

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2281

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2281

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 7991

Committee Clerk Signature

Em Lebell

Minutes:

Chairman Klein: Calls IBL to order.

Senator O'lafson: Health Savings Account. Written Testimony Attached. Explains how H.A.S works. The bill will change the language so they can be invested in any type of market.

Senator Andrist: How does the health savings account differ from flex?

Senator O'lafson: I am not familiar with flex.

Marilyn Foss, Written testimony attached. This does not affect credit unions, this is a banking code.

Senator Andrist: Do people have to put these funds in a savings account?

Marilyn: You can only offer it if these funds go into a banking account or CD. That's why we're trying to remove that language.

Senator Andrist: Is this a federal program and are you familiar with flex?

Marilyn: It is a federally originated program. With respect to the flex benefit plan, they are similar and they are trying to bring health savings accounts to individuals. Flex if offered by the employer.

Senate Potter: Flex is more of a use it or lose it program. What is health savings account?

Marilyn: Health savings accounts continue to grow.

Senator Horne: If I have a private health insurance, can I create a health savings account?

Marilyn: My understanding is you could not.

Senator Nodland: Are we trying to ease the transactions of these accounts from the limitations, so it isn't as difficult to get at your money?

Marilyn: Yes, we are trying to change the limitations so people have better access to their money.

Don Forseberg, Executive Vice President: This will give the flexibility to the account holder. We are trying to take out the restrictions.

Bob Endringer: Marilyn is correct. A savings account is a limited transaction account. It can only do six transactions a month. The bank needs to allow the person to place the money in checking.

Senator Andrist: Do banks charge fees for this service?

Bob: I believe they do.

Senator Andrist: Is there someone who has to prove what the money was used for, or just prove to the IRS?

Bob: I believe the IRS.

Rob St.Austin: The other big difference is when a person signs up for a health savings account. They also have a high deductible health plan. You put away money and the federal government determines what you can pull out every year. The health savings account continues to grow until the age of sixty five. It can be used as a retirement account for medical expenses.

Chairman Klein: We will close the hearing on Senate Bill 2281.

Motion to pass Senator Potter. Seconded by Senator Wanzek.

Roll Call Vote: Yes: 7 No: 0 Absent: 0 Floor Assignment: Senator Potter

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Date: 1/28/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2281

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken **Pass** **Do Not Pass** **Amended**

Motion Made By Senator Potter Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Potter

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

REPORT OF STANDING COMMITTEE

SB 2281: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2281 was placed on the Eleventh order on the calendar.

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2281

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2281

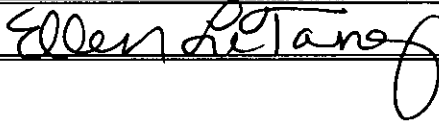
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 10, 2009

Recorder Job Number: 10554

Committee Clerk Signature



Chairman Keiser: Opened the hearing on SB 2281 relating to banks serving as custodian for health savings accounts & to declare an emergency.

Senator Curtis Olafson~District 10. SB 2281 is a bill that makes a minor change in the code that allow for health savings accounts to be invested something other than saving account or certificate of deposit. A health savings account is a tax exempt account owned by an individual in which the funds accumulate to pay for qualified medical expenses or catastrophic health problems. Under the current code, those accounts are only allowed to be invested in savings accounts. If I were to set up this account, I would prefer some other options, perhaps a more aggressive type of investment available to me.

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

Vice Chairman Kasper: Are the terms of deposit accounts and transaction accounts defined in North Dakota statute?

Clayburgh: It is my understanding that they are. Deposit accounts are but transactions accounts are not.

Vice Chairman Kasper: Could you bring me the definition of transaction accounts?

Clayburgh: Yes, I will.

Vice Chairman Kasper: What this does is goes beyond the deposit and transaction accounts by striking out where you had to put the funds. Are there any limitations on the North Dakota law on where custodial accounts can be invested?

Clayburgh: I will have to look that up.

Vice Chairman Kasper: Could you supply that as well.

Clayburgh: Yes, we will have that before you before you carry the bill.

