

**1999 SENATE INDUSTRY, BUSINESS AND LABOR
SB 2286**

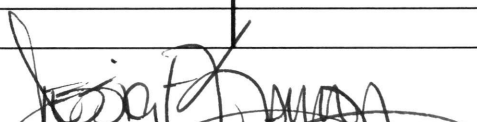
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2286

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 3, 1999

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|---------|
| 1 | x | | -3,000 |
| | | | |
| Committee Clerk Signature  | | | |

Minutes:

Senator Mutch opened the hearing on SB2286. All senators were present.

Senator Tomac introduced the bill.

Doug Barr testified in support of SB2286. His testimony is included. Senator Mutch asked him if the new section to the bill will make the records available at will. Mr. Bar said yes. Senator Krebsbach asked him if he could give her an example of a valid reason why this information would be released. Mr. Bar told her that an example of a valid reason would be a criminal investigation in a fraud appraisal and law enforcement asked for it. Senator Krebsbach told him that that would already be a valid reason for it to be released. Senator Klein stated that this bill keeps confidential what should have been confidential in the first place. Doug Barr told him that he was correct.

Courtney Koebene commented on the amendment to the bill.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2286

Hearing Date February 3, 1999

Senator Mutch concluded the hearing on SB2286.

Senator Heitkamp motioned to amend the bill. Senator Thompson seconded the motion. The motion carried with a 7-0-0 vote.

Senator Sand motioned for a do pass with amendments committee recommendation on SB2286.

Senator Heitkamp seconded his motion. The motion carried with a 7-0-0 vote.

Senator Thompson will carry the bill.

Date: ~~2/28/99~~ 2/3/99
Roll Call Vote #: 2286

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken AMEND

Motion Made By HEITKAMP Seconded By THOMPSON

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|----------|-----|----|
| Senator Mutch | X | | | | |
| Senator Sand | X | | | | |
| Senator Klein | X | | | | |
| Senator Krebsbach | X | | | | |
| Senator Heitkamp | X | | | | |
| Senator Mathern | X | | | | |
| Senator Thompson | X | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 2/13/99
 Roll Call Vote #: 2286 SR231842

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED.

Motion Made By SAND Seconded By HEITKAMP

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|----------|-----|----|
| Senator Mutch | X | | | | |
| Senator Sand | X | | | | |
| Senator Klein | X | | | | |
| Senator Krebsbach | X | | | | |
| Senator Heitkamp | X | | | | |
| Senator Mathern | X | | | | |
| Senator Thompson | X | | | | |
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Total (Yes) 7 No 0

Absent 0

Floor Assignment THOMPSON

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

REPORT OF STANDING COMMITTEE

SB 2286: 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 2286 was placed on the Sixth order on the calendar.

Page 1, line 15, remove ", including the complaint and response,"

Renumber accordingly

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2286

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2286

House Industry, Business and Labor

Conference Committee

Hearing Date 2-15-99

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-----------|
| 1 | x | | 29.0-43.8 |
| | | x | 2.4-3.0 |
| Committee Clerk Signature <i>Lisa Horner</i> | | | |

Minutes: BILL SUMMARY: Relating to confidentiality of real estate appraiser records.

Chairman Berg opened the hearing.

Douglas Bahr, an Assistant Attorney General : I am here on behalf of N.D. Real Estate

Appraisers to explain this bill. (See attached testimony)

Vice Chair Kempenich : 35.5 Can you give me a for instance.

Doug : We had a case where there was a complaint filed and the other attorney was seeking the appraisal. I issued an opinion, not to release, but it was questioned as to if the other board members could release them. This bill is to make sure, in the future, people can not go get this information to harm an individual or an organization.

Chairman Berg : 37.5 When I see section 2, I wonder if we want all documents confidential, subject to the board's discretion, and shouldn't some be available to the public?

Doug : 38.1 The first section simply says things are confidential under USPAP.

Chairman Berg : I am looking at “disciplinary” in lines 7 and 8, sect. 1. All of those are confidential.

Doug : The information obtained in those processes that are deemed confidential under USPAP, are addressed in my testimony. It doesn't make the whole process confidential; just the appraisal and supporting documentation to conduct the appraisal, confidential.

Chairman Berg : Is there any more testimony in favor of SB 2286. Is there any in opposition.

Hearing none, the hearing was closed.

The committee decided to take action later in the day.

Rep. Martinson made a motion to DO PASS and Rep. Klein seconded the motion.

ROLL CALL VOTE: 15 YES and 0 NO with 0 ABSENT. Passed. Rep. Brekke will carry the bill.

