

1999 HOUSE FINANCE AND TAXATION

HB 1414

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1414

House Finance and Taxation Committee

Conference Committee

Hearing Date January 27, 1999

Tape Number	Side A	Side B	Meter #
1	x		17.6
Committee Clerk Signature <i>Janice Stein</i>			

Minutes:

REP. BELTER Opened the hearing.

CALVIN N. ROLFSON, REP. NORTH DAKOTA BANKERS ASSOCIATION, Testified in support of the bill. See written testimony. Also submitted an amendment to the bill.

The amendment amends Sec. 47-14-05 , which states that any written agreement can be made as agreed by the parties involved.

REP. KROEBER Does the borrower here have a lot of ground to stand on in order to do a lot of bargaining?

CALVIN ROLFSON That is certainly possible. A lot of forms are preprinted, but it is not a hard and fast rule. There are cases where fees are negotiated. This is a very competitive market, and if those fees get excessive, certainly they will go to the lender with the lesser fees.

REP. RENNER What do you think they would want to change the fee schedule to?

CALVIN ROLFSON Stated he didn't know. History would dictate that it would be dictated by the market place and by the size of the loan. If it is a sizeable, there is very little incentive to make the payment timely with that penalty fee.

REP. WINRICH Would I be correct in interpreting some of your remarks as a prediction that if we pass this legislation, the relatively high interest rates on installment contracts would come down?

CALVIN ROLFSON I can't assure you of that, but it is one possibly. Some of those rates might be higher because of the risks involved, or the lower amount of the loan.

JOEL GILBERTSON, EXECUTIVE VICE-PRESIDENT AND GENERAL COUNCIL OF THE INDEPENDENT COMMUNITY BANKS OF NORTH DAKOTA, Testified in support of the bill. Also support the amendments.

GREG TSCHIDER, NORTH DAKOTA CREDIT UNION LEAGUE, Testified in support of the bill, and the amendments which were presented. We need to ask ourselves is a delinquent fee or fine of ten to fifteen dollars sufficient to make someone pay their payments on time. If someone has a payment due of one thousand dollars, is ten dollars a relevant factor to induce them to bring their payments current or to make their payments on time? It has been our experience, especially with the larger payments, that people don't have a very strong incentive. Ten or fifteen dollars barely buys a meal at McDonalds. The trouble with delinquencies, it costs more money for the financial institutions. Someone has to monitor these accounts, send out notices, call people, we have to sometimes, harrass them, we have to try to persuade them to make their payment. All they are out is ten or fifteen dollars.

There was a question as to , is there going to be any negotiation on late payment fees. With the credit unions, the late payment penalty thing is actually open. We have to write in what the penalty is under the law. We are the only place in the United States, where we found, we have such a minimal amount. Most states say ten dollars or one percent, whichever is greater. With retail installment contracts, we buy the paper from the dealers. The dealers set the interest rate.

REP. HERBEL How serious a problem is this on a whole, collecting late payments?

GREG TSCHIDER Generally speaking, people are current in their payments. I can't give you a percentage of delinquency. However, I do know that delinquency rates at the banks and credit unions in North Dakota, are at a fairly low rate right now. But we have had times when they weren't that good.

REP. HERBEL Stated I assume when I go to borrow money, the fee is already in that high rate of interest cost.

GREG TSCHIDER That is possible, when you get your loan, do you negotiate your rate. We have seen interest rates lower.

REP. HERBEL Who is in the better position to make that decision to negotiate, the borrower or the lender?

GREG TSCHIDER The lender has a responsibility, if they are going to stay in business to be able to work with their customers.

REP. RENNER On an agricultural loan, you can't set a fee greater than ten percent, this bill would apply to a retail contract?

GREG TSCHIDER That is correct.

RON NESS, PRESIDENT OF THE NORTH DAKOTA RETAIL ASSOCIATION. Testified in support of the bill. Credit has become a critical and essential part of retailing in the state, support what has been said.

With no further testimony, the hearing was closed.

COMMITTEE ACTION 1-27-99, Tape #1, Side B, Meter #42.9

REP. MICKELSON Made a motion to adopt the amendments which were presented by Calvin Rolfson during his testimony.

