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OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

2191

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Deanne D. Smith
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10/17/03
Date

2003 SENATE TRANSPORTATION

SB 2191

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2191

Senate Transportation Committee

Conference Committee

Hearing Date 1-23-03

Tape Number	Side A	Side B	Meter #
1	X		40-1135

Committee Clerk Signature

Mary K Monson

Minutes:

Chairman Senator Thomas Trenbeath opened the hearing on SB 2191 relating to retention of a customer's state-issued identification by a financial institution, trust company, or credit union.

Senator Espgaard: (Senator from District 43) Sponsor of SB 2191 which was requested by the Bankers Association. Introduced the bill and recommended a Do Pass.

Marilyn Foss: (General Counsel for the ND Bankers Association) Testimony attached.

Senator Trenbeath: What is the federal requirement? Do they have to do that for every customer?

Marilyn Foss: (Meter 440) No it is a forward looking requirement. It's possible the banks will use the convenience as a vehicle for complying with the regulations when you initiate a new transaction that requires a new account.

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10/17/03
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Senate Transportation Committee
Bill/Resolution Number SB 2191
Hearing Date 1-23-03

Senator Espgaard: Anytime a loan leaves the local bank and goes out to another market is when identification is proven. I would hope that there would be some relaxation in the law that in a local bank identification wouldn't need to be proven every time.

Marilyn Foss: Once the identity has been verified for a long standing customer, it won't need to be verified over and over again.

Senator Espgaard: Is there a rule now that requires customer identification?

Marilyn Foss: (Meter 660) About three years ago the federal agencies proposed very extensive "know your customer rules" that didn't focus so much on picture identification but on other ways, which raised serious concerns, and were withdrawn. The rules do permit other methods of verifying a customers identification and institutions are encouraged to use these methods along with getting the photo identification.

Senator Mutch: If this doesn't pass into law then what?

Marilyn Foss: The financial institutions would be put into a position of using more difficult methods of verifying identity or facing criminal penalties.

Senator Trenbeath: This isn't a matter where the federal regulations require a copy of the drivers license?

Marilyn Foss: Keeping a copy of the drivers license to document the identity verification is one of the methods.

Senator Espgaard: It is probably the easiest method. The other would be a copy of the birth certificate which most people don't carry with them.

Marilyn Foss: The clear intention of the proposed rule is convenience both for the customer and the financial institution.

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Senate Transportation Committee
Bill/Resolution Number SB 2191
Hearing Date 1-23-03

Joel Gilbertson: (Independent Community Banks of North Dakota) On record that ICBND supports SB 2191.

The hearing of SB 2191 was closed.

Senator Nething motions a **Do Pass**. Seconded by **Senator Mutch**. Roll call vote. 6-0-0.

Passed. Floor carrier is **Senator Espegard**.

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Deanna Nellis RB
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10/17/03
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Date: 1-23-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2191

Senate TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Nething Seconded By Senator Mutch

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier	✓	
Senator Duaine Espégard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Espégard

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

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10/17/03
Date

REPORT OF STANDING COMMITTEE (410)
January 23, 2003 11:43 a.m.

Module No: SR-13-0952
Carrier: Espgard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2191: Transportation Committee (Sen. Trenbeath, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2191 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-13-0952

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01/17/03
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2003 HOUSE TRANSPORTATION

SB 2191

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10/17/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2191

House Transportation Committee

Conference Committee

Hearing Date February 28, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.4 to 22.0
Committee Clerk Signature <i>Laura B. Foss</i>			

Minutes:

Rep. Weisz, Chairman opened the hearing on SB 2191, A bill for an Act to create and enact a new section to chapter 6-08 of the North Dakota Century code, relating to retention of a copy of a customer's state-issued identification by a financial institution trust company or credit union.

Marilyn Foss, Legal Counsel, North Dakota Banker's Association explained that the basis for this legislation is the US Patriot Act which requires banks and lending institution to keep a state-issued photo ID record for all customers. Basically they are required to verify the customer's identity, keep a copy of their verification record for 5 years, that is, keep the record upon which they relied for this identification. Currently the most readily available and most often accepted is the driver's license (passports are acceptable) however, North Dakota law in two instances -- in an effort to protect the individual's identity -- conflicts with the Federal mandate, i.e. the Patriot Act. A copy of her testimony is attached. Also the section of the Federal Patriot Act which requires the photo identification and verification is attached.

