

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1092

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Operator's Signature

*Yalosta Rickford*

Date

10/2/03

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1092

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*Halista Rickford*

Date

*10/2/03*

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1092

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 01-13-03

Tape Number	Side A	Side B	Meter #
1	X		847-3218
Committee Clerk Signature <i>Judith Hammer (prepared by BL)</i>			

Minutes: **CHAIR KEISER**: Opened hearing on HB 1092

**MARY KAE KELSCH** (Asst. Att. Gen): Discussed the three classes of records (open, confidential, and "exempt," which are neither public nor confidential. Bill also includes measures concerning information of clients of the UND School of Law, as well as other open records issues.

**REP. FROSETH**: Would the other bill concerning SSN on hunting and fishing licenses be necessary if the matter is covered in this bill?

**M.K. KELSCH**: Not sure if they are exactly the same.

**REP. NOTTESTAD**: SSN are part of the medicare program, in addition to other medical programs. What implications would this bill have on these areas?

**M.K. KELSCH**: Was a concern, which is why the section was added about employee benefits.

It is unclear about what changes will have to be made.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 1092

Hearing Date 1-13-03

**REP. FROSETH:** In order to really make SSN truly confidential, doesn't the Federal gov't have to discontinue use of SSN?

**M.K. KELSCH:** Even though the Feds won't do it, this will at least do something to help our citizen.

**ATTORNEY GENERAL STENJHEM:** Re-emphasized the importance of this bill. This bill goes farther from the previous bill allowing a new ID number on drivers license. Emphasized all records in ND are open unless exempted by Legislature.

**CHAIR KEISER:** Is there a concern with the Class C felony for disseminating that information?

**AG STENJHEM:** General classification of penalties for people who release confidential information. One exemption is for County Recorders because the old records on microfiche have SSN. Asked bill to be held until they can come back with what they can do. SSN on hunting licences is mandate from Federal gov't because people who are behind on child support are not allowed to be issued licenses and it is a tracking mechanism.

**REP. KLEIN:** Another bill requires that meetings that are "closed" be taped and be kept for X number of years. Will that have an impact on the smaller agencies?

**AG STENJHEM:** There will be an expense.

**JACK McDONALD (NDNA, NDBA):** (see testimony)

**CHAIR KEISER:** Closed hearing on HB 1092

(End at 3218)

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1092

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/20/03

Tape Number	Side A	Side B	Meter #
1	x		2.2-5.0
2	x		22.0-end
2		x	0.0-10.7
2		x	27.5-36.9
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **CHAIR KEISER** called for committee work on HB 1092.

**REP. RUBY:** Reported that the Attorney General's office is completing the amendment draft and it will be ready for committee review and action this afternoon.

Concluded.

Minutes: **CHAIR KEISER** called for committee work on HB 1092.

**MARY KAY KELSCH** (Attorney General's Office) appeared to present the amendments drafted by the AG's office. (See attached testimony). County Recorders have expressed concern about this bill, primarily because redacting Social Security numbers from their files would require labor intensive measures by staff and onerous demands of their fiscal budgets to compensate employees or temporaries. Compliance date would take effect on August 1, 2003.

**REP. FROSETH:** What liability would a County Recorder face for missing a redaction?

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*Yalosta Rickford*  
Operator's Signature

*10/2/03*  
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1092

Hearing Date 1/20/03

**KELSCH:** They would have to "knowingly" release a document with a SS# to be held liable for a criminal or civil offense.

Further discussion clarified issues and questions regarding SS#'s on bank loans and whether County Recorders might redact the SS#'s on a case by case basis as records were requested by the public and issued by the County Recorder's Office.

**EDWARD ERICKSON** (Attorney General's Office) was present to elaborate on the intent of this legislation. He state that HB 1185 is designed to work within the same parameters as HB 1092.

**REP. FROSETH** requested that the record note that a County Recorder would not be held responsible if SS#'s were inadvertently released.

Further discussion centered on just how banks and mortgages, Division of Vital Statistics records, genealogical and family research, background checks etc. would be required to alter their practices in order for County Recorders to comply with this legislation. Also clarified were those conditions under which Fire Departments, Emergency Response Teams, Law Enforcement Agencies and Workers Comp can release confidential information.

**ERICKSON** will draft language to be included in the proposed amendment, adding a 4th subsection to Section 1 and revision to Subsection 3 of section 11.

Committee work resumed prior to the afternoon hearing sessions.

**CHAIR KEISER** called for continuing committee work on HB 1092.

**REP. RUBY** explained the nuances of Section 11, subs. 3. **REP. KASPER** withdrew any objections he had pertaining to the previous version of the amendment. Clarifications were

Page 3  
House Industry, Business and Labor Committee  
Bill/Resolution Number HB 1092  
Hearing Date 1/20/03

discussed respective to release of the names of minor children, next of kin notifications, and what information is generally released to the press and media. **REP. JOHNSON** moved to accept the amendment. **REP. RUBY** seconded. A voice vote carried the motion.

**REP. NOTTESTAD** moved for a **Do Pass as Amended**.

**REP. RUBY** seconded the motion. The motion passed.

**The roll call vote results: 13-0-1.**

**REP RUBY** will carry this bill on the floor.

*Salista Rickford*  
Operator's Signature

*10/2/03*  
Date

38175.0101  
Title.0200

Prepared by the Legislative Council staff for  
House Industry, Business and Labor  
January 24, 2003

VR  
1/28/03  
102

HOUSE AMENDMENTS TO HOUSE BILL NO. 1092 IBL 1-29-03

Page 1, line 1, replace "two" with "a new section to chapter 11-18, a new subsection to section 23-02.1-28, and three"

Page 1, line 2, after "to" insert "redaction of social security numbers by the county recorder," and replace "and" with ", the confidentiality of"

Page 1, line 3, after "law" insert ", and the confidentiality of records of fire departments and rural fire protection districts"

Page 1, line 4, after the first comma insert "section 23-02.1-27, subsection 6 of section 41-09-73,"

Page 1, after line 9, insert:

**"SECTION 1.** A new section to chapter 11-18 of the North Dakota Century Code is created and enacted as follows:

**Filing or recording documents with recorder - Social security numbers.**

1. A document that includes a social security number may not be filed or recorded with the recorder unless a law requires the social security number to be in the document in order to be filed or recorded. A document that is required to contain a social security number may be recorded in the real estate records with the social security number redacted.
2. Notwithstanding any other provision of law, when a copy of a document that includes a social security number is requested, the recorder is not required to redact the social security number unless the document was filed or recorded with the recorder after the effective date of this Act.
3. A document that must include a social security number under chapters 14-03 and 23-02.1 may be processed and recorded under those chapters; however, the social security number is confidential and must be redacted before a copy or certified copy may be provided to the public."

