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ROLL NUMBER

DESCRIPTION

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Operator's Signature

Deanna Waller

Date

10/21/03

2003 SENATE JUDICIARY

SB 2228

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10/21/03
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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2228

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 01/29/03

Tape Number	Side A	Side B	Meter #
2	X		28 - 53
3	X		00 - 2.9
Committee Clerk Signature <i>Maria Salberg</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony Support of SB 2228

Senator Thomas L. Trenbeath, District 10, Introduced the bill (meter 28.3) at the request of the Attorney General's Office, with only one amendment.

Perrell D. Grossman Director of Consumer Protection and Antitrust Division Office of the Attorney General - Read (Attachment #1) (Meter 30.0)

Senator John T. Traynor, Chairman asked if other states utilize this bill? Yes. (meter 42.2)

Committee discussed case examples. Mr. Parrell brought two boxes of checks given erroneously to a fake charitable fund that were apprehended by the Attorney General.

Mr. Gossman submitted amendments (attachment #2)

Testimony in opposition of SB 2228

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Page 2
Senate Judiciary Committee
Bill/Resolution Number SB 2228
Hearing Date 021/29/03

none

Testimony Neutral to SB 2228

none

Discussion on the urgency of bill. (tape 3, side 1 meter)

Motion made to add emergency clause and submitted amendment on SB 2228 by Senator Thomas L. Trenbeath and seconded by Senator Dennis Bercier.

Roll Call Vote: 6 Yes. 0 No. 0 Absent.

Motion Carried

Motion made to do pass SB 2228 with amendment by Senator Thomas L. Trenbeath and Seconded by Senator Dennis Bercier.

Roll Call Vote: 6 Yes. 0 No. 0 Absent.

Motion Carried

Floor Assignment: Senator John T. Traynor, Chairman

Senator John T. Traynor, Chairman closed the hearing

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Dennis Bercier
Operator's Signature

10/21/03
Date

FISCAL NOTE
Requested by Legislative Council
01/17/2003

Bill/Resolution No.: SB 2228

1A. State fiscal effect: Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill only clarifies or minimally adds to the Attorney General's existing consumer fraud authority under NDCC Chapter 51-15. There is no anticipated fiscal impact.

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

A. Revenues: Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

Not applicable

B. Expenditures: Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Not applicable

C. Appropriations: Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Not applicable

Name:	Parrell Grossman/Kathy Roll	Agency:	Office of Attorney General
Phone Number:	328-3404/328-3622	Date Prepared:	01/21/2003

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Date

Job
2-3-3
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2228

Page 1, line 1, after "sections" insert "44-04-18.12,"

Page 1, line 2, replace "51-51-07" with "51-15-07"

Page 1, line 3, after the first "to" insert "the confidentiality of agreements between a governmental agency in another jurisdiction and the attorney general and to", remove "and", and after "penalty" insert "; and to declare an emergency"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Section 44-04-18.12 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.12. Cooperative investigations and litigation. A record acquired under ~~a written~~ an agreement between ~~or involving~~ a governmental agency in another jurisdiction and the attorney general is confidential, except for the purposes specified in the agreement, if the attorney general determines:

1. The record is necessary to further a civil investigation or litigation by the state;
2. The record can be obtained only by agreeing to keep the record confidential; and
3. The record is treated as confidential by the provider of the records."

Page 2, line 3, overstrike "any of the provisions of" and insert immediately thereafter "by other provisions of law, including"

Page 2, line 4, overstrike "that an investigation should be made to"

Page 2, line 5, overstrike "ascertain" and insert immediately thereafter "to investigate"

Page 2, line 6, after "under" insert "this chapter or other provisions of law, including"

Page 2, line 16, replace "therof" with "thereof"

Page 2, line 23, after the first "or" insert "by other provisions of law, including"

Page 3, line 17, after the first "chapter" insert an underscored comma, after the first "or" insert "other provisions of law, including", and after "51-18" insert an underscored comma

Page 3, line 29, after the first "chapter" insert an underscored comma and after the first "or" insert "by other provisions of law, including"

Page 4, line 6, after "chapter" insert an underscored comma, after the first "or" insert "in other provisions of law, including", and after "51-18" insert an underscored comma

2012

Page 4, line 9, after the first "chapter" insert an underscored comma and after the first "or" insert "by other provisions of law, including"

Page 4, line 17, after the first "chapter" insert an underscored comma and after "or" insert "by other provisions of law, including"

Page 4, line 22, after the first "chapter" insert an underscored comma, after "or" insert "under other provisions of law, including", and replace "and" with "or"

