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ROLL NUMBER

DESCRIPTION

1351

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1351

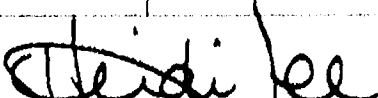
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1351

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan 31, 2001

Tape Number	Side A	Side B	Meter #
2	X		0-15.8
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.

Representative Nancy Johnson: I'm sponsoring bill.

Marilyn Foss: *ND Bankers Association* **Written Testimony**

Representative Kasper: What would be 'directly conducting a financial act'?

Foss: Acting as a finder.

Representative Ekstrom: Would it be possible to be a bank in name only?

Foss: This does not do that, the lines are blurry already.

C. Berg: Close hearing on HB 1351

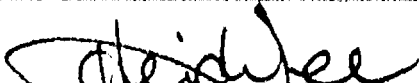
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1351 (B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Jan 31, 2001

Tape Number	Side A	Side B	Meter #
2		X	45.5
3	X		-1.9
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.

Representative Kasper: This opens state banks to do underwriting of securities and insurance.

Representative Severson: May there be some regions that this could be good?

Representative Kasper: This changes from selling to creating.

Representative Keiser: National league banks would allow this without subsidiary provisions.

Representative Kasper: This is a potential loss to assets of the bank, mainly customers.

Representative Severson: I move a do pass

Representative Lemieux: I second

13 y, 2 n, 0 absent
Carrier Representative Pietsch

Date: 1-31-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. ~~Click here to type Bill/Resolution No.~~ 1351

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Severson Seconded By Lemieux

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) 13 No 2

Absent 0

Floor Assignment Pietsch

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

REPORT OF STANDING COMMITTEE (410)
January 31, 2001 4:18 p.m.

Module No: HR-17-2043
Carrier: Lemieux
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1351: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends
DO PASS (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). HB 1351 was placed
on the Eleventh order on the calendar.

2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1351

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1351

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 21, 2001.

Tape Number	Side A	Side B	Meter #
1		x	23.2 to end
2	x		0 to 3.7
2	x		12.4 to 14.0
Committee Clerk Signature <i>David & Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1351 relating to the powers of state-chartered banks.

Representative Nancy Johnson, District 37, co sponsor. This bill was submitted at the request of the ND Bankers, Assn. In 1999 the federal government passed a banking bill that changed the powers of national chartered banks, this bill is a parity issue. Marilyn Foss will explain the content of the bill.

Marilyn Foss, ND Bankers Assn. Gral Counsel. In favor. Written testimony attached.

Senator Mutch: Are brokerage and similar activities already authorized by GLB?

M Foss: GLB has list of activities defined as "financial activities". GLB has a provision prohibiting national banks from engaging in insurance underwriting either directly or indirectly unless grandfathered. A number of state chartered banks in ND have insurance agent activities or agencies as affiliates.

Joel Gilbertson, Independent Community Banks of ND. In support this bill is necessary in the post GLB era.

Rep. Jim Kasper, District 46. In opposition. Submitted proposed amendment for page 2, line 4 to remove "directly or indirectly". During House hearings I asked Marilyn Foss if by having these words in the bill we are allowing state chartered banks to underwrite the insurance and securities and take the risk directly within the bank. Can they form an insurance company, not agency, or securities company, not agency, and subject depositors to the risks of the underwriting losses or gains? The answer was yes. Under GLB these activities are allowed under a subsidiary, that way depositors are not at risk. I suggest the committee consider this amendment. I won't change intent of the bill, what it does is protect depositors.

Senator Espgaard: Taking those words out won't change anything.

Rep Kasper: Yes because they would have to abide by the GLB provisions for national banks.

Senator Krebsbach: GLB restricts insurance underwriting? We are trying to set the same rules for both state and national chartered banks:

M Foss: GLB restricts insurance underwriting by national banks. The intention of drafting the bill is to allow state chartered banks to request authority to do directly activities national chartered banks can do only through subsidiaries. To address Representative Kasper's concern there will be the fire wall of the FDIC and the state board which are the ones who will be granting the authority. The point is to provide flexibility to compete in the insurance and securities industry without having to set up a subsidiary and all that it involves.

Senator Espgaard: The amendment won't do anything?

M Foss : I agree.