REP. GRANDE Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. MICKELSON Made a motion for a DO PASS AS AMENDED.

REP. RENNERFELDT Second the motion.

Discussion was held, some of the committee members felt maybe the amendments should be amended. Rep. Renner felt consumers would probably not be aware of these changes.

REP. WARNER Stated the amendments did not coincide with the existing code.

The motions were withdrawn, the bill would be acted on at a later date, after some research was done.

COMMITTEE ACTION 2-2-99, Tape 1, Side B, Meter #38.3

A lengthy discussion on the amendments which were introduced by Cal Rolfson. Committee members felt they needed Mr. Rolfson to explain why a different section of the code was used in the amendments. The bill was held for another day.

COMMITTEE ACTION 2-3-99, Tape #2, Side A, Meter #7.1

REP. MICKELSON Made a motion to withdraw the amendments which had been adopted earlier. REP. GRANDE Second the motion. MOTION CARRIED BY VOICE VOTE.

REP. MICKELSON Made a motion for a DO PASS in the bill's original form.

REP. GRANDE Second the motion. MOTION CARRIED.

10 Yes 4 No 1 Absent

REP. MICKELSON Was given the floor assignment.

Please type or use black pen to complete

Date 2-2-99

Roll call vote # 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1414

House HOUSE FINANCE & TAX Committee

- Subcommittee on _____
- Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken D P as amended

Motion Made By Rep. Mickelson Seconded By Rep. Rennerfeldt

Representatives	Yes	No	Representatives	Yes	No
BELTER			WINRICH		
RENNERFELDT					
CLARK					
FROELICH					
GRANDE					
GROSZ					
HERBEL					
KROEBER					
MICKELSON					
NICHOLAS					
RENNER					
SCHMIDT					
WARNER					
WIKENHEISER					

Withdrawn

Total _____
(Yes) (No)

Absent _____

Floor Assignment Rep.

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

Please type or use black pen to complete

Date 2-2-99
Roll call vote # 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1414

House HOUSE FINANCE & TAX Committee

Subcommittee on _____
 Conference Committee

withdwn } Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken D P as ~~amended~~

Motion Made By Rep. Mickelson Seconded By Rep. Coronde

Representatives	Yes	No	Representatives	Yes	No
BELTER			WINRICH		
RENNERFELDT					
CLARK					
FROELICH					
GRANDE					
GROSZ					
HERBEL					
KROEBER					
MICKELSON					
NICHOLAS					
RENNER					
SCHMIDT					
WARNER					
WIKENHEISER					

Motion withdrawn

Total _____
(Yes) (No)

Absent _____

Floor Assignment Rep

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

Please type or use black pen to complete

Date 2-3-99

Roll call vote # 3

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1414

House HOUSE FINANCE & TAX Committee

Subcommittee on _____

Conference Committee

} Identify or check where appropriate

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Mickelson Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
BELTER	✓		WINRICH		✓
RENNERFELDT	✓				
CLARK	✓				
FROELICH	A				
GRANDE	✓				
GROSZ	✓				
HERBEL	✓				
KROEBER		✓			
MICKELSON	✓				
NICHOLAS	✓				
RENNER	✓				
SCHMIDT		✓			
WARNER		✓			
WIKENHEISER	✓				

Total 10 4
(Yes) (No)

Absent 1

Floor Assignment Rep Mickelson

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

DO NOT USE HIGHLIGHTER ON ANY FORMS

REPORT OF STANDING COMMITTEE (410)
February 3, 1999 3:16 p.m.

Module No: HR-22-1824
Carrier: Mickelson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1414: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO PASS (10 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING). HB 1414 was placed on the Eleventh order on the calendar.

1999 SENATE INDUSTRY, BUSINESS AND LABOR
HB 1414

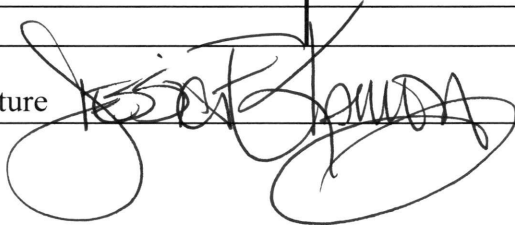
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1414

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 16, 1999

Tape Number	Side A	Side B	Meter #
1		x	-400
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1414. All senators were present.