Page 4, line 23, after the first "chapter" insert an underscored comma and after the first "or" insert "by other provisions of law, including"

Page 5, line 2, replace "non-prevalling" with "nonprevalling" and after "costs" insert an underscored comma

Page 5, line 10, after the first "chapter" insert an underscored comma and after "or" insert "by other provisions of law, including"

Page 5, line 22, remove the overstrike over the overstruck comma and after the first "or" insert "under other provisions of law, including"

Page 5, line 27, replace "attorney" with "attorney's"

Page 5, line 28, after the first "chapter" insert an underscored comma and after "or" insert "under other provisions of law, including"

Page 5, line 29, remove "and" and remove the overstrike over the first overstruck comma and insert immediately thereafter "and"

Page 6, line 7, after "51-16.1" insert an underscored comma

Page 6, after line 7, insert:

"SECTION 11. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: January 29, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2228

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38309.0101

Action Taken Amendment and Emergency Clause

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Dennis Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent Zero (0)

Floor Assignment _____

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

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Dennis Bercier
Operator's Signature

12/21/03
Date

Date: January 29, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2228

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38309.0101

Action Taken DO PASS as Amended

Motion Made By Senator Thomas L. Trenbeath Seconded By Senator Dennis Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent Zero (0)

Floor Assignment Senator John T. Traynor, Chairman

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

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Dennis Bercier
Operator's Signature

10/21/03
Date

REPORT OF STANDING COMMITTEE (410)
February 4, 2003 8:15 a.m.

Module No: SR-21-1575
Carrier: Traynor
Insert LC: 38309.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2228: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2228 was placed on the Sixth order on the calendar.

Page 1, line 1, after "sections" insert "44-04-18.12,"

Page 1, line 2, replace "51-51-07" with "51-15-07"

Page 1, line 3, after the first "to" insert "the confidentiality of agreements between a governmental agency in another jurisdiction and the attorney general and to", remove "and", and after "penalty" insert "; and to declare an emergency"

Page 1, after line 4, insert:

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1. The record is necessary to further a civil investigation or litigation by the state;
2. The record can be obtained only by agreeing to keep the record confidential; and
3. The record is treated as confidential by the provider of the records."

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Page 2, line 4, overstrike "that an investigation should be made to"

Page 2, line 5, overstrike "ascertain" and insert immediately thereafter "to investigate"

Page 2, line 6, after "under" insert "this chapter or other provisions of law, including"

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Page 4, line 9, after the first "chapter" insert an underscored comma and after the first "or" insert "by other provisions of law, including"

REPORT OF STANDING COMMITTEE (410)
February 4, 2003 8:15 a.m.

Module No: SR-21-1575
Carrier: Traynor
Insert LC: 38309.0101 Title: .0200

Page 4, line 17, after the first "chapter" insert an underscored comma and after "or" insert "by other provisions of law, including"

Page 4, line 22, after the first "chapter" insert an underscored comma, after "or" insert "under other provisions of law, including", and replace "and" with "or"

Page 4, line 23, after the first "chapter" insert an underscored comma and after the first "or" insert "by other provisions of law, including"

Page 5, line 2, replace "non-prevailing" with "nonprevailing" and after "costs" insert an underscored comma

Page 5, line 10, after the first "chapter" insert an underscored comma and after "or" insert "by other provisions of law, including"

Page 5, line 22, remove the overstrike over the overstruck comma and after the first "or" insert "under other provisions of law, including"

Page 5, line 27, replace "attorney" with "attorney's"

Page 5, line 28, after the first "chapter" insert an underscored comma and after "or" insert "under other provisions of law, including"

Page 5, line 29, remove "and" and remove the overstrike over the first overstruck comma and insert immediately thereafter "and"

Page 6, line 7, after "51-16.1" insert an underscored comma

Page 6, after line 7, insert:

"SECTION 11. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2003 HOUSE JUDICIARY

SB 2228

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10/21/03
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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2228

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-17-03

Tape Number	Side A	Side B	Meter #
1	xx		29-end
2	xx		15-16.2
Committee Clerk Signature <i>APemose</i>			

Minutes: 12 members present, 1 member absent (Rep. Galvin).

Chairman DeKrey: We will open the hearing on SB 2228.

Parrell Grossman, Director, Consumer Protection and Antitrust Div., Office of Attorney

General: Support (see attached testimony).

Rep. Delmore: As I look at the fiscal note, it appears to have no impact, yet we have several parts in the bill that address that, I guess I have two parts to the question: do you think there will be litigation that is going to involve additional expense that is not in the budget of the Attorney General and secondly, is there are large settlements made, do they go in a specific account, because they are paid back out to people or to be used in that way.