Representative Ruby: If you put the money into a deposit account, like a checking account, does it have to be an interest bearing, isn't the idea of a saving account is something that is going to grow?

Clayburgh: That is the idea of it, however, saying specifically saying saving account or CD, you technically pull out of that deposit account like a checking account but the interest or non-interest bearing, some checking accounts, money market accounts can be interest bearing. The whole concept of how savings accounts are operated, a certain amount of funds are held in a more accessible account. The remainder is in an interest bearing type accounts. By having a certain amount of funding in a more flexible account that allows the individual to write a check to pay their medical expense, where as a savings account has a restriction in the number of deposits.

Representative Ruby: A savings account is pretty accessible; I can go on line and transfer from my savings into checking at any time.

Clayburgh: Yes, up to six transactions a cycle.

Chairman Keiser: How long is the cycle?

Clayburgh: Depending on the length of the month.

Representative Amerman: If you put some of this money into an interesting bearing checking account to have the flexibility, you would only be able to write those checks for medical things because this is tax deferred? You couldn't write a check just for anything?

Clayburgh: That is correct. These are designed for help for health purposes. The idea is that down the road, if funds become very large in a healthier person, they would have the ability to utilize it for any other types, such as retirement. These are designed originally for health care purposes and to build the funds for catastrophic health needs.

Representative Nottestad: If you look at the IRS savings and we look at the number of transactions, what type of tracing or verification does the IRS do with these accounts to show that it's being used?

Clayburgh: It is my understanding on how these are operated, these accounts that is restricted for health savings purposes and it would have to be a specific account not attached to the checking account.

Vice Chairman Kasper: Do banks have to pay interest on deposit & transaction accounts?

Clayburgh: I'm not certain I'm following your question? Banks can offer interest on certain transactional & deposit accounts.

Vice Chairman Kasper: This bill with "HSA" accounts, if you offered a deposit account or transaction account to get to the ability to get more than six transactions a month, would the bank have to pay interest?

Clayburgh: That would be the decision of the bank but what see as it as a marketing tool that the bank would be setting it up that wouldn't have that type of restrictions and will offer interest to it. If it's just a checking account, we would not pay interest but it purely a marketing issue.

Chairman Keiser: It implies that these cannot be co-mingled but it really doesn't state they cannot be co-mingled in the checking account. If says the functions is to pay for, it's not clear and you could argue it. This really doesn't prevent the co-mingling, does it?

Clayburgh: It is my understanding that it does but I want to double check the specific section in the code? I can't recall.

Chairman Keiser: If we set it up into a checking account and it is segregated, if they were to make a payment from that account for clothing, what would that do to the HSA?

Clayburgh: I don't know the specific answer, I know that the funds that would be transferred out would be subject to a penalty provisions. I will get you an exact answer to that.

Bob Eslinger~Assistand Commissioner for the Department of Financial Institutions. We are here to support the bill. The reason the bill was introduced is because right after last session, when the amendment was made to allow (inaudible). The largest bank we have in the state is very heavily involved in this. It does not work for them. It's a nationwide program. You can see, somebody in Virginia doesn't necessarily want to use checks or to have a savings account because they can't get at the money. They want to use a debit card so they can go to multiple health care facilities. Because a savings account is a limited transaction account, it prohibits them from using that debit card. That why we want this bill to go through and also the emergency clause is attached so the bank can get their program moving forward. The other thing you need to know is there are always three parties involved in a HSA. There is the insurance company, the bank, and the third part administrator who is going to control where those funds are deposited.

Vice Chairman Kasper: What is the bank that you are trying to get this bill for?

Eslinger: State Bank and Trust in Fargo, they have the nationwide program.

Chairman Keiser: Are any banks currently allowing the use of debit card for their HSA in the state of North Dakota?

Eslinger: They could be national banks that are doing it but if the state chartered bank is doing it, we will cite them for violation of the statute. We have cited some. A saving account is a limited transaction account and you can only do the six transactions per month. There are now restrictions when you do a transfer in person at the bank, again it doesn't work for this nationwide program. They certainly deposit into a NOW account, which a regular checking account, no limitation on the number of transactions and its interest bearing. That is going to be an agreement between the third party administrator of the bank and the customer.