Cal Rolfson, Legislative Council on behalf of The North Dakota Bankers Association, testified in support of HB1414. His testimony is included.

Senator Heitkamp said that if he was late on a payment for his car or boat, it would be a \$10 fine. He then asked Mr. Rolfson if their intent was to raise that fee 500%, making it \$50. He then said that if you are trying to make an incentive for someone to make their payment on time, wouldn't 100% be enough to make sure that 99.9% of the people pay on time. Mr. Rolfson said that there are some loans that are for \$1000, making 100% not a very large percentage.

Senator Mutch suggested that they could leave it at 10% with a maximum fine of \$100.

Senator Heitkamp said with him but that the \$100 would be per month.

Senator Krebsbach said that it is important to note that it is a fine on the payment and not the entire loan.

Senator Thompson asked Mr. Rolfson if this is being anti-consumer because even if the payment is 30 days late, the bank is still owed the same amount of interest. Mr. Rolfson said that the rationale is to encourage payments and that the other concern is the responsible borrower and to create less charges and interest rates for them.

Senator Mutch asked Mr. Rolfson to explain how the amendment would effect the bill. Mr. Rolfson said that purpose of the amendment was to provide an agreement on in the contract.

Greg Tschider, North Dakota Credit Union League, testified in support of HB1414. He said that the interest is due regardless. If you pay your interest late in the month and then make your payment on time the next month, there is going to be more interest out of the first payment and less out of the second. If you were to make your payments out of sequence throughout the life of the contract, as long as you make your final payment on time, the total amount of interest that accrues on that contract is going to remain the same.

Senator Sand asked him if the purpose of this bill was to encourage payment and cover costs.

Mr. Tschider said that the intentions of this bill are to charge the difficult for being difficult.

Senator Sand asked Mr. Rolfson if the borrower would be screened. Mr. Rolfson told him that normally a credit check would be run.

Senator Sand then asked him what the delinquency rate is on the people that have had checks run. Mr. Rolfson said that the rate is at 1 1/2 to 2%.

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number Hb1414

Hearing Date March 16, 1999

Jack McDonald, Independent Community Banks of North Dakota, testified in support of HB1414. He said that his group also supported the proposed amendments. His testimony is included.

Senator Mutch closed the hearing on HB1414.

Senator Krebsbach motioned for the committee to adopt the amendments that were offered by Mr. Rolfson except the wording on lines 10 and 11. Senator Klein seconded her motion. The motion carried with a 7-0-0 vote.

Senator Krebsbach motioned for a do pass with amendments committee recommendation on HB1414.

Senator Thompson suggested that the committee offer a new amendment.

Senator Krebsbach withdrew her motion.

Senator Thompson motioned to adopt an amendment that would put a cap on of \$25. Senator Heitkamp seconded his motion. The motion failed.

Senator Krebsbach motioned for a do pass with amendments committee recommendation on HB1414. Senator Klein seconded her motion. The motion carried with a 5-2-0 vote.

Senator Sand will carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1414

Page 1, line 9, remove:

~~"in an amount equal to ten percent of the delinquent installment payment"~~

and insert:

"in an amount equal not more than ten percent of the delinquent installment payment"

ND Page 1, line 10, remove "as agreed by the parties in the retail"

ND Page 1, line 11, remove "installment contract"

Renumber accordingly

Date: 3/16
Roll Call Vote #: 3

SR515241

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
HOUSE BILL/RESOLUTION NO. 1411

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED

Motion Made By KREBSBACH Seconded By KUEN

AMEND

AMEND (THOMPSON)

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp		X			
Senator Thompson		X			

Total (Yes) 5 No 2

Absent 0

Floor Assignment SAND

REPORT OF STANDING COMMITTEE

HB 1414: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1414 was placed on the Sixth order on the calendar.