Mr. Grossman: Those are excellent questions. I do not expect a fiscal impact. I do believe that at any one particular time, there could be additional expenses. For instance, if we get involved in a judicative proceedings, those can be very time consuming and costly and for those reasons, we'll probably move fairly slowly and not use that proceeding except in those cases of the most

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House Judiciary Committee
Bill/Resolution Number SB 2228
Hearing Date 3-17-03

blatant consumer fraud, because we have to pay for those services provided by the Office of Administrative Hearings. We do have the ability to be reimbursed, if in fact, those defendants actually have the money to do that. Over the term, we don't think that this legislation will necessarily result in additional litigation, it just clarifies what our authority is, in most instances when we become involved in that litigation. As to the second part, there is a special fund in which recoveries are deposited and out of those recoveries, the restitution is paid out of those accounts generally first to those that comes from the consumer fraud action and any monies that we might have received is reimbursement of attorneys fees, remain in that fund and at the end of the biennium, any remaining funds are turned over to the State's general fund. During the time which those funds are in the Attorney General's possession, they can be used for consumer protection and antitrust enforcement. At any one particular time, there may be funds in there that would pay for the cost of ongoing investigations, some of which we might expense significant resources knowing that they are going to be limited, in fact, if any recovery, and yet that is our obligation to do so and other instances we receive funds that probably significantly exceed the amount of money we have spent on some of the large, national settlements like with Bridgestone, Firestone, Ford and some of those multi-state actions. So kind of on the offset, there is generally always going to be more money available in that fund than we would otherwise expend for the cases that we are trying.

Rep. Wrangham: You mentioned that in the Bismarck case, that it took two months to get a court order to cease and desist. Why did it take that long, is that the norm?

Mr. Grossman: That is not necessarily the norm, but certainly at least a month. In this particular case, it's assigned to a judge when you file an action, and then whether that judge is

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Hearing Date 3-17-03

available at any particular time, is just a matter of circumstance. In this particular case, the timing with the judge wasn't available during that particular time and at that point, you simply can't say to the court, could you please assign a different judge who will be available on a more timely basis. So two months would not necessarily be a typical time, but it's almost always going to be approximately 30 days. Plus you need time to garner your witnesses, etc.

Rep. Wrangham: Under this change, if I'm understanding it correctly, until now if a citizen is suspected of doing something wrong, it's up to you to go to the court and get a cease and desist order. This will change it to where the citizen who is, at this time, still innocent, it's going to put the burden of proof on him to prove that he's not guilty. When he goes to this court, I would assume it's going to take him even much longer to get in, I'm sure the court's try to accommodate you the best they can. I'm a little concerned that you are going to stop somebody from doing business and they have a recourse but it may take them a long time and, if in fact, they were not guilty, it would be a real hardship on them. Could you comment on that?

Mr. Grossman: First I would mention that that procedure will be brought under the Administrative Agencies Practices Act, so I don't believe that that will take longer. They do have the opportunity to ask for that hearing, and I think they have 10 days to request that hearing. Then, the Attorney General's office still retains that burden to satisfy that hearing officer, that in fact this company has engaged in fraudulent conduct. Then if the Administrative Hearing Officer would rule in favor of the Attorney General, then that defendant can appeal that in a district court proceeding. If the Office of Administrative Hearing rules against the Attorney General, then you are in a situation where the Attorney General is not likely to proceed with that action. So, yes in that respect, it provides us the opportunity more quickly to proceed, but again I have to stress that

Deanna Waller
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10/21/03
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this legislation is intended for the most egregious conduct for these pyramids that come to that state, they move very quickly, people start investing money at a very rapid pace, and the next thing you know, you've got 5-10,000 people that have become involved in a pyramid, that there is absolutely no question in our eyes, nor would there be in the court according to the law that it is an illegal activity, and yet you are going to spend a lot more time and resources for the Attorney General's office to get to a district court and to bring that proceeding as a preliminary injunction. Yes, although you can accomplish the same thing. Another example might be where somebody comes to town selling some bogus product. It really does very little good and provides very little relief to the citizens of North Dakota that that individual can stay at the community civic center and sell for 3 or 4 days because, by the time we can go in and file a complaint and bring an action against that individual, it's too late to stop, and by then they have moved on, out of state, and probably not a wise use of resources to try and track this person down in Florida, Alabama or Texas, someplace to try and bring a consumer fraud action. So the main focus in the case of a cease and desist, is really to protect people. You're not getting any relief under that particular proceeding, but you are stopping them from engaging in what we think is fraudulent activity and again we think that's going to be used very egregiously in those very limited circumstances; but it does have a fairly heavy hammer in that these organizations recognize that if they sell in violation of that cease and desist, there are substantial penalties. So I can't imagine a case in which somebody has a reasonable basis to contest our authority, that we probably wouldn't sit down and reach some sort of agreement. I think the reasons that I am expressing are the reasons that the Securities Commissioner, the Insurance Commissioner, and the Banking Commissioner all have this authority. Because there is a time, sometimes, when you have to act