Vice Chairman Kasper: I can't think of too many instances where someone with a HSA would need to make more than six transactions in a month because if you bills come in on a monthly basis and you have ten places to pay. You still could withdraw one lump of money and pay those places.

Eslinger: There are a number of ways you could do it but the problem with the savings account, to use the debit card; you are going to be limited to three transactions. I can guarantee you that there are people that will have more than three transactions.

Don Porsborg~Executive Vice President for Independent Community Banks. We too support this bill. It really meets the needs of our customers who have been asking for this flexibility. When the original legislation was passed last sessions to allow these accounts, we didn't anticipate this type of interest.

Chairman Keiser: Is there anyone here to testify in opposition to SB 2281, neutral? Closes the hearing, what are the wishes of the committee?

Representative Gruchalla: Moves a Do Pass.

Representative Boe: Second.

Chairman Keiser: Further discussion?

Chairman Keiser: My fear is the co-mingled account. There has to be a separate account.

Vice Chairman Kasper: The only concern I have on the bill if we go to a deposit and transaction accounts, where there is not interest not paid on those accounts. Right now anyone one account as time goes on there could be thousands and thousands dollars in those accounts. If the bank would develop a program that says, well being, we need the flexibility to write six or eight transactions a months. The only account we have is a deposit account or transactions account but that doesn't pay interest. I have a concern about that. I'm hoping that is not the case that occurs as these accounts develop.

Chairman Keiser: Is it legal to have more than two for one person and more than two accounts to put HSA monies into? Could I have a CD and a checking account that I can move money once a month from into checking? Is that legal?

Bob: I think that's the intent to have the bulk of the money invested so that it is earning interest. On a monthly basis, transfer money into that checking account if it is needed. An HSA is nothing more than a health IRA. It's under the same regulations in the IRS code.

Voting roll call was taken on SB 2281 for a Do Pass with 13 ayes, 0 nays, 0 absent and Vice Chairman Kasper is the carrier.

Date: Mar. 10, 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2281

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 Gruchalla Seconded By Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe	7	
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Kasper

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

REPORT OF STANDING COMMITTEE (410)
March 10, 2009 12:17 p.m.

Module No: HR-43-4434
Carrier: Kasper
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2281: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2281 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2281

TESTIMONY IN FAVOR OF SENATE BILL NO. 2281

Chairman Klein, members of the IBL committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. This bill was introduced at our request and I am here today to ask you to support it.

This truly is a housekeeping bill. In 2007 the legislative assembly adopted a law to enable state chartered banks to serve as custodians for health savings account. However, that law states that HSA funds are to be held in a savings account or certificate of deposit. Since that time, we have learned that this limitation does not work with the rules that apply to savings accounts and CDs to provide customers with the flexibility they need to access funds from an HSA.

Accordingly, SB 2281 removes the requirement for HSA funds to be deposited in a savings account or CD. Removing the requirement will accommodate the HSA product as it has developed and permit the Department of Financial Institutions to stop citing banks for a technical violation because they allow HSA account funds to be deposited in deposit accounts which are transaction accounts which can be accessed without any limit as to the number of withdrawals, or delay or penalty.

Thank you.



TESTIMONY OF THE NORTH DAKOTA BANKERS ASSOCIATION
IN FAVOR OF SENATE BILL 2281

Chairman Kaiser, members of the IBL committee, I am Rick Clayburgh, President and CEO of the North Dakota Bankers Association. Senate Bill 2281 was introduced at our request and I am here today to ask you to support it.

This truly is a housekeeping bill. In 2007 the legislative assembly adopted a law to enable state chartered banks to serve as custodians for health savings account. However, that law states that HSA funds are to be held in a savings account or certificate of deposit. Since that time, we have learned that this limitation does not work with the rules that apply to savings accounts and CDs to provide customers with the flexibility they need to access funds from an HSA.

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Thank you.