

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1347

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1347

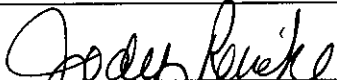
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1347

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-31-05

Tape Number	Side A	Side B	Meter #
1		x	0-34.3
3	x		49.-end
3		x	0-5.
Committee Clerk Signature 			

Minutes:

**Chairman Keiser:** Opened the hearing on HB 1347. All committee members were present.

**Representative N. Johnson:** Appeared in support of HB 1347 and also was a sponsor.

**Marilyn Foss, General counsel ND Bankers Association:** Appeared in support of HB 1347 and provided a written statement. (SEE ATTACHED TESTIMONY).

**Greg Tschider, North Dakota, Credit Union League:** On line 9 it indicates that payroll checks can only be issued on bank, obviously we have farmers, we have small business men that have accounts at credit unions, obviously are paying wages, if we are going to be looking at this bill I'd really appreciate it if the committee would entertain the prospect of adding on banks or credit unions. Issue number 2 that is bothering me is the issue that Representative Dosch raised, it says or at the election of the employee, if we only have an employer that has just a few employees, the thought of all of a sudden having one or two employees that we want this card could be cost prohibitive to the employer, or employers will not want to do this, its fine if you have a large employment group. This bill should include credit unions and also to make us legal.

**Tim Skarsky, Commissioner, of ND Financial Institutions:** There are a couple of positives to this bill, right now employers pay there employees by check, and when each employees get their check, and they go to check cashing facilities that are not licensed by anyone there is a law to set forth fees, to cash their checks, the real advantage that is if you get this card, if I don't want to go cash this check and pay the fee, I can go in and buy my groceries I can use my debit card there should be no fee, if people are going to get there cards and not cash them for 6 or 7 months I want those type of jobs, because I have to cash my check.

**Representative Johnson:** Move to **ADOPT amendments** as presented by Legislative Council

**Representative Nottestad:** **SECOND** the motion to adopt amendments.

Motion carried.

**Representative Thorpe:** Move to further **adopt amendments** by Greg Tschider.

**Representative Boe:** **SECOND** the motion to **adopt amendments** by Tschider.

Motion failed.

**Representative Dosch:** I move a **DO PASS** as **AMENDED**.

**Representative Ruby:** **SECOND** the **DO PASS** as **AMENDED** motion.

**Representative Froseth will carry the bill on the floor.**

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1347

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-2-05

Tape Number	Side A	Side B	Meter #
2		x	5.3-27.1
Committee Clerk Signature			

Minutes:

**Chairman Keiser:** Reconvened on HB 1347.

**Representative Johnson:** I move to **ADOPT** amendments.by Legislative Council

on HB 1347

**Representative Nottestad:** **SECOND** the motion to **ADOPT** amendments.

Motion carried.

**Representative Thorpe:** I move To further **AMEND** HB 1347(Greg Tschider amendments)

**Representative Boe:** **SECOND** to further amend

Motion failed.

**Representative Dosch:** I move a **DO PASS AS AMENDED** on HB 1347

**Representative Ruby:** **SECOND** the **DO PASS AS AMENDED** motion

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1347

Hearing Date 2-2-05

Motion carried    **VOTE: 11-YES 2-NO 1-Absent.(EKSTROM)**

**Representative Froseth will carry the bill on the floor.**

Date: 1-31-05  
Roll Call Vote #: HB 1347 #1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. H B 1347

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

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

Action Taken Adopt Amendments as L.C. presented

Motion Made By Rep. Johnson Seconded By Rep. Nottestad

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) 13 No 0

Absent (1) Rep. Ekstrom

Floor Assignment \_\_\_\_\_

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

Date: 1-31-05  
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1347

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

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

Action Taken Further amend by Tschider

Motion Made By Rep. Thorpe Seconded By Rep. Boe

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman		X	Rep. B. Amerman	X	
N. Johnson-Vice Chairman		X	Rep. T. Boe	X	
Rep. D. Clark		X	Rep. M. Ekstrom	A	A
Rep. D. Dietrich		X	Rep. E. Thorpe	X	
Rep. M. Dosch		X			
Rep. G. Froseth		X			
Rep. J. Kasper		X			
Rep. D. Nottestad	X				
Rep. D. Ruby		X			
Rep. D. Vigasaa		X			

Total (Yes) 4 No 9

Absent (1) Rep. EKstrom

Floor Assignment \_\_\_\_\_

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



February 2, 2005

VK  
2/2/05

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1347

Page 1, line 9, after "checks" insert "as that term is used in chapter 41-03, drawn" and after  
"banks" insert "or credit unions"

Page 1, line 10, after "employee" insert "when offered by the employer"

Renumber accordingly

Date: 1-31-05  
Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1347

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50523.0101 - 0200

Action Taken DO PASS AS Amend

Motion Made By Rep. Dosch Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	X
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	A	A
Rep. D. Dietrich	X		Rep. E. Thorpe		X
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) 11 No 2

