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SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1082

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1082

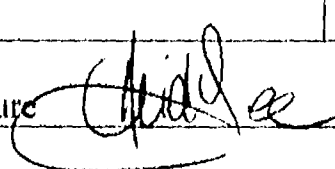
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1082

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan 10, 2001

Tape Number	Side A	Side B	Meter #
1	X		12.15
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Chairman Berg: We will start the hearing on House Bill 1082.

Gary Preszler: (1215) Commissioner, Department of Banking and Financial Institutions in support of HB 1082. *Written testimony.*

Rep Keiser: Are you going to handle the contract that is signed by the parties or to administrative rules processed by which information requested and transmitted?

Preszler: Not by administrative rule but by the actual agreement itself. The agreement will structure whether you have to make a written request for information and timely response to that or the free flowing or type of information, the agreement will spell that out.

Rep Keiser: Is that agreement available for us to see?

Preszler: Yes, *See Attached*

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 1082

Hearing Date Jan 10, 2001

Rep Ekstrom: Has your amendment been reviewed by the Attorney General?

Preszler: Yes, the Assistant Attorney General did review that.

Chairman Berg: Any further questions by the committee? How many people are here to testify on behalf of this bill? *Four.* Any opposition? *None.* We will continue with the proponents with that in mind.

Marilyn Foss: *ND Bankers Assoc.* I agree with Mr. Preszler about the confidentiality and I support the amendments. In the banking industry we recognize the concept of functional regulation and we recognize that there are instances of overlapping activities among members of the financial services industry will cause situations when information and sharing between the functional regulators is appropriate and we support that concept, we simply recognize also that the information that bank regulators obtain and the systems of confidentiality which have been in place for the banking industry didn't necessarily carry over to the insurance and securities regulatory agencies and we were concerned about that. We appreciate the amendment and with it we are supportive of the bill.

Chairman Berg: Any questions for Ms. Foss?

Joel Gilbertson: *Executive Vice President General Council of the Bank of North Dakota.* I will simply say we agree with all who are for the amendments.

Chairman Berg: Any questions for Mr. Gilbertson? Others wishing to testify on behalf of this legislation? Others that would like to sign the registration in support or opposition? *Signed in support of HB1082: Gary Prezler, Marilyn Foss, Joel Gilbertson, Patrick Ward-Nail, ACCL.* Let's open the bill up for discussion by the committee.

Rep Klein: I move the adoption of the amendment.

Rep Ekstrom: I second.

Chairman Berg: It's been moved and seconded to adopt the amendments. Any further discussion? We'll take a voice vote. All in favor, none opposed. Motion carries. Now will have the bill before us as amended, any discussion on the bill?

Rep Klein: I move as do pass as amended.

Rep Ekstrom: I second.

Chairman Berg: House Bill 1082 has been moved and seconded as amended, is there any further discussion?

Rep Keiser: I would like the specific details, a request in writing for information being provided.

Preszler: It can be done.

Chairman Berg: If anyone wants to table this that motion would be in order now, if not we will vote as a committee. We will have a roll call vote for a Do Pass on HB 1082 as amended. *All polled and results we 15 AYE, 0 NAY, 0 Absent.* Motion carries, Rep Klein to carry.

January 10, 2001

✓R
1/10/01

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1082

Page 1, line 1, replace "subsection" with "subsections 3 and"

Page 1, line 5, replace "Subsection" with "Subsections 3 and"

Page 1, line 6, replace "is" with "are"

Page 1, after line 6, Insert:

- "3. The commissioner may, ~~in the commissioner's discretion,~~ furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession."

Page 1, line 7, overstrike ", In the commissioner's discretion,"

Renumber accordingly

Date: 1-10-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1082

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Klein Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux		
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe	✓	

Total (Yes) 14 No 0

Absent 1

Floor Assignment Rep. Matthew M. Klein

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

REPORT OF STANDING COMMITTEE

HB 1082: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1082 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "subsections 3 and"

Page 1, line 5, replace "Subsection" with "Subsections 3 and"

Page 1, line 6, replace "is" with "are"

Page 1, after line 6, insert:

- "3. The commissioner may, ~~in the commissioner's discretion~~, furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession."

Page 1, line 7, overstrike ", in the commissioner's discretion,"

Renumber accordingly

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1082

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1082

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 13, 2001.