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Bill/Resolution Number SB 2228
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now and you have to act quickly, so that you can stop that fraudulent activity as opposed to try and undue that mess from the organization has moved on. I simply can't imagine a circumstance where this cease and desist authority is going to be used in a established local business in our communities throughout North Dakota. It would have to be a clear and fraudulent activity and we're always engaged in conversations with these businesses before we reach this kind of point.

Rep. Wrangham: I would certainly feel absolutely comfortable with the great people we've got in the Attorney General's office in the fraud division now, but when we pass these laws we don't know who is going to be there 10 years from now. These other agencies that have this authority, do they in fact have the authority to issue a cease and desist without any hearing or notification.

Mr. Grossman: They do have the authority to issue that cease and desist and then those defendants have the same opportunity that we're providing under this proposed legislation. They can then request a hearing challenging that cease and desist authority. In fact, there have been numerous circumstances where we worked jointly with the Securities Commissioner's office on pyramids, because they also have some authority in that area and so we've had to rely on their cease and desist authority in that particular circumstances, because we did not have our own, and yet we are receiving calls from consumer and residents in this state, saying can't you do something to stop this.

Chairman DeKrey: Thank you. Further testimony in support, opposition. We will close the hearing.

(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to SB 2228.

Rep. Delmore: I move a Do Pass.

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Bill/Resolution Number SB 2228
Hearing Date 3-17-03

Rep. Kretschmar: I seconded that.

10 YES 1 NO 2 ABSENT

DO PASS

CARRIER: Rep. Kingsbury

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Date

Date: 3/17/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2228

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Kretschmar

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	AB		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	AB				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham		✓			

Total (Yes) 10 No 1

Absent 2

Floor Assignment Rep. Kingsbury

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

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10/21/03
Date

REPORT OF STANDING COMMITTEE (410)
March 17, 2003 12:15 p.m.

Module No: HR-47-4903
Carrier: Kingsbury
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2228, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2228 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-47-4903

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10/21/03
Date

REPORT OF STANDING COMMITTEE (410)
March 24, 2003 12:46 p.m.

Module No: HR-52-5534
Carrier: Kingsbury
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2228, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). Engrossed SB 2228 was placed on the Fourteenth order on the calendar.

SB 2228

Sen. Trenbeath, Holmberg, Urlacher
Rep. Belter, Grosz

A BILL for an Act to amend and reenact sections 44-04-18, 12, 51-15-01, 51-15-04, 51-15-05, 51-15-06, 51-15-06.1, 51-15-07, 51-15-08, 51-15-10, and 51-15-11 of the North Dakota Century Code, relating to the confidentiality of agreements between a governmental agency in another jurisdiction and the attorney general and to unlawful sales or advertising practices; to provide a penalty; and to declare an emergency.

01/16	Senate	Introduced, first reading, referred Judiciary	SJ 90
01/29	Senate	Committee Hearing 11:00	
02/04	Senate	Reported back amended, amendment pcc y 006 n 000	SJ 220
02/05	Senate	Amendment adopted, placed on calendar	SJ 227
		Second reading passed, y 047 n 000 Emergency clause carried	SJ 227
02/06	House	Received from Senate	HJ 364
02/12	House	Introduced, first reading, referred Judiciary	HJ 486
03/17	House	Committee Hearing 09:00	
03/17	House	Reported back, do pass, placed on calendar y 010 n 001	HJ 924
03/18	House	Referred to Judiciary	HJ 937
03/24	House	Reported back, do pass, placed on calendar y 010 n 001	HJ 1013
03/27	House	Second reading passed, y 080 n 000 Emergency clause carried	HJ 1073
03/27	Senate	Returned to Senate	SJ 935
04/01	Senate	Signed by President	SJ 1021
04/01	House	Signed by Speaker	HJ 1172
04/02	Senate	Sent to Governor	SJ 1056
04/04	Senate	Signed by Governor	SJ 1140
04/04	Senate	Filed with Secretary of State	

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2003 TESTIMONY

SB 2228

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10/21/03
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AT #1

SENATE JUDICIARY COMMITTEE
JOHN T. TRAYNOR, CHAIRMAN
JANUARY 29, 2003

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2228

Mr. Chairman and members of the Senate Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support Senate Bill No. 2228.