Absent (1) Rep. EKstrom

Floor Assignment Rep. Froseth

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

**REPORT OF STANDING COMMITTEE**

**HB 1347: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1347 was placed  
on the Sixth order on the calendar.

Page 1, line 9, after "checks" insert "as that term is used in chapter 41-03, drawn" and after  
"banks" insert "or credit unions"

Page 1, line 10, after "employee" insert "when offered by the employer"

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1347

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1347

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
1	X		3,400-END
1		X	1-5327
Committee Clerk Signature <i>Jerry Kneib</i>			

Minutes:

**Chairman Mutch** opened the hearing on HB 1347. All Senators were present.

**Representative Nancy Johnson** introduced the bill. This bill would allow employers to offer a stored value card, similar to a debit card for their employees. Their wages would be placed in the card and could be used as the employee wishes. Neither party would be required to participate.

**Senator Klein-** We will be hearing an amendment about having credit unions as a sponsor on this. Your thoughts about that?

**Rep. Johnson-** We added the credit union language in the section on wages. We are making this bill very conservative, where the wages are protected.

**Senator Espegaard-** So, the protection you are referring to is if the financial institution goes broke, the employee has their wages somewhere else?

**Rep. Johnson-** Yes.

**Senator Krebsbach-** What would be the difference in a stored value card in comparison to just making a deposit in the account?

**Senator Espegaard-** There wouldn't be much of a difference.

**Marilyn Foss, General counsel for the ND Bankers Association** appeared in support of the bill. See written testimony.

**Senator Espegaard-** So, who has the money?

**Marilyn-** The person who has the account is the employer.

**Senator Espegaard-** Would an employer who puts money in the bank, and issues the cards out to 4-5 people, what is to stop him from taking the money out?

**Marilyn-** The cards would be used for employers who have a large number of employees.

They can't put the money in, and then take it out, when it is insured.

**Senator Espegaard-** If a person loses the card, then what happens to the money? Does it become unclaimed?

**Marilyn-** Those are points that have been addressed by the FDIC in rulemaking proceedings.

**Senator Espegaard-** Is this enabling legislation?

**Marilyn-** Yes, in some respects.

**Senator Krebsbach-** In my estimation, if a business gives an employee a card, they should have a separate amount set aside, so it is totally covered.

**Marilyn-** The requirements for a payroll card are much more stringent than for a checking card.

**Senator Klein-** Once that card is loaded with the employee's wage, the employer cannot spend it on anything else.

**Marilyn-** There may be some obligation by the bank.

**Senator Fairfield-** So, this would only be appropriate for larger employers?

**Marilyn-** Yes, because of the processes that are attached to it.

**Senator Fairfield-** What are some examples of employers your are referring to?

**Marilyn-** One of the examples are manufacturing companies.

**Senator Espgaard-** We need to keep in mind this is not a mandatory program, a large amount of people probably aren't going to sign up for it.

**Senator Fairfield-** Are the charges that can be applied found in the FDIC rules?

**Marilyn-** No.

**Senator Nething-** Is the charge made to an employer for participating with it? Is there an updated notice with how much is in the account?

**Marilyn-** It could be, but it is not mandated to be there.

**Senator Nething-** We primarily encourage people to do joint accounts in banking. You have to stay with a bank transaction in order to do a joint account?

**Marilyn-** Yes, that is correct.

**Senator Heitkamp-** Why do the banks want this?

**Marilyn-** This first came to my attention to deal with how one provides services to those who don't have a bank account.

**Senator Klein-** So, that would cut the cost of the bank, they wouldn't need a staff person to do the processing.

**Senator Heitkamp-** Banks earn interest off of paychecks being deposited in the bank, in this scenario that would not be the case.

**Marilyn-** No, the funds would be in the bank, this is a payroll product for employers. It is not a product that is geared towards individuals, it is directed at employers.

**Senator Krebsbach-** I see this as a progression on how we handle payments to individuals. I'm having difficulty with why credit unions are being kept out of it.

**Marilyn-** Credit unions are limited purpose institutions as a matter of state law, they encourage thrift for their members. They are not chartered to be full service commercial banking institutions, and don't have to pay the financial institution tax. This card is not designed to be a product for small businesses.

**Senator Espgaard-** So, if an employer goes broke, and the money is not there, the employer could lose his wages. The FDIC doesn't really protect these counts?

**Marilyn-** These accounts can be structured to be insured.

**Senator Heitkamp-** Should we be setting up a custodial account within the structure of the bank?

**Marilyn-** It has already been suggested to me that this bill is protective enough as it is for employers. We don't want to be so protective that we make the product meaningless.

This method is way more protective than getting paid with a check.

**Senator Espgaard-** As long as the employee is protected, that is the main thing.

**Senator Fairfield-** What happens if the employee doesn't use the card?

**Marilyn-** If the cards have not been used for 5 years, the funds are turned over to unclaimed property.

**Senator Nething-** This card will get the net wages into the employee's hand, what about the gross wages?



**Marilyn-** That would not change from the current system. Employers like this system because it is an easier method, and they don't have to do the accounting for their checking accounts.

