

TESTIMONY OF

Tag Anderson, Director Risk Management Division

Chairman Shauer and members of the committee, my name is Tag Anderson. I am the Director of the Risk Management Division of the Office of Management and Budget (OMB). I appear today in support of SB 2109.

State agencies typically purchase routine electronic equipment and software that is used by most state team members' computers using statewide contracts. These contracts are available to all state agencies. Some of these contracts originate as multi-state cooperative contracts where state government-appropriate terms are negotiated.

This legislation is not designed to bypass that process and the need for the State Procurement Office, with assistance from North Dakota Information Technology (NDIT), to have appropriate terms, including the issue of limitation of liability provisions. However, many software or electronic products use, or are embedded with, commercially available systems or platforms that are owned by third parties.

This legislation would allow an agency, in consultation with the Attorney General's Office, OMB and NDIT to agree to limitation of liability provisions in third-party, click-through agreements or shrink wrap terms that would otherwise violate N.D.C.C. § 32-12.2-15. This will allow agencies to properly negotiate appropriate terms consistent with state law with the vendor the agency is directly contracting with, while recognizing there may be third-party systems that are used in the product the agency is purchasing that contains click-through or shrink wrap terms that are contrary to N.D.C.C. § 32-12.2-15. In some cases, the vendor we are directly contracting with does not even have the ability to contact the maker of the third-party product and obtain a side agreement just for the state. In addition, this legislation will allow for the purchase of routine commercially available products from third-party sellers where there is no need for, or even option to have, an independently negotiated contract addressing limitation of liability provisions.

Chairman Shauer and committee members, this concludes my testimony. I ask your support for SB 2109. I would be happy to answer any questions.

Thank you.