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10/3/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1286

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1286

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
2	X		0.2-2399
Committee Clerk Signature <i>Elizabeth R. Fein</i>			

Minutes: **CHAIR KEISER:** Opened hearing on HB 1286

REP. KASPER: Described bill

REP. EKSTROM: Do I assume this applies to both in- and out-of-state financial institutions?

Rep. Kasper said that yes, it is meant to be all encompassing.

REP. KEISER: Asked how we enforce this outside of ND. Rep. Kasper said that you can't, but the legislation will say they should and hopes they would comply. Keiser than asked about a penalty for noncompliance and Rep.Kasper replied that although it is not in the bill, the committee should consider a penalty.

REP. RUBY: Will this be the duty of the Bank Commissioner? Rep Kasper answered that the bank commissioner would take care of the banks and the insurance commission will do the insurance reports.

REP. NOTTESTAD: Why is there not a fiscal note? Rep. Kasper stated that if one is necessary, then the committee should look into it.

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House Industry, Business and Labor Committee

Bill/Resolution Number 1286

Hearing Date 1-28-03

MARILYN FOSS (ND Bankers Assoc. General Counsel): Opposes with written testimony.

REP. RUBY: Is the concern that this will make banks reporting agencies and then they are liable? Is it not understood that they would get the report from a non-bank source and they go to that agency with questions? Foss noted that the customer is already notified of where to get the report and that the banks she spoke with say that few people ask for the report. Rep. Ruby then said that it takes 60 days to get it through the agency when the bank already has it. Foss corrected that it takes 3 weeks. The 60 days is the period where the customer contacts the agency and gets the report.

REP. KEISER: The bill is a service issue. Are the banks concerned with legal issues and the shift of liability? Foss stated three areas of concern: the legal aspect, the contractual provisions which shift liability to the banks, and the idea of consumers misunderstanding how you fix what problems and forego the route to fix them.

REP. KASPER: What is the report, where do you get it? How do you separate the bank from the report? Foss stated that banks do discuss adverse decisions, but the banks cannot, nor is it their responsibility to discuss credit reports with the customer.

MARILYN FOSS: Also stated that she has been authorized to speak on behalf of the Independent Community Banks. They also take the position of the ND Bankers Association.

PAT WARD (State Farm and American Family Insurance): Agrees with Foss. This also applies to insurance companies. Underwriters are not always in ND and agents do not then have the credit reports. And if there is a \$10 charge, how to the insurance companies enforce that if someone doesn't want to pay. Creates more problems than it solves because more people end up seeing your credit report than are now. Privacy issue.

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House Industry, Business and Labor Committee
Bill/Resolution Number 1286
Hearing Date 1-28-03

REP. KEISER asked which insurance company wouldn't charge the \$10? Ward said that it is not actuarially sound

TIM KARSKY (Commissioner of Financial Institutions): Neutral position. There are no teeth to this bill. What do you do with national banks in ND? This bill doesn't include Savings and Loans and other institutions. This would be tough to enforce.

REP. NOTTESTAD questioned if a fiscal note is necessary. Karsky had no idea how many complaints they would receive or whether or not additional staff would be required.

CHAIR KEISER: Closed hearing on HB 1286

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1286

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/29/03

Tape Number	Side A	Side B	Meter #
2		x	21.3-28.0
Committee Clerk Signature <i>Juan Hammer</i>			

Minutes: **Chairman Kelser** called for committee work on HB 1286.

Rep. Kasper: This bill deals with being denied credit by a financial institution and that institution's responsibility for providing you with a copy of that report.

Rep. Klein: What was Marilyn Foss' take on this?

Rep. Kasper: I think her concern was that the consumer might be confused that it's the bank's information causing the denial of a loan as opposed to the credit union report.

Rep. Severson: She was opposed to the bank becoming the service body..

Chairman Kelser: Federal law states that a consumer can get a free copy. But that may not be true because banks are not consumer reporting agencies. By charging a \$10 fee and distributing a credit report that they become de facto a consumer reporting agency.

Rep. Ruby: This insults the intelligence of the customer.