**Ervin Mund, representing St. Alexius Community Credit Union** appeared before the committee and presented amendments for the committee's consideration. See attached.

**Senator Klein-** So, these amendments just add credit unions to the bill? Have federal credit unions worked on this?

**Ervin-** Not sure. The card is used within our medical center, and works in the cafeteria.

**Senator Espgaard-** When do you load the cards?

**Ervin-** The employee loads the card whenever they want to, there is a machine within the medical center for that.

**Senator Nething-** Did you offer these amendments in the House?

**Ervin-** No.

**Senator Espgaard-** Would the NCUA be insuring the hospital's account or the employee's account?

**Ervin-** It depends on how the rules would be written by the NCUA. I believe its a consumer issue.

**Senator Heitkamp-** How do you answer Marilyn's claim that this isn't the role of credit unions?

**Ervin-** The medical center has over 2,000 employees at the present time. They get paid 26 times a year. We provide services to our employees, and the majority of our employees are lower salary individuals.

**Senator Klein-** So, if St. Alexius wants to use your credit union as an avenue for their cards, they can. The employer can choose any institution they would like?

**Ervin-** Correct.

**Greg Tschider, representing the ND Credit Union League** appeared before the committee.

See written testimony.

**Greg-** Credit Unions are covered by National Credit Union Association, which is similar to FDIC that covers banks, the rules are very much alike. They have the same amount of federal and consumer protection. Most financial institutions that issue credit or debit cards, don't handle it locally, it is on a national basis. Many of banks or credit unions in other states buy these cards from VISA or Mastercard. The stored value card is very similar to a debit card.

**Senator Espgaard-** So, every two weeks, the card is electronically recharged?

**Greg-** It all depends, some institutions issue new cards instead.

**Bob Entringer, Assistant Commissioner for the Department of Financial Institutions** appeared before the committee. He spoke of the differences between this bill and HB 1174. He had a neutral position on the amendments.

**Tim Karsky, representing the Department of Financial Institutions** appeared before the committee. For people that have bank accounts, are most likely not going to be interested in a stored value card. The concern is whether or not there is insurance on the stored value cards issued by credit unions. The NCUA needs to address that issue.

**Chairman Mutch closed the hearing on HB 1347. No action was taken.**

*Ervin Mund*

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1347

Page 1, line 14, after "bank" insert "or credit union"

Page 1, line 16, after "corporation" insert "or national credit union administration"

Page 1, line 17, replace "issuing bank" with "issuer"

Page 1, line 19, replace "issuing bank" with "issuer"

Renumber accordingly

Date: 3-15-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1347

Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

50523.0201  
.0201

Action Taken

Adopt Amendments

Motion Made By

Heitkamp

Seconded By

Klein

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	X	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total

(Yes)

7

No

0

Absent

Floor Assignment

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

Date: 3-15-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1347

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50523.0201

Action Taken

DPAM

Motion Made By

Heitkamp

Seconded By

Klein

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	X	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes)

7

No

0

Absent

0

Floor Assignment

Heitkamp

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

**REPORT OF STANDING COMMITTEE**

HB 1347, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1347 was placed on the Sixth order on the calendar.

Page 1, line 14, after "bank" insert "or credit union"

Page 1, line 16, after "corporation" insert "or national credit union administration"

Page 1, line 17, replace "issuing bank" with "issuer"

Page 1, line 19, replace "issuing bank" with "issuer"

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1347


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1347

House Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date 3-30-05

Tape Number	Side A	Side B	Meter #
1	x		0-8.3
Committee Clerk Signature 			

Minutes:

**Chairman Froseth:** Opened the conference committee on HB 1347.

Chairman Froseth, Representative Dosch, Representative Thorpe, Chairman Espegard, Senator Klein, Senator Heitkamp were all present.

**Chairman Froseth:** The changes you have made have to do with including the credit unions being able to offer the stored value cards?

**Senator Espegard:** On that particular one I just think it was an area of fairness, we thought we've included credit unions as a bank.

**Senator Klein:** Mr. Chairman, one of the discussions as an employer using a credit union as a financial institution, and want to use the stored value cards, why should they have to get another account at another institution



**Senator Espgaard:** We had some people come over from the St. Alexius Credit Union, they primarily bank at their own institution and if they wanted a stored value card, they would of had to go to another institution.

**Chairman Froseth:** Didn't the banking association object to this?

**Senator Klein:** They weren't in lock step.

**Chairman Froseth:** These amendments were offered on the house side also, and I think that it was brought out in testimony that the credit unions were not ready for this type of service.

**Senator Klein:** After visiting with the financial institutions I felt comfortable that the credit unions would be ready to go.

**Representative Thorpe:** I felt optimistic about including credit unions, they will get up to speed in a hurry to get on the band wagon.

**Senator Klein:** The other issue I recall, we have those 14 federal credit unions doing this and the state credit unions are being held back, we felt that was not fair either.

