

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2211

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2211

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2211

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 30, 2001

Tape Number	Side A	Side B	Meter #
1	x		37.8 to 49.6
Committee Clerk Signature <i>Doree Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2211 relating to the provision of self-critical financial institution analysis privilege.

MARILYN FOSS, ND Bankers Assn. In favor of this bill. Written testimony attached. This bill is an incentive for self audit. Amendment enclosed.

JOEL GILBERTSON, ICBND, in favor of this bill.

SENATOR ESPEGARD: Bill makes it so it is not incriminatory?

MARILYN FOSS: In a way, if noncompliance is concluded discovery is made more difficult and harder to use against you.

No opposing testimony. Hearing concluded. SENATOR ESPEGARD: move do pass on amendment. SENATOR D. MATHERN seconded. Roll call vote: 7 yes; 0 no.

SENATOR TOLLEFSON moved do pass as amended. SENATOR KREBSBACH seconded.

Roll call vote: 7 yes; 0 no. Carrier SENATOR ESPEGARD

FISCAL NOTE
 Requested by Legislative Council
 01/17/2001

Bill/Resolution No.: SB 2211

Amendment to:

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		\$0
Expenditures				\$0		\$0
Appropriations				\$0		\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Gary D. Preszler	Agency:	Dept. of Banking and Financial Institutions
Phone Number:	328-9933	Date Prepared:	01/24/2001

AMENDMENTS TO SB 2211

Page 2, line 17, replace "2000" with "2001"

Page 6, line 27, replace "26.1 51-06" with "6 of this Act"

Renumber accordingly.

REPORT OF STANDING COMMITTEE (410)
January 31, 2001 8:13 a.m.

Module No: SR-17-1973
Carrier: Espegard
Insert LC: 18278.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2211: 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). SB 2211 was placed on the Sixth order on the calendar.

Page 2, line 17, replace "2000" with "2001"

Page 6, line 27, replace "26.1-51-06" with "6 of this Act"

Renumber accordingly

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2211

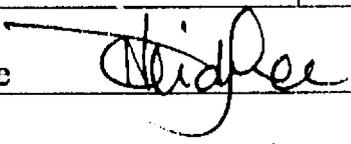
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2211

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 6, 2001

Tape Number	Side A	Side B	Meter #
1	X		31.1
		X	-7.11
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.

Marilyn Foss: *ND Bankers Assoc. Written testimony in support.*

Rep Jensen: What is an in-camera review?

Foss: It is when you provide the documents to the court, as opposed to the parties.

Vice-Chairman Keiser: Material that is not protected is that the same?

Foss: Yes.

Vice-Chairman Keiser: May I ask to receive a copy?

Foss: The banks are free to do that and may very well. The examining authorities can get your internal audit now. What this bill does is to have institutions become more aggressive about auditing themselves for compliance and then the incentive to do it is the protection you get from taking corrective action.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2211

Hearing Date March 6, 2001

Rep. Kasper: Would it be fair to say that this bill is a bill to protect banks against self-incrimination?

Foss: It protects the bank against having documents that are critical used against them. It does not protect them from having to disclose the information and response to a question properly propounded by anyone.

Rep Ekstrom: This somewhat allows the bank to be self-regulating.

Foss: Banks are examined for compliance, this bill doesn't have any impact on that.

Chairman Berg: We'll close the hearing on SB 2211.

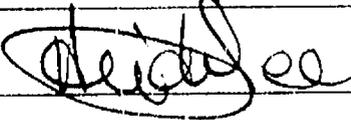
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2211(B)

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 12, 2001

Tape Number	Side A	Side B	Meter #
3	X		1.8-4.6
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.

Rep Froseth: Explained bill to protect financial institutes from self-analysis.

Vice-Chairman Keiser: I move a do pass.

Rep M. Klein: 1 second.

13 yea, 1 nay, 1 absent Carrier Rep Froseth

Date: 3-7-01
 Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2211

House Industry, Business and Labor *enby* Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Keiser Seconded By M. Klein

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 1

Absent 1

Floor Assignment Rep M. Klein

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

REPORT OF STANDING COMMITTEE (410)
March 7, 2001 3:37 p.m.

Module No: HR-39-5048
Carrier: M. Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2211, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). Engrossed SB 2211 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2211

TESTIMONY OF MARILYN FOSS
IN FAVOR OF SB 2211
(On Behalf of the 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 SB 2211.

The bill is being proposed in order to create an environment which will encourage financial institutions to critically evaluate their compliance with various state and federal laws and with their own policies and to protect the results of their self evaluation from being used against the institution in state court litigation. The effect of the bill is to make the results of a self-audit confidential (Section 2) and, generally, not subject to discovery or admissible in evidence in litigation or administrative proceedings involving the financial institution (Sections 3 and 4). The results of a self-audit are not secret. The commissioner of banking and financial institutions may obtain a copy of the self-audit, but may not use the self audit to impose a penalty against the financial institution unless the commissioner determines by clear and convincing evidence that the financial institution has failed to take reasonable action to correct problems or violations which are disclosed by the audit. (Section 5). Audit results are to remain confidential in the commissioner's possession.

Section 6 of the bill provides that a financial institution may waive the privilege which protects the self-audit from disclosure and establishes the rule that a court or administrative agency may require the self-audit results to be disclosed if the privilege is being asserted for a fraudulent purpose or with regard to material which is not protected. The material may also be disclosed in a criminal proceeding under these circumstances if a court concludes the audit results are relevant to the proceeding. Section 7 of the bill sets up the procedure for determining the existence of the privilege when the fact of privilege is challenged. The determination will be made by a court or administrative agency, as appropriate, after an in-camera review by the presiding judge. This protects the information from an adverse party, but allows the adjudicating official to determine whether material which is sought to be withheld is entitled to the privilege. There is a

provision for prompt resolution of a dispute as the reviewing judge must rule within 45 days. Appellate review is also available.

Section 9 of the bill makes it clear that the privilege can not be used to evade obligations to provide information to regulatory agencies when those obligations are imposed by other state or federal laws. For example, examiners will continue to have full access to original information which may have been reviewed in the self-audit process. Similarly, information which is the subject of the self-audit, but obtained independent of the audit is not protected.

Financial institutions are highly regulated entities. We believe this bill will have cause more financial institutions to look at their practices, particularly in the area of "fair lending" with a more critical eye and then, if problems are found, to correct those practices. This is because the protection of the law is greater when the financial institution has taken reasonable corrective action.

This bill is a virtual clone of a bill which was adopted by the 1999 legislative assembly for the insurance industry. It has been reviewed by the Commissioner of Banking and Financial Institutions who has told me he has no objections to it.

The bill is so identical to last session's bill that there are two erroneous references which should be corrected by amendment:

The first is on page 2, line 17. There, "2000", should be "2001".

The second is the reference on page 6, line 27 to an insurance statute. There, "26.1-51-06" should be replaced with " 6 of this Act".

The correct statutory reference will be inserted by the Code Revisor once the bill is adopted and prepared for inclusion in the North Dakota Century Code.

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