The Attorney General respectfully asks the House Industry, Business, and Labor Committee give House Bill 1346 a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
JERRY KLEIN, CHAIRMAN
MARCH 4, 2015

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DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
HOUSE BILL NO. 1346

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The individual was criminally prosecuted and convicted for the violations. The Consumer Protection Division put its action on hold during the criminal prosecution. After completion of the prosecution, the Consumer Protection Division further resolved the matter with a civil agreement in December 2014, requiring civil penalties and reformation of the existing consumer contracts.

During the investigation, the Consumer Protection Division discovered a loophole in the law between the state and federal law. The transactions were subject to TILA, so they were not subject to the disclosures of chapter 51-13, even though the business was not actually complying with TILA.

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