**Chairman Froseth:** I would hope that the NCUA would have to do the same thing.

**Senator Klein:** The banking also explain that is what is really covered anyway under NCUA or FDIC, because that money came out of that account, it is still in the bank, still guaranteed at the bank level, although it is not the employers money anymore that bank is still guaranteeing it at that level. That money is covered under the regular law.

**Representative Thorpe:** I move that the House Accede to the Senate Amendments, on HB 1347

**Representative Heitkamp:** I SECOND the motion.

Motion carried VOTE: 6-YES 0-NO 0-Absent.

Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1347

Hearing Date 3-30-05

**Representative Froseth will carry the bill on the floor. Hearing adjourned**

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420

07398

(Bill Number) 1347 (, as (re)engrossed):

Your Conference Committee

For the Senate:

	Y	N
<u>Espegard</u> *	X	
<u>Levin</u> *	X	
<u>Heitkamp</u> *	X	

For the House:

	Y	N
<u>Froseth</u> *	X	
<u>Alsch</u> *	X	
<u>Thorp</u> *	X	

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
723/724 725/726 5724/5726 5723/5725

*Heitkamp* *Thorp* *Engrossment of*  
the (Senate/House) amendments on (SJ/HJ) page(s) 1190 - 1190

☒ and place 1347 on the Seventh order.  
727

☐ , adopt (further) amendments as follows, and place  
\_\_\_\_\_ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

DATE: 3/30/05

CARRIER: Froseth

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

\* Chair

**Insert LC: .**

**REPORT OF CONFERENCE COMMITTEE**

**HB 1347, as engrossed:** Your conference committee (Sens. Espegard, Klein, Heitkamp and Reps. Froseth, Dosch, Thorpe) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ page 1190 and place HB 1347 on the Seventh order.

Engrossed HB 1347 was placed on the Seventh order of business on the calendar.

**2005 TESTIMONY**

HB 1347

## TESTIMONY OF MARILYN FOSS IN FAVOR OF HB 1347

Chairman Keiser, members of the IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. HB 1347 was introduced at our request.

The bill amends NDCC 34-14-02 to allow employers to pay wages via a stored value card ("payroll card") that is issued by a federally insured bank and to allow employees to choose to receive their wages in the form of a payroll card. This is a bill about options and convenience for employers and employees and protections for employees. I might add that the requirements for federal deposit insurance coverage make the bill one that will take effect in the future.

With this committee's background from the money transmitter's bill, I am going to skip a detailed discussion about electronic payment instruments. However, please feel free to ask if by the conclusion of my testimony I haven't answered your specific questions about bank issued, branded cards.

Let's start first with the employer- This bill allows employers to pay wages through a payroll card that meets the requirements of the section. Those requirements are for the payroll card to be issued by a federally insured bank and for the value of the card to be a federally insured deposit. This feature is intended to protect employees from losing money if the employer or issuer should become insolvent before the employee has expended the full value of the payroll card. As of today, the FDIC is engaged in rulemaking on the subject of FDIC insurance coverage for payroll cards. That rulemaking will cover both coverage for the employer deposit that backs the payroll cards issued to the employer's employees and "pass-through" coverage rules so that each employee payroll card is also insured. Comments were taken through July 15, 2004. Of course we can't predict exactly when the final FDIC rules will be out; all I can say is that payroll cards have become very popular with employers and employees, so there is some pressure to conclude the rulemaking and issue a final rule. Since this bill requires FDIC insurance for the deposits which back the payroll cards, a North Dakota employer could

not legally pay wages with a payroll card before the FDIC rulemaking is complete and final rules are in effect. So, while the bill doesn't have a prospective effective date section, it will take a while for its provisions to be used.

On to employees- For employees, too, this bill is permissive. No employee is required to receive wages through a payroll card. We wanted to make this clear because there are fees that can apply to payroll cards as well as other bank issued stored value cards. The most common example of this would be using the payroll card at a non-issuer ATM machine.

I have noted that payroll cards are very popular with employers and employees, so much so that I both local and national press (print and television) have carried stories praising this new payment method for wages. Payroll cards appeal particularly to youthful employees who are used to debit cards and credit cards and to those who are "unbanked", that is, without a checking account or other deposit relationship with a mainstream bank or other financial services organization. Bank regulatory agencies are also quite enthusiastic about the potential for payroll cards to provide better protection to vulnerable employees than exists in the cash underground or world of fee based check cashing businesses. An employee who is paid with a payroll card that is issued by a federally insured bank has the bank regulatory agencies as a vehicle for complaint and, more importantly complaint resolution if there is a problem. Brand bank issued cards carry the protections that go along with a credit card, including protection from theft or loss and mandatory error resolution procedures. Branded bank cards also carry the convenience in that they can be used wherever the same branded credit card may be used.

In short, we think this bill is a "win-win" for everyone involved and we strongly encourage a "DO PASS" from the committee. Thank you.