Page 1, after line 22, insert:

**"SECTION 4. AMENDMENT.** Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**23-02.1-27. Disclosure of records.** The state registrar, and local registrars, may supervise and regulate physical access to vital records to protect vital records from loss, mutilation, or destruction and to prevent improper disclosure of records that are confidential. Information relating to the birth or fetal death of a child to a woman who was not married to the child's father when the child was conceived or born may be disclosed only to the child's guardian, to the ~~person~~ individual to whom the record relates if that ~~person~~ individual is at least eighteen years old, to the parent of the child, or upon order of a court of competent jurisdiction. Information in vital records indicating cause of death may not be disclosed except to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the deceased, to the child fatality review panel, or upon order of a court of competent jurisdiction. An individual's social security number contained in vital records may not be

Page No. 1

38175.0101

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Operator's Signature

*Halima Rickford*

Date

*10/2/03*



HOUSE AMENDMENTS TO HB 1092 IBL 1-29-03

disclosed except to the individual to whom it pertains, that individual's lawful agent or guardian, or by order of a court. Only a certified copy of a certificate or record may be provided to the public.

**SECTION 5.** A new subsection to section 23-02.1-28 of the North Dakota Century Code is created and enacted as follows:

A certified copy may not disclose an individual's social security number unless the copy is being provided to the individual to whom it pertains, that individual's lawful agent or guardian, or by order of a court.

**SECTION 6. AMENDMENT.** Subsection 6 of section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~Effective January 1, 2002, any~~ Any social security number or federal tax identification number submitted under subdivision e of subsection 1 is not a public record and may not be disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a copy of the record. A debtor's social security number or federal tax identification number may be filed only in the filing office with the central indexing system and may not be recorded in the real property records.

HOUSE AMENDMENT TO HB 1092 IBL 1-29-03

Page 2, line 25, replace "person" with "individual" and after "assigned" insert ", that individual's lawful agent or guardian, or by order of a court"

Page 2, after line 31, insert:

**"SECTION 11.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

**Records of fire departments and rural fire protection districts confidential.**

1. a. An investigation record of a fire department or a rural fire protection district is confidential until the investigation:
  - (1) is closed and not referred for further criminal investigation or prosecution; or
  - (2) The criminal investigation is no longer active under section 44-04-18.7.
- b. This subsection does not restrict the release of the name and identifiable biographical information of a child under section 12.1-35-03.
2. Standard operating procedures written for emergency response, prefire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the hands of a fire department or rural fire protection district are exempt from section 44-04-18.
3. Individually identifiable health information obtained by a fire department or rural fire protection district in the course of an investigation is confidential.

Renumber accordingly

Date: 1/20/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1092

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38175.0101 Title # 0200

Action Taken Do pass as amended

Motion Made By NO Hestad Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelser	✓		Rep.Boe	✓	
Rep. Severson, Vice-Chair	✓		Rep. Ekstrom	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser		
Rep. Johnson	✓				
Rep. Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep. Tieman	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Ruby

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

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

REPORT OF STANDING COMMITTEE (410)  
January 29, 2003 12:27 p.m.

Module No: HF-17-1250  
Carrier: Ruby  
Insert LC: 38175.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**HB 1092: Industry, Business and Labor Committee (Rep. Kelsner, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1092 was placed  
on the Sixth order on the calendar.

Page 1, line 1, replace "two" with "a new section to chapter 11-18, a new subsection to section 23-02.1-28, and three"

Page 1, line 2, after "to" insert "redaction of social security numbers by the county recorder," and replace "and" with ", the confidentiality of"

Page 1, line 3, after "law" insert ", and the confidentiality of records of fire departments and rural fire protection districts"

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2. Notwithstanding any other provision of law, when a copy of a document that includes a social security number is requested, the recorder is not required to redact the social security number unless the document was filed or recorded with the recorder after the effective date of this Act.
3. A document that must include a social security number under chapters 14-03 and 23-02.1 may be processed and recorded under those chapters; however, the social security number is confidential and must be redacted before a copy or certified copy may be provided to the public."

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REPORT OF STANDING COMMITTEE (410)  
January 29, 2003 12:27 p.m.

Module No: HR-17-1250  
Carrier: Ruby  
Insert LC: 38175.0101 Title: .0200

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**SECTION 6. AMENDMENT.** Subsection 6 of section 41-09-73 of the North Dakota Century Code is amended and reenacted as follows:

6. ~~Effective January 1, 2002, any~~ Any social security number or federal tax identification number submitted under subdivision e of subsection 1 is not a public record and may not be disclosed as part of any search under section 41-09-94 or 41-09-96 or as part of a copy of the record. A debtor's social security number or federal tax identification number may be filed only in the filing office with the central indexing system and may not be recorded in the real property records.

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Page 2, after line 31, insert:

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  - (2) The criminal investigation is no longer active under section 44-04-18.7.
- b. This subsection does not restrict the release of the name and identifiable biographical information of a child under section 12.1-35-03.
2. Standard operating procedures written for emergency response, prefire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the hands of a fire department or rural fire protection district are exempt from section 44-04-18.
3. Individually identifiable health information obtained by a fire department or rural fire protection district in the course of an investigation is confidential."

Renumber accordingly

(2) DESK, (3) COMM

Page No. 2

HR-17-1250

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Valista Rickford  
Operator's Signature

10/2/03  
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1092

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*Salvatore Rickford*

Date

*10/2/03*

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1092

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-12-03

Tape Number	Side A	Side B	Meter #
1	xxx		2800-end
1		xxxx	0-920
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Mutch opened the hearing on HB 1092. All Senators were present.

HB 1092 relates to confidentiality of social security numbers, notice of emergency or special meetings, and release of certain information received by the attorney general when preparing open records and meetings opinions.

**Testimony in support of HB 1092.**

**Mary Kae Kelsch**, Assistant Attorney General, introduced the bill. See attached testimony.

**Senator Krebsbach:** In section 10 on page 4 you specifically address the school of law. Is there protection for the Marketing Club at UND?

**Mary Kae:** For social security numbers, that will apply to any public entity across the board.

This section 10 is in regards beyond social security numbers. They do low income divorces. In the course of that you can get very personal information, so this will allow this to be private information as if they had gone to a private attorney.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1092

Hearing Date 03-12-03

**Senator Klein:** In regards to the amendment, wouldn't it be easier for the bankers to notify people rather than have the reporters send notice?

**Mary Kae:** I will defer to the bankers association and county reporters as to what the easiest method would be.

**Senator Nething:** Is there anything in here that would free up an individual who certifies a record once that existing social security number is expunged?

**Mary Kae:** That has been brought to our attention and we have that because the county reporters also certify. We do address that in section 5. The stamp will have to state that this is a certified copy and name the statute that allows them to remove the social security number.

**Senator Mutch:** What if an individual business man wants identification? For instance if the customer wants to cash a check, and the business man wants the social security number.

**Mary Kae:** I will let the Attorney General address that.

**Wayne Stenehjem,** Attorney General, spoke in support of the bill. See brochure. He states that identity theft problem is the fastest growing crime in the U.S. We in North Dakota have had problems as well. We have worked with the highway department to not have social security numbers on driver's licenses. The social security number is the rail that identity thieves need. This bill is designed to remove social security numbers from public record.

**Joel Boespflug,** Bismarck Fire Chief, spoke in support of the bill. See attached testimony.

**Marilyn Foss,** ND Bankers Association spoke in support of the bill.

**Rod St. Aubyn,** Blue Cross Blue Shield, was neutral to the bill, for the record.

**Hearing was closed. No action taken at this time.**

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1092

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-24-03

Tape Number	Side A	Side B	Meter #
1	xxx		420-750
Committee Clerk Signature <i>Lisa VanBerkum</i>			

Minutes: Chairman Mutch opened the discussion on HB 1092. All Senators were present.