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Date

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House Transportation Committee
Bill/Resolution Number SB 2191
Hearing Date February 28, 2003

Rep. Thorpe: What about the disclosure of this information.

Marilyn Foss: First of all there is not much on your driver's license that anybody would want to know -- such as your height, weight, color of your eyes but there is no need for concern because these records are protected under the restricted customer information laws under which the banks are governed.

Rep. Ruby: I have reservations about these records and why do the banks need this information at all?

Marilyn Foss: The US Patriot Act requires them to verify the identity of their customers and to retain that information -- that is Federal Law. What the government is trying to do in war on terrorism is to be able to trace the flow of large amounts of cash.

Rep. Bernstein: The Federal law requires 5 years and our driver's license is good for only 4 years?

Marilyn Foss: That is not really a conflict -- the driver's license is used for the identification at the time the account or transaction was initiated -- that record for the purposes of the Federal Law must be retained for 5 years -- not that the driver's license needs to be valid that long.

Rep. Weisz: If a potential customer applies for a bank loan, furnishes he identification and the loans is not approved or he goes elsewhere -- is that information protected even though he is not a customer.

Marilyn Foss: Yes the customer information or information received for that purpose is protected.

Rep. Ruby: the federal law requires 5 years but you make not time limit or reference in this bill?

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House Transportation Committee
Bill/Resolution Number SB 2191
Hearing Date February 28, 2003

Marilyn Foss: We did the purposely as there is another section of North Dakota law which requires these records to be maintained for 6 years; also, to avoid further possible conflicts, -- the federal law may change to 7 years or ten years -- so we felt this is the best approach so that we would have come back for amending legislation.

Rep. Galvin: If there are points against your driving record does that information need to be shown?

Marilyn Foss: It has been so long since I have looked at my driver's license I don't know what is on there but as I said this information is not disclosed and it does change so I don't think it matters and I don't know how the State would issue a license without that if they are indeed required to show it.

Rep. Dosch: Would this help reduce fraud -- how do they know that is the right person if the state doesn't verify it?

Marilyn Foss: The verification serves to the extent that the state verifies but it will help to the extent that photograph resembles the person they are dealing with. The Federal Law doesn't require the institutions to verify the identification -- it requires a state issued identification.

Rep. Ruby: Asked Marilyn Foss for a copy of that section of the Federal Law -- a noted above a copy was furnished and is attached.

Greg Tschider: A Bismarck lawyer representing the North Dakota Credit Union League. He supports the bill and said that real problems are forgeries and the altering of checks -- while this doesn't answer all the questions but it will help to have these identifications and records. There really is a 'catch-22' for the credit union and financial institutions with the conflict between federal - state laws and various rule and regs. They need SB 2191 to pass.

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House Transportation Committee
Bill/Resolution Number SB 2191
Hearing Date February 28, 2003

Rep. Weisz: Can this information be copied or reproduced?

Greg Tschider: there really is no need to as the Feds want to see the identity of the person, persons or people involved in the transactions.

Rep. Ruby: Can there be the sharing of this information between institutions?

Greg Tschider: There are times when member banks and branch banks transfer accounts and audits. etc. -- generally the information may not be shared between banks under the nondisclosure but there are time when mortgages and loans are sold -- in that case the record I would think would follow the money.

Joel Gilbertson: Representing the Independent Banks of North Dakota stated they too supported this legislation.

Rep. Delmore: Initiated some discussion of what types of state issued ID's there are if you don't drive and therefore no driver's license -- passport, other types of professional licenses were discussed but birth certificates do not qualify.

There being no other persons wishing to testify either for or against SB 2191, Chairman Weisz closed the hearing.

End of hearing record (22.0).

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2191 b

House Transportation Committee

Conference Committee

Hearing Date March 14, 2003

Tape Number	Side A	Side B	Meter #
1	x		14.4 to end
		x	4.3 to 11.5
Committee Clerk Signature <i>Lauren B. Zank</i>			

Minutes:

Rep. Weisz opened the discussion on SB 2191 to consider the proposed amendments and action.