Gary Preszler, Banking Commissioner, clarified activities allowed under GLB to banks,

Page 3
Senate Industry, Business and Labor Committee
Bill/Resolution Number HB 1351
Hearing Date February 21, 2001.

subsidiaries and holding companies. If activity is done by subsidiary or in bank, its still their investment that is at stake. If done by holding company shareholders' money is at stake. CILB never gave states right to determine powers of state banks, that is still up to the states legislature. FDIC would still have to approve them. Distributed copies of Title I - Facilitating Affiliation Among Banks Securities Firms, and Insurance Companies.

No additional testimony. Hearing closed.

Tape 2-A-12.4 to 14.0.

Discussion held. **Senator Espegard:** Motion: do pass. **Senator Klein:** Second.

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

18303.0101
Title.

Prepared by the Legislative Council staff for
Representative Kasper
February 20, 2001

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1351

Page 2, line 4, remove "directly or indirectly"

Renumber accordingly

Date: Feb 21/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1351

Senate Industry, Business and Labor

Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Edwards Seconded By Sen. Klein

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment Len Edwards

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

REPORT OF STANDING COMMITTEE (410)
February 21, 2001 1:42 p.m.

Module No: SR-32-4224
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1351: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1351 was placed
on the Fourteenth order on the calendar.

2001 TESTIMONY

HB 1351

TESTIMONY OF MARILYN FOSS
IN FAVOR OF HB 1351
(On Behalf of North Dakota Bankers Association)

Chairman Berg, members of the House Industry Business and Labor Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association and am appearing before you to support HB 1351 which amends NDCC 6-03-38. NDCC 6-03-38 is North Dakota's "parity" statute; it is the means by which state chartered banks can keep up with national banks as national bank powers are expanded.

This bill is a "housekeeping" bill and is an offshoot of the Federal Financial Modernization Act (Gramm Leach Bliley) ("GLB") which became federal law in November, 1999. GLB removed barriers which kept the banking, insurance and securities industries separate and implemented the concepts of "financial" activities and activities which are "complementary" to financial activities to provide a framework for expanding bank powers.

However, since we were looking at the statute we also took the opportunity to modernize the language which authorizes a state chartered bank to invest in subsidiaries which are organized in a business entity form other than a business corporations, eg., an LLC. This second point is the sole purpose of changing "corporation" to "organization" on page 1.

The bill also removes the word "banking" as a modifier and classification of the types of activities which a subsidiary of a state bank (p. 1, line22) or a state bank (page 2, line 4) can engage with state banking board approval. Before GLB, bank powers and activities were generally authorized as "banking activities or powers" or "incidental" to the banking business. Indeed, these words became "terms of art" and had specific meaning within the banking industry. Bank applications to engage in new activities were analyzed to make sure the powers fell within the restrictions expressed by these terms of art. Classic "banking" powers are typically set out in statutes such as NDCC 6-03 or the National Bank Act. For example, the power to make a real estate loan under specified conditions is set out in NDCC 6-03- 05 and is a banking activity. Both state and federal law also authorize banks to engage in activities which are "incidental" to the business of banking. "Incidental" banking powers include, under North Dakota law, the power to

offer electronic funds transfer services. The regulator for national banks has determined that banks may sell excess data storage as a correspondent service to other banks and to the public as an incident to a national bank's business when the excess capacity is acquired in good faith in connection with bank operations. (Interpretive Letter #888, May 2000).

GLB has added "financial" activities and activities which are "complementary" to financial activities to the activities lingo. GLB includes a list of some "financial" activities, but assigns much of the responsibility for developing the concept to federal bank regulators. As a result federal bank regulators are authorizing national banks to expand their business operations into activities which are defined as being "financial" or "complementary" to financial activities. A couple of examples of a "financial" activity are investment and economic advisory services, and acting as a finder. Real estate brokerage is now being proposed as a "financial" activity. By removing the word "banking" as a modifier to activities, this bill makes it clear that the state banking board may allow North Dakota's state chartered banks to use subsidiaries to engage "indirectly" in any kind of activity which is permitted for a subsidiary of a national bank, no matter how the activity is classified by federal regulators.

