MICROFILM DIVIDER

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

ROLL NUMBER

DESCRIPTION

1234

2003 HOUSE JUDICIARY

HB 1234

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1234

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
2	xx		10-end
2		xx	27-36
Committee Clerk Signature	DPenrose		

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1234.

Charles McCay, Farm Credit Services: Support (see attached testimony and amendments).

Chairman DeKrey: I sponsored these three bills and this is how I see this package, is back in the 1980's lending was done on 65% of the assets. If he had the assets, he got the loan. That is why there was such a financial crisis in the '80s when inflation topped out, values started to drop, now you didn't have the 65% anymore. They were in trouble. With these policies that we have in place now, we've gone strictly to the other side of the spectrum which is strictly cash flow. These bills are trying to establish a happy medium, moving us closer to the middle, would you agree with that.

Mr. McCay: Yes. What it does is made the real estate collateral slightly more secure and certain as to the value. We will give greater consideration in loans.

Chairman DeKrey: So the chances of having the opportunity for being able to access more operating money is going to be better for the producer, right.

Mr. McCay: Yes.

Rep. Klemin: On line 15 and 16, we're talking here about the period of redemption, must be six months for a redemption under subsection 1, or one year. How does that sentence tell us which redemption period we're using.

Mr. McCay: Our purpose in this bill is not to change the length of the redemption period, it just changes when the clock starts ticking.

Rep. Klemin: So what we're saying is that the redemption period would still be one year, but the time that the redemption period expires would be the same as under the short term, with regard to the date of the sheriff sale, so it would be 60 days after the date of the sheriff sale or one year after they've filed a summons and complaint with the clerk of court, whichever is longest.

Mr. McCay: I believe that is the intent.

Chairman DeKrey: When the time period keeps getting stretched out, assets start to disappear, no income going to the lender and assets are being sold off but not paid to the lender.

Mr. McCay: Yes. This deals directly with the real estate portion.

Chairman DeKrey: When the producer loses, the bank loses, all those costs are going to be borne by the operator who are making it.

Mr. McCay: It is part of doing business. We make money from the interest off loans.

Chairman DeKrey: Are you aware of many foreclosure situations, where the time period has gotten stretched out and the producer has improved his position.

Mr. McCay: There have been instances where they have offered a defense, and we have gone to trial and have resolved the issue reasonably quickly, there is no bankruptcy involved, and we are always in the position that it only makes good business to negotiate until there is nothing left to negotiate, and even after winning the trial, getting judgment, we continue to negotiate and find ways to help the farmer continue. When they filed bankruptcy, I don't know of any situation where it got better.

Rep. Onstad: The bank has already established lending practices on certain criteria.

Mr. McCay: I'm not sure of the question.

Rep. Onstad: Initially when you start a loan procedure, the bank institution does have lending practices already established, we can lend you the money if this criteria is met?

Mr. McCay: Yes. We look at the financial position of the borrower, their ability to pay debt, credit history, available collateral, etc. If there is a strength in one area, that allows us to be a little weaker in another area.

Rep. Onstad: You made the loan, what you're trying to say is by shortening up the redemption period, is going to help the initial lending practices.

Mr. McCay: What it does is take a little bit of uncertainty out of the value of their collateral. If there is default on the loan and we have to foreclose, having the ability to stretch out that period before the redemption period starts ticking, costs us money. We're accruing interest, taxes, insurance, etc. while that is going on. This just says that the borrower can offer all the defenses that he has always has, but that the redemption period starts ticking a little sooner.

Rep. Onstad: I guess the point is, you're lending money on the basis upfront, but you are turning around and say we're going to be a little more liberal. I don't think the bank is going to be anymore liberal.

Mr. McCay: What are you saying? Are you saying that the fact that we considered collateral, or the value of the collateral important, means that we're expecting the loan to fail.

Rep. Onstad: A new customer comes in, you use your criteria and you work with that individual. I can't understand the argument that you and the Chairman are trying to make, that on the end is going to make the whole lending practice that much easier. I don't know how to tie the two together.

Mr. McCay: Right now, if you wanted to buy some land, we would probably start with the assumption that we would lend 65% of the appraised value. We would look at all the credit package and if you were exceptionally in your payment ability, that may affect that 65%, but let's just say that you were a so-so, that if you default on the loan, it's going to take us a minimum of 18 months to acquire the property so that we can sell it and get our money back. During that time, we are absorbing all the interest, taxes, insurance, attorney fees, etc. In order for us to get our money back, we can't lend anymore than 65%.

Rep. Klemin: This will apply to any case, not just farm land, in which a standard mortgage is used where the redemption period would otherwise be one year from the date of the sheriff sale.

Mr. McCay: That is correct.

Rep. Klemin: We are talking about commercial property, whatever, even residential if the party used a standard mortgage instead of a short term redemption.

Mr. McCay: I think that is correct, even on residential if the debt is less than about 2/3 of the value, it goes to a 12 month redemption.

Rep. Klemin: In that case, the short term redemption act does say when the redemption period starts.

Rep. Wrangham: As I view lending, I think of their increased risk or the increased length of time it takes you to secure the property, more the risk, the higher the interest rate. Would interest rates go down a little.

Mr. McCay: Risk can be dealt with in two ways. Raise your income enough to cover it, or else change your underwriting standards to eliminate as much as you can. Typically lenders are going to work with both of them. I can't tell you that it's going to reduce the cost of lending money. It's easier for us to drop our interest rates to beat competition because our costs are less, so we can project those costs.

Chairman DeKrey: Thank you. Any further testimony in support? Any testimony in opposition to HB 1234.

Jeff Knudson, Ag. Dept.: Opposed (read testimony on behalf of Roger Johnson, see attached testimony).

Chairman DeKrey: Thank you. Any further testimony in opposition.

Mark Sitz, ND Farmers Union: Opposed. This is one of three bills that deal with debtor protection. We feel these bills are really are eroding our debtor protections. When the three bills are put together, it draws some concern. They make it more restrictive for borrowers. Ag lenders in North Dakota are in good shape, because of current laws. Earnings are high, we need to go slow.