PROPOSED AMENDMENTS TO HB 1347  
(Submitted by Marilyn Foss, North Dakota Bankers Association)

Page 1, line 9 after "checks" insert "as that term is used in chapter 41-03, drawn" and after "banks" insert "or credit unions"

Page I, line 10, replace "at the election of the employee" with "upon the agreement of the employer and employee"

Renumber accordingly



# TESTIMONY OF GREG TSCHIDER PROPOSING AMENDMENTS TO HOUSE BILL NO. 1347

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GREG TSCHIDER, ND CREDIT UNION LEAGUE

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

This is a "me too" situation. The present bill would only permit banks to be issuers of the stored value cards. The North Dakota Credit Union League respectfully requests that credit unions also be permitted to offer the same service. Stored-value cards are a new technology and service. This bill is particularly important to closed chartered credit unions whose field of membership is restricted to a certain occupation such as Affiliated Employees Credit Union which is limited to employees of Blue Cross Blue Shield of North Dakota, Dickinson Educator's Credit Union which is limited to school employees in Stark County or Genie-Watt Credit Union which is restricted to employees of MDU Resources Group. These are loyal employers who may be interested in providing another mode of paying wages to their employees.

All credit unions in North Dakota are insured by the North Credit Union Administration (NCUA) up to \$100,000 per account. NCUA coverage on accounts is identical to FDIC insurance. Thus credit union deposits are insured in the same manner and to the same extent as banks.

This bill provides employers and employees another payment option and the credit unions request that they be authorized to provide this service to its members.

Thank you.

PROPOSED AMENDMENTS TO HB 1347

Page 1, line 9, after banks, insert "or credit unions"

Page 1, line 13, after bank, insert "or credit union"

Page 1, line 15, after corporation, insert "or national credit union administration"

Page 1, line 16, after bank, insert "or credit union"

Page 1, line 18, after bank, insert "or credit union"

Renumber accordingly

RESPECTFULLY SUBMITTED BY  
Greg Tschider  
North Dakota Credit Union League

# TESTIMONY OF GREG TSCHIDER PROPOSING AMENDMENTS TO HOUSE BILL NO. 1347

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GREG TSCHIDER, ND CREDIT UNION LEAGUE

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

This is a "me too" situation. The present bill would only permit banks to be issuers of the stored value cards. The North Dakota Credit Union League respectfully requests that credit unions also be permitted to offer the same service. Stored-value cards are a new technology and service. This bill is particularly important to closed chartered credit unions whose field of membership is restricted to a certain occupation such as Affiliated Employees Credit Union which is limited to employees of Blue Cross Blue Shield of North Dakota, Dickinson Educator's Credit Union which is limited to school employees in Stark County or Genie-Watt Credit Union which is restricted to employees of MDU Resources Group. These are loyal employers who may be interested in providing another mode of paying wages to their employees.

All credit unions in North Dakota are insured by the North Credit Union Administration (NCUA) up to \$100,000 per account. NCUA coverage on accounts is identical to FDIC insurance. Thus credit union deposits are insured in the same manner and to the same extent as banks.

Federally chartered credit unions have the authority to issue stored value cards. Attached to this testimony is a copy of the NCUA Regulations which state that federal credit unions have the authority to issue stored value cards. Also attached is a September 10, 2003 letter from the NCUA General Counsel's Office which addresses the fact that federal credit unions may provide payroll cards as a replacement for payroll checks.

If this bill is not amended to permit credit unions to issue stored value cards for wages, an employer would be able to issue a check for wages to an employee but not a stored value card for wages. That does not make sense. What difference does it make what payment method is used?

This bill provides employers and employees another payment option and the credit unions request that they be authorized to provide this service to its members.

Thank you.

## § 721.1 What does this part cover?

This part authorizes a federal credit union (you) to engage in activities incidental to your business as set out in this part. This part also describes how interested parties may request a legal opinion on whether an activity is within a federal credit union's incidental powers or apply to add new activities or categories to the regulation. An activity approved in a legal opinion to an interested party or as a result of an application by an interested party to add new activities or categories is recognized as an incidental powers activity for all federal credit unions. This part does not apply to the activities of corporate credit unions.

## § 721.2 What is an incidental powers activity?

An incidental powers activity is one that is necessary or requisite to enable you to carry on effectively the business for which you are incorporated. An activity meets the definition of an incidental power activity if the activity:

(a) Is convenient or useful in carrying out the mission or business of credit unions consistent with the Federal Credit Union Act;

(b) Is the functional equivalent or logical outgrowth of activities that are part of the mission or business of credit unions; and

(c) Involves risks similar in nature to those already assumed as part of the business of credit unions.

## § 721.3 What categories of activities are preapproved as incidental powers necessary or requisite to carry on a credit union's business?

The categories of activities in this section are preapproved as incidental to carrying on your business under § 721.2. The examples of incidental powers activities within each category are provided in this section as illustrations of activities permissible under the particular category, not as an exclusive or exhaustive list.

(a) *Certification services.* Certification services are services whereby you attest or authenticate a fact for your members' use. Certification services may include such services as notary services, signature guarantees, certification of electronic signatures, and share draft certifications.