Chairman Kelser: Pat Ward and Tim Karsky commented on the penalty clause. And this bill doesn't include Pay Day Loan Centers, Savings & Loans, etc.

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1286

Hearing Date 1/29/03

Rep. Ekstrom: This is unenforceable. With those reports coming to the bank, it increases the risk of a breach of confidentiality.

Rep. Kasper: Banks don't get credit reports, they get credit scores, according to Pat Ward.

Rep. Ekstrom moved a Do Not Pass.

Rep. Froseth seconded the motion.

The roll call vote results were: **11-3-0.**

Rep. Ekstrom will carry this on the floor.

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10/3/03
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Date: 1/29/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1286

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Eckstrom Seconded By Froseth

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

Total (Yes) 11 No 3

Absent 0

Floor Assignment Eckstrom

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

~~Handwritten scribbles~~

REPORT OF STANDING COMMITTEE (410)
January 30, 2003 10:44 a.m.

Module No: HR-18-1339
Carrier: Ekstrom
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1286: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **DO NOT PASS** (11 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
HB 1286 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-18-1339

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2003 TESTIMONY

HB 1286

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10/3/03
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TESTIMONY OF MARILYN FOSS (NDBA) ON HB 1286

Mr. Chairman, members of the committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. We believe this bill, while well intended, is unnecessary, confusing, and duplicative in light of existing federal law and regulation over banks. We are also concerned about the bill's potential to subject banks to regulation as consumer reporting agencies under the federal Fair Credit Reporting Act. For that reason, we must oppose it.

Federal Reserve Regulation B already requires banks to advise consumers and smaller businesses (those with gross revenues of \$1,000,000 or less) when information in a credit report or a credit score is the reason or a principal reason for an adverse decision on a customer account or application for services. Under Regulation B the notice which is given must itself state the principal reasons for the adverse decision or advise the customer that a statement of specific reasons for the adverse action will be provided on request. The notice or statement must also advise the customer when the adverse action is based on information from an outside source, whether a credit reporting agency or another affiliated or non affiliated outside source. When the outside source is a credit reporting agency, the adverse action notice also must provide the name, address and toll free telephone number for the consumer reporting agency. The notice also advises the customer how to obtain similar details when the information source is other than a consumer reporting agency. The adverse action notice also tells the customer that a free copy of the report may be obtained from the consumer reporting agency if it is requested within sixty days of receipt of the notice and that the customer has the right to dispute inaccurate or incomplete information with the consumer reporting agency. There is a similar adverse action notice when adverse action is the result of

a poor credit score. Copies of the approved federal notice forms are attached to my testimony.

We are also concerned that a customer who obtains a copy of a credit report from the bank will incorrectly assume that complaints made to the bank about inaccuracies or incompleteness will have the same effect as a complaint to the reporting agency. Under federal law, there is an established process for a consumer to dispute an inaccurate or incomplete report. Federal law also imposes specific responsibilities on the consumer reporting agency to investigate complaints, to correct errors, or to include material regarding a dispute in the credit file. We are concerned that customers who obtain the report from a bank will assume the bank has a role in the complaint resolution process when it doesn't and that those customers will forgo undertaking the route which has been established by law to help them.

Our banks are asking us whether this bill will turn them into a consumer reporting agency under the federal Fair Credit Reporting Act. They are concerned because compiling and selling credit information isn't the business of banks and most don't want to take on that line of business without preparation. Under the FCRA one becomes a consumer reporting agency by assembling or distributing consumer credit information on a fee basis. Since a credit report includes information from creditors other than the bank and customer, it's not clear how the "third party" language would or would not apply, but it is of concern.

Finally, we are concerned that the bill would have the unintended effect of shifting liability for a problem report from the consumer reporting agency to the bank. Although it appears that contracts with credit reporting agencies permit banks to provide a copy of the report to the customer if that is required by law, contracts also include "hold harmless"

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10/3/03
Date

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clauses by which the bank holds the credit reporting agency harmless for any attorney fees, damages etc that are determined to be the result of that disclosure. This clause doesn't operate when the consumer reporting agency discloses the report under the mandate of federal law.