Tape Number	Side A	Side B	Meter #
1	x		12.2 to 17.7
Committee Clerk Signature <i>Doris B. Papp</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on engrossed House Bill 1082 relating to information sharing agreements between the department of banking and financial institutions and other state agencies.

Tim Karsky, testifying for Gary Preszler, Commissioner, Dept of Banking and Financial Institutions. Written testimony attached.

Laurie Wolf, ND Insurance Dept. : This bill is necessary, urge do pass.

No opposing testimony. Hearing closed.

Senator Klein: Motion: do pass. **Senator Espgaard**: Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Mathern**.

Date: 2/13/01

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1082

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____
or _____

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen Klein Seconded By Sen Espinal

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Matheson

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

REPORT OF STANDING COMMITTEE (410)
February 13, 2001 1:39 p.m.

Module No: SR-26-3208
Carrier: D. Mathern
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1082, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1082 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1082

TESTIMONY FOR HOUSE BILL NO. 1082

House Industry, Business, and Labor Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions in support of House Bill No. 1082.

The Gramm-Leach-Bliley Financial Modernization Act of 1999 (GLB), Title II, describes the structure for functional regulation. This coordinated regulatory process provides the Federal Reserve as the "umbrella regulator" for financial holding companies, but individual bank, securities, and insurance regulators continue to be responsible for supervising holding company affiliates and subsidiaries.

Following enactment of GLB, the National Association of Insurance Commissioners (NAIC) effectuated a Cooperative Sharing Agreement with the Office of the Comptroller of the Currency, the regulator for national banks. House Bill No. 1082 seeks authority to enter into a similar agreement with the North Dakota Insurance and Securities Commissioners.

Existing law already provides the Commissioner discretion to furnish information to "other state agencies". See NDCC § 6-01-07.1(3). House Bill No. 1082 merely authorizes the Commissioner to enter into information sharing agreements. A proposed Cooperative Sharing Agreement with the Insurance

Department contemplates the process of exchanging information, the treatment of confidential information, the process for handling related consumer complaints or inquiries, and responsibility for enforcement of insurance or banking code violations. The Cooperative Sharing Agreement is patterned after a model agreement provided by the Conference of State Bank Supervisors.

Senate Bill No. 2127 is a companion bill to House Bill No. 1082 and allows the Insurance Commissioner to share information with other state agencies.

In North Dakota the sale of insurance by entities affiliated with banks has been allowed for many years. The coordination of the regulatory processes between insurance, securities, and insurance is necessary and an appropriate step in streamlining supervision of those activities.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1082

A question has recently been asked as to whether information deemed confidential under the Department of Banking and Financial Institutions' laws remains confidential under the receiving state agency's open records laws exceptions. Although there are numerous Attorney General Opinions on open records, none of the opinions address the exchange of confidential information. The proposed Cooperative Sharing Agreement model provides the responsibility for a receiving agency to treat the information confidential as provided under laws of the sending agency.

The proposed amendments to House Bill No. 1082 provide that any confidential information forwarded to other state agencies or received from other state agencies would continue to be treated as confidential.

The Department stands in support of House Bill No. 1082 and requests a favorable "Do Pass" with the Department offered amendments.

DEPARTMENT OF BANKING AND FINANCIAL INSTITUTIONS

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1082

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Page 1, line 5, replace "Subsection" with "Subsections 3 and"

Page 1, line 6, replace "is" with "are"

Page 1, after line 6, insert:

3. The commissioner may, in the commissioner's discretion, furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party that is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party that is confidential in the third party's possession remains confidential in the commissioner's possession.

Renumber accordingly

1082
Gary Presler

COOPERATIVE SHARING AGREEMENT

Between the
North Dakota Department of Insurance and the North Dakota Department of Banking and
Financial Institutions

Background

In recent years, as a result of changes in both the banking and insurance industries, state-chartered banks have become increasingly involved with the delivery and distribution of insurance products. The increasing involvement of state-chartered banks in insurance activities and the applicability of certain state laws to these activities make clear that state insurance and banking regulators share a common interest in insurance activities conducted by state-chartered banks.

The Department of Insurance and the Department of Banking and Financial Institutions recognize that open channels of communication and strong coordination are important for effective and streamlined regulation of the insurance activities of state-chartered banks. To ensure that this common interest is addressed effectively and efficiently, the Department of Insurance and Department of Banking and Financial Institutions agree to communicate and cooperate in the manner described below.