Rep. Ruby: As you remember this is the bill that allowed the banks to keep a copy and retain for your identification for five years. He proposed that the bill was a bit limiting in what the banks could accept besides driver's licenses for example. There seems to be a need for those who don't have drivers licenses and for those who open accounts by phone, on the internet and other things like that. His proposed amendments are more encompassing allowing other types of identification. On page 1 line 2 -- replace a "a customer's state- issued identification by" with the words "information used to identify and verify a customer of"; and on page line 3 -- after institution insert a come and after company insert a coma; and, on page 1, line 8 replace "any motor" with (and then he read a lengthy paragraph which is attached) and then to remove lines 9 and 10. Considerable discussion followed as Marilyn Foss, General Counsel for the North Dakota Bankers Association was present to inform the committee the requirements of the Federal

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Page 2
House Transportation Committee
Bill/Resolution Number SB 2191 b
Hearing Date March 14, 2003

Patriots Act. She was also available for a lengthy question and answers session as current banking procedures and requirements. They covered definitions of customer, etc. and the applicable sections of code.

Rep. Weisz also had some amendments that he had wanted to offer.

Rep. Weiler: (after listening to the testimony and discussions --) I like the bill in its original form.

Rep. Weisz stated he still had some concerns as to who or how a 'potential' customer ---

Discussion and record continues on Side B - --

Rep. Headland --I move for a "Do Pass" as written. Rep. Zaiser seconded the motion.

On a roll call vote the motion carried 11 Ayes 1 Nay 1 Absent and not voting.

Rep. Ruby was designated to carry SB 2191 on the floor.

End of record (11.5)

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Date

30440.0101
Title.

Prepared by the Legislative Council staff for
Representative Ruby
March 14, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2191

Page 1, line 2, replace "a customer's state-issued identification by" with "information used to identify and verify identity of a customer of"

Page 1, line 3, after "institution" insert a comma and after "company" insert a comma

Page 1, line 8, replace "any motor" with "information used to identify and verify the identity of a customer. As used in this section, customer includes any person that opens an account, seeks to open an account, or will be signatory on an account; and types of information used to verify a customer's identity include a government-issued identification document or number, including a social security card, driver's license, passport, and state-issued nondriver's identification card; a piece of mail addressed to the customer at the customer's residence; a business entity identification, including registered articles of incorporation, government-issued business license, trust instrument, and partnership agreement; and a law enforcement identification card."

Page 1, remove lines 9 and 10

Renumber accordingly

Page No. 1

30440.0101

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Date: March 14, 2003
 Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2191

House TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number 30440.0108

Action Taken Do Pass

Motion Made By Rep. Headland Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman		✓	Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt	✓	
LeRoy G. Bernstein	✓		Elwood Thorpe	✓	
Mark A. Dosch	✓		Steven L. Zaiser	✓	
Pat Galvin	✓				
Craig Headland	✓				
Clara Sue Price	✓				
Dan J. Ruby	✓				
Dave Weiler	✓				

Total Yes 11 No 1

Absent 1

Floor Assignment Rep Ruby

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

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Operator's Signature Deanna Hall Date 10/17/03

REPORT OF STANDING COMMITTEE (410)
March 14, 2003 12:12 p.m.

Module No: HR-46-4788
Carrier: Ruby
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2191: Transportation Committee (Rep. Welsz, Chairman) recommends DO PASS
(11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2191 was placed on the
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-46-4788

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03/17/03
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2003 TESTIMONY

SB 2191

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10/17/03
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TESTIMONY OF MARILYN FOSS ON SB 2191

Mr. Chairman, members of the transportation committee, I am Marilyn Foss. I am general counsel for the North Dakota Bankers Association

SB 2191 was introduced by Senator Epegard at the request of NDBA. In the aftermath of the September 11 attack, the USA Patriot Act was passed by Congress. Among its provisions are requirements for depository financial institutions such as banks, savings associations, and credit unions to verify the identity of customers. Federal bank regulatory agencies are in the process of implementing this requirement and have proposed regulations which require the verification of customer identity, set out the methods by which that verification is to be made, and require financial institutions to keep documentation of their compliance for five years.

Under the proposed regulations, a financial institution may accept a driver's license or other government issued non driver's license identification card to verify the customer's identification if the document has a photograph of the customer on it. However, this method of identity verification is acceptable only if the financial institution makes a copy of the document and retains it on file for five years. This method of verification is intended to be easy for the customer and the financial institution since most people carry a driver's license or other government issued photo ID with them. However, current North Dakota law includes two, little known sections which have been read to prohibit the reproduction of a driver's license or non driver photo ID. These sections are NDCC 39-06-40.1(driver's licenses) and 39-06-03.1(non drivers photo ID). Of course the purpose of these sections is to preclude reproduction of a license or other ID for fraudulent purposes, but the prohibitions which they incorporate are very broad. When I discussed the problem with the motor vehicle

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department, we were both concerned that we didn't make a change that could, inadvertently reduce the protections against fraud.