# Part 721

## Incidental Powers

(b) *Correspondent services.* Correspondent services are services you provide to other credit unions that you are authorized to perform for your members or as part of your operation. These services may include loan processing, loan servicing, member check cashing services, disbursing share withdrawals and loan proceeds, cashing and selling money orders, performing internal audits, and automated teller machine deposit services.

(c) *Electronic financial services.* Electronic financial services are any services, products, functions, or activities that you are otherwise authorized to perform, provide, or deliver to your members but performed through electronic means. Electronic services may include automated teller machines, electronic fund transfers, online transaction processing through a web site, web site hosting services, account aggregation services, and Internet access services to perform or deliver products or services to members.

(d) *Excess capacity.* Excess capacity is the excess use or capacity remaining in facilities, equipment, or services that: You properly invested in or established, in good faith, with the intent of serving your members; and you reasonably anticipate will be taken up by the future expansion of services to your members. You may sell or lease the excess capacity in facilities, equipment or services such as office space, employees and data processing.

(e) *Financial counseling services.* Financial counseling services means advice, guidance or services that you offer to your members to promote thrift or to otherwise assist members on financial matters. Financial counseling services may include income tax preparation service, electronic tax filing for your members, counseling regarding estate and retirement planning, investment counseling, and debt and budget counseling.

(f) *Finder activities.* Finder activities are activities in which you introduce or otherwise bring together outside vendors with your members so that

the two parties may negotiate and consummate transactions. Finder activities may include offering third party products and services to members through the sale of advertising space on your web site, account statements and receipts, or selling statistical or consumer financial information to outside vendors to facilitate the sale of their products to your members.

(g) *Loan-related products.* Loan-related products are the products, activities or services you provide to your members in a lending transaction that protect you against credit-related risks or are otherwise incidental to your lending authority. These products or activities may include debt cancellation agreements, debt suspension agreements, letters of credit and leases.

(h) *Marketing activities.* Marketing activities are the activities or means you use to promote membership in your credit union and the products and services you offer to your members. Marketing activities may include advertising and other promotional activities such as raffles, membership referral drives, and the purchase or use of advertising.

(i) *Monetary instrument services.* Monetary instrument services are services that enable your members to purchase, sell, or exchange various currencies. These services may include the sale and exchange of foreign currency and U.S. commemorative coins. You may also use accounts you have in foreign financial institutions to facilitate your members' transfer and negotiation of checks denominated in foreign currency or engage in monetary transfer services for your members.

(j) *Operational programs.* Operational programs are programs that you establish within your business to establish or deliver products and services that enhance member service and promote safe and sound operation. Operational programs may include electronic funds transfers, remote tellers, point of purchase terminals, debit cards, payroll deduction, pre-authorized member transactions, direct deposit, check clearing services, savings bond purchases and redemptions, tax payment services, wire transfers, safe deposit boxes, loan collection services, and service fees.

(k) *Stored value products.* Stored value products are alternate media to currency in which you transfer monetary value to the product and create a medium of exchange for your members' use. Examples of stored value products include stored value cards, public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, postage stamps, electronic benefits transfer script, and similar media.

(l) *Trustee or custodial services.* Trustee or custodial services are services in which you are authorized to act under any written trust instrument or custodial agreement created or organized in the United States and forming part of a pension or profit-sharing plan, as authorized under the Internal Revenue Code. These services may include acting as a trustee or custodian for member retirement and education accounts.

#### § 721.4 How may a credit union apply to engage in an activity that is not preapproved as within a credit union's incidental powers?

(a) *Application contents.* To engage in an activity that may be within an FCU's incidental powers but that does not fall within a preapproved category listed in § 721.3, you may submit an application by certified mail, return receipt requested, to the NCUA Board. Your application must describe the activity, your explanation, consistent with the test provided in paragraph (c) of this section, of why this activity is within your incidental powers, your plan for implementing the proposed activity, any state licenses you must obtain to conduct the activity, and any other information necessary to describe the proposed activity adequately. Before you engage in the petition process you should seek an advisory opinion from NCUA's Office of General Counsel, as to whether a proposed activity fits into one of the authorized categories or is otherwise within your incidental powers without filing a petition to amend the regulation.

(b) *Processing of application.* Your application must be filed with the Secretary of the NCUA Board. NCUA will review your application for completeness and will notify you whether additional information is required or whether the activity requested is permissible under one of the categories listed in § 721.3. If the activity falls within a category provided in § 721.3, NCUA will notify you that the activity is permissible and treat the application as withdrawn. If the activity does not fall within a category provided in § 721.3, NCUA staff will consider whether the proposed activity is legally permissible. Upon a recommendation by NCUA staff that the activity is within a credit union's incidental powers, the NCUA Board may amend § 721.3 and will request public comment on the establishment of a new category of activities within § 721.3. If the activity proposed in your ap-

September 10, 2003

Richard T. Wargo, Jr. Esq.  
Sr. Vice President/General Counsel  
Pennsylvania Credit Union Association  
4309 North Front Street  
Harrisburg, Pennsylvania 17106-0007

Re: Payroll Cards.

