

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

4019

2001 SENATE JUDICIARY

SCR 4019

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4019

Senate Judiciary Committee

Conference Committee

Hearing Date 14 February 2001

Tape Number	Side A	Side B	Meter #
1	x	x	47.1-end/0-5.8
Committee Clerk Signature			

Minutes: **Senator Watne** opened the hearing on SCR 4019: A CONCURRENT RESOLUTION DIRECTING THE LEGISLATIVE COUNCIL TO STUDY MEDICAL AND FINANCIAL PRIVACY LAWS IN THIS STATE, THE EFFECTIVENESS OF MEDICAL AND FINANCIAL PRIVACY LAWS IN OTHER STATES, THE INTERACTION OF FEDERAL AND STATE MEDICAL AND FINANCIAL PRIVACY LAWS, AND WHETHER CURRENT MEDICAL AND FINANCIAL PRIVACY CONDITIONS MEET THE REASONABLE EXPECTATIONS OF THE CITIZENS OF NORTH DAKOTA.

**Wayne Stenchjem**, Attorney General of ND, testifies in support of the resolution. A lot of bills dealing with privacy. Concern of yours and your constituents. In addition to all bills, there have been federal regulations. These regulations are complex. We don't want this to conflict with federal regulations. I'm proposing a study resolution so an interim committee may look at these laws. (testimony attached)

**Senator Watne**, do you think this question has been opened by the Internet?

Page 2  
Senate Judiciary Committee  
Bill/Resolution Number SCR 4019  
Hearing Date 14 FEBRUARY 2001

**Wayne Stenehjem**, yes, one of the major reasons.

**Senator Nelson**, do you see this covering things like the locked in locked out provision?

**Wayne Stenehjem**, yes, that is the hot topic?

**Jack McDonald**, representing the North Dakota Newspaper Association and North Dakota Broadcasters Association, supports the bill. (testimony attached)

**Joel Gilbertson**, Executive Vice President and General Council for the Independent Community Banks of North Dakota, supports the bill. (testimony attached)

**Marilyn Foss**, general counsel for the North Dakota Bankers Association, supports the bill.  
(testimony attached)

**Buell Riech**, supports the bill.

**Mike Lefor**, supports the bill.

**Senator Watne** closed the hearing on SCR 4019.

**SENATOR BERCIER MOTIONED TO DO PASS, SECONDED BY SENATOR LYSON.  
VOTE INDICATED 6 YEAS, 0 NAYS AND 0 ABSENT AND NOT VOTING. SENATOR  
BERCIER VOLUNTEERED TO CARRY THE BILL.**

Date: 2/14/01  
 Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. SCR 4019

Senate Judiciary Committee

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

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

Action Taken ~~Failed~~ To Pass

Motion Made By Bercier Seconded By Lyson

Senators	Yes	No	Senators	Yes	No
Traynor, J. Chairman			Bercier, D.	X	
Watne, D. Vice Chairman	X		Nelson, C.	X	
Dever, D.	X				
Lyson, S.	X				
Trenbeath, T.	X				

Total (Yes) 6 No 0

Absent B 1

Floor Assignment Bercier

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

**REPORT OF STANDING COMMITTEE (410)**  
February 15, 2001 8:35 a.m.

**Module No: SR-28-3433**  
**Carrier: Bercler**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SCR 4019: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS**  
**(6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SCR 4019 was placed on the**  
**Eleventh order on the calendar.**

2001 HOUSE JUDICIARY

SCR 4019

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4019

House Judiciary Committee

Conference Committee

Hearing Date 03-05-01

Tape Number	Side A	Side B	Meter #
TAPE I		x	1282 to 2161

Committee Clerk Signature *Joan Dries*

Minutes: Chairman DeKrey opened the hearing on SCR 4019. A concurrent resolution directing the Legislative Council to study medical and financial privacy laws in this state, the effectiveness of medical and financial privacy laws in other states, the interaction of federal and state medical and financial privacy laws and whether current medical and financial privacy protections meets the reasonable expectations of the citizens of North Dakota.

Wayne Stenejem: North Dakota Attorney General, We need to conduct a study to see what we have in North Dakota may be an enhancement, how it interplay's with federal legislation that is coming along. And whether in North Dakota we need additional legislation of some kind to bring us along.

Chairman DeKrey: Are there any questions, if none thank you for appearing before the committee.



Page 2  
House Judiciary Committee  
Bill/Resolution Number SCR 4019  
Hearing Date 03-05-01

Jack Mc Donald: North Dakota Newspaper Association as well as The Independent Community Banks of North Dakota. Agreed with the Attorney General comments and stand in support of SCR 4019.

