

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1329

2001 HOUSE JUDICIARY

HB 1329

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1329

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-24-01

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|-------------|
| Tape 1 | | x | 781 to 2423 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Joan Diers</i> | | | |

Minutes: Chr DeKrey opened the hearing on HB 1329 and asked the clerk to read the title.

Relating to the disclosure by a financial institution of suspected exploitation of a disabled or vulnerable elderly adult to a government agency or law enforcement agency.

Rep Roxanne Jensen: District 17, I am sponsoring HB 1329 at the request of the North Dakota Bankers Association. In 1997 the financial exploitation of disabled or vulnerable elderly adult individuals was criminalized and classified as a felony. However there was a gap. That law did nothing to make disclosure of the crime more likely. This bill fills that gap, by making it possible for bankers, can report suspicious activity to government agencies or law enforcement in good faith and be protected from liability.

Marilyn Foss: appearing on behalf of the North Dakota Bankers Association (general counsel)(see attached testimony) appeared in support of the bill.

Chr DeKrey: Won't this bill work against the bank? If someone is being taken advantage of and you fail to report it, the family comes back and says you failed to report.

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House Judiciary Committee

Bill/Resolution Number HB 1329

Hearing Date 01-23-01

Marilyn Foss: The bill specifically provides that banks are not obligated to investigate that.

Rep Delmore: Can anyone in the bank report, or does this have to be reported to someone higher up have to follow through with filing the report.

Marilyn Foss: That is my view of it.

Rep Delmore: Will there be some type of training for the employees?

Marilyn Foss: I am not aware of any specific training.

Rep Delmore: How wide spread is this issue?

Marilyn Foss: I have maybe two inquires a year, but there are probably more. This bill would permit the institution to help with the investigation.

Sen Espgaard: Senator from District 43, Grand Forks, ND. I urge your support of HB 1329.

Parrell Grossman: Director of Consumer Protection and AntiTrust Division of the Attorney General's Office. This office supports HB 1329. (see attached testimony)

Kathleen Pfeifle: Co-Chairperson of the NDCSW RP&L Committee (see attached testimony)

Jack McDonald: presenting the Independent Community Banks of North Dakota and AARP, spoke in support of HB 1329.

Howard Snortland: representing AARP, testified in support of HB 1329, this state needs adult protection services.

Krista Andrews: an attorney with the North Dakota Department of Human Services' Legal Advisory Unit. (see testimony attached)

Chr DeKrey: Any other testimony, if not we will close the hearing on HB 1329.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1329A

House Judiciary Committee

☐ Conference Committee

Hearing Date 01-24-01

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|------------|
| TAPE III | x | | 800 to 996 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Joan Diers</i> | | | |

Minutes: Chairman DeKrey opened the committee hearing on HB 1329. Rep Klemin made a DO PASS motion on HB 1329, seconded by Rep Wrangham. Chairman DeKrey asked the clerk to call the roll on a DO PASS motion on HB 1329. The motion passes with a vote of 13 YES, 0 NO, and 2 ABSENT. The floor assignment is Rep Kingsbury.

Date: 01-24-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Klemin Seconded By Rep Wrangham

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|-----------------|-----|----|
| CHR - Duane DeKrey | ✓ | | | | |
| VICE CHR -- Wm E Kretschmar | ✓ | | | | |
| Rep Curtis E Brekke | ✓ | | | | |
| Rep Lois Delmore | ✓ | | | | |
| Rep Rachael Disrud | ✓ | | | | |
| Rep Bruce Eckre | ✓ | | | | |
| Rep April Fairfield | ✓ | | | | |
| Rep Bette Grande | ✓ | | | | |
| Rep G. Jane Gunter | | | | | |
| Rep Joyce Kingsbury | ✓ | | | | |
| Rep Lawrence R. Klemin | ✓ | | | | |
| Rep John Mahoney | ✓ | | | | |
| Rep Andrew G Maragos | | | | | |
| Rep Kenton Onstad | ✓ | | | | |
| Rep Dwight Wrangham | ✓ | | | | |

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Kingsbury

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

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 8:36 a.m.

Module No: HR-13-1571
Carrier: Kingsbury
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1329: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1329 was placed on the
Eleventh order on the calendar.

2001 SENATE JUDICIARY

HB 1329

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1329

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 13th, 2001

| Tape Number | Side A | Side B | Meter # |
|---------------------------|--------|--------|---------|
| 1 | x | | 0-12 |
| | | | |
| | | | |
| Committee Clerk Signature | | | |

Minutes: **Senator Traynor**, opened hearing on HB 1329.

Rep. Jensen, district 17, supporting bill at the request of ND Bankers Association. ND has significant growing population of vulnerable persons and are susceptible. This bill will deter those who would take advantage of vulnerable people.

Marilyn Foss, testifying for the ND Bankers Association, (testimony attached).