Page 1, line 9, remove the overstrike over "~~in an amount~~", after "to" insert "not more than", and remove the overstrike over "~~ten percent of the delinquent installment payment~~"

Renumber accordingly

1999 TESTIMONY

HB 1414

TESTIMONY BY
CALVIN N. ROLFSON, LEGISLATIVE COUNSEL
ON BEHALF OF
NORTH DAKOTA BANKERS ASSOCIATION
REGARDING
HOUSE BILL 1414

MY NAME IS CALVIN N. ROLFSON. I AM THE LEGISLATIVE COUNSEL FOR THE NORTH DAKOTA BANKERS ASSOCIATION. I APPEAR ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION IN SUPPORT OF HOUSE BILL 1414. I ALSO HAVE AN AMENDMENT TO OFFER.

HOUSE BILL 1414 PROPOSES TO AMEND SUBSECTION 2 OF SECTION 51-13-02. THAT SECTION SETS OUT THE REQUIREMENTS THAT ARE TO BE INCLUDED IN RETAIL INSTALLMENT CONTRACTS IN CONSUMER LOAN SETTINGS. THE STATUTE DETAILS WHAT ELEMENTS MUST BE CONTAINED IN A RETAIL INSTALLMENT CONTRACT, INCLUDING THE FACT THAT IT MUST BE DATED, THAT IT MUST BE IN WRITING AND THAT IT MUST HAVE CERTAIN WORDS IN BOLD PRINT.

SECTION "e" OF SUBSECTION 2 CURRENTLY STATES THAT WHEN A BUYER UNDER A RETAIL INSTALLMENT CONTRACT IS DELINQUENT OR IN DEFAULT ON A LOAN, THE SELLER OR OWNER OF THE CONTRACT MAY ONLY CHARGE 10% OR \$10 AS A LATE PAYMENT FEE, WHICHEVER IS THE LESSER. THE BILL PROPOSES

TO ELIMINATE THE DOLLAR AND PERCENTAGE AMOUNT OF THE LATE PAYMENT FEES, AND SIMPLY ALLOWS THE PARTIES TO THE CONTRACT IN A CONSUMER LOAN TO AGREE ON THE PENALTY CHARGE FOR DELINQUENCY AND SET THAT AMOUNT IN THE CONTRACT ITSELF.

THE NORTH DAKOTA BANKERS ASSOCIATION HAD INTENDED TO ALSO SEEK THE INTRODUCTION OF A SEPARATE BILL THAT WOULD HAVE SIMILARLY AMENDED THE GENERAL PROVISIONS REGARDING THE LEGAL RATE OF INTEREST AS FOUND IN SECTION 47-14-05. HOWEVER, SINCE THE SECTION AMENDED BY HOUSE BILL 1414 IS ALSO AFFECTED BY THE GENERAL PROVISIONS OF LATE PAYMENT CHARGES IN NDCC 47-14-05, IT MADE SENSE TO US TO DEAL WITH THOSE TWO ISSUES IN ONE BILL RATHER THAN HAVING TWO BILLS. FOR THAT REASON, WE ARE PROPOSING THAT HB 1414 BE AMENDED ACCORDING TO THE PROPOSED AMENDMENTS I HAVE HANDED OUT.

LAST SESSION, THE LEGISLATURE AMENDED NDCC 47-14-05 THAT APPROVED COMMERCIAL LOAN AND AGRICULTURAL LOAN LATE FEES BY CONTRACT. THE LEGISLATURE ALSO LAST SESSION APPROVED AMENDMENTS TO NDCC 51-14-02 REGARDING THE SETTING OF LATE FEES BY CONTRACT IN REVOLVING CHARGE ACCOUNTS AND PERMITTING LATE FEES TO BE CHANGED UPON NOTICE TO THE CUSTOMER. THOSE CHANGES IN THE LAW WERE SUPPORTED BY THE CREDIT UNIONS AND OTHER LENDERS. THESE BILLS LAST SESSION ESSENTIALLY DID THE SAME THING WITH REGARD TO AGRICULTURE AND COMMERCIAL LOANS AS THIS BILL SEEKS TO DO FOR CONSUMER LOANS.