HB 1092 relates to confidentiality of social security numbers, notice of emergency or special meetings, and release of certain information received by the attorney general when preparing open records and meetings opinions.

Amendments were presented by the Attorney General's Office. See attached.

**Senator Klein:** One of the questions was from the recorders. The banks are fine with the bill.

The only thing that has changed is the date from 2004 to 2003.

**Senator Klein moved the amendments. Senator Krebsbach seconded.**

**Roll Call Vote: 7 yes. 0 no. 0 absent.**

**Senator Klein moved a DO PASS AS AMENDED. Senator Krebsbach seconded.**

**Roll Call Vote: 7 yes. 0 no. 0 absent.**

**Carrier: Senator Klein**

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*Valista Rickford*  
Operator's Signature

*10/2/03*  
Date



PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1092

Page 1, line 1, after "Act" insert "to provide for public notice of restrictions against filing or recording social security or federal tax identification numbers with county recorders;"

Page 1, line 6, remove the first "and"

Page 1, line 11, after "opinions" insert "; to provide an effective date and declare an emergency"

Page 5, line 4, remove "In the course of an investigation"

Page 6, after line 2, insert:

**SECTION 14. RECORDERS - NOTICE TO PUBLIC.** Section 9 of this Act does not apply to recorders until December 1, 2003. From the effective date of this act until November 30, 2003, recorders shall provide written notice of the relevant terms of this Act to persons filing or recording documents if the documents contain social security or federal tax identification numbers. The notice shall also state that documents containing social security and federal tax identification numbers may not be filed or recorded after November 30, 2003.

**SECTION 15. EFFECTIVE DATE.** Sections 1 and 6 of this Act become effective on December 1, 2003.

**SECTION 16. EFFECTIVE DATE.** Section 14 of this Act is effective until November 30, 2003, and is ineffective after that date."

**SECTION 17. EMERGENCY.** This Act is declared to be an emergency measure.

Renumber accordingly

Mary Kay Kelsch

*Yolanda Rickford*  
Operator's Signature

10/2/03  
Date

38175.0201  
Title.0300

Adopted by the Industry, Business and Labor  
Committee

March 24, 2003

*JB*  
3-24-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1092

Page 1, line 6, remove the first "and"

Page 1, line 11, after "opinions" insert "; to provide for application; to provide an effective date;  
and to declare an emergency"

Page 5, line 4, remove "In the course of an investigation"

Page 6, after line 2, insert:

**"SECTION 14. APPLICATION - NOTICE TO PUBLIC.** Section 9 of this Act does not apply to recorders until December 1, 2003. From the effective date of this Act until November 30, 2003, each recorder shall provide written notice of the relevant terms of this Act to any individual filing or recording a document if the document contains a social security or federal tax identification number. The notice must also state that a document containing a social security and federal tax identification number may not be filed or recorded after November 30, 2003.

**SECTION 15. EFFECTIVE DATE.** Sections 1 and 6 of this Act become effective on December 1, 2003.

**SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

Page No. 1

38175.0201

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*Yalosta Rickford*  
Operator's Signature

*10/2/03*  
Date

Date: 3-24-03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate 1092 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments of Mary Kay Kelsch <sup>Asst. Attorney General</sup>  
Motion Made By Klein Seconded By Krebsbach

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Nething	X				
Senator Heitkamp	X				
Senator Every	X				
Senator Espgaard	X				

Total (Yes) Click here to type Yes Vote 7 No Click here to type No Vote 0

Absent 0

Floor Assignment Click here to type Floor Assignment

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

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Stalosta Rickford  
Operator's Signature

10/2/03  
Date

Date: 3-24-03  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate 1092 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass As Amended

Motion Made By

Klein

Seconded By

Krebsbach

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Nething	X				
Senator Heitkamp	X				
Senator Every	X				
Senator Espegard	X				

Total (Yes) Click here to type Yes Vote 7 No Click here to type No Vote 0

Absent

0

Floor Assignment

Click here to type Floor Assignment

Klein

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

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Yolanda Rickford  
Operator's Signature

10/2/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
March 25, 2003 2:10 p.m.

Module No: SR-53-5697  
Carrier: Klein  
Insert LC: 38175.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

HB 1092, as engrossed: 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). Engrossed HB 1092 was placed on the Sixth order on the calendar.

Page 1, line 6, remove the first "and"

Page 1, line 11, after "opinions" insert "; to provide for application; to provide an effective date; and to declare an emergency"

Page 5, line 4, remove "In the course of an investigation"

Page 6, after line 2, insert:

**"SECTION 14. APPLICATION - NOTICE TO PUBLIC.** Section 9 of this Act does not apply to recorders until December 1, 2003. From the effective date of this Act until November 30, 2003, each recorder shall provide written notice of the relevant terms of this Act to any individual filing or recording a document if the document contains a social security or federal tax identification number. The notice must also state that a document containing a social security and federal tax identification number may not be filed or recorded after November 30, 2003.

**SECTION 15. EFFECTIVE DATE.** Sections 1 and 6 of this Act become effective on December 1, 2003.

**SECTION 16. EMERGENCY.** This Act is declared to be an emergency measure."

Renumber accordingly

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

HB 1092

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*Salista Rickford*

Date

*10/2/03*

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1092

House Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date April 3, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.0-4.8
Committee Clerk Signature <i>Judith Hamma</i>			

Minutes: Conference Committee Chairman Ruby opened the conference on HB 1092.

All appointed conference committee members were present:

Representatives Ruby, Nottestad and Thorpe

Senators Klein, Espgaard & Heitkamp.

Conference Committee Chairman Ruby stated that Chairman Keiser did not concur only because the Supreme Court's office thought that one area relating to records that contain social security numbers (child support etc.) that are maintained by the County Recorder would be adversely affected by this legislation.

Mary Kay Kelsh, office of the Attorney General, met with Supreme Court officials to explain the bill and how it would not apply to the situation with which they had concerns. This legislation pertains to open records and not exempt records, i.e. records that are available to proper authorities when needed but these records are not available to the public.

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*10/2/03*  
Date

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1092

Hearing Date April 3, 2003

**Senator Klein:** One of the changes came in removing the phrase "in the course of an investigation". I think we discussed that with Mary Kay Kelsh. That came up for rural fire departments and emergency rescue teams, any information they get is confidential. The way we understand it, the records are confidential until investigations are completed and closed.

**Mary Kay Kelsh, office of the Attorney General,** explained this issue. She stated that firefighters said that they obtain medical information, not necessarily during the course of an investigation, but while routinely responding to a medical emergency such as a heart attack or an auto accident. They were concerned that if the aforementioned language was included they could only keep medical information if there was an investigation and not in the course of their regular duties as emergency personnel.