Senator Trenbath, I see that Senator Epsgard is on this. I'm dimly aware of a bank secrecy act. Is that effected by this bill?

Marilyn Foss, no.

Senator Traynor, do the bankers have a code of ethics?

Marilyn Foss, not a written code of ethics like lawyers do, but they have business ethics.

Senator Traynor, do they have seminars on ethics.

Marilyn Foss, seminars on following laws.

Senator Dever, what do the bankers do now regarding this issue?

Page 2
Senate Judiciary Committee
Bill/Resolution Number 1329
Hearing Date March 13, 2001

Marilyn Foss, they remain silent, or talk to the customer.

Senator Nelson, if I'm a trustee of my mothers account, I should need a copy for the bank?

Marilyn Foss, if you are your mothers trustee, you should be the signator on the account. A banker would then have no reason to question your good faith.

Joel Gilbertson, representing the banks of ND, supports the bill.

Krista Andrews, attorney with the North Dakota Department of Human Services' Legal Advisory Unit, (testimony attached). Supports the bill.

Senator Traynor, would your agency receive the report?

Krista Andrews, I'm not sure.

Senator Bercler, how often does the bank give a report to the trustee?

Krista Andrews, marilyn foss might answer that better.

Marilyn Foss, they would send out a statement much like a regular bank statement. Those go to the customer not the trustee.

Senator Traynor, closed the hearing on HB 1329.

SENATOR TRENBEATH MOTIONED TO DO PASS, SECONDED BY SENATOR WATNE. VOTE INDICATED 7 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR TRENBEATH VOLUNTEERED TO CARRY THE BILL.

Date: 3/13/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1329

| | | |
|---------------|------------------|------------------|
| Senate | Judiciary | Committee |
|---------------|------------------|------------------|

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DP

Motion Made By Trentham Seconded By Watne

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment Trenbeath

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

REPORT OF STANDING COMMITTEE (410)
March 13, 2001 12:57 p.m.

Module No: SR-43-5474
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1329: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS**
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1329 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

HB 1329

TESTIMONY OF MARILYN FOSS
IN FAVOR OF HB 1329
ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION

Chairman DeKrey, members of the House Judiciary Committee, my name is Marilyn Foss. I am appearing before you on behalf of the North Dakota Bankers Association in support of HB 1329.

I'd like to give you a little background about this bill. Occasionally I receive calls from bankers who are concerned that an elderly customer is being taken advantage of by another person. Typically, the banker's antennae are raised because of unusual checking or savings account activity for a long time customer. The banker suspects something is wrong and would like to report his or her suspicions to the proper authorities, but isn't sure he or she "should". After all, the bank hasn't got the customer's written consent and the banker is concerned about exposing the bank to liability to the suspected "abuser" if the suspicions aren't borne out after investigation. Sometimes the banker is even concerned about asking for the customer's consent because the banker doesn't know whether even that may expose the customer to jeopardy. After a bit of research I learned that the 1997 legislative assembly which made financial exploitation of a disabled adult or of a vulnerable elderly adult ("a protected person") a felony if the

amount involved is more than \$1000. NDBA view HB 1329 as a corollary to the 1997 law and as a way of making it more effective.

HB 1329 does two things to address the concerns of the bankers I have spoken to about this: It exempts a report of suspected financial exploitation of a protected person as defined by NDCC 12.1-31-07.1 from the requirement for written customer consent under Chapter 6-08.1. And, in section 2 , it immunizes a financial institution which makes a good faith report of suspected financial exploitation to a government agency or law enforcement agency from liability. In short, the bill permits (but does not require) a report to be made without obtaining the protected person's prior written consent and protects a person who makes a good faith report from the risk of being held liable for making the report. We view the immunity protection to be critical to making this bill work just as it has been critical to encourage people to report suspected child abuse. . . If banks are afraid of liability for suspicious activity which turns out not to be criminal, they simply won't report suspected financial exploitation to government or law enforcement agencies. Because of the similarities between reporting suspected financial exploitation and child abuse, section 2 of this bill is modeled on NDCC 50-25.1-09 which immunizes a person who makes a

good faith report of suspected child abuse from any civil or criminal liability for that report.

NDBA legislative committee members were unabashedly enthusiastic about supporting this bill and we urge your DO PASS recommendation for it.

HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
JANUARY 23, 2001

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
HOUSE BILL NO. 1329

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support House Bill No. 1329

The Consumer Protection Division staff works closely and very effectively with our North Dakota financial institutions in order to protect our elderly citizens from consumer fraud scams. Despite our best efforts to educate our seniors and other members of the public, many vulnerable elderly consumers are victimized each year in North Dakota, particularly in telemarketing scams, by persistent and smooth talking scam artists.