Definitions

1. Agency or Agencies means the Department of Insurance and Department of Banking and Financial Institutions individually or collectively.
2. Enforcement Action means any action, including an investigation, to enforce applicable banking or insurance laws or regulations.
3. Department of Insurance means the relevant state insurance regulator.
4. Department of Banking and Financial Institutions means the relevant chartering authority and supervisory agency for state-chartered financial institutions and supervised lenders in that state.
5. Originating Authority means the Agency that originally compiles or drafts an item of Supervisory Information.
6. Providing Party means the Agency that provides Supervisory Information to the Receiving Party.
7. Receiving Party means the Agency that receives Supervisory Information from the Providing Party.
8. Supervisory Information means information and reports collected, compiled or drafted in the course of supervising and examining state-chartered financial institutions and supervised lenders, including but not necessarily limited to, privileged or confidential information and reports of examination and information relating to applications, consumer complaints, enforcement actions, or copies thereof.

Information Sharing

1. To the extent required or permitted by applicable law, regulation or practice, the Department of Insurance and Department of Banking and Financial Institutions agree to share Supervisory Information received or gathered by each Agency regarding the insurance activities of state-chartered banks or supervised lenders. Requests for Supervisory Information shall be in writing and shall be reasonably specific as to the documents requested. Neither agency intends that a separate request be filed for each document. Each agency intends that the requirement for a specific description is to indicate the time period and general subject matter, so as to aid document retrieval. An Agency that receives a request for Supervisory Information shall respond as soon as practicable upon receipt of the request.
2. The requested Supervisory Information must directly relate to matters within the jurisdiction of the Requesting Agency and must be for a legitimate regulatory or supervisory purpose.
3. The Department of Banking and Financial Institutions shall prepare periodic reports identifying unresolved exceptions relating to insurance (e.g., credit, life, accident and health insurance) noted during the examination of financial institutions regulated by the Department of Banking and Financial Institutions and shall submit this report to the Department of Insurance for future supervisory guidance and recommendations.
4. The Agencies may exchange other information relating to the insurance activities of state-chartered financial institutions and supervised lenders regulated by the Department of Banking and Financial Institutions such as regulatory and policy initiatives and educational efforts pertaining to insurance sales by state-chartered financial institutions, in order to ensure general awareness of the respective positions taken by the Agencies.
5. The Agreement shall in no way limit the discretion of the Department of Insurance or Department of Banking and Financial Institutions to deny future requests for Supervisory Information, in whole or in part, for any reason consistent with the Agency's own supervisory interests and obligations.

Confidential Information

1. Privileged or confidential Supervisory Information shared among the Agencies shall remain confidential in accordance with the applicable federal and state banking laws, state insurance laws, federal freedom of information laws and/or state public record laws. Such confidential Supervisory Information remains the property of the Originating Authority or Providing Party and shall not be disclosed by the Receiving Party to any other individual or entity without the prior written permission of the Originating Authority and/or Providing Party, as applicable.
2. The Receiving Party agrees to protect the confidentiality of the Supervisory Information in accordance with this Agreement and applicable laws and regulations.
3. In the event of a subpoena, order or other process which requires the recipient of confidential Supervisory Information to deliver, testify about, or otherwise disclose such

confidential Supervisory Information, the Receiving Party shall: (i) immediately notify the Providing Party that production is being sought, and afford the Providing Party the opportunity to take whatever action it deems appropriate to protect the confidential and/or privileged nature of the Supervisory Information; (ii) notify the party seeking production of the Supervisory Information that it belongs to the Providing Party; (iii) use its best efforts to resist production of the Supervisory Information pending written permission of the Providing Party; and (iv) consent to any application by the Providing Party to use its own resources to intervene in any action for the purpose of asserting and preserving any privilege(s) and/or claims of confidentiality with respect to the Supervisory Information.

4. It is expressly agreed and understood that in the event any court of competent jurisdiction issues an order to compel the Receiving Party to produce the Supervisory Information covered by this Agreement, the Receiving Party may comply with such order. The Receiving Party agrees to promptly advise the Providing Party.
5. No third party compulsory disclosure of Supervisory Information shall be considered a waiver of privilege or claim of confidentiality, unless such is found by a judicial authority of competent jurisdiction.