**Senator Klein:** We added Section 14. Application - Notice to Public. There was some discussion about whether or not County Recorders could get this mechanism in place in time. There was discussion about moving it back to 2004, but the Recorders decided they would rather move it up as soon as possible. They were amenable to the December 1, 2003 effective date and the emergency measure. They want to get the word out that they will not accept filings with the SS# on it after November 30, 2003. Banks and credit unions were in during the testimony so they are apprised and understand it, they are already notifying their customers and subsidiaries. There are other people who utilize the filings and information available at the Recorder Offices so it is important that the notification process get underway.

**Rep. Ruby:** So the notification process begins as soon as the bill is law and after December 1, 2003, County Recorders will no longer accept filings containing Social Security numbers and will return them to the filer for correction, is that correct?

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*10/2/03*  
Date



Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number HB 1092

Hearing Date April 3, 2003

**Senator Klein:** That's correct.

**Rep. Nottestad** moved to accede to the Senate amendments.

**Rep. Thorpe** seconded the motion.

**Results** of the roll call vote were **unanimous: 6-0.**

HB 1092 will be placed on the Seventh Order.

**Rep. Ruby** closed the conference committee meeting.

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10/2/03  
Date

REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420  
\*\*\*\*\*

07398

(Bill Number) HR 1092 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Klein ✓  
Espesard ✓  
Heitkamp ✓

For the House:

Ruby ✓  
Nottingham ✓  
Thorpe ✓

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
the (Senate/House) amendments on (S/J/H) page(s) 1078 - 1078

☒ and place 1092 on the Seventh order.  
727

☐ , adopt (further) amendments as follows, and place  
\_\_\_\_\_ on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed. 690/515

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

DATE: 4/13/03

CARRIER: Rep Ruby

LC NO. \_\_\_\_\_ of amendment

LC NO. \_\_\_\_\_ of engrossment

Emergency clause added or deleted \_\_\_\_\_

Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

Yalosta Rickford  
Operator's Signature

10/2/03  
Date

REPORT OF CONFERENCE COMMITTEE (420)  
April 3, 2003 4:33 p.m.

Module No: HR-60-6712

Insert LC: .

**REPORT OF CONFERENCE COMMITTEE**  
**HB 1092, as engrossed:** Your conference committee (Sens. Klein, Espøgaard, Heltkamp and  
Reps. Ruby, Nottestad, Thorpe) recommends that the **HOUSE ACCEDE** to the Senate  
amendments on HJ pages 1078-1078 and place HB 1092 on the Seventh order.

Engrossed HB 1092 was placed on the Seventh order of business on the calendar.

(2) DESK, (2) COMM

Page No. 1

HR-60-6712

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*10/2/03*  
Date

2003 TESTIMONY

HB 1092

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*10/2/03*

LP

## HOUSE BILL 1092

House Bill 1092 is intended to make social security numbers confidential in the hands of a public entity unless otherwise provided by federal or state law.

There are 11 sections.

- **SECTION 1**

Making social security numbers confidential will greatly affect county recorders. This section creates an effective date for the county recorders office. After August 1, 2003, the county recorder will not accept or record documents containing a social security number unless the document is required to have a social security number by law. In that case, the recorders can require that the social security number be removed from the document before it is filed. It also provides protection for a recorder if a mistake is made and a number is released accidentally. (11-18)

- **SECTION 2**

Social security numbers obtained from applicants for a hunting or fishing license are confidential. (20.1-03-35)

- **SECTION 3**

Social security numbers on death certificates will be confidential under this section. (23-02.1-19)

- **SECTION 4 AND SECTION 5**

Sections 4 & 5 address records kept with vital records (birth certificates or death certificates). They regularly contain social security numbers. The social security number cannot be disclosed by vital statistics unless it is to the person to whom it pertains, that person's lawful agent or guardian, or by order of a court. (23-02.1-27; 23-02.1-28).

- **SECTION 6**

A social security number is required by law to be on a financing statement. Financing statements are sometimes filed with real estate records in the county recorders office. There is no reason to have a social security number on a financing statement for the purpose of a real estate recording. This section provides that a financing statement may not be

*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

recorded in real-property records if it has the social security number on it. (41-09-73) (it will still be able to be filed with central indexing with the social security number on it)

- **SECTION 7**

Social security numbers of applicants for an occupational or professional certificate, permit or license are made confidential under this section. (43-50-04).

- **SECTION 8**

Currently under the ND open records law, the social security number of a public employee is an exempt record. This section makes the social security number confidential. (44-04-18.1)

- **SECTION 9**

This section makes social security numbers in the possession of public entities confidential. They may be released for purposes of participation in retirement or other employee benefit programs or if the employee or their lawful agent authorizes the release. (44-04)

- **SECTION 10:**

This section makes client files at the legal aid clinic at the University of North Dakota confidential. (44-04)

- **SECTION 11**

This section addresses records of Fire departments and rural fire protection districts. During the investigation of a fire, the investigative records would be confidential. After the case is closed, those records would be open to the public.

This section would also protect emergency response plans and other sensitive documents such as plans of buildings and pipelines by making them exempt.

In the course of a response or an investigation, fire departments receive medical information. This section makes such information confidential unless released by proper authorization from the individual. (44-04)

• **SECTION 12**

Section 12 removes confusing language in open records and meetings law that addresses the notice for special meetings. (44-04-20)

• **SECTION 13:**

The open records and meetings law provides that anyone can request an opinion of the Attorney General if they think a denial of records or denial of access to a meeting was a violation of the law. In determining whether there is a violation, the public entity in question provides information to the Attorney General's office. Public entities are reluctant to give the Attorney General's office the records for review because it is an open record when it is in the Attorney General's office. This section provides that the Attorney General's office does not have to release information given to them by an entity while they review a possible violation. (44-04-21.1)

**BACKGROUND**

Three classes of public records under North Dakota law:

1. Open. Disclosure generally required.
2. Confidential. Disclosure generally prohibited. The knowing disclosure of confidential information is a class C felony. N.D.C.C. § 12.1-13-01.
3. Exempt. Not confidential, but are also not subject to the open records law.

Disclosure by the public entity is discretionary.

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10/2/03  
Date

Office of the Attorney General

Testimony on H.B. 1092  
Before the House Committee on Industry, Business, and Labor  
January 13, 2003

Prepared by: Mary Kae Kelsch  
Assistant Attorney General

**INTRODUCTION**

The open records and open meetings laws were enacted as both statutes and constitutional provisions to give the public a right to see how governmental decisions are being made and how public funds are being spent. Both the North Dakota Constitution (Art. XI, § 6) and state statute (N.D.C.C. § 44-04-18) provide that all records of public entities are open unless a law specifically provides otherwise. There are generally three classes of public records under North Dakota law. The first class consists of documents that are open. Disclosure of these documents is generally required. The second class consists of documents that are confidential. Disclosure of these documents is generally prohibited. The knowing disclosure of confidential information is a class C felony. N.D.C.C. § 12.1-13-01. The third class of documents consists of documents that are not confidential, but are also not subject to the open records law. Documents in this third category are considered exempt. Because disclosure of this class of documents is neither prohibited nor required, disclosure by the public entity is discretionary.

Currently, social security numbers on most records held by public entities are open records. In some cases, statutes make them exempt. This bill makes

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*10/2/03*  
Date



social security numbers on records held by public entities confidential, with some exceptions that will be explained in more detail as I describe each section of the bill.

