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ROLL NUMBER

DESCRIPTION

2158

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Operator's Signature

10/17/03
Date

2003 SENATE FINANCE AND TAXATION

SB 2158

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2158

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 13, 2003

Tape Number	Side A	Side B	Meter #
1	X		5,030
1		X	1
Committee Clerk Signature			

Minutes:

Tim Karsky Commissioner for the Department of Financial Institutions-Reviewed each section and clarified. Written testimony attached. Urged support of SB2158

Senator Urlacher- You are changing the penalty from $500 to $5000, why?

Mr. Karsky(Tape 1, Side B, meter #1)-Penalty amount is based on the penalties in surrounding states.

Senator Urlacher-What criteria do you use to determine financial condition and background?

Mr. Karsky (meter #135)-Consumer Finance companies have to have a $25,000.00 net worth.

Senator Wardner- Pay day loan thing, how is that going.

Mr. Karsky- We thought we would have 40-45 companies in North Dakota, we have many more than that right now. Most of our complaints about pay day loan companies come from credit counseling groups but few complaints from consumers.

Senator Nichols-Give us some education on money brokers and mortgage lenders.

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Mr. Karsky-answer meter #325. Money brokers take information and work with a third party to provide a financial service.

Senator Nichols-Any problems in this area?

Mr. Karsky-Problems based on situation such as escrow accounts status after a hail storm.

Senator Tollefson-Pay day loans-high rates.

Mr. Karsky-The law says loan up to $500.00 and a fee of $20.00 is OK. A fair amount of demand in this area and fierce competition within the market.

Senator Tollefson- Authority to remove employees?

Mr. Karsky-Example, license renewal sent out, never sent back. We assumed agency is closed and cancel the license. In this case the manager of the agency would be held responsible. Would also address situations when there are stolen funds, a bad manager or abusive collector. We want the ability to remove them.

Senator Tollefson-Would this include general employees?

Mr. Karsky (meter #770)-Would include collectors or perhaps a business manager.

Senator Urlacher-Is there written criteria for removal?

Mr. Karsky-In the instance of the willful violation of breach of trust, we will want to remove employees.

Senator Syverson-$5000.00 max. penalty. Are there time when that would not deter?

Mr Karsky- There are times when it is a small amount. However, if there is legal action the penalty could be much larger.

Senator Wardner-Whoever carries this bill needs backing on the $5000.00 penalty.

Mr. Karsky-We can get you bullets and background.

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Senator Urlacher-Any other questions or testimony in opposition of SB2158? Hearing closed.

General discussion on the bill, should the penalty be higher?

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Deanne Hallwitt 5/17/03
Operator's Signature Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2158

Senate Finance and Taxation Committee

☐ Conference Committee

Hearing Date January 14, 2003

Tape Number	Side A	Side B	Meter #
1	X		5,000
1		X	1
Committee Clerk Signature			

Minutes:

Senator Urlacher opened the hearing on SB2158. Relating to money brokers and consumer finance companies. All committee members were in attendance.

Senator Wardner - SB2158 allows increasing a penalty to $5000.00. That amount would be a starting point. Would be a smaller penalty if applicable.

Senator Tollefson - I feel $5000 may be a low number.

Senator Tollefson motioned a Do Pass. Second by Senator Wardner. Roll call vote, 6 yea, 0 nay, 0 absent. Senator Tollefson is the carrier.

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FISCAL NOTE

Requested by Legislative Council
01/03/2003

Bill/Resolution No.: SB 2158

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	$0	$0	$0
Expenditures	$0	$0	$0	$0	$0	$0
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill will grant the Department of Financial Instituions the authority to remove officers and employees from consumer finance, money broker, and deferred presentment service provider licensees who do not demonstrate the ability to abide by applicable laws and regulations. The bill also sets forth guidelines for responding to information requests from the Department, applicant qualifications, electronic record retention, and penalties for violating the consumer finance, money broker, collections agency, and deferred presentment service provider acts.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

No increase in revenue.

   B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

No increase in expenditures.

   C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

No increase in appropriations.

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1/17/03
Date

Name:	Joan Becker	**Agency:**	Department of Financial Institutions
Phone Number:	328-9958	**Date Prepared:**	01/06/2003

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5/17/03
Date

Date: 1-16-03
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2158

Senate Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Sen. Tollefson Seconded By Sen. Wardner

Senators	Yes	No	Senators	Yes	No
Senator Urlacher - Chairman	↘		Senator Nichols	↘	
Senator Wardner - Vice Chairman	↘		Senator Seymour	↘	
Senator Syverson	↘				
Senator Tollefson	↘				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Sen. Tollefson

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

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Operator's Signature 1/17/03 Date

REPORT OF STANDING COMMITTEE (410)
January 14, 2003 11:42 a.m.