In some instances, due to attentive and trained personnel at our various financial institutions, we have had some very successful joint interventions in stopping a theft or scam, resulting in saving the potential victim thousands of dollars. Unfortunately, in many instances, the elderly victims are unwilling to allow the financial institutions to intervene by involving the Consumer Protection Division of the Attorney General's office or law enforcement. I recall one particular instance in which a consumer refused to allow a bank to call our office for assistance, or to divulge her information to this office and she lost \$50,000 as a result of that scam.

In some instances the financial institution's employees and this office will not be able to stop or divert the theft, even with our combined efforts. Nonetheless we should make every effort to prevent such theft. We should use every reasonable means to prevent or prosecute the exploitation of disabled or vulnerable elderly adults.

House Bill 1329 will offer reasonable and necessary protection to employees of financial institutions acting in good faith for the purposes of assisting government or law enforcement agencies with investigations in instances of suspected exploitation of disabled or vulnerable elderly adults in this state.

For these reasons, the Attorney General respectfully urges this committee to give House Bill 1329 a "do pass" recommendation.

Thank you for your time and consideration and I will be available to try and answer any questions.

North Dakota Conference of Social Welfare, Incorporated



Research Planning and Legislative Committee

| Association/Organization | Membership/Size |
|--|-------------------------|
| American Association of Retired Persons ND-AARP | 70,000 Members |
| Catholic Family Service CFS | 36 Employees |
| Children's Caucus CC | 100 Members |
| Graying of North Dakota | 30 Members |
| Mental Health Association of ND MHA | Mailing list of 3000 |
| National Association of Social Workers ND-NASW | 315 Members |
| ND Association of Counties NDACo | 600 Members |
| ND Association of Non-Profit Organizations NDANO | 205 Members |
| ND Catholic Conference NDCC | Mailing List of 4000 |
| North Dakota Conference of Social Welfare NDCSW | 615 Members |
| Project Directors Association | 30 Members |
| Professional Association of Treatment Homes ND-PATH | 9 Offices, 32 Employees |
| Silvered Haired Assembly | 70,000 Members |
| St Alexius Medical Center - Elder Care, Community Health, Social Services, Mental Health Division | 60 Employees |

01/23/2001

North Dakota Conference of Social Welfare, Incorporated



Research Planning and Legislative Committee

House Judiciary Committee Testimony January 23, 2001

Chairman DeKrey and members of the Judiciary Committee, I am Kathleen Pfeifle, Co-Chairperson of the NDCSW RP&L Committee. The NDCSW has been in existence since September 1, 1920, when Minnie Nielson, Superintendent of Public Instruction, and others organized a group to speak out effectively and strongly on behalf of North Dakota's children and its underprivileged. The group that assembled in Bismarck was comprised of Red Cross workers, college professors, teachers, nurses, police officers, and social workers. The assembled group was successful in persuading the State Legislature to establish a Children's Code Commission to deal with child labor, the rights of children, mother's aid laws and child health. In 1935 the Conference was involved lobbying for the establishment of a Public Welfare Board.

During the last 80 years, the Conference has reflected the emerging social needs of the State, such as recognizing the financial needs of destitute citizens, identification of the needs of returning veterans and displaced persons, identifying the needs of institutionalized patients, the increasing needs of the elderly, the welfare of children and families, and improved professional standards for families in transition. The Conference has been, is, and can be a powerful vehicle for improving the social needs of the citizens of North Dakota.

Today, I am speaking to you concerning HB 1329. North Dakota citizens have good work ethics. Our adult and elderly population have worked hard and saved all their lives for their retirement years. The support systems that surrounded them while they were younger are no longer in place as their children and families are more mobile and have moved on. There is no one for them to call, to depend upon for the day to day affairs that they face that are difficult to comprehend. The elderly realize that they are vulnerable and deserve protection from exploitation of their resources. This bill provides protection for North Dakota's citizens to remain independent in their communities and use their resources on themselves rather than becoming dependent on the system because they have been financially abused.

Following the tradition of the NDCSW, in recognizing the needs of our elderly adult population, the Conference is fulfilling it's role as an umbrella organization, pulling together the other organizations in the state that are concerned with the exploitation of the vulnerable elderly adult. I am attaching a resource listing of the organizations that are working together in support of the bill. See Attachment A

The NDCSW and RP&L Committee supports this bill and we are asking for your full consideration and support on HB 1329. Thank you for your time.

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING
HOUSE BILL NO. 1329
JANUARY 23, 2001**

Chairman DeKrey and members of the Committee, my name is Krista Andrews, and I am an attorney with the North Dakota Department of Human Services' Legal Advisory Unit. I am here to support House Bill No. 1329.