The bill also contains some housekeeping measures. It makes information in the files of private clients at the University of North Dakota School of Law confidential. It also amends a couple of other open records and meeting statutes to address issues that have arisen during the past biennium.

#### **SECTION ONE**

Section one of the bill amends N.D.C.C. § 20.1-03-35. This section makes social security numbers on applications for permits to hunt, fish, or trap exempt from the open records laws. The amendments make social security numbers confidential rather than exempt.

#### **SECTION TWO.**

Section two of the bill amends N.D.C.C. § 23-02.1-19(8). This section currently provides that social security numbers on death certificates are exempt from the open records laws. The amendments make social security numbers on death certificates confidential rather than exempt.

#### **SECTION THREE.**

Section three of the bill amends N.D.C.C. § 43-50-C4. N.D.C.C. ch. 43-50 prohibits state boards that license individuals in regulated occupations or professions from issuing licenses or permits unless the individual provides his or her social security number. Any board that maintains an automated database of individuals that have applied for or been issued a certificate, license, or permit

must include the social security number as an identifier in the database. Currently, N.D.C.C. § 43-50-04 makes social security numbers provided pursuant to N.D.C.C. ch. 43-50 exempt from the open records law. The proposed amendments make the numbers confidential

#### SECTION FOUR

Section four of the bill amends N.D.C.C. § 44-04-18.1(2). This section currently provides that personal information of a public employee in the employee's personnel record is exempt. That means that the employer has the discretion to release the information. You may think that an employer would always choose to keep the public employee's social security number private, but I have run into a few instances where the public entity included social security numbers in information it regularly released to the public. As you will notice, references to social security numbers are struck. By removing the language relating to social security numbers in this subsection, social security numbers in an employee's personnel record will be subject to the language in SECTION FIVE, thereby making social security numbers of public employees confidential.

#### SECTION FIVE

Section five is the heart of the bill. As the Attorney General explained, a person's social security number is the key to major new problem in this country – identity theft. To protect the public from the every increasing fraudulent abuse of our social security numbers, section five of the bill creates a new section to chapter 44-04, making social security numbers in the hands of public entities confidential. The impact of this change is significant. As discussed above, under the open

records and meetings law, making something confidential means that it is prohibited from being released to the public; i.e. the public entity has no discretion to release a confidential record.

We all recognize, however, that social security numbers are used for many legitimate purposes. One important use relates to employee benefit programs. Subsection 2 allows a social security number to be released for employment benefit purposes or as authorized by the employee. In addition, a social security number may be released if another law, either state or federal, provides otherwise.

#### **SECTION 6**

In the course of running the legal aid clinic at the University of North Dakota, the lawyers and law students receive sensitive information from applicants or clients that would normally be confidential if disclosed to an attorney representing the applicant or client. Section 6 creates a new section of the code making this information confidential if provided to the legal aid clinic, giving their clients the same rights as any other citizen with legal representation. This confidentiality exemption is similar to N.D.C.C. § 27-12-09 which makes information provided to the state bar association regarding applicants or participants in the lawyer referral service or volunteer lawyer program confidential.

#### **SECTION 7**

This section clarifies subsection 6 of section 44-04-20. This is the section of the code that addresses special or emergency meetings. Specifically, subsection 6 sets forth the requirements for a special meeting notice and limits the topics that

may be considered by a public entity at a special or emergency to the topics contained in the notice "to the media". The words "to the media" were confusing, as they seemed to indicate that the notice to the media was somehow different than the notice given to everyone else. By removing these words, it will be clear that only one notice is necessary, and that the topics that may be considered at a special or emergency meeting are limited to those contained in that notice.

#### SECTION 8

Any interested person under N.D.C.C. § 44-04-21.1 can request an attorney general's opinion to review a written denial of a request for records or a denial of access to a meeting. In preparing an opinion, the attorney general's office requests information from the public entity to determine whether or not a violation has occurred. In the case of a possible improper executive session, N.D.C.C. § 44-04-19.2(5) requires all executive sessions to be recorded electronically and provides that the recording must be disclosed to the attorney general for review. This office cannot disclose the recording and must return it to the governing body upon completion of the administrative review.

Governing bodies are much more likely to provide the tape to us because of this protection. There is no similar statutory protection for other types of information that a public entity asserts are confidential or exempt from public disclosure. In order for us to determine whether or not the record is indeed confidential or exempt under the law, it is often imperative for us to review the document. Public entities are reluctant to give us the record for review because it is an open record

Yalosta Rickford  
Operator's Signature

10/2/03  
Date

when it is in our hands and vulnerable to a request before we can determine its proper status.

It is essential that the attorney general's office have the complete cooperation from the public entities involved in an administrative review. This section will guarantee that the record in question is protected while this office makes a determination, thereby guaranteeing future cooperation from public entities.

On behalf of the attorney general, I request your support of H.B. No. 1092. I would be happy to answer any questions you have.

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JANUARY 13, 2003

HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE  
HB 1092

REPRESENTATIVE KEISER AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. While these organizations generally oppose any closed meetings or closed records bills, they support HB 1092 as a necessary tweaking of the current open meetings and open records laws.

Certainly it is important to protect social security numbers wherever possible. We don't publish or broadcast these, and as long as it's possible to redact, or black out the numbers in otherwise public records, we don't object to making them confidential.

And, since we always thought the records of the UND Legal Assistance Clinic were confidential under the attorney-client privilege, we don't object to this provision. And, we agree that the tapes and other items the Attorney General reviews while investigating open meeting challenges, should remain confidential while in his office.

If you have any questions, I'd be glad to try and answer them. Thank you for your time and consideration.

1/20/03

# PROPOSED AMENDMENTS TO HOUSE BILL 1092

Page 1, line 1, after "enact" insert "a new section to chapter 11-18, a new subsection to section 23-02.1-28, and" and replace "two" with "three"

Page 1, line 2, after "to", insert "redaction of social security numbers by the county recorder," and replace "and" with ", the confidentiality of"

Page 1, line 3, after "law" insert ", and the confidentiality of records of fire departments and rural fire protection districts."

Page 1, line 4, after the first comma insert "sections 23-02.1-27, subsections 2 and 3 of section 41-09-73,"

Page 1, after line 9, insert the following:

**SECTION 1.** A new section to chapter 11-18 of the North Dakota Century Code is created and enacted as follows:

## Filing or recording documents with recorder- social security numbers.

1. A document that includes a social security number may not be filed or recorded with the recorder unless a law requires the social security number to be in the document in order to be filed or recorded. A document that is required to contain a social security number may be recorded in the real estate records with the social security number redacted.
2. Notwithstanding any other law, when a copy of a document that includes a social security number is requested, the recorder is not required to redact the social security number unless the document was filed or recorded with the recorder after July 31, 2003.
3. A document which must include a social security number under chapters 14-03 and 23-02.1 may be processed and recorded under those chapters, however the social security number is confidential and must be redacted before a copy or certified copy may be provided to the public.

Page 1, after line 22, insert the following:

Ericksen  
Language

4.