Chapter 51-15 is commonly referred to as North Dakota's "consumer fraud law." The Attorney General prosecutes civil consumer fraud violations primarily under chapter 51-15. In order to make chapter 51-15 more effective in protecting North Dakota consumers, the Attorney General is proposing some amendments to the consumer fraud law.

First, in order to more effectively prosecute violations of North Dakota's charitable solicitations law, involving fraudulent or deceptive charitable solicitations, we propose an amendment to the definition of "merchandise" to include "charitable contributions" and the definition of "sale" to include "charitable solicitations." These are small changes that will have no effect upon our legitimate, reputable charitable organizations. However, these amendments will bring the fraudulent charitable solicitations by fraudulent professional fundraisers or fraudulent charities within the authority of the consumer fraud law and the Attorney General's enforcement.

Questionable professional fundraisers and charities, located primarily out-of-state, frequently take advantage of generous North Dakota citizens and consumers who open their checkbooks to give substantial money pursuant to many charitable pitches. These donors contribute hundreds of thousands of dollars to organizations they are not familiar with because they want to help when told, for example, the money will be used for disabled firefighters and law enforcement officers, etc. Unfortunately, in many instances, 95 percent of the money goes directly into the pockets of the professional fundraiser. The remaining amount of the donation may actually be used for charitable purposes, depending upon one's definition of "charitable purposes." The Attorney General's concerns are regarding the misrepresentations that often occur during the solicitations. According to the Attorney General's investigations and experience in the area of charitable solicitations, consumers would not contribute but for the misrepresentations or deception by the fundraisers and charities.

In October 2002 the Attorney General initiated legal action against two out-of-state professional fundraisers, Public Awareness, Inc. and Duane Kolve, who were conducting charitable solicitations on behalf of four nonprofit organizations including the Association for Disabled Firefighters, Inc., Coalition of Police and Sheriffs, Inc., American Veteran Relief Foundation, Inc. and ADSA, Inc. (an acronym for American Deputy Sheriffs Association.) The lawsuit alleges that the professional fundraiser and the four associated

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Date

charities engaged in misrepresentations during the solicitations including that the donations would be used to fund nonexistent burn camps in North Dakota and falsely stating that the consumers solicited previously had contributed to the organization. Pursuant to a court order, the Attorney General took possession of at least one thousand five hundred checks that were sent by North Dakota donors to local mail processing centers during the weeks following the initiation of the legal action. Those checks range from \$15 to \$30 or more and probably total between \$22,000 and \$40,000. These defendants would have cashed those checks, if the Attorney General had not intercepted these checks pursuant to a court order. The checks are sent in envelopes provided by the fundraisers to the local address of the mail-processing center, but do not include the name of the mail-processing center in order to create the false impression that the "charity" has a local address. Questionable charities routinely employ this practice. The donations involved in our pending legal action are a drop in the bucket in comparison to the total amount of charitable solicitations sent by consumers to other professional fundraisers in similar circumstances.

The Attorney General must be able to use the powers, remedies and penalties of chapter 51-15 to fully investigate and prosecute fraudulent solicitations or charities.

The amendments throughout this legislation refer to chapters 50-22 relating to charitable solicitations, chapter 51-12 relating to false advertising and chapter 51-16.1 relating to pyramid and promotional sales schemes. These chapters mandate the Attorney General's enforcement of violations of those chapters and, in most instances, already contain cross-references to the powers, remedies and penalties of chapter 51-15. These proposed changes in chapter 51-15 will now clarify those cross-references by including enforcement of those statutes in chapter 51-15.

The legislature occasionally enacts new legislation that specifies enforcement of violations by the Attorney General pursuant to chapter 51-15. There are at least two such legislative bills pending this session. For that reason the Attorney General has proposed some amendments to Senate Bill 2228 that would clarify that the statutory references in the provisions of chapter 51-15 are not exclusive and would apply to other chapters in which the legislature has directed the Attorney General to use the enforcement statutes already provided in chapter 51-15. The proposed amendments to Senate Bill 2228 contain approximately thirteen insertions of "by other chapters" or similar language to indicate the mentioned chapters are only an example of or are in addition to other chapters that reference and invoke the Attorney General's chapter 51-15 authority. In this manner it should not be necessary to continue to amend chapter 51-15 in each new instance when the legislature provides for enforcement of other statutes under chapter 51-15.