Date: 2-15-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2286

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Martinson Seconded By Klein

| Representatives | Yes | No | Representatives | Yes | No |
|-------------------------|-----|----|-----------------|-----|----|
| Chairman Berg | / | | Rep. Thorpe | / | |
| Vice Chairman Kempenich | / | | | | |
| Rep. Brekke | / | | | | |
| Rep. Ekstrom | / | | | | |
| Rep. Froseth | / | | | | |
| Rep. Glassheim | / | | | | |
| Rep. Johnson | / | | | | |
| Rep. Keiser | / | | | | |
| Rep. Klein | / | | | | |
| Rep. Koppang | / | | | | |
| Rep. Lemieux | / | | | | |
| Rep. Martinson | / | | | | |
| Rep. Severson | / | | | | |
| Rep. Stefonowicz | / | | | | |

Total (Yes) 15 No 0

Absent _____

Floor Assignment Brekke

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

REPORT OF STANDING COMMITTEE (410)
February 24, 1999 2:39 p.m.

Module No: HR-33-3482
Carrier: Brekke
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2286: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2286 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY
SB 2286

TESTIMONY OF DOUGLAS A. BAHR

ON

SENATE BILL NO. 2286

Mr. Chairman, members of the committee, I am Doug Bahr, an Assistant Attorney General and Counsel to the North Dakota Real Estate Appraiser Qualifications and Ethics Board. I am here today to give a summary of Senate Bill No. 2286 on behalf of the Real Estate Appraiser Qualifications and Ethics Board.

Section 1. N.D.C.C. ch. 43-23.3 establishes the North Dakota Real Estate Appraiser Qualifications and Ethics Board. The purpose of the Board is to license and regulate appraisers. As part of the initial licensing process and for a licensee to upgrade a license, the Board requires an applicant submit appraisals for review. The appraisals are reviewed by an independent reviewer to determine whether the appraisals comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The results of the review, as well as the education and training of the applicant, are considered to determine whether to grant a license or upgrade a license.

The Board also addresses complaints against appraisers. These complaints are typically based upon an appraisal performed by the appraiser. In order to investigate the complaint, the Board obtains a copy of the appraisal and has it reviewed by an independent appraiser to determine whether it complies with USPAP.

For the committee's information, the Uniform Standards of Professional Appraisal Practice is developed and published by the Appraisal Standards Board of the Appraisal Foundation on behalf of appraisals and users of appraisal services. USPAP is used by state and federal regulatory agencies. N.D.C.C. § 43-23.3-18 provides that North Dakota licensed and certified appraisers "shall comply with the standards of professional appraisal practice and ethical rules specified by the uniform standards of professional appraisal practice and all other standards and ethical requirements adopted by the appraisal foundation."

As explained above, in order to perform its licensing, investigative, and disciplinary functions, the Board is required to obtain appraisals. Section 1 of SB 2286 exempts as open records the appraisals and related documents obtained by the Board if they are deemed confidential under USPAP. Clients who receive appraisals expect them to be kept confidential. The client's expectation of confidentiality should not be breached because the Board obtains a copy of the appraisal to perform its licensing or disciplinary functions. For the committee's benefit, attached to my written testimony is a copy of the Confidentiality Rule of the Ethics Provision of USPAP. Also attached is a copy of Statement of Appraisal Standards number 5, which addresses the Confidentiality Rule.

Section 2. Section 2 of SB 2286 exempts as open records the Board's investigative files. It further provides, however, that the investigative file shall be provided to a

licensee if a complaint is filed against the licensee by the Board. The Board believes it's files should be exempt as open records because they contain appraisals and other sensitive information. Release of this sensitive information could adversely affect the business and financial position of both individuals and organizations that file a complaint against a licensed appraiser and third parties not involved with the complaint. It is important to note that section 2 only exempts the investigative files. If disciplinary action is commenced, the disciplinary proceeding would be subject to the open records and open meetings laws. It is also important to note that the investigative files are exempt records, not confidential. This means the Board has discretion to release the investigative files if it feels there is a valid reason to do so. N.D.C.C. § 44-04-17.1(5).

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ETHICS PROVISION (continued)

Management (continued)

Advertising for or soliciting appraisal assignments in a manner which is false, misleading or exaggerated is unethical.

Comment: In groups or organizations engaged in appraisal practice, decisions concerning finder or referral fees, contingent compensation, and advertising may not be the responsibility of an individual appraiser, but for a particular assignment, it is the responsibility of the individual appraiser to ascertain that there has been no breach of ethics, that the appraisal is prepared in accordance with these Standards, and that the report can be properly certified as required by Standards Rules 2-3, 3-2, 5-3, 6-8, 8-3 or 10-3.