**SECTION 4. AMENDMENT.** Section 23-02.1-27 of the North Dakota Century Code is amended and reenacted as follows:

**Disclosure of records.** The state registrar, and local registrars, may supervise and regulate physical access to vital records to protect vital records from loss, mutilation, or destruction and to prevent improper disclosure of records that are confidential. Information relating to the birth or fetal death of a child to a woman who was not married to the child's father when the child was conceived or born may be disclosed only to the child's guardian, to the person to whom the record relates if that person is at least eighteen years old, to the parent of the child, or upon order of a court of competent jurisdiction. Information in vital records indicating cause of death may not be disclosed except to a relative or personal representative of the deceased, to the attorney or the agent of a relative or personal representative of the deceased, to the child fatality review panel, or upon order of a court of competent jurisdiction. A person's social security number contained in vital records may not be disclosed except to the person to whom it pertains, that person's lawful agent or guardian, or by order of a court. Only a certified copy of a certificate or record may be provided to the public.

**SECTION 5.** A new subsection to section 23-02.1-28 of the North Dakota Century Code is created and enacted as follows:

A certified copy may not disclose a person's social security number unless the copy is being provided to the person to whom it pertains, that person's lawful agent or guardian, or by order of a court.

**SECTION 6 . AMENDMENT.** Subsections 2 and 3 of section 41-09-73 of the North Dakota Century Code are amended and reenacted as follows:

2. Except as otherwise provided in subsection 2 of section 41-09-72, to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are about to become fixtures, must satisfy subsection 1 and also:
  - a. Indicate that it covers this kind of collateral;
  - b. Indicate that it is to be filed for record in the real-property records;

Yalosta Rickford  
Operator's Signature

10/2/03  
Date



- c. Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and
  - d. If the debtor does not have an interest of record in the real property, provide the name of a record owner; and
  - e. Notwithstanding paragraph e of subsection 1, the debtor's social security or federal tax identification number may only be filed in the filing office with the central indexing system but may not be recorded in the real-property records.
3. A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:
- a. The record indicates the goods or accounts that it covers;
  - b. The goods are or are to become fixtures related to the real property described in the record and is as-extracted collateral or timber to be cut;
  - c. The record satisfies the requirements for a financing statement in this section other than an indication that it is to be filed in the real-property records; and
  - d. Notwithstanding paragraph e of subsection 1, the debtor's social security or federal tax identification number may only be filed in the filing office with the central indexing system but may not be recorded in the real-property records; and
  - e. It is duly recorded.

Page 2, line 25, after "assigned" insert ", that person's lawful agent or guardian, or by order of a court"

Page 2, after line 31, insert the following:

**SECTION 11.** A new section to chapter 44-04 of the North Dakota Century Code is created and enacted as follows:

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

Records of fire departments and rural fire protection districts.

1. Investigation records of fire departments and rural fire protection districts are confidential until the investigation:
  - a. Is closed and not referred for further criminal investigation or prosecution; or
  - b. The criminal investigation is no longer active under section 44-04-18.7.

Thereafter, the records are open. This subsection does not restrict the release of the name and identifiable biographical information of a child under section 12.1-35-03.

2. Standard operating procedures written for emergency response, pre-fire action plans, plans of a building, pipeline, electrical system, or any other infrastructure plan in the hands of a fire department or rural fire protection district are exempt from section 44-04-18.

3. Individually identifiable health information obtained by a fire department or rural fire protection district is confidential.

Renumber accordingly

*amend sugg.  
by Erickson*  
↓  
(in course  
of investigation?)

**Testimony on Engrossed House Bill 1092**  
**Senate Industry, Business and Labor Committee**

By Joel Boespflug

March 12, 2003

Mr. Chairman and members of the Committee, my name is Joel Boespflug, Bismarck Fire Chief and also a Director with the North Dakota Fire Chief's Association. I appear before you today in favor of Engrossed House Bill 1092, specifically section eleven which pertains to records of the fire service.

Fire investigations are conducted to determine the cause and origin of a fire. In most cases, fires occur from an accidental cause. However, in many other cases, fire investigators are able to determine that a fire was intentionally set. In addition, the fire investigation often reveals in great detail how the fire was actually set. The fire investigation information is shared with law enforcement to initiate the criminal investigation and prosecution. In working with the Attorney General's Office through open records training, we have learned that the fire department's investigation information is considered to be an open record. On page four, lines 23 through 29 properly mitigate the existing problem.

*Yolanda Rickford*  
Operator's Signature

*10/2/03*  
Date

House Bill 1092 Testimony  
Page 2

To have a successful outcome during a fire, rescue, or chemical emergency, fire departments rely on established procedures and detailed information obtained from buildings or other critical hazard areas. The information used by the fire department for a positive, safe and successful outcome during an emergency could also be used for extremely different and evil reasons by persons intending to cause harm or promote terrorism. For protection of our citizens, emergency responders, and property, it is necessary that fire departments standard operating procedures, pre-fire plans, building plans, or any other critical response information be confidential. This is achieved within the bill on page four starting on line 30.

Mr. Chairman and members of the committee, I urge you to support section eleven of Engrossed House Bill 1092. Thank you for your time this morning and I will be happy to answer your questions.

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*Yolanda Rickford*

Date

10/2/02

introduce

Office of the Attorney General

Testimony on H.B. 1092  
Before the Senate Committee on Industry, Business, and Labor  
March 12, 2003

Prepared by: Mary Kae Kelsch  
Assistant Attorney General

### INTRODUCTION

The open records and open meetings laws were enacted as both statutes and constitutional provisions to give the public a right to see how governmental decisions are being made and how public funds are being spent. Both the North Dakota Constitution (Art. XI, § 6) and state statute (N.D.C.C. § 44-04-18) provide that all records of public entities are open unless a law specifically provides otherwise. There are generally three classes of public records under North Dakota law. The first class consists of documents that are open. Disclosure of these documents is generally required. The second class consists of documents that are confidential. Disclosure of these documents is generally prohibited. The knowing disclosure of confidential information is a class C felony. N.D.C.C. § 12.1-13-01. The third class of documents consists of documents that are not confidential, but are also not subject to the open records law. Documents in this third category are considered exempt. Because disclosure of this class of documents is neither prohibited nor required, disclosure by the public entity is discretionary.

Currently, social security numbers on most records held by public entities are open records. In some cases, statutes make them exempt. This bill makes social security numbers on records held by public entities confidential, with some

exceptions that will be explained in more detail as I describe each section of the bill.

The bill also contains some housekeeping measures. It makes information in the files of private clients at the University of North Dakota School of Law confidential and makes investigative records of fire departments and fire protection districts confidential. It also amends a couple of other open records and meeting statutes to address issues that have arisen during the past biennium.

#### SECTION ONE

Section one of the bill is a new section to chapter 11-18 of N.D.C.C. regarding county recorders. As I will explain further in my testimony, we are proposing that social security numbers be confidential in the hands of public entities rather than exempt. This section prohibits a document containing a social security number from being filed. This places the burden on the filer to remove the social security number before it is filed. The section also gives a starting date after which county recorders have to remove social security numbers.

#### SECTION TWO.

Section two of the bill amends N.D.C.C. § 20.1-03-35. This section makes social security numbers on applications for permits to hunt, fish, or trap exempt from the open records laws. The amendments make social security numbers confidential rather than exempt.