The most significant change in the legislation is in Section 6 of the legislation relating to section 51-15-07 in chapter 51-15. These amendments provide the Attorney General with "cease and desist" authority, which is important to timely and effective protection of North Dakota consumers. Among others, the Insurance Commissioner, the Securities Commissioner and the Commissioner for the North Dakota Department of Financial Institutions all have "cease and desist" authority. Yet, the Attorney General, the chief law enforcement officer of the state, does not currently have this authority. This authority is

necessary to protect consumers. Occasionally, the most blatant consumer fraud will appear in advertisements or at some physical location in North Dakota. In order to stop the illegal activity the Attorney General is required to initiate legal action with documents requiring substantial preparation time. The court cannot issue a consumer fraud preliminary injunction *ex parte*. The court may only issue a preliminary injunction after a hearing. We must locate and serve the defendant and schedule a hearing. In a recent Bismarck case involving ongoing consumer fraud, the Attorney General filed a legal action on January 7 but the court hearing is not until February 24, almost two months later. The victims have already lost thousands of dollars. The defendant in the meantime is not prohibited from continuing the fraudulent activity. The pending fraudulent charitable solicitation cases are another example of the necessity for "cease and desist" authority. Violators subject to the cease and desist authority usually stop the illegal activity immediately because of the serious penalties for violating a "cease and desist" order. The Attorney General could provide numerous other examples of circumstances requiring prompt action to protect consumers from additional losses.

Section 8 of the legislation clarifies the award of attorney's fees, investigation fees, cost and expenses to the Attorney General in an investigation and action brought under chapter 51-15. The proposed amendments to Senate Bill 2228 also correct an error on Page 5, line 29 to make the intended language on line 29 consistent with the language on line 27.

The proposed amendments to Senate Bill 2228 contain a Section 10 in regard to records in cooperative investigations and litigation under section 44-04-18.12. The Attorney General is frequently involved in numerous consumer fraud and antitrust multi-state investigations or litigation, including twenty-four multi-state cases during 2002. The businesses involved as investigation targets or defendants in legal actions are becoming more reluctant to cooperate in providing confidential records due to concerns that a particular state's laws may subject those records to public disclosure. In some instances when other states have already received the records, North Dakota must continue to fight with the defendants for those same records. With the current language in section 44-04-18.12 it is very burdensome, if even possible, for the North Dakota Attorney General to obtain a written agreement with each of the twenty to forty other states and/or federal government. With this requirement it is difficult for the Attorney General to timely review records and documents necessary to make an informed decision or otherwise participate in a multi-state action. The recovery of penalties, investigation costs and attorney's fees often depends on the stage and level of participation. Delays in joining the multi-state or obtaining records for review could have a significant impact on North Dakota's enforcement and/or recoveries in regard to consumer fraud and antitrust multi-state cases. The amendments to section 44-04-18.12 would resolve this problem and would be consistent with the treatment of joint investigation records by the majority of other states.

For these reasons, the Attorney General respectfully urges this committee to give Senate Bill 2228 a "do pass" recommendation, with the proposed amendments.

Thank you for your time and consideration and I will be available to try and answer any questions.

Att # 2

Proposed Amendments to Senate Bill 2228
Senate Judiciary Committee
John T. Traynor, Chairman
January 29, 2003

Presented by
Parrell D. Grossman
Director, Consumer Protection and Antitrust Division
Office of Attorney General

Page 1, line 2, after "51-15-10," remove "and"

Page 1, line 2, after "51-15-11" insert ", and 44-04-18.12"

Page 1, line 3, after "practices" insert "and cooperative investigations and litigation"

Page 1, line after "chapter" insert a comma

Page 2, line 3, after "or" overstrike "any of the provisions of" and insert immediately thereafter "by other chapters including"

Page 2, line 4, after "interest" overstrike "that an investigation should be made to ascertain" and insert immediately thereafter "to investigate"

Page 2, line 6, after "under" insert "this chapter or under other chapters, including"

Page 2, line 16, replace "therof" with "thereof"

Page 2, line 23, after "or" insert "by other chapters, including"

Page 3, line 17, after "chapter " insert a comma

Page 3, line 17, after "or" insert "other chapters, including"

Page 3, line 29, after "chapter " insert a comma

Page 3, line 29, after "or" insert "by other chapters, including"

Page 4, line 6, after "chapter" insert a comma

Page 4, line 6, after "or" insert "in other chapters, including"

Page 4, line 9, after "chapter" insert a comma

Page 4, line 9, after "or" insert "by other chapters, including"

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Page 4, line 17, after "chapter" insert a comma