Chairman DeKrey: Are there questions, thank you for appearing.

Marilyn Foss: general counsel for the North Dakota bankers Association. (see attached testimony).

Chairman DeKrey: Any questions, thank you for appearing.

Hugh Wright: North Dakota Credit Union League. The North Dakota credit Union League strongly supports this bill.

Chairman DeKrey: Any questions, thank you for appearing before this committee.

Cal Rollson: attorney of Bismarek and I represent a Pharmaceutical Research Manufacture. in regard to the health areas of this bill, we would offer the resources of our organization to provide assistance in your research of this bill. We encourage the support of this bill.

Mr. Dan Almer: lobbyist for Blue Cross Blue Shield, me too.

Chairman DeKrey: Anyone else wishing to testify on SCR 4019, if not, we will close the hearing on SCR 4019.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SCR 4019b

House Judiciary Committee

Conference Committee

Hearing Date 03-07-01

Tape Number	Side A	Side B	Meter #
TAPE II		x	664 to 855
Committee Clerk Signature <i>Joan Diens</i>			

Minutes: Vice Chr Kretschmar called the committee to order. We will take up SCR 4019. What are the wishes of the committee.

COMMITTEE ACTION

Rep Disrud moved a DO PASS, seconded by Rep Kingsbury.

DISCUSSION

Vice Chr Kretschmar: the clerk will call the roll on a DO PASS motion on SCR 4019. The motion passed with 12 YES, 0 NO and 3 ABSENT. Rep Disrud will be the carrier. The resolution will be placed on the CONSENT CALENDAR.

Date: 03-07-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SCR-4019

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_

or

Conference Committee

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

Action Taken Do Pass

Motion Made By Rep Disrud Seconded By Rep Kingsbury

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey					
VICE CHR --Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande	✓				
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney					
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Disrud

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

**REPORT OF STANDING COMMITTEE (410)**  
March 7, 2001 4:40 p.m.

**Module No: HR-39-5053**  
**Carrier: Disrud**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SCR 4019: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SCR 4019 was placed on the Tenth order on the calendar.**

2001 TESTIMONY

SCR 4019

**Testimony in Favor of S.C.R. 4019**  
**Joel Gilbertson, Executive Vice President**  
**Independent Community Banks of North Dakota**

Mr. Chairman, I am Joel Gilbertson, Executive Vice President and General Counsel for the Independent Community Banks of North Dakota. ICBND is a state association of 94 banks located in communities of all sizes located all over the state.

Gramm Leach Bliley has shaken up the privacy "globe" a lot. There is much public interest and there are many bills. We do have federal legislation that has passed and affects every state in some respect. We still don't know what the exact effect will be in North Dakota because of our unusual predicament. We want to let our community banks read all of the regulations sent out after Gramm Leach Bliley and know that if they meet those requirements they are ok. That is embodied in S.B. 2191, and that will get our banks through the biennium.

Other than that, we want to let things settle. Let's wait until the session is over and embark on a two year extensive study by those that are interested and take another look at the environment in two years. We support S.C.R. 4019, which does just that.

We must urge a Do Pass on this bill. We want to take a look at what is happening around the country and then jump into this task. Although rushing into implementation of new state laws may have some appeal, we believe the wiser course is to let the dust settle and undertake a comprehensive but deliberate study of this significant, but highly complex public policy matter.

## consumer privacy vs. financial services: striking a balance can be tricky

March 2, 2000 (*Finance and Commerce*)

By Karen L. Grandstrand, Banking

Phone: (612) 347-7153

E-Mail: [kgrandstrand@fredlaw.com](mailto:kgrandstrand@fredlaw.com)

State legislatures should not feel pressured to quickly enact state privacy laws to protect financial data. Late in 1999, Congress passed a new privacy law that attempts to protect consumer privacy without overwhelmingly burdening financial institutions or consumers. Striking this balance is tricky and we do not know whether the new federal law has it right. Only time will tell – we need to operate under the new law to gain an understanding of its practical implications. Adding laws in 50 states, on top of an untested federal law, is not the way to approach this important public policy issue.

The federal financial modernization legislation, known as the Gramm-Leach-Bliley Act, includes a new privacy law, captioned Disclosure of Nonpublic Personal Information. This law limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties. It also requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties.

The federal law applies to any company engaged in financial services – whether or not the company is affiliated with a bank. Thus, the law not only covers banks, thrifts, and credit unions, it covers other companies that traditionally have not been considered financial institutions.