Module No: SR-06-0516
Carrier: Tollefson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2158: Finance and Taxation Committee (Sen. Urlacher, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2158 was placed on the Eleventh order on the calendar.

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1/17/03
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2003 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2158

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10/17/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2158

House Industry, Business and Labor Committee

❑ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.0-14.4
Committee Clerk Signature	Judith Hammer		

Minutes: **Chairman Keiser** opened the hearing on SB 2158.

Tim Karsky, Commissioner for the Department of Financial Institution, introduced and testified in support the bill. **(See attached)**

Rep. Ekstrom: Have you discussed these changes with existing businesses? How many deferred presentment providers do we have in the state? In your testimony on page 2, you refer to "convicted of a felony." In insurance law there are instances that if you are convicted of a felony and not convicted of stealing money, you can still practice your profession. Is that true in banking? What is a Class B felony? Will this be a mandatory Class C in those situation? Can collection agencies still file by paper if they wish not to file electronically?

Karsky: Not all the entities we regulate have associations. We have met with pay days, deferred presentment service providers and collection agencies and they have no problems with this legislation. Currently we have 59 deferred presentment service providers in the state. Regarding felony convictions, it would have to be a breach of trust, not something like drunk driving etc.

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The Class C felony is in the preferred presentment service providers now. It's a fine and up to five years in jail. A misdemeanor is just a fine. I'll look those up. The Department refers a violation, issues a cease and desist order and tries to have it enforced and somebody is convicted, the States Attorney or US Attorney gets a conviction on an embezzlement or breach of trust, at that time, instead of just removing them for one to three years, it would be a permanent order that would prohibit them from being licensed, not only as pay day lender but they couldn't jump over to money broker or collection agency. It's up to a Class C Felony. Correct, we've had to maintain paper files but now as long as records can by reproduced from diskette or whatever, they're given the option of filing electronically or by paper.

Rep. Klein: Those are pretty stiff penalties. What's the rationale? Is this in line with what other states are doing?

Karsky: Judges issue the penalties. But stealing money from collection agencies or escrow funds for mortgage lending is serious stuff. We'd be in line with the civil penalties. Minnesota and Wisconsin are in line with what we're proposing here. South Dakota doesn't regulate.

Rep. Nottestad: This wouldn't have anything to do with federal penalties, we can't impose them.

Karsky: If someone is convicted on a federal crime of breach of trust, that would allow us not to have to license them.

Rep. Thorpe: How did you operate before this?

Karsky: A lot of this new language will help us speed up the process. We have 657 entities today, that's up 17 from a month ago, we have 15-20 applicants pending, half of those are slow to respond to our requests. This process is time consuming If penalties are stepped up that will keep people more honest.

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Chairman Keiser: The big picture is this: we're taking money brokers, collection agencies, consumer finance companies, small loan companies, deferred presentment service providers and sellers of checks and we're trying to standardize them relative to electronic records giving you authority to request information in a timely fashion, civil and criminal penalties, give you the power to remove officers and authority to issue complaints? Does that cover it?

Karsky: That covers it.

Rep. Froseth: What is a *seller of checks*?

Karsky: Someone authorized to sell money orders, travelers checks etc. There are 12 licensed in the state.

As there was no one else present to testify either in support of or in opposition to SB 2158, the hearing was closed.

Rep. Ekstrom moved a Do Pass.

Rep. Klein seconded the motion.

Results of the roll call vote were: 14-0-0.

Rep. Ekstrom will carry this on the floor.

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5/17/03
Date

Date: 3/5/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2158

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Ekstrom Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Ekstrom.

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Operator's Signature 10/17/03 Date

REPORT OF STANDING COMMITTEE (410)
March 5, 2003 11:42 a.m.

Module No: HR-39-3933
Carrier: Ekstrom
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2158: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2158 was placed on the Fourteenth order on the calendar.

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2003 TESTIMONY

SB 2158

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Same testimony to House

1-13-03

TESTIMONY FOR SENATE BILL NO. 2158

Good morning Chairman Urlacher and members of the Finance and Taxation Committee, my name is Tim Karsky, and I am the Commissioner for the Department of Financial Institutions. I am here to urge your support of Senate Bill No. 2158.

For those of you that are not familiar with the Department of Financial Institutions, we currently supervise 89 state-chartered banks, 39 state-chartered credit unions, and approximately 650 licensees which include money brokers, collection agencies, consumer finance companies, small loan companies, deferred presentment service providers, and sale of checks.