The restriction on contingent compensation in the first paragraph of this section does not apply to consulting assignments where the appraiser is not acting in a disinterested manner and would not reasonably be perceived as performing a service that requires impartiality. This permitted contingent compensation must be properly disclosed in the report.

Comment: Assignments where the appraiser is not acting in a disinterested manner are further discussed in the general Comment to STANDARD 4. The preparer of the written report of such an assignment must certify that the compensation is contingent and must explain the basis for the contingency in the report (See Standards Rule 5-3) and in any transmittal letter in which conclusions are stated.

Confidentiality²

An appraiser must protect the confidential nature of the appraiser-client relationship.

Comment: An appraiser must not disclose confidential factual data obtained from a client or the results of an assignment prepared for a client to anyone other than: 1) the client and persons specifically authorized by the client; 2) such third parties as may be authorized by due process of law; and 3) a duly authorized professional peer review committee. As a corollary, it is unethical for a member of a duly authorized professional peer review committee to disclose confidential information or factual data presented to the committee.

Record Keeping

An appraiser must prepare written records of appraisal, review, and consulting assignments including oral testimony and reports and retain such records for a period of at least five (5) years after preparation or at least two (2) years after final disposition of any judicial proceeding in which testimony was given, whichever period expires last. The written records of an assignment are the workfile.

Comment: Written records of assignments include true copies of written reports, written summaries of oral testimony and reports (or a transcript of testimony), all data and statements required by these Standards, and other information as may be required to support the findings and conclusions of the appraiser. A workfile may also include information stored on electronic, magnetic, or other media as well as a reference indicating the location of other information utilized in the appraisal.

²See Statement on Appraisal Standards Number 5 on page 75.

STATEMENT ON APPRAISAL STANDARDS NO. 5 (SMT-5)

SUBJECT: Confidentiality Rule of the ETHICS PROVISION

The Confidentiality rule and the explanatory Comment relating to this rule are stated below:

An appraiser must protect the confidential nature of the appraiser-client relationship.

Comment: An appraiser must not disclose confidential factual data obtained from a client or the results of an assignment prepared for a client to anyone other than: 1) the client and persons specifically authorized by the client; 2) such third parties as may be authorized by due process of law; and 3) a duly authorized professional peer review committee. As a corollary, it is unethical for a member of a duly authorized professional peer review committee to disclose confidential information or factual data presented to the committee.

THE ISSUE:

The appraiser-client relationship begins with and is governed by a written or oral contract of engagement between the appraiser and the client. What are the confidential aspects of the appraiser-client relationship that the appraiser must protect under USPAP?

THE STATEMENT:

Fiduciary responsibilities are inherent in professional appraisal practice. The confidential nature of the appraiser's relationship with the client was recognized by the appraisal profession before December 4, 1989, the date of the ETHICS PROVISION amendment to USPAP, as evidenced by codes of professional ethics of a number of professional appraisal organizations.

The obligation of the appraiser to protect the confidential nature of the appraiser-client relationship is neither absolute nor clearly understood.

Under USPAP, an appraiser must act in good faith with regard to the legitimate interests of the client in the use of the written or oral appraisal report and the disclosure of confidential elements of the appraisal report or disclosure of confidential information given to the appraiser by the client for use in connection with the appraisal.

Obviously, there is no violation of the Confidentiality rule when an appraiser discloses the results of an assignment or confidential factual data obtained from a client to the client and all other persons specifically authorized by the client.

However, the appraiser-client relationship envisioned in USPAP is not comparable, for example, to the attorney-client relationship because there is no violation of the Confidentiality rule when an appraiser discloses, without the client's permission, the results of an assignment or confidential factual data obtained from a client to third parties authorized under due process of law or to a duly authorized professional peer review committee. Disclosure under these circumstances serves the superior interests of the public and the appraisal profession in uncovering suppression of material information or advocacy through misuse or abuse of the Confidentiality rule.

The results of an assignment prepared for a client are the appraiser's analyses, opinions, and conclusions pertinent to the assignment. These are clearly confidential matters under USPAP and may only be disclosed to the three groups cited in the Comment to the Confidentiality rule.

Under USPAP, an appraiser may only disclose confidential data obtained from client to the persons within the same three cited groups. Consequently, the meaning of "confidential factual data obtained from the client" is critically important because factual data obtained from a client that is not deemed confidential may be disclosed by an appraiser without the client's permission.