CURRENTLY, THE LAWS FOR ALL OTHER LOANS, INCLUDING CREDIT CARDS, AG AND COMMERCIAL LOANS, HAVE PROVISIONS THAT PERMIT THE ESTABLISHMENT OF LATE PAYMENT FEES AS A MATTER OF CONTRACT. THE ONLY EXCEPTION IS CONSUMER LOANS AND RETAIL INSTALLMENT LOANS, AND THIS LEGISLATION WITH THE PROPOSED AMENDMENT IS INTENDED TO LEVEL THAT PLAYING FIELD.

IF A CONSUMER BORROWER HAS AN OUTSTANDING \$1,000 PAYMENT, THERE IS LITTLE INCENTIVE FOR THE BORROWER TO MAKE THAT PAYMENT WITH A \$10 OR \$15 MAXIMUM LATE PAYMENT FEE. THE RESULT IS THAT DELINQUENT BORROWERS WHO ABUSE THE SYSTEM IN CONSUMER LOAN AREAS CAUSE INCREASED CHARGES FOR ALL OTHER RESPONSIBLE BORROWERS. IT IS UNFAIR FOR THE CONSCIENTIOUS BORROWER TO ABSORB HIGHER INTEREST RATES OR LOAN COSTS BECAUSE OF A FEW DELINQUENT BORROWERS. THIS BILL IS INTENDED TO PLACE THE RESPONSIBILITY FOR LATE PAYMENT FEES SQUARELY ON THE SHOULDERS OF THE DELINQUENT BORROWER AND NOT ON ALL OTHER BORROWERS.

THIS IS A HIGHLY COMPETITIVE LENDING ARENA AND CONSUMER LENDERS WILL MARKET THEIR PRODUCT WITH COMPETITIVE LATE PAYMENT FEES IN MIND. HOWEVER, TO ARBITRARILY ESTABLISH A LATE PAYMENT FEE WITH THESE \$10 AND \$15 MAXIMUMS IN MIND, TRANSLATES INTO GENERAL UNFAIRNESS TO THE RESPONSIBLE BORROWER.

ALSO, UNDER CURRENT NORTH DAKOTA LAW, LENDERS CANNOT RAISE INTEREST RATES UPON DEFAULT OF A PAYMENT. IT IS INTERESTING TO NOTE THAT FARM CREDIT SERVICES, BECAUSE THEY ARE REGULATED BY FEDERAL LAW, MAY DO SO. THE NORTH DAKOTA BANKERS ASSOCIATION BELIEVES IT IS NOT APPROPRIATE TO PERMIT LENDERS TO RAISE INTEREST RATES DURING THE COURSE OF THE LOAN. HOWEVER, WE DO SUPPORT PERMITTING THE BORROWER AND THE LENDER TO NEGOTIATE LATE PAYMENT FEES BY CONTRACT.

THE THRUST OF THIS BILL IS TO MAKE SURE THAT THESE ARBITRARY PROVISIONS OF LAW REGARDING LATE PAYMENT FEES ARE MODIFIED TO PERMIT THE BORROWER AND LENDER TO SET THAT AMOUNT AND BY DOING SO, TO ESSENTIALLY DISCOURAGE LATE PAYMENTS OR LOAN DEFAULTS. THE BILL WOULD ALLOW LATE FEES TO BE A MATTER OF CONTRACT FOR ALL TYPES OF LOANS, NOT ONLY COMMERCIAL AND AGRICULTURAL LOANS.

I WOULD APPRECIATE YOUR FAVORABLE CONSIDERATION OF HOUSE BILL 1414 AS AMENDED.

**NORTH
RETAIL**



**DAKOTA
ASSOCIATION**

RON NESS • PRESIDENT

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HB 1414

Senate Industry Business and Labor Committee

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NELSON'S FURNITURE, BOTTINEAU

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TRACY SIPMA
COUNTRY GENERAL STORE, DICKINSON

RYAN THOMPSON
SIOUX CYCLE, MANDAN

Mr. Chairman and members of the committee my name is Ron Ness, I am the President of the ND Retail Association. We support HB1414 and ask for your favorable consideration.

We support the Bankers Association's position on the bill and concur with their proposed amendments of a flat ten percent delinquent fee. The current law does not provide enough of an incentive for customers to pay on time.

The ability to provide credit to customers has become a vital tool in retail business. Many customers prefer to use some type of financing when making major purchases. The availability of credit helps many customers choose the item of their choice and pay for it as their budget allows.