The bill also gives the board and state chartered banks the broadest possible flexibility about how to structure new activities. As a result of the changes on page 2, line 4, the state banking board will have more power and flexibility to apply the financial modernization concepts which are expressed by GLB to state banks themselves. With the insertion of the words "directly or indirectly" we intend to empower the state banking board to permit a state bank to engage directly in any activity which is authorized for a national bank even though a national bank is required to conduct the same activity indirectly through a subsidiary. But a state bank will only be able to do so if the state banking board and FDIC both determine the safety wall of a subsidiary isn't required under for reasons of safety and soundness. The idea here is to permit state bank's to avoid the expense and complications of a complex business structure if the bank can convince its state and federal regulators that conducting a financial activity directly is appropriate.

The parity provisions of NDCC 6-03-38 have kept North Dakota's state chartered banks competitive with national banks. The changes proposed by the bill continue that tradition. For that reason we urge you to give the bill a do pass recommendation.

2/21

HB 1351 - Submitted by G. Ponzio

TITLE I - FACILITATING AFFILIATION AMONG BANKS, SECURITIES FIRMS, AND INSURANCE COMPANIES

Subtitle A—Affiliations

Section 101 repeals Section 20 and Section 32 of the Banking Act of 1933 (commonly referred to as the "Glass-Steagall Act") thus allowing Federal Reserve member banks to affiliate with, and have director or employee interlocks with, firms principally engaged in securities activities.

Section 102 allows bank holding companies (as opposed to financial services holding companies, discussed below) to own companies that conduct activities deemed "closely related to banking" by the Federal Reserve Board as of November 12, 1999. This provision will allow bank holding companies that do not meet the requirements for financial holding companies, or do not want to become financial holding companies, to continue to perform activities that have already been determined to be closely related to banking. Bank holding companies will be limited to these activities.

Section 103 makes the distinction between *financial* holding companies and *bank* holding companies, and allows financial holding companies to conduct activities that the Federal Reserve Board, in coordination with the Treasury Department, deems "financial in nature" or "complementary to a financial activity," without posing substantial safety and soundness risks. Both Treasury and the Fed have the authority to override the other agency's determination that an activity is financial in nature or complementary to a financial activity.

Permissible activities. A new Section 4(k)(4) of the Bank Holding Company Act specifies eight types of activity that *are* allowed:

- ◆ Lending, exchanging, transferring, investing for others, or safeguarding money or securities;
- ◆ Insurance underwriting and agency;
- ◆ Investment advice;
- ◆ Issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly;
- ◆ Securities underwriting and dealing;
- ◆ Activities deemed "closely related to banking;"
- ◆ Activities allowed for U.S. bank holding companies in other countries, subject to the Fed's approval; and

- ◆ Merchant banking, or owning nonfinancial firms through insurance or securities affiliates, provided that the bank holding company is not directly involved in the management of these firms.

Financial holding companies generally need not apply to the Fed for permission to acquire a new affiliate or begin a new activity, but must give notice within 30 days.

The Federal Reserve Board and the Treasury will develop joint regulations on transactions between banks and their merchant banking affiliates.

By the end of 2003, the Fed and the Treasury must report jointly to Congress on the activities, including grandfathered commercial activities, of financial holding companies. The report must describe the agencies' criteria for determining activities to be financial in nature; analyze the safety and soundness risks of commercial affiliates; and evaluate the effects of mergers and consolidations on market concentration.

Requirements for expanded activities. To conduct an expanded activity through a financial holding company, a bank holding company must declare its intention to the Fed to become a financial holding company and certify that all the depository institutions within the holding company are well-capitalized and well-managed. All insured depository institutions in the holding company must have CRA ratings of satisfactory or outstanding. The Federal Reserve Board will have enforcement authority over the financial holding company, and the section lays out procedures for enforcement actions against noncompliant FHCs. An existing financial holding company that has an insured depository institution with less than a satisfactory CRA rating may not begin any *new* financial activity until it improves its CRA rating. Noncompliance with CRA brings no other enforcement actions.

Grandfathering for non-financial activities. Financial holding companies that were not bank holding companies or foreign banks may continue to engage in activities beyond those permitted for FHCs if they were conducting these activities on September 30, 1999; derive at least 85% of gross revenues from financial activities; and agree not to expand these activities beyond their status on September 30. Aggregate gross revenues from commercial activities may not exceed 15% of total gross revenues of the FHC. **This grandfather expires in 2009, with the option of a five-year extension.** In general, depository institutions within these FHCs may not cross-market the services of their commercial affiliates, but the law makes some exceptions to this, and the Fed has the authority to make more.