#### SECTION THREE.

Section three of the bill amends N.D.C.C. § 23-02.1-19(8). This section currently provides that social security numbers on death certificates are exempt from the open records laws. The amendments make social security numbers on death certificates confidential rather than exempt.

#### **SECTIONS FOUR AND FIVE**

Section four and five of the bill amends N.D.C.C. § 23-02.1-27 and 23-02.1-28. Chapter 23-02.1 pertains to vital records. Many records are kept with vital records including birth and death certificates. Both of these normally contain social security numbers. These amendments provide that social security numbers on birth and death certificates can be disclosed to the individual to whom it pertains, that person's lawful agent, or guardian, or by order of a court.

#### **SECTION SIX**

Section six of the bill amends N.D.C.C. § 41-09-73 dealing with contents of financing statements. A social security number is required by law to be on a financing statement. Financing statements are sometimes filed with real estate records in the county recorders office. There is no reason to have a social security number on a financing statement for the purpose of a real estate recording. This section provides that a financing statement may not be recorded in real-property records if it has the social security number on it.

The amendment provides that social security numbers could be filed with the central indexing system but not real estate records.

## **SECTION SEVEN**

Section seven of the bill amends N.D.C.C. § 43-50-04. N.D.C.C. ch. 43-50 prohibits state boards that license individuals in regulated occupations or professions from issuing licenses or permits unless the individual provides his or her social security number. Any board that maintains an automated database of individuals that have applied for or been issued a certificate, license, or permit must include the social security number as an identifier in the database. Currently, N.D.C.C. § 43-50-04 makes social security numbers provided pursuant to N.D.C.C. ch. 43-50 exempt from the open records law. The proposed amendments make the numbers confidential

## **SECTION EIGHT**

Section eight of the bill amends N.D.C.C. § 44-04-18.1(2). This section currently provides that personal information of a public employee in the employee's personnel record is exempt. That means that the employer has the discretion to release the information. You may think that an employer would always choose to keep the public employee's social security number private, but I have run into a few instances where the public entity included social security numbers in information it regularly released to the public. As you will notice, references to social security numbers are struck. By removing the language relating to social security numbers in this subsection, social security numbers in an employee's personnel record will be subject to the language in SECTION NINE, thereby making social security numbers of public employees confidential.



## SECTION NINE

Section nine is the heart of the bill. A person's social security number is the key to major new problem in this country – Identity theft. To protect the public from the every increasing fraudulent abuse of our social security numbers, section five of the bill creates a new section to chapter 44-04, making social security numbers in the hands of public entities confidential. The impact of this change is significant. As discussed above, under the open records and meetings law, making something confidential means that it is prohibited from being released to the public; i.e. the public entity has no discretion to release a confidential record. We all recognize, however, that social security numbers are used for many legitimate purposes. One important use relates to employee benefit programs. Subsection 2 allows a social security number to be released for employment benefit purposes or as authorized by the employee. In addition, a social security number may be released if another law, either state or federal, provides otherwise.

## SECTION TEN

In the course of running the legal aid clinic at the University of North Dakota, the lawyers and law students receive sensitive information from applicants or clients that would normally be confidential if disclosed to an attorney representing the applicant or client. Section 10 creates a new section of the code making this information confidential if provided to the legal aid clinic, giving their clients the same rights as any other citizen with legal representation. This confidentiality exemption is similar to N.D.C.C. § 27-12-09 which makes information provided to

the state bar association regarding applicants or participants in the lawyer referral service or volunteer lawyer program confidential.

#### **SECTION ELEVEN**

Section 11 addresses records of fire departments and rural fire protection districts. During the investigation of a fire, the investigative records would be confidential. After the case is closed, those records would be open to the public.

This section would also protect emergency response plans and other sensitive documents such as plans of buildings and pipelines by making them exempt.

In the course of a response or an investigation, fire departments receive medical information. This section makes such information confidential unless released by proper authorization from the individual.

#### **SECTION TWELVE**

This section clarifies subsection 6 of section 44-04-20. This is the section of the code that addresses special or emergency meetings. Specifically, subsection 6 sets forth the requirements for a special meeting notice and limits the topics that may be considered by a public entity at a special or emergency to the topics contained in the notice "to the media". The words "to the media" were confusing, as they seemed to indicate that the notice to the media was somehow different than the notice given to everyone else. By removing these words, it will be clear that only one notice is necessary, and that the topics that may be considered at a special or emergency meeting are limited to those contained in that notice.

### SECTION THIRTEEN

Any interested person under N.D.C.C. § 44-04-21.1 can request an attorney general's opinion to review a written denial of a request for records or a denial of access to a meeting. In preparing an opinion, the attorney general's office requests information from the public entity to determine whether or not a violation has occurred. In the case of a possible improper executive session, N.D.C.C. § 44-04-19.2(5) requires all executive sessions to be recorded electronically and provides that the recording must be disclosed to the attorney general for review. This office cannot disclose the recording and must return it to the governing body upon completion of the administrative review.

Governing bodies are much more likely to provide the tape to us because of this protection. There is no similar statutory protection for other types of information that a public entity asserts are confidential or exempt from public disclosure. In order for us to determine whether or not the record is indeed confidential or exempt under the law, it is often imperative for us to review the document. Public entities are reluctant to give us the record for review because it is an open record when it is in our hands and vulnerable to a request before we can determine its proper status.

It is essential that the attorney general's office have the complete cooperation from the public entities involved in an administrative review. This section will guarantee that the record in question is protected while this office makes a determination, thereby guaranteeing future cooperation from public entities.

### AMENDMENTS

I am offering one additional amendment. This amendment came at the request of the Bankers Association. Even though it is not legally necessary, many mortgage companies put social security numbers on their documents that are filed with the county recorder's office. As I explained in my testimony about section one, county recorders will no longer accept documents that contain a social security number after a certain date. In order to provide notice of the change to banking institutions, this amendment will require the county recorders to send notices of the law change starting on August 1, 2003 until June 30, 2004. On July 1, 2004, the county recorders will no longer accept documents containing a social security number. Sections 9 will not be effective for county recorders until July 1, 2004.

On behalf of the attorney general, I request your support of H.B. No. 1092. I would be happy to answer any questions you have.

Yolanda Rickford  
Operator's Signature

10/2/03  
Date

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1092**

Page 1, line 1, after "Act" insert "to provide for public notice of restrictions against filing or recording social security or federal tax identification numbers with county recorders;"

Page 1, line 6, remove the first "and"

Page 1, line 11, after "opinions" insert "; and to provide an effective date"

Page 6, after line 2, insert:

**"SECTION 13. RECORDERS - NOTICE TO PUBLIC.** Section 9 of this Act does not apply to recorders until July 1, 2004. Recorders shall provide written notice to persons filing or recording documents if the documents contain social security or federal tax identification numbers and may not be lawfully filed or recorded after July 1, 2004. The notice must inform the person of the relevant terms of this Act and state that social security and federal tax identification numbers may not be filed or recorded after July 1, 2004.