To summarize: consumers and "small" businesses already have the right to get a free copy of their credit file from the consumer reporting agency which compiled it. If there's a problem, it's the consumer reporting agency, not the bank, that has the obligation and ability to correct the problem. To reiterate, this bill is well intended, but unnecessary. We ask that you give it a "DO NOT PASS" recommendation.

Thank you.

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10/3/03
Date

FORM C-1 - SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination, or Change

Applicant's Name: _____ Date: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

Description of Action Taken:

PART I - PRINCIPAL REASON(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT.
This section must be completed in all instances.

- | | |
|---|---|
| <input type="checkbox"/> Credit application incomplete | <input type="checkbox"/> Length of residence |
| <input type="checkbox"/> Insufficient number of credit references provided | <input type="checkbox"/> Temporary residence |
| <input type="checkbox"/> Unacceptable type of credit references provided | <input type="checkbox"/> Unable to verify residence |
| <input type="checkbox"/> Unable to verify credit references | <input type="checkbox"/> No credit file |
| <input type="checkbox"/> Temporary or irregular employment | <input type="checkbox"/> Limited credit experience |
| <input type="checkbox"/> Unable to verify employment | <input type="checkbox"/> Poor credit performance with us |
| <input type="checkbox"/> Length of employment | <input type="checkbox"/> Delinquent past or present credit obligations with others |
| <input type="checkbox"/> Income insufficient for amount of credit requested | <input type="checkbox"/> Garnishment, attachment, foreclosure, repossession, collection action, or judgment |
| <input type="checkbox"/> Excessive obligations in relation to income | <input type="checkbox"/> Bankruptcy |
| <input type="checkbox"/> Unable to verify income | <input type="checkbox"/> Value or type of collateral not sufficient |
| <input type="checkbox"/> Other, specify: _____ | |

FORM C-1, page 2

PART II -DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE.

This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

- Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

Name: _____

Address: _____

(Toll-free) Telephone number: _____

- Our credit decision was based in whole or in part on information obtained from an affiliate or from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____

Creditor's address: _____

Creditor's telephone number: _____

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in appendix A).

Pl. 202, App. C

12 CFR Ch. II (1-1-01 Edition)

FORM C-2-SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Date

Dear Applicant:

Thank you for your recent application. Your request for [a loan/a credit card/an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

Your Income:

- ☐ is below our minimum requirement.
- ☐ is insufficient to sustain payments on the amount of credit requested.
- ☐ could not be verified.

Your Employment:

- ☐ is not of sufficient length to qualify.
- ☐ could not be verified.

Your Credit History:

- ☐ of making payments on time was not satisfactory.
- ☐ could not be verified.

Your Application:

- ☐ lacks a sufficient number of credit references.
- ☐ lacks acceptable types of credit references.
- ☐ reveals that current obligations are excessive in relation to income.

Other: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and [toll-free] telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. Any questions regarding such information should be directed to [consumer reporting agency].

If you have any questions regarding this letter, you should contact us at [creditor's name, address and telephone number].

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Federal Reserve System

Pt. 202, App. C

FORM C-3 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS
(CREDIT SCORING)

Date

Dear Applicant:

Thank you for your recent application for _____.
We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons why you did not score well compared with other applicants were:

- Insufficient bank references
- Type of occupation
- Insufficient credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and [toll-free] telephone number of the consumer reporting agency]. You also have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency.

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____
Address: _____
Telephone: _____

Sincerely,

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Federal Reserve System

Pt. 202, App. C

FORM C-5 -- SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT
DENIAL

Date

Dear Applicant:

Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time.

If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receiving your request.

Creditor's Name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and [toll-free] telephone number is shown below. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you. [You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.] You have a right to a free copy of your report from the reporting agency, if you request it no later than 60 days after you receive this notice. In addition, if you find that any information contained in the report you receive is inaccurate or incomplete, you have the right to dispute the matter with the reporting agency. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address
[Toll-free] Telephone number

Sincerely,

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

Sal Costa Rickford
Operator's Signature

10/3/03
Date