FIL-1-2001

January 8, 2001

ACTIVITIES OF INSURED DEPOSITORY INSTITUTIONS

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: Final Rule Governing Activities of Insured State Banks
(Part 362 of FDIC's Rules and Regulations)

The Federal Deposit Insurance Corporation's (FDIC) Board of Directors has revised the agency's regulation governing the activities of insured state banks—Part 362 of the FDIC's rules and regulations. The revisions reflect statutory changes made pursuant to the new financial modernization law, the Gramm-Leach-Bliley Act (GLBA). The final rule, which is attached, takes effect immediately.

The revised final rule provides the framework for subsidiaries of state nonmember banks to engage in financial activities—including securities underwriting—that the new law permits national banks to conduct through a financial subsidiary. As in the past, all contemplated activities must be permitted by the institution's chartering authority.

- Under the final rule, a state nonmember bank must submit a notice to the FDIC to engage in financial activities through a subsidiary. The final rule contains a self-certification process that is effective upon receipt of the notice. The rule specifies information that must be certified by the bank and clarifies that the FDIC may impose any limitations on the conduct of activities when the bank fails to continue to meet the regulation's requirements. To engage in financial activities under the new GLBA authority, the insured state nonmember bank must certify that:

- it is well-managed, and
- it and all of its insured depository institutions are well-capitalized after deducting its investment in the subsidiary.

The insured state nonmember bank must also meet, and continue to meet, the following additional requirements:

- Disclose, and continue to disclose, the capital deduction in any published financial statements;
- Comply with sections 23A and 23B of the Federal Reserve Act; and
- Comply with the required financial and operational safeguards.

When the state nonmember bank submits its notice, the bank and all of its depository institution affiliates must have a Community Reinvestment Act compliance rating of no less than satisfactory. The notice required under the rule must be filed before acquiring an interest in a subsidiary that engages in financial activities or commencing a new financial activity.

Because the final rule provides for a self-certification process rather than the 30-day process included in the interim rule, the final rule provides that a state nonmember bank certify that it is well-managed before it engages in activities pursuant to section 46. The FDIC considers this requirement necessary for safety and soundness reasons; however, the FDIC will consider applications for relief from this requirement in appropriate circumstances.

The Board has also eliminated section 337.4 of the FDIC's regulations relating to securities activities of insured state nonmember banks, and incorporated its remaining provisions into Subpart B of Part 362. In making this change, the FDIC is making its rules for bank affiliation with a securities firm consistent with its rules for bank ownership of a subsidiary engaging in general securities underwriting activities. The FDIC is retaining limited separation standards for financial subsidiaries engaging in general securities underwriting activities.

For further information, please contact Curtis Vaughn (202-898-6759), Examination Specialist in the Division of Supervision; or Linda Stamp (202-898-7310), Counsel in the Legal Division.

Michael J. Zamorski

Michael J. Zamorski
Acting Director

Attachment

Distribution: FDIC-Supervised Banks (Commercial and Savings)



REGULATORY NOTICE

Federal Reserve Bank of Minneapolis
90 Hennepin Avenue, P.O. Box 291
Minneapolis, Minnesota 55480-0291

Bank Holding Companies and Change in Bank Control (Regulation Y)

January 12, 2001

To All Those Concerned in the
Ninth Federal Reserve District:

Docket No.: R-1091

SUMMARY: The Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly propose to seek comment on whether to determine by rule that real estate brokerage is an activity that is financial in nature or incidental to a financial activity and therefore permissible for financial holding companies and financial subsidiaries of national banks. The Board and the Secretary also jointly propose to solicit comment on whether real estate management activities could be considered financial in nature or incidental to a financial activity. The Board's proposed rule would amend subpart I of the Board's Regulation Y to add real estate brokerage and real estate management to the list of activities permissible for financial holding companies. The Secretary's proposed rule would amend its financial subsidiary regulations to add real estate brokerage and real estate management to the activities permissible for financial subsidiaries of national banks. The Board and the Secretary solicit comment on all aspects of the proposal.

DATES: Comments must be received by March 2, 2001.