Dear Mr. Wargo:

Regional Director Edward Dupcak has asked this office to respond to your inquiry as to whether a federal credit union (FCU) may provide payroll cards as a replacement for payroll checks a member distributes to its employees. Yes, it is within the FCU's incidental powers to offer this service to its member.

Your association owns a company that would like to provide payroll card services to credit unions. You have asked if an FCU may offer payroll cards to its sponsor that is a member of the FCU. Payroll cards are stored value payment cards. Through the services of the association's company, payroll cards are produced and sent to the sponsor's employee's homes. The FCU places the employees pay on the card through a direct deposit arrangement between the employee and employer, the FCU's sponsor-member. The employee-cardholder activates the card over the web or by phone and may use these methods to replenish the balance on the card. Cardholders can access their funds through automated teller machines (ATMs); use the cards at point-of-sale terminals in stores that accept the underlying payment brand, MasterCard or Visa; and obtain balance information through the Internet, telephone, and ATMs. Payroll cards may be particularly helpful for the sponsor's unbanked employees because they no longer need check cashing outlets.

FCUs may provide electronic financial services, which are defined as services, products, functions, or activities that an FCU is otherwise authorized to perform, provide, or deliver to its members but performed through electronic means. 12 C.F.R. §721.3(c). These services include ATMs and electronic fund transfers. Our office has issued several opinions recognizing an FCU's ability to make disbursements on behalf of a member to third parties. In the attached OGC legal opinion 95-1236, dated January 29, 1996, we stated that an FCU, as incidental to its authority to receive shares from a member, may make disbursements on behalf of that member to third parties, such as its sponsor's payroll checks to nonmember employees. These opinions, like others concerning point-of-sale terminals or federal wire transfers, authorize an FCU to offer services to assist members in financial transactions that the FCU is either better situated than the member or uniquely able to conduct as a financial institution. An FCU, therefore, may offer electronic stored value products, like a payroll card, to its member as a means for making disbursements to third-parties from the member's share draft account.

We note that our analysis finds the activity permissible as an incidental powers activity within paragraph (c) of §721.3, which covers electronic financial services, rather than paragraph (k), which authorizes FCUs to issue stored value products to members. While the proposed activity may result in nonmembers obtaining stored value cards branded by the FCU, the activity is permissible because the FCU is providing a financial service through electronic means to its sponsor, a member of



the FCU, by offering an alternative to share drafts.

Sincerely,

Sheila A. Albin  
Associate General Counsel

GC/CJL:bhs  
03-0908  
Enclosure

Mr. Chairman, Senators,

My name is Ervin Mund. I am President of St. Alexius Community Credit Union in Bismarck.

We propose to amend HB1347 to allow credit unions' to participate in stored value cards once the National Credit Union Administration has approved the rules and regulations. The amendments were drafted by the legislative council staff.

These amendments have been reviewed by the Commissioner of Financial Institutions and I believe he will speak in the affirmative.

St. Alexius Medical Center is the primary sponsor of our Credit Union. The Medical Center currently provides each employee with a stored value card. This card serves as their employee cash card for use in the cafeteria and vending machines. They pay their employees every two weeks, 26 times per year. This bill would impact the employees of St. Alexius Medical Center.

Times are changing, technology is here and we need to be able to change and adapt.

I would stand for questions.

## TESTIMONY OF MARILYN FOSS SUPPORTING ENGROSSED HB 1347

Chairman Mutch, members of the Senate IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. HB 1347 was introduced at our request. We also worked with the House IBL Committee on the amendments which were made to the bill and support the engrossed version of the bill.

Engrossed HB 1347 amends NDCC 34-14-02 to allow employers to pay wages to employees via a bank issued stored value card as well as by cash, check, or direct electronic deposit. Stored value cards that are used to pay wages are also commonly called "payroll cards". Payroll cards combine the benefits of direct deposit (which the 2003 legislative assembly approved for wage payment) with the convenience of a debit card. Payroll cards have the net monetary value of an employee's wages encoded on the magnetic strip on the card; the employee realizes that monetary value by using the card to obtain cash through an ATM or by using the card to pay for merchandise as one does by a credit card or a debit card. The exchange of funds represented by payroll cards is handled through the collection system that is in place for credit cards, debit cards, and ordinary stored value cards that are used to access cash at ATMs.

Payroll cards are becoming increasingly popular with workers who are new to the workforce, college students, people who change jobs frequently, immigrants and anyone who doesn't have a conventional bank account or who doesn't want to handle a checking account (including keeping track of balances to avoid NSF checks and related fees.) The cards are particularly desirable for these "unbanked" and can help these workers to avoid substantial check cashing fees and predatory payroll loans. People who are paid via a payroll card have the option of withdrawing the full amount of their wages at one time to spend or transfer to another account on payday. Or, they may use their payroll cards to purchase goods and services that would otherwise require a credit card. Examples of these are auto rentals, hotel reservations and online purchases. These features of payroll cards enable employees to exercise their purchasing power at businesses that would not cash or accept a third party check as payment.