The problem with credit is that not all customers make timely payments. The costs of credit are increased on all customers because of the delinquency of a few. HB1414 is a step to ensure that retailers or other providing retail credit have the ability to create adequate incentives to make timely payments. Currently, the ten dollars or ten percent whichever is less is not a severe enough penalty to initiate payment over other types of debt which by law can charge a higher delinquent fee.

We urge a do-pass recommendation on HB1414.

TESTIMONY BY
CALVIN N. ROLFSON, LEGISLATIVE COUNSEL
ON BEHALF OF
NORTH DAKOTA BANKERS ASSOCIATION
REGARDING
HOUSE BILL 1414

MY NAME IS CAL ROLFSON. I AM THE LEGISLATIVE COUNSEL FOR THE NORTH DAKOTA BANKERS ASSOCIATION. I APPEAR ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION IN SUPPORT OF HOUSE BILL 1414. I ALSO HAVE AN AMENDMENT TO OFFER.

HOUSE BILL 1414 PROPOSES TO AMEND SUBSECTION 2 OF SECTION 51-13-02. THAT SECTION SETS OUT WHAT MUST BE INCLUDED IN RETAIL INSTALLMENT CONTRACTS IN CONSUMER LOAN SETTINGS. RETAIL INSTALLMENT CONTRACTS ARE USED BY RETAILERS AND OTHER LENDERS AND BUSINESSES TO ALLOW CUSTOMERS TO TAKE POSSESSION AND FINANCE THE ASSET THROUGH PERIODIC PAYMENTS. THE ASSET MAY BE A CAR, A BOAT, JEWELRY, ETC.

ATTACHED IS A COPY OF NDCC 51-13-02 FOR YOUR REVIEW.

SECTION "e" OF SUBSECTION 2 CURRENTLY SAYS THAT WHEN A BUYER UNDER A RETAIL INSTALLMENT CONTRACT IS DELINQUENT OR IN DEFAULT ON A LOAN, THE SELLER OR OWNER OF THE CONTRACT MAY ONLY CHARGE 10% OR \$10 AS A LATE PAYMENT FEE, WHICHEVER IS THE LESSER. THE BILL PROPOSES

TO ELIMINATE THE DOLLAR AND PERCENTAGE AMOUNT OF THE LATE PAYMENT FEES, AND SIMPLY ALLOWS THE PARTIES TO THE RETAIL INSTALLMENT CONTRACT TO AGREE ON THE PENALTY CHARGE FOR DELINQUENCY AND SET THAT AMOUNT IN THE CONTRACT ITSELF.

LAST SESSION, THE LEGISLATURE AMENDED NDCC 47-14-05. THAT AMENDMENT PERMITTED COMMERCIAL LOAN AND AGRICULTURAL LOAN LATE PAYMENT FEES TO BE SET BY CONTRACT BETWEEN THE BORROWER AND LENDER RATHER THAN BY LAW. ALSO, LAST SESSION THE LEGISLATURE APPROVED AMENDMENTS TO NDCC 51-14-02 REGARDING THE SETTING OF LATE FEES BY CONTRACT IN REVOLVING CHARGE ACCOUNTS AND PERMITTING LATE FEES TO BE CHANGED UPON NOTICE TO THE CUSTOMER. THOSE CHANGES IN THE LAW WERE SUPPORTED BY THE CREDIT UNIONS AND OTHER LENDERS. THESE BILLS LAST SESSION ESSENTIALLY DID THE SAME THING WITH REGARD TO GENERAL AGRICULTURE AND COMMERCIAL LOANS AS THIS BILL SEEKS TO DO FOR RETAIL INSTALLMENT CONTRACTS.

CURRENTLY, THE LAWS FOR OTHER LOANS, INCLUDING CREDIT CARDS, AG AND COMMERCIAL LOANS, ALL HAVE PROVISIONS THAT PERMIT THE ESTABLISHMENT OF LATE PAYMENT FEES AS A MATTER OF CONTRACT. THE ONLY EXCEPTION IS CONSUMER LOANS AND RETAIL INSTALLMENT LOANS, AND THIS LEGISLATION IS INTENDED TO BRING RETAIL INSTALLMENT CONTRACTS IN LINE WITH THESE OTHER LENDING PRACTICES.