The *Federal Register* notice is attached. The proposed rule is also available at the following web site: <http://www.access.gpo.gov/nara/index.html>.

For Further Information, Contact:

Mr. Daniel R. Hanger, Manager, Banking Supervision, (612) 204-5066.

1

TESTIMONY OF MARILYN FOSS
IN FAVOR OF HB 1351
(On Behalf of North Dakota Bankers Association)

Chairman Mutch, members of the Senate Industry Business and Labor Committee, my name is Marilyn Foss. I am general counsel for the North Dakota Bankers Association and am appearing before you to support HB 1351 which amends NDCC 6-03-38. NDCC 6-03-38 is the means by which state chartered banks can keep up with national banks as national bank powers are expanded because it empowers the state banking board to authorize state chartered banks to engage in activities in which national banks may engage.

This bill is another offshoot of the Gramm Leach Bliley Financial Modernization Act ("GLB"). GLB removed barriers which kept the banking, insurance and securities industries separate and implemented the concepts of "financial" activities and activities which are "complementary" to financial activities to provide a framework for expanding bank powers.

However, since we were looking at the statute we also took the opportunity to do some housekeeping by modernizing the language which authorizes a state chartered bank to invest in subsidiaries which are organized in a business entity form other than a business corporations, eg., an LLC. This is the sole purpose of changing "corporation" to "organization" on page 1.

The bill removes the word "banking" as a classification of the types of activities which a subsidiary of a state bank (p. 1, line22) or a state bank (page 2, line 4) can engage with state banking board approval. Before GLB, national bank and state bank powers and activities were generally classified as "banking" activities or activities "incidental" to the banking business. Indeed, these words became "terms of art" with specific meaning within the banking industry. Bank applications to engage in new activities were analyzed to make sure the powers fell within the restrictions expressed by these terms of art. Classic "banking" powers are typically set out in statutes such as NDCC 6-03 or the National Bank Act. For example, the power to make a real estate loan under specified conditions is set out in NDCC 6-03- 05 and is a banking activity. Both state and federal law also authorize banks to engage in activities which are "incidental" to

the business of banking. "Incidental" banking powers include, under North Dakota law, the power to offer electronic funds transfer services. The regulator for national banks has determined that banks may sell excess data storage as a correspondent service to other banks and to the public as an incident to a national bank's business when the excess capacity is acquired in good faith in connection with bank operations. (Interpretive Letter #888, May 2000).

GLB has added "financial" activities and activities which are "complementary" to financial activities to the activities lingo. GLB includes a list of some "financial" activities, but assigns much of the responsibility for developing the concept to federal bank regulators. As a result federal bank regulators are authorizing national banks to expand their business operations into activities which are defined as being "financial" or "complementary" to financial activities. A couple of examples of a "financial" activity are investment and economic advisory services, and acting as a finder. Real estate brokerage is now being proposed as a "financial" activity. By removing the word "banking" as a modifier to activities, this bill makes it clear that the state banking board may allow North Dakota's state chartered banks to use subsidiaries to engage "indirectly" in any kind of activity which is permitted for a subsidiary of a national bank, no matter how the activity is classified by federal regulators.

The bill also gives the board and state chartered banks the broadest possible flexibility about how to structure new activities. As a result of the changes on page 2, line 4, the state banking board will have more power and flexibility to apply the financial modernization concepts which are expressed by GLB to state banks themselves. With the insertion of the words "directly or indirectly" we intend to empower the state banking board to permit a state bank to engage directly in any activity which is authorized for a national bank even though a national bank is required to conduct the same activity indirectly through a subsidiary. But a state bank will only be able to do so 1) if the activity is one which has been authorized for a national bank by federal law, and, 2) if the state banking board and FDIC, the primary regulators for state banks, both determine the safety wall of a subsidiary isn't required under for reasons of safety and soundness. The idea here is to permit state bank's to avoid the expense and

complications of a complex business structure if the bank can convince its state and federal regulators that conducting a financial activity directly is appropriate.

The changes proposed by the bill do not authorize a state chartered bank to engage in any activity which has not been authorized for a national bank. The parity provisions of NDCC 6-03-38 have kept North Dakota's state chartered banks competitive with national banks. The bill follows this tradition of this legislative assembly and was passed out of the House with 93 yea votes. We urge you to likewise give the bill a strong do pass.