Payroll cards that are issued by banks carry a brand, such as VISA™ or MasterCard™. As the cards are broadly accepted and also are protected from loss, theft or fraudulent use. The cards have security features such as a PIN for access and are replaceable when they are lost.

With that general explanation, I'd like to point out a couple of special features of this bill. The first thing of note is that this method of paying wages is optional. Employers are not required to offer payroll cards to employees and employee are not required to accept wages in the form of a payroll card. The reason for this is simple: there is a cost to the employer who uses the cards to pay employees and there may be a cost to the employee depending upon how that employee accesses his or her wages by using the card. (For example, ATM usage above a certain number of transactions or use of an ATM that is not owned by the issuer may carry a fee.)

This bill is highly protective of employees because a qualifying payroll card must be issued by a bank and backed by deposits that are insured by the FDIC. I have now seen suggestions that this requirement for FDIC insurance is overly protective. However, at this stage of the product development we disagree and think a conservative approach is appropriate. This requirement is designed to protect employees from an employer insolvency and an issuer insolvency and to make sure employees aren't left holding a plastic card instead of the wages they've earned. It has also been suggested that the requirement for FDIC insurance, particularly, may limit competition among card issuers. I readily acknowledge that; there are companies that have the technical ability to issue the cards and, because they are not subject to federal or state regulation as banks, those companies probably can issue the cards more cheaply than can a bank. However, it remains the fact that employees who are paid with cards that are issued by those companies would, quite literally, be being paid with an IOU from companies who don't have established capital requirements or regulatory oversight and who would, at minimum, be exposed to a loss of wages if their employer or the third party issuer becomes insolvent before the employee has accessed or spent the wages. The requirement for the cards to be backed by deposits that are covered by FDIC insurance protects employees from that significant risk.

The federal bank regulators, including the OCC ( for national banks), the FDIC (for national and state banks) and the Federal Reserve (for state member banks and bank holding companies) are all giving bank issued payroll cards first level attention. For example,

1. FDIC has undertaken a rulemaking proceeding which specifically covers and clarifies the application of its deposit insurance rules for payroll cards and how deposits must be structured to ensure coverage for wages represented by payroll cards. FDIC rules for deposit insurance coverage apply to both national and state banks.
2. The OCC has issued a variety of guidances and papers on the subject of payroll cards and has been very clear about practices which this regulator sees as being unfair to consumers. (A main one is being required to accept wages via a payroll card.) Federal and state bank regulators are available to protect workers who have complaints about a bank issued payroll card. This same level of regulatory attention, oversight, and consumer protection simply doesn't apply to third party, non bank issuers of stored value cards.
3. The Fed has recently started rulemaking proceedings to cover payroll cards by Regulation E (electronic funds transfers). Banks are already familiar with the requirements of that Regulation because it applies to other services (such as wire transfers and direct deposit) that are offered by banks.

Bank regulators uniformly describe bank issued payroll cards as being safe and as protecting workers from high check cashing fees and the kinds of payday lending operations that are predatory. This was a major concern in the House IBL committee.

No doubt, by now you realize, this bill does not provide for credit unions to issue qualifying payroll cards. There are several reasons for this (beyond the fact that NDBA works on behalf of banks.) I'd like to go over them.

Credit unions are exempt from a variety of income, sales and excise taxes that apply to commercial banks. This tax preferred status is because credit unions are by law limited purpose institutions which are to focus their efforts and provide services to individuals and, with the expansions (or, depending on one's view, erosions) that

have occurred over time, to small businesses. However, payroll card services are a commercial product geared to large employers, not individuals or small businesses. Additionally, the NCUA, the insuring agency for credit unions has not focused on payroll card services as have the FDIC and OCC which regulate state and national commercial banks. NCUA has not undertaken to clarify how payroll cards are to be covered by the credit union insurance fund and has not given credit unions guidance about them. Indeed the only reference that I have found to payroll cards by searching the NCUA web site is a single general counsel's letter. By way of contrast both the OCC and FDIC web sites have many, many citations to documents that address and cover payroll cards and practices that must be adhered to by banks which are issuing payroll cards.

This bill does reflect the longstanding statutory distinctions between commercial banks, which are chartered to provide a wide range of financial products and services to individuals and business of all sizes, hopefully, on a for profit, tax paying basis, and credit unions, which are chartered to be non profit, tax preferred organizations which have a mission to provide services for primarily for individuals, but also to some degree for small businesses. The bill does nothing to inhibit credit union membership or growth in that membership. Workers who are paid by payroll cards tend to be without bank (or credit union) accounts. However, if those workers want to do business with a credit union, they are completely free to do so. All they need to do is to cash out the card and place the funds in a credit union account.

In short, this bill is not hostile to credit unions. It simply reflects the fact that a credit union is not a commercial bank.

With that I want to thank you and urge you to give the bill a DP recommendation.