IF A CONSUMER BORROWER IN A RETAIL INSTALLMENT CONTRACT HAS AN OUTSTANDING \$1,000 PAYMENT, FOR EXAMPLE, THERE IS LITTLE INCENTIVE FOR THE BORROWER TO MAKE THAT TIMELY PAYMENT WITH A \$10 MAXIMUM LATE PAYMENT FEE UNDER CURRENT LAW. THE RESULT IS THAT DELINQUENT BORROWERS WHO ABUSE THE SYSTEM CAUSE INCREASED CHARGES AND HIGHER INTEREST RATES FOR ALL OTHER RESPONSIBLE BORROWERS. IT IS UNFAIR FOR THE CONSCIENTIOUS BORROWER TO ABSORB HIGHER INTEREST RATES OR LOAN COSTS BECAUSE OF A FEW DELINQUENT BORROWERS. THIS BILL IS INTENDED TO PLACE THE RESPONSIBILITY FOR LATE PAYMENT FEES MORE FAIRLY ON THE SHOULDERS OF THE DELINQUENT BORROWER AND NOT ON ALL OTHER BORROWERS.

RETAIL INSTALLMENT LENDING IS HIGHLY COMPETITIVE AND RETAILERS AND LENDERS WILL MARKET THEIR PRODUCT WITH COMPETITIVE LATE PAYMENT FEES IN MIND. HOWEVER, TO ARBITRARILY ESTABLISH A LATE PAYMENT FEE WITH THESE \$10 MAXIMUMS IN MIND, TRANSLATES INTO GENERAL UNFAIRNESS TO THE RESPONSIBLE BORROWER.

ON THE HOUSE SIDE, IT WAS SUGGESTED THAT A MIDDLE-GROUND APPROACH MAY BE TO CHANGE THIS LAW TO PERMIT LATE PAYMENT FEES IN RETAIL INSTALLMENT CONTRACTS TO BE NOT MORE THAN 10% OF THE DELINQUENT PAYMENT RATHER THAN THE CURRENT LAW. EVEN THOUGH THE HOUSE PASSED HB 1414 INTACT, WE TOLD SEVERAL MEMBERS OF THE HOUSE COMMITTEE THAT WE WOULD BE WILLING TO PROPOSE AN AMENDMENT TO THE

BILL THAT WILL MERELY CHANGE THE CURRENT LAW NOW WHERE DELINQUENCY PAYMENTS ARE 10% OR \$10, WHICHEVER IS LESS, TO A PROVISION OF NOT MORE THAN 10% OF THE DELINQUENT PAYMENT. THAT WILL THEN NOT BE A MAJOR CHANGE TO THE CUSTOMER WHO HAS A SMALL PAYMENT, AND IT WILL BE FAIR TO THE LENDER WHERE A LARGE PAYMENT IS DELINQUENT AND WHERE A DELINQUENCY PAYMENT OF \$10 MAY BE MEANINGLESS. THE ATTACHED PROPOSED AMENDMENT WILL ACCOMPLISH THIS CHANGE AND WE SUPPORT THE AMENDMENT.

YOUR FAVORABLE CONSIDERATION OF HOUSE BILL 1414 AS AMENDED IS URGED BY NDBA.

51-13-02. Requirements as to retail installment contracts.