**SECTION 14. EFFECTIVE DATE.** Sections 1 and 6 of this Act become effective on July 1, 2004.

**SECTION 15. EFFECTIVE DATE.** Section 13 of this Act is effective until June 30, 2004, and is ineffective after that date."

**IDENTITY**

Even though you have taken all the preventative steps, you find out your identity has been stolen. What do you do now? The most important thing to remember is **ACT QUICKLY!**

Unfortunately, it may take months to clear your name. However, you should take these basic steps **IMMEDIATELY:**

**File a report with your local police.**  
It is a crime for an individual to use another individual's identifying numbers (see N.D.C.C. §12.1-23-11). Once the police report is written, request a copy for your records. You may be asked by your bank, credit card companies or other agencies to supply a copy of this report for their files.

**Contact the fraud departments of each of the three major credit bureaus.**  
Tell them you are an identity theft victim. Request a "fraud alert" be placed in your file as well as a victim's statement asking that creditors call you before opening any new accounts or changing your existing accounts. Order a copy of your credit report each of the credit bureaus so you can check for other fraudulent accounts.

**Contact the creditors for any accounts that have been tampered with or opened fraudulently.**  
"Creditors" can include credit card companies, telephone companies, other utilities, banks and other lenders. Ask to speak with someone in the security or fraud department of each creditor, and **follow up with a letter.** Immediately close any accounts that have been tampered with and open new ones with new Personal Identification Numbers (PINs) and passwords.

**File a complaint with the Federal Trade Commission (FTC).**  
Contact the FTC's Identity Theft Hotline by telephone: toll free 1-877-IDENTHEFT; by mail: Identity Theft Clearinghouse, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580; or on-line: [www.consumer.gov/idtheft](http://www.consumer.gov/idtheft). The FTC has an outstanding publication called **ID Theft, When Things Happen To Your Good Name.**

Obtain a copy of your credit report regularly to check for fraudulent information. **Immediately** report all errors to the credit bureau. You can contact the three major credit bureaus at:

	EQUIFAX	EXPERIAN	TRANS UNION
<b>Address</b>	PO Box 740241 Atlanta, GA 30374-0241	PO Box 2104 Allen, TX 75013	PO Box 390 Springfield, PA 19064-0390
<b>Order credit report</b>	800-685-1111	888-397-3742	800-916-8800
<b>Report Fraud</b>	800-525-6285	888-397-3742	800-680-7289

You can reduce the amount of **junk mail** you receive by writing to: Mail Preference Service, P.O. Box 9008, Farmingdale, NY 11735-9008 or [www.the-dma.org](http://www.the-dma.org).

To stop telemarketing calls, write to: Telephone Preference Service, P.O. Box 9014, Farmingdale, NY 11735-9008 or [www.the-dma.org](http://www.the-dma.org).

Both of these lists are managed by Direct Marketing Association.



**OFFICE OF ATTORNEY GENERAL  
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*Attorney General*  
**Avoiding  
Identity  
Theft**



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*Valosta Rickford*  
Operator's Signature  
10/2/03  
Date

## IDENTITY THEFT: The act of stealing your good name to commit fraud.

Every year thousands of people are victimized by identity thieves.

Besides basic information like name, address, and telephone number, identity thieves look for **social security numbers**, driver's license numbers, credit card and **bank account numbers**, as well as bank cards, telephone calling cards, birth certificates or passports.

**IT'S NOT JUST YOUR WALLET**—although stealing your wallet with your driver's license is one way to get what they are looking for, the dangers are everywhere:

### THIEVES

- look through your trash for canceled checks, bank statements and **pre-approved credit card applications**;
- hang out in lines at banks and ATM machines to get your account and PIN numbers;
- use technology to capture your passwords and other personal information from your computer without your knowledge.

The thief will use your social security number and other personal information to take over your **existing** bank and credit card accounts and to open **new** accounts in your name. The thief will apply for loans and credit cards, welfare benefits and much more, using **your identity**.



As soon as they have spent all the money they can get under your name, they will move on—leaving you to suffer the consequences.

On average it takes 175 hours and almost \$1,000 to clear your name.

Your social security number is probably your most valuable asset. It is unique - it identifies YOU.

The theft of your identity can leave you with a poor credit rating and a ruined reputation that may take **months or even years** to correct. Meanwhile, due to your seemingly dreadful credit history, you may be **denied** auto or home **loans**, credit cards, apartments and **jobs**. An identity thief may even create a **criminal record** using your name.



However, there are several preventative measures that you can take to reduce your chances of becoming a victim. These few **simple precautions** may save you months of anxiety and explanation:



**Don't use your social security number as your driver's license number.** Your SSN is the "key" that unlocks the door to your private and financial information. It is used to access your credit history, criminal history, medical and school records, credit cards, bank accounts and financial records and social security benefits.



**Don't leave outgoing mail in your mailbox** - it makes it easy for someone to steal your bill payments and use that information to their own advantage.



**Keep and carry as few credit cards as possible.** After completing a credit card transaction, make sure that the card you get back is your own. Tear up the carbon copies. **Cancel all unused credit accounts.**



**Store credit cards, bank statements, pre-approved credit applications, utility and phone bills, and other documents containing sensitive personal data in a secure place. Shred or tear up all such documents and any junk mail before throwing them away.**



**Review bank and credit card statements, cancelled checks, phone and utility bills as soon as you get them.** Report any discrepancies immediately. If a monthly bill doesn't arrive, contact both the post office and the creditor to ensure that your mail isn't being diverted.



**Don't give out your credit card number or other personal information over the telephone unless you initiated the call and you know it is a reputable company.** Never, ever give out any personal information over cordless or cellular telephones, because those calls can be easily intercepted even by baby monitors.



**Remove "extra" information, such as your social security number, date of birth and home telephone number, from your check blanks.**

### OTHER CONSUMER TIPS

- Provide only the **necessary** information on incentive, rebate and warranty registration forms—don't answer the marketing questions.
- Don't respond to phony "surveys" - which are simply a con artist's way of getting your personal information so they can steal it. Tell telemarketers to put you on their **"do not call"** list, so they can't call you again.
- **Stop** credit card companies, banks and other businesses from selling your personal information to other companies— use the form included with the company's "privacy notice" or call customer service and tell them you want to **"opt out."** You can opt out at any time.
- Don't respond to e-mails asking you to provide or "confirm" personal or account information. Delete any e-mails from unknown senders.

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Operator's Signature  
Yolanda Rickford  
Date 10/2/03

March 12, 2003

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE  
HB 1092

SENATOR MUTCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. While these organizations generally oppose any closed meetings or closed records bills, they **support** HB 1092 as a necessary tweaking of the current open meetings and open records laws. We support it and urge you to give it a do pass.

Certainly it is important to protect social security numbers wherever possible. We don't publish or broadcast these, and as long as it's possible to redact, or black out the numbers in otherwise public records, we don't object to making them confidential.

We always thought the records of the UND Legal Assistance Clinic were confidential under the attorney-client privilege, so we don't object to this provision. And, we agree that the tapes and other items the Attorney General reviews while investigating open meeting challenges, should remain confidential while in his office.

The other changes are adjustments to the open records laws that are not unduly restrictive to the public's right to know.

If you have any questions, I'd be glad to try and answer them. Thank you for your time and consideration.