The Department's main purpose for introducing this Bill is to bring uniformity as to how the Department regulates all the above entities. As you will notice in some of the Sections, the Department has certain authority over one entity and not the next. Again, the Department wishes to regulate all the entities the same and bring uniformity to the various licensees. Senate Bill No. 2158 gives the Department authority to remove officers and employees from entities the Department licenses, along with requesting various information and to provide a penalty. I will review the bill Section by Section.

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Section 1 of the Bill deals with the Consumer Finance Act and factors for the Department in considering whether to approve the license. Specifically, on line 20, language is added allowing us to look at the financial condition and business experience as criteria. It also gives the Department the ability to look at certain records of the business to determine if the business is adequately capitalized and to ensure satisfactory management fiscal responsibility.

Section 2 of the Bill also deals with the Consumer Finance Act and grants the Commissioner the authority to issue a complaint stating the basis for the Commissioner's belief that an officer or employee is willfully engaging or has willfully engaged in certain conduct. This Section also grants the officer or employee the ability to request an administrative hearing which would be held in front of the Commissioner; however, if the Commissioner determines the record warrants, the officer or employee can be removed for a period of time not exceeding three years from the effective date of the suspension or temporary removal. If an officer or employee is convicted of a felony, the order or suspension can be made permanent.

Section 3 of the Bill allows for records of a consumer finance company to be maintained electronically, provided all records can be reproduced upon the request of the Department.

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Operator's Signature 5/17/03 Date

Section 4 of the Bill also deals with consumer finance companies, and allows the Department to request information concerning an applicant licensee or any person subject to the provisions of the chapter to supply information to the Department and to set specified times for this information to be submitted. There have been instances in the past where the Department requests additional information and the applicant does not respond. The Department is requesting the ability to deny an application when the information is not received in a timely manner, which the current law does not authorize.

Section 5 of the Bill changes the penalty provisions for violations of this Chapter from a Class A misdemeanor to a Class C felony. We have also added language that the Commissioner can impose civil money penalties not to exceed $5,000 per violation upon a person or agency that willfully violates the law, rule, or order under this chapter. This Section also allows the party to appeal the assessment of civil money penalties under provisions of Chapter 28-32 by filing a written notice of appeal.

Section 6 of the Bill pertains to money brokers and mortgage lenders. This Section gives the Department the ability for additional options when reviewing a new application, such as adding the financial condition, business experience, and general fitness of the applicant. This same criteria was discussed earlier in the Bill for consumer finance companies.

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Section 7 is the same language talked about in Section 2 of the Bill under suspension and removal of consumer finance officers, but now pertains to the money broker officers and employees.

Section 8 of the Bill allows money brokers to maintain records electronically if they can be reproduced upon request by the Department.

Section 9 of the Bill sets forth requirements for the Department requesting information from an applicant or licensee which is again a minimum of 10 days or as specified in the request. The language also indicates if the information is in regard to new applications or renewal applications; if the information is not received within the time specified the Department may deny the application.

Section 10 of the Bill deals with penalties for violations of the chapter for money brokers and gives the Commissioner the ability to impose civil money penalties, and allows for appeal rights from the interested party.

Section 11 of the Bill deals with the collection agencies under Title 13-05. This language is again similar to language in the Bill regarding consumer finance companies and money brokers, and allows the Department to determine whether or not to license applicants based on additional information such as financial condition, business experience, and the general fitness of the applicant.

Section 12 of the Bill allows collection agencies to maintain their records electronically.

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Section 13 of the Bill is again similar to language in the Bill for the previous entities which sets forth timelines for licensees and applicants to respond to requests for additional information.

Section 14 of the Bill reinstates the language which was deleted on page 9, lines 7 through 13. In addition, the penalty for violating this Chapter is changed from a Class A misdemeanor to a Class C felony, and the amount of the penalty has changed from $500 for each violation up to $5,000.

Section 15 of the Bill allows collection agencies to maintain their records electronically.

Section 16 of the Bill is for deferred presentment service providers and allows the Department to set timeframes for applicants and licensees to respond to requests for information. Again, this language is similar to other language which was added previously in the Bill.

Section 17 of the Bill deals with the suspension or removal of officers and employees for deferred presentment service providers, and is exactly the same language as was added for the consumer finance companies, money brokers, and collection agencies. The Department feels this gives the Department another option to remove an individual or employee in any of the entities we regulate without taking the most severe action of revoking a license when the removal of an

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employee would be sufficient. Again, the Department has to prove it was a willful violation and the aggrieved party has the ability to request a hearing.

Section 18 of the Bill changes the amount of civil money penalties from $1,000 per transaction up to $5,000 per violation, which again is consistent with the other language added.

Chairman Urlacher and members of the Committee, I would be happy to answer any questions you may have, and would urge your favorable consideration of Senate Bill No. 2158.

Thank you.

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