

**1999 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1102**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1102

House Industry, Business and Labor Committee

Conference Committee

Hearing Date January 12, 1999

Tape Number	Side A	Side B	Meter #
1	x		19.6-45.6
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

**CHAIRMAN BERG** called the hearing for HB 1102 to order.

**1A: 20.1 GARY PRESZLER, Commissioner of the Department of Banks and Financial Institutions**, testified in support of the bill. (See attached testimony.)

**1A: 24.0 REP. KEISER** asked if this applies to federally chartered banks as well as state chartered banks. Mr. Preszler replied that it only applies to the state chartered banks.

**1A: 24.8 REP. KLEIN** asked if the federal government and the other states have the same kind of system that is being proposed. Mr. Preszler said that the federal system has a number of regulations basically dealing with security and liability issues. Each state is different in regards to how it deals with liability issues.

**1A: 26.5 REP. KEISER** asked if this would cover ALL state chartered banks, including credit unions. Mr. Preszler said yes, it does apply to all state chartered banks.

**1A: 27.6 REP. GLASSHEIM** said that he is concerned about consumer protection, and asked if there may be any regulations in the future to protect the consumer and if there will be problems with security issues. Mr. Preszler said that security will definitely be a concern to the institutions. He said there is no fool-proof system, but security is improving.

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House Industry, Business and Labor Committee

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1A: 29.5 CHAIRMAN BERG expressed concern about putting up a barrier that may discourage ND banks from trying new technology. Mr. Preszler said he did not believe this to be a barrier to new technology at all.

1A: 35.9 MARILYN FOSS, General Council for the ND Bankers Association, testified against the bill. The association questions whether or not the State Banking Board or Dept. of Banking and Financial Services should be adding layers of regulation which apparently apply only to banks.

1A: 45.6 CHAIRMAN BERG adjourned the hearing on HB 1102.

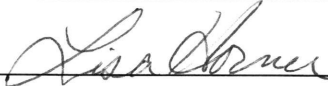
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1102 1-12-99

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-12-99

Tape Number	Side A	Side B	Meter #
2		x	981 - 1943
Committee Clerk Signature 			

Minutes: Chairman Berg opened the discussion of HB 1102.

One of the issues here that is important is that now we regulate the banks and allow them to deliver their services the way they want. I think we are stepping out into regulating how banks can deliver their services. I question whether there is a need for this.

Rep. Glassheim: It seems to me that he is not trying to create barriers but to enable.

Rep. Stefonowicz made a motion for a Do Not Pass.

Rep. Ekstrom second the motion.

The roll call vote was 13 yea, 1 nay, 1 absent.

The motion carries.

Rep. Keiser will carry the bill.

Date: 1-12-99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1102

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken do not pass

Motion Made By Stefonowicz Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glasheim		/			
Rep. Johnson					
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 13 No 1

Absent 1

Floor Assignment Keiser

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

REPORT OF STANDING COMMITTEE (410)  
January 12, 1999 4:45 p.m.

Module No: HR-06-0516  
Carrier: Keiser  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1102: Industry, Business and Labor Committee (Rep. Berg, Chairman)** recommends **DO NOT PASS** (13 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1102 was placed on the Eleventh order on the calendar.

**1999 TESTIMONY**

**HB 1102**

TESTIMONY FOR HOUSE BILL NO. 1102

House Industry, Business, and Labor Committee

Testimony of Gary D. Preszler, Commissioner, Department of Banking and Financial Institutions in support of House Bill No. 1102.

House Bill No. 1102 grants specific authority to the State Banking Board to authorize electronic banking transactions.

Unlike most corporations, a bank may only exercise authority that has been expressly provided. However, a state-chartered bank is given broadly expressed power to exercise all the incidental powers as are necessary to carry on the business of banking. Stated differently, a bank's activity is authorized as an incidental power, necessary to carry on the business of banking, if it is convenient or useful in connection with the performance of one of the bank's established activities pursuant to its express powers.

To avoid any contest as to whether the State Banking Board has authority to authorize electronic banking transactions and whether such transactions constitutes an incidental power necessary to carry on the business of banking, it seems prudent to have specific legislation. One cannot say that the traditional banking statutes were necessarily designed to address issues of technological change and the enactment of House Bill No. 1102 postures the State Banking Board in a proactive position to address such changes.



The primary purpose for House Bill No. 1102 is to ensure North Dakota state banks can utilize new technology in the delivery of bank services as new technology is made available. Since nobody can precisely predict future forms of delivery, having the ability for the Board to authorize by rule or order the use of different electronic media provides that North Dakota state banks will be able to keep pace with technological advancements.

The Department stands in support of House Bill No. 1102 and requests a favorable "Do Pass" from the Committee.

TESTIMONY OF MARILYN FOSS  
HB 1102 - Electronic Banking Transactions

(On Behalf of the North Dakota Bankers Association)

Chairman Berg, members of the House IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association on whose behalf I appear before you today to discuss and oppose House Bill 1102. It is a short bill and I will endeavor to make my comments equally short and to the point. Yesterday I spoke to the committee about declining to adopt bills which don't address specific problems. At NDBA, we believe this is one such bill.

I understand Commissioner Preszler to want this bill, not because there is any problem with electronic bank transactions, but so that the state banking board can issue an order (or adopt rules) to permit state banks to provide their services through electronic means - at least that is what he advised me in response to my question about the need for it. Honestly, it seems to me that HB 1102 confuses regulation of bank powers, that is, the activities in which banks are permitted by law to engage, with regulations over the methods by which banks will engage in authorized activities. Banks are now providing a variety of services through electronic means - easy examples are telephone banking, electronic funds transfer services through wire transfers and ATM services. And, until now, no one, has questioned a bank's authority to use electronic means to provide authorized services to customers, just as no one has suggested that there must be a rule or bank board order to allow banks to provide their services through pen and paper. Electronic banking is the bank providing its lawful services through electronic means. It isn't the bank engaging in any new activity or asserting any new power and it shouldn't be treated as if it were.

The rise of electronic commerce has given rise to some new issues. For example, how to meet signature requirements which are imposed by law when a transaction is conducted via electronic means. The authentication issue is the focus of lawyers and legislative bodies, including a subcommittee of the UCC panel of the Commission of Uniform State Laws and at least two proposed federal laws. This is a subject over which the state banking board has neither expertise nor the interest.

All passage of this bill will do is inject uncertainty into the ordinary, day to day operations of a bank. Let me give you just one example of this. Lets say that a bank wishes to offer a Mastercard or Visa card to its customers. To do this, the bank must join the Mastercard or Visa Network as a new means of providing credit to its customers. There is no North Dakota statute which says a bank may make loans through credit cards or that it may join a network to do so. Must every bank which wants to do this go to the state banking board for permission to do so? Bills such as HB 1102 make it appear so. They make things uncertain, not certain and do nothing but impose another level of regulation on an industry which already has to much of it. I have one final comment. The commissioner has supported the bill by noting that he has had inquiries about whether a state chartered bank may offer personal computer banking services and that one bank is already offering those services. I say "good". The answer to the question is that state law does not regulate the method by which a bank may offer its services to the public. If it did, and the bank which is offering pc banking services was prohibited by our law from doing so, the commissioner would have acted to shut those services down. The bill replaces clarity with uncertainty and it should not be adopted.