Next to self-neglect, the second most common report that the Department of Human Services' Aging Division receives is that of financial exploitation. These reports are received from concerned citizens, but generally are not received until after the exploitation has occurred, at which point, little can be done to remedy the situation. However, it is financial institutions and its employees that may have the most direct proof of financial exploitation of our elderly population. But because financial institutions are not allowed to report suspected exploitation due to the current confidentiality constraints, cases may not be reported to the Department of Human Services or law enforcement officials, and consequently, will not be investigated. By allowing financial institutions and its employees to report instances of suspected financial exploitation, we may be able to prevent some of the exploitation of our elderly citizens.

House Bill No. 1329 closes an important loophole by allowing financial institutions or its employees participating in good faith to make a report of suspected exploitation of a disabled adult or vulnerable elderly adult, without fear from potential liability. This bill serves to further protect our disabled adult and vulnerable elderly adult population, which the Department fully supports.

I would be happy to answer any questions the Committee may have.

Presented by:

**Krista Andrews
Attorney, Legal Advisory Unit
ND Department of Human Services**

**TESTIMONY OF MARILYN FOSS
IN FAVOR OF HB 1329
ON BEHALF OF THE NORTH DAKOTA BANKERS ASSOCIATION**

Chairman Traynor, members of the Senate Judiciary Committee, my name is Marilyn Foss. I am appearing before you on behalf of the North Dakota Bankers Association in support of HB 1329.

I'd like to give you a little background about this bill. Occasionally I receive calls from bankers who are concerned that an elderly customer is being taken advantage of by another person. Typically, the banker's antennae are raised because of unusual checking or savings account activity for a long time customer. The banker suspects something is wrong and would like to report his or her suspicions to the proper authorities, but isn't sure he or she "should". After all, the bank hasn't got the customer's written consent and the banker is concerned about exposing the bank to liability to the suspected "abuser" if the suspicions aren't borne out after investigation. Sometimes the banker is even concerned about asking for the customer's consent because the banker doesn't know whether even that may expose the customer to jeopardy. After a bit of research I learned that the 1997 legislative assembly which made financial exploitation of a disabled adult or of a vulnerable elderly adult ("a protected person") a felony if the amount involved is more than \$1000. NDBA view HB 1329 as a corollary to the 1997 law and as a way of making it more effective.

HB 1329 does two things to address the concerns of the bankers I have spoken to about this: It exempts a report of suspected financial exploitation of a protected person as defined by NDCC 12.1-31-07.1 from the requirement for written customer consent under Chapter 6-08.1. And, in section 2 , it immunizes a financial institution which makes a good faith report of suspected financial exploitation to a government agency or law enforcement agency from liability. In short, the bill permits (but does not require) a report to be made without obtaining the protected person's prior written consent and protects a person who makes a good faith report from the risk of being held liable for making the report. We view the immunity protection to be critical to making this bill work just as it has been critical to encourage people to report suspected child abuse. . . If banks are afraid of liability for suspicious activity which turns out not to be criminal, they simply won't report suspected financial exploitation to government or law enforcement agencies. Because of the similarities between reporting suspected financial exploitation and child abuse, section 2 of this bill is modeled on NDCC 50-25.1-09 which immunizes a person who makes a good faith report of suspected child abuse from any civil or criminal liability for that report.

NDBA legislative committee members were unabashedly enthusiastic about supporting this bill and we urge your DO PASS recommendation for it.

The definition of prohibited financial exploitation is found at NDCC 12.1-31-07.1. The people who are subject to the law are those who stand in a position of trust and confidence or who have a business relationship with a disabled adult or a vulnerable elderly adult and those who know that a disabled adult or vulnerable elderly adult lack capacity to consent. The conduct which is prohibited is 1) obtaining or using a protected person's funds, assets or property 2) with the intent to temporarily or permanently deprive the protected person of the use, benefit, or possession of that property and 3) for the benefit of a person other than the protected person.

**TESTIMONY BEFORE THE
SENATE JUDICIARY COMMITTEE
REGARDING
HOUSE BILL NO. 1329
MARCH 13, 2001**

Chairman Traynor and members of the Committee, my name is Krista Andrews, and I am an attorney with the North Dakota Department of Human Services' Legal Advisory Unit. I am here to support House Bill No. 1329.

Next to self-neglect, the second most common report that the Department of Human Services' Aging Division receives is that of financial exploitation. These reports are received from concerned citizens, but generally are not received until after the exploitation has occurred, at which point, little can be done to remedy the situation. However, it is financial institutions and its employees that may have the most direct proof of financial exploitation of our elderly population. But because financial institutions are not allowed to report suspected exploitation due to the current confidentiality constraints, cases may not be reported to the Department of Human Services or law enforcement officials, and consequently, will not be investigated. By allowing financial institutions and its employees to report instances of suspected financial exploitation, we may be able to prevent some of the exploitation of our elderly citizens.

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I would be happy to answer any questions the Committee may have.

Presented by:

**Krista Andrews
Attorney, Legal Advisory Unit
ND Dept. Of Human Services**