Page 4, line 17, after "or" insert "by other chapters, including"

Page 4, line 22, after "chapter" insert a comma

Page 4, line 22, after "or" insert "under other chapters, including"

Page 4, line 23, after "chapter" insert a comma

Page 4, line 23, after "or" insert "by other chapters, including"

Page 5, line 10, after "chapter" insert a comma

Page 5, line 10, after "or" insert "by other chapters, including"

Page 5, line 22, after "chapter" remove the overstrike over the comma

Page 5, line 22, after "or" insert "under the provisions of other chapters, including"

Page 5, line 28, after "chapter" insert a comma

Page 5, line 28, after "or" insert "under other chapters, including"

Page 5, line 29, after "fees" remove "and"

Page 5, line 29, after "costs" remove the overstrike over the comma and insert immediately thereafter "and"

Page 6, line 7, after "51-16.1" insert a comma

Page 6, after line 7, insert:

SECTION 10. AMENDMENT. Section 44-04-18.12 of the North Dakota Century Code is amended and reenacted as follows:

44-04-18.12. Cooperative investigations and litigation. A record acquired under a an written agreement between or involving a governmental agency in another jurisdiction and the attorney general is confidential, except for the purposes specified in the agreement, if the attorney general determines:

1. The record is necessary to further a civil investigation or litigation by the state;
2. The record can be obtained only by agreeing to keep the record confidential; and

3. The record is treated as confidential by the provider of the records.

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HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
MARCH 17, 2003

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
ENGROSSED SENATE BILL NO. 2228

Mr. Chairman and members of the House Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General supports Engrossed Senate Bill No. 2228.

Chapter 51-15 is commonly referred to as North Dakota's "consumer fraud law." The Attorney General prosecutes civil consumer fraud violations primarily under chapter 51-15. In order to make chapter 51-15 more effective in protecting North Dakota consumers, the Attorney General is proposing some amendments to the consumer fraud law.

First, in order to more effectively prosecute violations of North Dakota's charitable solicitations law, involving fraudulent or deceptive charitable solicitations, we propose an amendment to the definition of "merchandise" to include "charitable contributions" and the definition of "sale" to include "charitable solicitations." These are small changes that will have no effect upon our legitimate, reputable charitable organizations. However, these amendments will clarify that fraudulent charitable solicitations by fraudulent professional fundraisers or fraudulent charities are within the authority of the consumer fraud law and the Attorney General's enforcement.

Questionable professional fundraisers and charities, located primarily out-of-state, frequently take advantage of generous North Dakota citizens and consumers who open their checkbooks to give substantial money pursuant to many charitable pitches. These donors contribute hundreds of thousands of dollars to organizations they are not familiar with because they want to help when told, for example, the money will be used for disabled firefighters and law enforcement officers, etc. Unfortunately, in many instances, 95 percent of the money goes directly into the pockets of the professional fundraiser. The remaining amount of the donation may actually be used for charitable purposes, depending upon one's definition of "charitable purposes." The Attorney General's concerns are regarding the misrepresentations that often occur during the solicitations. According to the Attorney General's investigations and experience in the area of charitable solicitations, consumers would not contribute but for the misrepresentations or deception by the fundraisers and charities.

In October 2002 the Attorney General initiated legal action against two out-of-state professional fundraisers, Public Awareness, Inc. and Duane Kolve, who were conducting charitable solicitations on behalf of four nonprofit organizations including the Association for Disabled Firefighters, Inc., Coalition of Police and Sheriffs, Inc., American Veteran Relief Foundation, Inc. and ADSA, Inc. (an acronym for American Deputy Sheriffs Association.) The lawsuit alleges that the professional fundraiser and the four associated

charities engaged in misrepresentations during the solicitations including that the donations would be used to fund nonexistent burn camps in North Dakota and falsely stating that the consumers solicited previously had contributed to the organization. Pursuant to a court order, the Attorney General took possession of at least one thousand five hundred checks that were sent by North Dakota donors to local mail processing centers during the weeks following the initiation of the legal action. Those checks range from \$15 to \$30 or more and probably total between \$22,000 and \$40,000. These defendants would have cashed those checks, if the Attorney General had not intercepted these checks pursuant to a court order. The checks are sent in envelopes provided by the fundraisers to the local address of the mail-processing center, but do not include the name of the mail-processing center in order to create the false impression that the "charity" has a local address. Questionable charities routinely employ this practice. The donations involved in our pending legal action are a drop in the bucket in comparison to the total amount of charitable solicitations sent by consumers to other professional fundraisers in similar circumstances.

