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2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1038

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*10/2/03*

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1038

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 3, 2003

Tape Number	Side A	Side B	Meter #
1	X		0-1560
Committee Clerk Signature <i>Beth Leier</i>			

Minutes: Chair Kelser: Opened hearing on HB 1038

Jennifer Clark (Legislative Council): There are three substantive changes. Page one changes the definition of "customer" and "financial institutions." Page three has the removal of the definition of "person." The definition of "person" clarifies the customer of financial institutions protected by the state financial privacy law does not have to live in the state of ND. Residents are domiciled because a customer can be an individual or an entity. "Financial institutions" clarifies that we are talking about the bank or credit union. That entity is required to be in the state.

Rep. Kelser: On the sections on page three, subsections 12 and further, please review that section. Clark said she would get laws out of the Federal Register because it pertains to Gramm-Leach-Bliley, where they would look to interpret it.

Marilyn Foss (General Counsel for ND Bankers): Supports with offered amendment with testimony.

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House Industry, Business and Labor Committee

Bill/Resolution Number 1038

Hearing Date February 3, 2003

**Joel Gilbertson (Independent Community Banks of ND):** Supports bill as amended by Foss.

**Greg Tschider (ND Credit Union League):** Supports with written testimony.

**Tim Karsky (Commissioner of Financial Institutions):** Supports as amended by Foss.

**Earl Jarolimek (Community First Bank, Fargo):** Supports. ND does not follow federal privacy laws. The amendment by Foss clears up problem of whether to follow federal, ND, or other state laws.

**Rep. Kasper:** Does Community First have affiliated insurance and affiliated security services?

Jarolimek said the insurance services are through an affiliate. The investment services are through a third party. Rep. Kasper then asked if they share or sell information to any outside nonaffiliated third party. Jarolimek said they do not. There is a joint marketing exception in federal law. Kasper asked about the joint marketing ventures, but Jarolimek refrained from commenting because the hearing today is on export.

**Chair Kelser:** Closed hearing on 1038.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1038

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
1	X		1654-1767

Committee Clerk Signature

*Elizabeth R. Quinn*

Minutes: Chair Kelser: Opened discussion on HB 1038. Amendments to 1478 merged the two bills together.

Rep. Ruby moved DNP. Seconded by Rep. Klein.

Vote: 14 Yes 0 No 0 Absent and not voting Carrier: Froseth

Date: 2/11/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1038

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DNP

Motion Made By Ruby Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Froseth

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

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10/2/03  
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**REPORT OF STANDING COMMITTEE (410)**  
February 11, 2003 9:36 a.m.

Module No: HR-26-2218  
Carrier: Froese  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1038: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)  
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1038 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-26-2218

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*Salvatore Rickford*  
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*10/2/03*  
Date

2003 TESTIMONY

HB 1038

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*Salista Rickford*

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*10/2/03*

**Testimony of Earl Jarolimek  
House IBL Committee  
Support of Amendment to HB 1038  
February 3, 2003**

Thank you Mr. Chairman and members of the Committee.

My name is Earl Jarolimek. I'm a Vice President at Community First Bankshares, headquartered in Fargo, N.D. I am here today to communicate our support for the North Dakota Bankers Association (NDBA) amendment to HB 1038.

Our overriding issue and concern with existing privacy statutes in North Dakota is the possibility of its provisions being exported to other states in which we conduct business.

I'll explain why that is such a concern, but would like to first tell you a little about Community First. Community First has a long-standing tradition of calling North Dakota its home. Community First was formed in North Dakota in 1987. Back then we chose to base our company in North Dakota over Minnesota and South Dakota, the other two states we operated in at that time. We've experienced significant growth since our beginning—leading to expansion and more jobs in North Dakota. Later, in 2001, we chose to merge 11 non-North Dakota banks into the North Dakota bank charter.

North Dakota is home to the holding company, the bank charter, our insurance affiliate, a mortgage lending affiliate, our technology and data processing center, a loan processing center, and branch offices in Fargo, Dickinson, Wahpeton, Lidgerwood, Cooperstown and Beach. We currently employ 644 people in this state with good paying jobs in the financial services industry.

HB 1038 Testimony/E. Jarolimek  
Page 1

*Yolanda Rickford*  
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10/2/03  
Date

Of the 12 states we currently operate in, only North Dakota does not follow federal privacy law or a state law that mirrors federal law. Thus, 11 of our 12 states' privacy laws differ significantly from North Dakota's privacy law.

HB 1038 does not fully correct one of the problems it was intended to address.

One of the goals of HB 1038 is to clarify the coverage of North Dakota's privacy law.

HB 1038 amends definitions of "customer" and "financial institution" in the North Dakota privacy law. Unfortunately, the definition of customer refers to any person, regardless of their state of residence or domicile. The NDBA amendment to HB 1038 clears up this problem. The NDBA amendment refers to a customer as any person who is a resident of or is domiciled in North Dakota.

It is important to clear up this problem.

As long as the scope of the North Dakota privacy law is uncertain, financial institutions do not know whether to follow federal law, North Dakota law or the law of another state in handling customer information. There are many costs associated with this uncertainty, including costs to comply with multiple and conflicting regulatory requirements, the risks of litigation or claims, expenses of developing redundant or special systems and procedures and the loss of business opportunities.

The approach favored by the NDBA strikes a sensible balance.