As explained by the Federal Trade Commission's ("FTC") proposed rule of February 24, personal property appraisers, real estate appraisers, retailers, career counselors for employees in financial occupations, real estate settlement services, manufacturers of computer hardware and software, and travel agencies operated in connection with financial services are considered financial institutions under the privacy act.

The FTC rule further explains, however, that while many of these entities come within the broad definition of financial institution, they will likely not be subject to many of the privacy rules because they do not provide services or products to "consumers." The law does not cover the provision of products or services to businesses. Also, not every product or service that a financial institution provides to a consumer is a financial product. Thus, a department store that issues its own credit card directly to consumers provides a financial service (credit) to consumers who use the card; but when it sells merchandise, it provides a nonfinancial product or service.

The law imposes three basic requirements:

- Financial institutions must provide an initial notice to consumers

about their privacy policies, describing the conditions under which they may disclose nonpublic personal information to nonaffiliated third parties and affiliates. Institutions must provide this notice before disclosing the information to nonaffiliated third parties.

- Financial institutions must provide annual notices of their privacy policies to consumers with whom they establish a customer relationship.
- Financial institutions must provide a method for consumers to "opt out" of disclosures to nonaffiliated third parties.

The law does contain a number of exceptions. Financial institutions can disclose information, without giving consumers the ability to prohibit disclosure, in recognition of the need for financial institutions to disclose information to process and service transactions, prevent fraud, comply with other laws, respond to judicial process, and the like.

The law also recognizes that smaller financial institutions may have a greater need to rely on nonaffiliated third parties to provide products and services to their customers. Unlike large banks, small banks do not typically own their own insurance agencies or securities firms. They contract with other companies to provide these services to their customers. The law recognizes this marketplace reality, and allows an institution to provide information about a consumer to a nonaffiliated third party to perform services (which may include joint marketing) or functions on the bank's behalf. This can only be done, however, if the consumer is given notice and if the financial institution enters into a confidentiality contract with the third party.

Will this new federal privacy law work? We don't know. It is new and untested. No one knows whether the law will offer the right protections without unduly burdening financial institutions and consumers. While all of us, as consumers, want some amount of privacy in our lives, we also want to be able to conduct our financial transactions without delays and excessive paperwork. Crafting a law to accomplish this balance is not easy.

The new federal law is effective as of November 13, 2000. In the meantime, eight different federal agencies are drafting regulations to clarify its scope. These regulations are due to be final by May 12, 2000.

While it may be politically popular to rush and implement state laws in each of the states, is this the best way to approach this significant, highly complex, public policy matter? I think not. Let's see how the federal scheme is working before adding potentially inconsistent and costly state laws.



## TESTIMONY OF MARILYN FOSS IN FAVOR OF SCR 4019

Chairman Traynor, members of the Judiciary Committee, my name is Mariiyn Foss. I am general counsel for the North Dakota Bankers Association. NDBA and its member banks strongly support SCR 4019

NDBA member banks are committed to a continuous process of developing reasonable policies and security systems to protect information in their possession from irresponsible use and unauthorized access . This was true before GLB and it is true today. A bank must maintain a customer's trust in order to keep the customer. That's an old principle of the banking business and it applies today as it always has.

SCR 4019 focuses on reasonable expectations of privacy for financial and medical information in the face of technological change. This covers a variety of concepts, ranging from complete concealment, protection from intrusion, and limits on access, disclosure, use.

I submit that most of the information which people now seek to protect as private is available will continue to be. For example, virtually all of the information on the face of a check is "nonpublic personal financial information" under the regulations which implement GLB. And, yet people write checks and distribute them in public arenas to persons and payees who have no reason or obligation to protect or conceal the information which the check contains. I have been in the audience for a few demonstrations about how Internet related privacy intrusions. The demonstrations focused on information which most of us make no effort at all to conceal: names, addresses, telephone numbers, car license numbers , etc. What is new is the fact that more people can now access and use the information.

We think the reasonable use of information is a public policy issue and that it deserves careful consideration. After all, the wide spread availability of information and information sharing has brought us to an information based economy which is the envy of the world even if it is having a "soft landing". And, it has produced for our citizens convenient access to a broad range of financial products and services. Consider. The US economy has been founded on a system which, until now, has, virtually without exception, permitted information to be freely acquired and shared. As a result, consumers in the US have access to ATMs, debit cards, readily accepted credit cards, same day pre-approved loans, individualized tax advantaged products such as home equity loans and lines of credit, and a variety of investment and insurance opportunities. Because our laws have allowed information to be shared, we have been able to develop the data bases and systems necessary to measure risk in a way which has allowed home mortgages and other financial assets to be securitized and secondary markets to develop. It is estimated that this feature of the US credit markets alone has resulted in mortgage interest rates in the US which are in the range of 200 basis points lower than elsewhere in the world and has substantially contributed to the high level of homeownership here. Because our laws have allowed information sharing our consumers now receive quick decision making on applications for loans, insurance and other financial products. And, they can receive a single statement for their various financial accounts. Consider how consumer convenience will be impaired or what now unknown advancements will not occur if we now turn the system on its head and impede or prohibit information sharing.