Maintaining Existing Statutory Authority and Obligations

1. Each party to this Agreement retains all rights and obligations under existing statutes and regulations, and this Agreement will not restrict the supervisory prerogatives of either Agency.
2. Nothing in this Agreement restricts, enlarges, or otherwise modifies the respective jurisdictions of the Agencies. Neither this Agreement, nor its termination, shall affect the rights and obligations of the parties under applicable statutes or be deemed an interpretation of such statutes or regulations.

Complaints and Consumer Inquiries

1. The Department of Banking and Financial Institutions shall forward to the Department of Insurance any complaint that it receives relating to insurance activities of a state-chartered financial institution, or any affiliate thereof, including supervised lenders, agencies or producers known to be affiliated with a financial institution.
2. The Department of Insurance will provide copies of such complaints it receives against such institutions and including related correspondence to the Department of Banking and Financial Institutions and will advise the Department of Banking and Financial Institutions of the ultimate resolution of the complaint.

Insurance Code Violations

1. Responsibility for enforcing compliance with the Insurance Code by financial institutions and supervised lenders rests with the Department of Insurance.
2. In the event that the Department of Banking and Financial Institutions determines that a state-chartered financial institution or supervised lender has violated a provision of the

Insurance Code, the Department of Insurance will inform the Department of Banking and Financial Institutions regarding the nature and substance of the violation.

Banking Code Violations

1. Responsibility for enforcing state bank statutes and regulations applicable to state-chartered financial institutions and supervised lenders, arising out of the insurance activities of financial institutions and supervised lenders, will rest with the Department of Banking and Financial Institutions.
2. In the event that the Department of Banking and Financial Institutions determines that a state-chartered financial institution or supervised lender has violated a provision of the state banking statutes, the Department of Banking and Financial Institutions will inform the Department of Insurance regarding the nature and substance of the violation.

Enforcement Actions

1. As soon as possible, the Department of Insurance and the Department of Banking and Financial Institutions shall notify one another of any enforcement action taken against a state-chartered bank or supervised lender. Whenever practicable, such notification shall be given in advance of any enforcement action.
2. Enforcement actions against state-chartered banks and supervised lenders to address regulatory or statutory violations, whenever practicable, shall be coordinated by the Department of Insurance and Department of Banking and Financial Institutions.
3. Notwithstanding the previous section, the Department of Insurance and Department of Banking and Financial Institutions may, independent of each other, take any enforcement action against a state-chartered bank or supervised lender subject to statutory or regulatory violations within their supervisory jurisdiction and authority.

Term and Termination

1. This Agreement becomes effective as of the date signed by the Agencies and continues in effect until terminated by either Agency.
2. An Agency may withdraw and revoke its participation in this Agreement by providing written notice to the other party; provided, however, that such termination shall not affect the rights and obligations of either party with respect to confidential Supervisory Information shared pursuant to this Agreement.
3. Neither this Agreement, nor its termination, shall affect the rights and obligations of the parties under applicable statutes or regulations, or be deemed an interpretation of such statutes or regulations.

Authority to Share Information

Subsection 3 of Section 6-01-07.1 of the North Dakota Century Code provides that the Commissioner for the Department of Banking and Financial Institutions has the authority to furnish information to the Department of Insurance.

Section _____ of the North Dakota Century Code provides the Department of Insurance with the authority to share information with the Department of Banking and Financial Institutions.

Modifications to Agreement

This Agreement supersedes all other agreements or representations either oral or written between the parties regarding the exchange of Supervisory Information. No waiver or modification of provisions in this Agreement shall be binding unless subsequently made in writing and signed by duly authorized representatives of the parties hereto.

BY

Glenn Pomeroy, Commissioner
Department of Insurance

Gary D. Preszler, Commissioner
Department of Banking and Financial
Institutions

Date

Date

TESTIMONY FOR ENGROSSED HOUSE BILL NO. 1082

Senate Industry, Business, and Labor Committee

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The House amended the bill to assure information deemed confidential under the Department of Banking and Financial Institutions' laws remains confidential under the receiving state agency's open records laws exceptions. The proposed Cooperative Sharing Agreement model also provides the responsibility for a receiving agency to treat the information confidential as provided under laws of the sending agency.

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