1. A retail installment contract must be dated and in writing, and must contain all the agreements of the parties with respect to the cost and terms of payment for the personal property, including any promissory notes or other evidences of indebtedness between the parties relating to the transaction.
2. a. If the retail installment sale for which the retail installment contract is made is not subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], this subsection applies. The printed portion of the contract must be in at least eight-point type. The contract must contain printed or written in a size equal to at least ten-point bold type:
 - (1) Either at the top of the contract or directly above the space reserved for the signature of the buyer, the words "RETAIL INSTALLMENT CONTRACT".
 - (2) A specific statement that liability insurance coverage for bodily injury and property damage caused to others is not included, if that is the case.
 - (3) The following notice: "NOTICE TO THE BUYER: 1. Do not sign this contract before you read it or if it contains any blank space. 2. You are entitled to a completely filled in copy of this contract when you sign it. 3. Under the law, you have the following rights, among others: (a) to pay off in advance the full amount due and to obtain a partial refund of the finance charge; (b) to redeem the property if repossessed for a default within the time provided by law; (c) to require, under certain conditions, a resale of the property if repossessed. 4. If you desire to pay off in advance the full amount due, the amount of the refund you are entitled to, if any, will be furnished upon request."
- b. The seller shall deliver to the buyer a legible copy of the contract or any other document the seller has required or requested the buyer to sign. Until the seller does so, a buyer who has not received delivery of the personal property has an unconditional right to cancel the contract and to receive immediate refund of all payments made and redelivery of all goods traded in to the seller on account of or in contemplation of the contract. Any acknowledgment by the buyer of delivery of a copy of the contract must be printed or written in a size equal to at least ten-point bold type and, if contained in the contract, must also appear directly above the space reserved for the buyer's signature. The buyer's written acknowledgment of delivery of a copy of a contract is conclusive proof of such delivery and of compliance with this subdivision in any action or proceeding by or against an assignee of the contract without knowledge to the contrary when he purchases the contract.
- c. The contract must contain:
 - (1) The names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the personal property including its make, year model, model and identification numbers or marks, if any, and whether it is new or used.
 - (2) The cash price of the personal property which is the subject matter of the retail installment sale.
 - (3) The amount of the buyer's downpayment, itemizing the amounts paid in money and in goods and containing a brief description of the goods, if any, traded in.
 - (4) The difference between paragraphs 2 and 3, which is the unpaid balance of cash price.
 - (5) The amount, if any, included for insurance, specifying the coverages.
 - (6) The amount, if any, of official fees.

- (7) The amount financed, which is the sum of paragraphs 4, 5, and 6.
 - (8) The amount of the finance charge, if any.
 - (9) The total of payments, which is the sum of paragraphs 7 and 8, payable by the buyer to the seller, the number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.
 - (10) The deferred payment price, which is the sum of the amounts determined in paragraphs 2, 5, 6, and 8.
 - (11) If any installment substantially exceeds in amount any prior installment other than the downpayment, the following legend printed in at least ten-point bold type or typewritten: "THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS", followed, if there be but one larger installment, by: "AN INSTALLMENT OF \$ _____ WILL BE DUE ON _____", or, if there be more than one larger installment, by: "LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS: _____", in such latter case inserting the amount of every larger installment and its due date.
 - (12) Any balloon payments. If any payment under a contract is more than twice the amount of an otherwise regularly scheduled equal payment, the seller shall identify the amount of such payment by the term "balloon payment".

The items need not be stated in the sequence or order set forth above; additional items may be included to explain the calculations involved in determining the amount to be paid by the buyer.
- d. If the cost of any insurance is included in the contract and a separate charge is made to the buyer for the insurance:
- (1) The contract must state whether the insurance is to be procured by the buyer or the seller.
 - (2) If the insurance is to be procured by the seller or holder, the seller or holder shall within thirty days after execution of the retail installment contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this state and sold by a licensed insurance agent.
- If any such policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract must be credited to the final maturing installments of the retail installment contract except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.
- e. A contract may provide for the payment by the buyer of a delinquency and collection charge on each installment in default for a period of more than ten days in an amount equal to ten percent of the delinquent installment payment or ten dollars, whichever is less; provided, that only one such delinquency and collection charge may be collected on each installment in addition to interest accruing thereon.
- f. No retail installment contract may be signed by any party thereto when it contains blank spaces to be filled in after it has been signed except that, if delivery of the personal property is not made at the time of the execution of the contract, the identifying numbers or marks of the property or similar information and the due date of the first installment may be inserted in the contract after its execution.
3. If a retail installment sale is also subject to the Truth in Lending Act [15 U.S.C. 1601-1667e], the seller may, instead of complying with the disclosure requirements of subsection 2, comply with all requirements of the Truth in Lending Act. A seller who complies with the Truth in Lending Act still must comply with the provisions of this section governing matters other than disclosure