The importance of the ability to gather, analyze and use consumer data to the development and existence of a vibrant economy is recognized by economic experts. Allan Greenspan has explained it in the following way:

“The plethora of information on the characteristics of consumers” has been a “critical component of our ever more finely hewn competitive market system.” “Such information has enabled producers and marketers of our consuming public to fine tune production schedules to the ever greater demands of our consuming public for diversity and individuality of products and services. . . It has enabled financial institutions to offer a wide variety of customized insurance and other products. Detailed data obtained from consumers as they seek credit or make product choices help engender the whole set of sensitive price signals that are so essential to the functioning of an advanced information based economy as ours.”

We're not suggesting that you accept Mr. Greenspan's or anyone else's analysis without question. We're supporting SCR 4019 and the special committee because they provide an appropriate vehicle from which thoroughly examine the issues, the evidence, and the consequences to laws which seek to stop the flow and use of information as well as the reasonable expectations of North Dakota citizens and North Dakota businesses. For that reason we urge this committee to give SCR 4019 a DO PASS recommendation.

February 14, 2001

SENATE JUDICIARY COMMITTEE  
SCR 4019

SENATOR TRAYNOR AND COMMITTEE MEMBERS:

Happy Valentines Day. My name is Jack McDonald. I'm appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. We support SCR 4019 and urge you to give it a do pass.

Privacy is a complicated area, as we're finding out in this legislative session. There are numerous bills dealing with financial, medical and insurance information privacy. There was a resolution for a constitutional amendment. In Congress, there are at least a dozen or more privacy bills pending. The FTC has just issued 170 pages of regulations concerning banking privacy. It goes on and on.

North Dakota needs to take a long and careful look at what, if any, steps are needed in the privacy area in light of all the Federal legislation. It's important that we don't put North Dakota businesses and individuals at a disadvantage with legislation that is out of step with the rest of the country.

Therefore, we think a careful, two-year study is the proper approach. Thank you for your time and consideration. I'd be happy to answer any questions you might have.

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SCR 4019 focuses on reasonable expectations of privacy about financial and medical information in the face of technological change. This covers a variety of concepts, including complete concealment, protection from intrusion, and limits on access, disclosure, use.

I submit that most of the information which people now seek to protect from view is available to those with the initiative to seek it out. And, I submit it is likely the information will continue to be available. For example, virtually all of the information on the face of a check is "nonpublic personal financial information" under the GLB regulations. Yet people write checks and distribute them in public arenas to persons and payees who have no reason or obligation to protect or conceal the information which the check contains and no obligation not to use that information. I have seen a few demonstrations about Internet related privacy intrusions. The demonstrations focused on information which most of us make no effort at all to conceal: names, addresses, telephone

numbers, car license numbers, etc. What is new is the fact that more people can now access and then use the information.

We think what constitutes the reasonable use of information is a public policy issue and that it deserves careful consideration. After all, the wide spread availability of information and information sharing has brought us to an information based economy which is the envy of the world even if it is having a "soft (and bumpy) landing". And, it is information sharing that has produced for our citizens convenient access to a broad range of financial products and services. Consider. The US economy has been founded on a system which, until now, has, virtually without exception, permitted information which is in the public arena to be freely acquired and shared, even if the information is "personal". As a result, consumers in the US have access to ATMs, debit cards, readily accepted credit cards, same day pre-approved loans, individualized tax advantaged products such as home equity loans and lines of credit, and a variety of investment and insurance opportunities. Because our laws have allowed information to be shared, we have been able to develop the data bases and systems necessary to measure risk in a way which has allowed home mortgages and other financial assets to be securitized and secondary markets to develop. It is estimated that this feature of the US credit markets alone has resulted in mortgage interest rates in the US which are in the range of 200 basis points lower than elsewhere in the world and has substantially contributed to the high level of homeownership here. Because our laws have allowed information sharing our consumers now receive quick decision making on applications for loans, insurance and other financial products. And, they can receive a single statement for their various financial accounts. Consider

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