The solution the department and we came up with is SB 2191. This bill adds a statute to the state banking laws, rather than the motor vehicle laws. Once enacted, the bill will permits financial institutions to use and copy a customer's driver's license or non driver photo ID to verify identify to comply with federal regulations, irrespective of the cited motor vehicle statutes. However, the general protections of the motor vehicle statutes are maintained. Of course, the retained copy is a piece of customer information which is protected from inappropriate disclosure by other banking laws.

The motor vehicle department has reviewed both the concept I've described and the language of SB 2191 and has advised me that it is acceptable. With that, I ask you to recommend the bill for adoption and will answer questions which you may have about it.

Thank you.

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SEC. 326. VERIFICATION OF IDENTIFICATION.

(a) IN GENERAL- Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

(1) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS-

(1) IN GENERAL- Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

(2) MINIMUM REQUIREMENTS- The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for--

(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and

(C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

(3) FACTORS TO BE CONSIDERED- In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

(4) CERTAIN FINANCIAL INSTITUTIONS- In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

(5) EXEMPTIONS- The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or

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order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

'(6) EFFECTIVE DATE- Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.'

(b) STUDY AND REPORT REQUIRED- Within 6 months after the date of enactment of this Act, the Secretary, in consultation with the Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) and other appropriate Government agencies, shall submit a report to the Congress containing recommendations for--

(1) determining the most timely and effective way to require foreign nationals to provide domestic financial institutions and agencies with appropriate and accurate information, comparable to that which is required of United States nationals, concerning the identity, address, and other related information about such foreign nationals necessary to enable such institutions and agencies to comply with the requirements of this section;

(2) requiring foreign nationals to apply for and obtain, before opening an account with a domestic financial institution, an identification number which would function similarly to a Social Security number or tax identification number; and

(3) establishing a system for domestic financial institutions and agencies to review information maintained by relevant Government agencies for purposes of verifying the identities of foreign nationals seeking to open accounts at those institutions and agencies.

SEC. 327. CONSIDERATION OF ANTI-MONEY LAUNDERING RECORD.

(a) BANK HOLDING COMPANY ACT OF 1956-

(1) IN GENERAL- Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

'(6) MONEY LAUNDERING- In every case, the Board shall take into consideration the effectiveness of the company or companies in combatting money laundering activities, including in overseas branches.'

(2) SCOPE OF APPLICATION- The amendment made by paragraph (1) shall apply with respect to any application submitted to the Board of Governors of the Federal Reserve System under

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TESIMONY OF MARILYN FOSS ON SB 2191

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Under the proposed regulations, a financial institution may accept a driver's license or other government issued non driver's license identification card to verify the customer's identification if the document has a photograph of the customer on it. However, this method of identity verification is acceptable only if the financial institution makes a copy of the document and retains it on file for five years. This method of verification is intended to be easy for the customer and the financial institution since most people carry a driver's license or other government issued photo ID with them. However, current North Dakota law includes two, little known sections which have been read to prohibit the reproduction of a driver's license or non driver photo ID. These sections are NDCC 39-06-40.1(driver's licenses) and 39-06-03.1(non drivers photo ID). Of course the purpose of these sections is to preclude reproduction of a license or other ID for fraudulent purposes, but the prohibitions which they incorporate are very broad. When I discussed the problem with the motor vehicle

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Date

department, we were both concerned that we didn't make a change that could, inadvertently reduce the protections against fraud.

The solution the department and we came up with is SB 2191. This bill adds a statute to the state banking laws, rather than the motor vehicle laws. Once enacted, the bill will permits financial institutions to use and copy a customer's driver's license or non driver photo ID to verify identify to comply with federal regulations, irrespective of the cited motor vehicle statutes. However, the general protections of the motor vehicle statutes are maintained. Of course, the retained copy is a piece of customer information which is protected from inappropriate disclosure by other banking laws.

The motor vehicle department has reviewed both the concept I've described and the language of SB 2191 and has advised me that it is acceptable.

SB 2191 passed the Senate 46-0. With that, I ask you to recommend the bill for adoption and will answer questions which you may have about it.

Thank you.

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Deanne Hall
Operator's Signature

10/17/03
Date