HB 1038 Testimony/E. Jarolimek  
Page 2

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Date

The NDBA amendment protects all customers who reside in North Dakota. Applying North Dakota law within the state of North Dakota means all financial institutions that do business in North Dakota play by the same rules. Extending North Dakota's privacy law to branches of North Dakota banks that are located in other states, places the North Dakota banks at a competitive disadvantage in those states. If out-of-state offices of North Dakota banks must follow the stricter requirements of North Dakota law in those markets, they will incur additional costs and lose opportunities to the competing banks in those markets.

Applying North Dakota privacy laws to transactions in other states places North Dakota potentially in conflict with those states, and raises the possibility that other states would apply a similar rationale to apply their laws in North Dakota. Because of the complexities of privacy laws, the requirements of one state may actually contradict the requirements of another, setting up a conflict between competing state interests.

**North Dakota citizens benefit by having locally-based financial institutions.**

Several North Dakota-based financial institutions have expanded into other states. By maintaining their main offices in North Dakota, these institutions provide higher-paying jobs, sophisticated financial resources, and support many ancillary service industries. Local communities strive to attract these institutions, and in turn use the presence of these institutions to attract other businesses. Applying North Dakota privacy laws to transactions in other states merely because the main office of the financial institution is in

HB 1038 Testimony/E. Jarolimek  
Page 3

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10/2/03  
Date

North Dakota can only discourage financial institutions from locating their main office in North Dakota.

Thank you for your time to discuss this important amendment.

Lobbyist Registration: #436

HB 1038 Testimony/E. Jarolimek  
Page 4

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*E. Jarolimek*  
Operator's Signature

*10/2/03*  
Date

TESTIMONY OF MARILYN FOSS (NDBA) ON HB 1038

Mr. Chairman, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I will try to be somewhat succinct because the committee will be taking up HB 1478, another bill on this same subject, later in the week.

We have had two major focuses throughout the discussion on financial information privacy. The first is to have North Dakota's customer information law include exceptions which will clearly permit North Dakota banks to offer customers modern financial products and services as they continue to develop, and to conduct normal, banking operations without running afoul of some provision of our law on disclosure of customer information. The second is to have our statutes be clear that North Dakota's law applies to North Dakota banks when they are doing business in North Dakota with North Dakotans, but that it does not apply when the bank is doing business in other states with customers who are residents of the other states. In those cases, the law of the other states would govern information sharing by a North Dakota bank. This is the issue of "export" which you may have heard about. NDBA opposes Section 1 of HB 1038 because its provisions export North Dakota law to other states. For that reason we are recommending Section 1 changes to incorporate a non export approach. The amendments I am submitting adopt the language from HB 1478 on this point. They define a customer as "a person that is a resident of or is domiciled in this state" and a covered financial institution as one that "is physically located in the state".

We support the additional exceptions which the interim family law committee has recommended in Section 2 of HB 1038 because they make it clearer that a financial institution may share customer information in order to effect, administer, enforce, service, or process a transaction that is requested or authorized by a customer; to maintain or service a customer's account with the institution or in connection with a private label credit card program or as part of an extension of credit on behalf of the person with whom information is being shared; or any information sharing that is done at the direction or with the consent of the customer. The addition of subsection 12 to NDCC 6-08.1-02 will substantially improve the current law without in any way intruding on customer expectations of privacy.

Before I close, I do want to note that the committee has considered and will be considering other bills which address disclosure of nonpublic personal information (customer information) by both the securities and insurance industries. Each of those other bills permits exceptions which will allow insurance companies and securities firms to share information in more instances than apply to banks and credit union under HB 1038. NDBA continues to believe that financial institutions and their competitors should operate under the same rules for information and would be in favor of laws which embody that same principal.

With that, I'd be happy to respond to committee questions.

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1038**

Page 1, line 7 after "that" replace "regardless of the state of residence or" with "is a resident of or is domiciled in this state"

Page 1, line 8, replace "domicile," with "and which"

Renumber accordingly

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# TESTIMONY IN REGARDS TO HOUSE BILL NO. 1038

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GREG TSCHIDER, ND CREDIT UNION LEAGUE

Mr. Chairman and Members of the House Industry, Business, and Labor Committee, I am Greg Tschider and I represent the North Dakota Credit Union League.

It is submitted that House Bill 1038 should be considered by the Committee at the same time that the Committee considers House Bill 1478 since both bills address the same issues.

There are two significant parts to House Bill 1038. The first part on page 1 relates to the exporting issue or how the law defines "customer". The Credit Unions support the definition of "customer" as provided in House Bill 1478.

The second part of House Bill No. 1038 (see page 3, starting at line 20) relates to exemptions which will permit financial institutions to perform necessary operating functions to provide financial services to its members.

Most credit unions are small institutions without the expertise or facilities to perform such functions as data processing, home banking, check processing, and ATM equipment. Third party vendors perform those functions. The existing law does not specifically grant that authority. In order to erase those concerns and questions and to avoid potential future litigation, the exemption language is necessary.

The exemption language in House Bill 1478 is identical to House Bill 1038.

House Bill 1478 has a third part which prohibits joint marketing agreements. The North Dakota Credit Union League is not opposed to the joint marketing language, however, the North Dakota Credit Union League is concerned that the joint marketing prohibition also applies to the insurance and securities industry in order to provide the consumer the same privacy protection regardless of the industry involved.

In summation, the North Dakota Credit Union League:

- a. Supports the export (definitions) language in House Bill 1478.
- b. Supports the exemption language in both House Bills 1038 and 1478.
- c. Has no objection to the joint marketing language in House Bill 1478 with the caveat that the joint marketing prohibition also apply to insurance and securities companies.

Thank you for your time and consideration.