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The legislature occasionally enacts new legislation that specifies enforcement of violations by the Attorney General pursuant to chapter 51-15. There are at least two such legislative bills pending this session, including House Bill 1388 and Senate Bill 2255. For that reason Senate Bill 2228 now contains language throughout that would clarify that the statutory references in the provisions of chapter 51-15 are not exclusive and would apply to other chapters in which the legislature has directed the Attorney General to use the enforcement statutes already provided in chapter 51-15. Engrossed Senate Bill 2228 contain approximately thirteen insertions of "by other chapters" or similar language to indicate the mentioned chapters are only an example of or are in addition to other chapters that reference and invoke the Attorney General's chapter 51-15 authority. In this manner it should not be necessary to continue to amend chapter 51-15 in each new instance when the legislature provides for enforcement of other statutes under chapter 51-15.

The most significant change in the legislation is in Section 6 of the legislation relating to section 51-15-07 in chapter 51-15. These amendments provide the Attorney General with "cease and desist" authority, which is important to timely and effective protection of North Dakota consumers. Among others, the Insurance Commissioner, the Securities Commissioner and the Commissioner for the North Dakota Department of Financial Institutions all have "cease and desist" authority. Yet, the Attorney General, the chief law enforcement officer of the state, does not currently have this authority. This authority is

necessary to protect consumers. Occasionally, the most blatant consumer fraud will appear in advertisements or at some physical location in North Dakota. In order to stop the illegal activity the Attorney General is required to initiate legal action with documents requiring substantial preparation time. The court cannot issue a consumer fraud preliminary injunction *ex parte*. The court may only issue a preliminary injunction after a hearing. We must locate and serve the defendant and schedule a hearing. In a recent Bismarck case involving ongoing consumer fraud, the Attorney General filed a legal action on January 7 but the court hearing was not scheduled until February 24, almost two months later. The victims have already lost thousands of dollars. The defendant in the meantime was not prohibited from continuing the fraudulent activity. The court, in fact, did grant a Preliminary Injunction against this defendant on February 24, after the hearing.

The district court hearing is an opportunity for defendants to challenge the Attorney General's authority, evidence or action. Defendants will continue to have the opportunity to challenge the Attorney General's authority, evidence or action in an adjudicative proceeding before a hearing office pursuant to the procedures set forth in the Administrative Agencies Practices Act. The primary difference is that the Attorney General will be able to more quickly and effectively act with enforcement actions to stop blatantly fraudulent or illegal activity.

The pending fraudulent charitable solicitation cases are another example of the necessity for "cease and desist" authority. Violators subject to the cease and desist authority usually stop the illegal activity immediately because of the serious penalties for violating a "cease and desist" order. The Attorney General could provide numerous other examples of circumstances requiring prompt action to protect consumers from additional losses.

Section 8 of the legislation clarifies the award of attorney's fees, investigation fees, cost and expenses to the Attorney General in an investigation and action brought under chapter 51-15. The courts will continue to decide whether, when and the extent to which the court will order the defendants to pay attorneys fees in consumer fraud actions. The language, however, will encourage courts to shift the burden of attorney's fees from the agency and the taxpayers to the defendants determined in violation of the consumer fraud law.

Engrossed Senate Bill 2228 contains a Section 10 in regard to records in cooperative investigations and litigation under section 44-04-18.12. The Attorney General is frequently involved in numerous consumer fraud and antitrust multi-state investigations or litigation, including twenty-four multi-state cases during 2002. The businesses involved as investigation targets or defendants in legal actions are becoming more reluctant to cooperate in providing confidential records due to concerns that a particular state's laws may subject those records to public disclosure. In some instances when other states have already received the records, North Dakota must continue to fight with the defendants for those same records. With the current language in section 44-04-18.12 it is very burdensome, if even possible, for the North Dakota Attorney General to obtain a written agreement with each of the twenty to forty other states and/or federal government. With this requirement it is difficult for the Attorney General to timely review records and documents necessary to make an informed decision or otherwise participate in a multi-state action. The recovery of penalties, investigation costs and attorney's fees often

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depends on the stage and level of participation. Delays in joining the multi-state or obtaining records for review could have a significant impact on North Dakota's enforcement and/or recoveries in regard to consumer fraud and antitrust multi-state cases. The amendments to section 44-04-18.12 would resolve this problem and would be consistent with the treatment of joint investigation records by the majority of other states.

For these reasons, the Attorney General respectfully urges this committee to give Engrossed Senate Bill 2228 a "do pass" recommendation.

Thank you for your time and consideration and I will be available to try and answer any questions.

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