

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2237

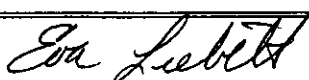
## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2237  
January 24, 2011  
Job Number 13251

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices in the insurance business.

### Minutes:

5 Testimonies Attached

**Chairman Klein:** Opened the hearing.

**Senator Schneider:** Prime sponsor of the bill. Testimony Attached (1).

**Senator Nodland:** Asked if he brought the bill because there have been some instances where a person was not provided insurance.

**Senator Schneider:** Domestic Violence is considered a silent crime and he didn't feel victims would come forward to testify. He believes insurers when they say they would not purposely deny someone but he would be surprised if it has not already happened unwittingly. It is a prevalent crime in all fifty states.

**Janelle Moos, Executive Director of the North Dakota Council on Abused Women's Services:** Testimony Attached (2).

**Chairman Klein:** Asked the question of what proof they have that victims are being denied coverage.

**Janelle:** A lot of this has been done looking at National Law, they work with a survivor group and they have talked about the challenges they have had. They were often insured under their spouses and they want to be proactive in making sure they are not denied coverage of their own. She also stated that they see 4000 to 4500 domestic violence victims each year and it has been consistent for the last ten years.

Questions asked.

**Michael Fix, Director of the Life and Health Division and Actuary of the North Dakota Insurance Department:** Testimony Attached (3).

Question asked.

**Paul Sanderson, Property and Casualty Insurers Association of America:** Testimony Attached (4) with proposed amendments.

**Senator Laffen:** Asked what it meant to say by limiting a person's access to insurance and if it meant limiting their ability to get claim money on an existing policy or if it means they are denied the ability to get a policy.

**Paul:** He said he read that, personally, more on denying their access to insurance, limiting their ability to be written. He feel if they pass the bill, it will be at the interpretation of the insurance department or the courts. It is a concern they have and why they would feel more comfortable if it was under health insurance instead of property and casualty where it is already covered.

**Chairman Klein:** Asked Senator Schneider if this was under the proper department and if he wanted to visit with the insurance department.

**Senator Schneider:** Wants to make sure that changing it wouldn't change anyone else's support of the bill.

**Dan Ulmer, Blue Cross and Blue Shield of North Dakota:** Testimony Attached (5). Neutral on the bill but would like to see some changes.

**Senator Schneider:** Thanks Dan for offering the technical amendments but wanted to know about a code that he had stated from. Dan did not have a copy of the code but could get it for him. He asked if the code only applied to group health plans and not to individual.

**Dan:** Yes, that's why they brought back one of the similar acts.

**Senator Schneider:** To make clear it doesn't make reference to domestic violence or abuse.

**Dan:** No, but it does in terms of being able to discriminate. Stated that they can't discriminate based on a class and abuse would be a class. He also wanted to comment on the question of pre-existing conditions. There greatest fear about pre-existing conditions is that people will buy insurance as they need it and then drop it when they don't. The healthy carry the sick, the more healthy in the pool the less it costs everyone. Continued to expand on what he feels will harm the insurance industry.

**Chairman Klein:** Closed the hearing.

# 2011 SENATE STANDING COMMITTEE MINUTES

**Senate Industry, Business and Labor Committee**  
Roosevelt Park Room, State Capitol

SB 2237  
February 2, 2011  
Job Number 13874

☐ Conference Committee

Committee Clerk Signature

*Eva Lubelt*

## **Explanation or reason for introduction of bill/resolution:**

Relating to prohibited practices in the insurance business

## **Minutes:**

Discussion and Vote

**Chairman Klein:** Opened the discussion on Senate Bill 2237.

**Senator Schneider:** Provided his amendment.

Discussion on Senator Schneider's amendment

**Senator Schneider:** Moved a do pass to adopt the amendment.

**Senator Murphy:** Seconded the motion.

Roll Call Vote: Yes-7 No-0

Discussion

**Senator Larsen:** Moved a do not pass.

**Senator Nodland:** Seconded the motion.

Roll Call Vote: Yes-5 No-2

Senator Larsen to carry the bill

## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2237  
February 14, 2011  
Job Number 14474

☐ Conference Committee

Committee Clerk Signature

*Eva Lubett*

### Explanation or reason for introduction of bill/resolution:

Relating to prohibited practices in the insurance business

### Minutes:

Reconsider Action, Hog House Amendment and  
Vote

**Chairman Klein:** Opened the hearing on Senate Bill 2237.

**Senator Nodland:** Motioned to reconsider action on Senate Bill 2237.

**Senator Schneider:** Seconded the motion.

**Chairman Klein:** All in Favor of that motion, motion carried. The bill had left with a do not pass. He worked to get everyone on board that he could, including blue cross and the PNC, Pat Wards group. Janelle looked at it and he thinks she is okay with it. This would be a Hog House Amendment and in effort to keep it alive and get it over to the House and if they is anything else to be done they can possibly do it. They will be adding one line into the current code.

**Janelle Moss, Executive Director of the North Dakota Council on Abused Women's Services:** Said she looked at the amendments and they feel it will still do what they hoped it will do, it will allow victims to not be denied insurance based on a pre-existing condition.

**Dan Ulmer, Blue Cross and Blue Shield:** He explains accident insurance which he said he thinks it includes health insurance at a whole. He doesn't know if there is a limited line section for this. Generally speaking if you go back and look at 26.10403 it talks about unfair methods of competition or unfair or deceptive acts or practices defined. He feels it would cover it. He believes it is a prohibit section but doesn't have a solid answer.

**Senator Schneider:** To the extent that it is ambiguous and a lawyer might be looking at it someday, he said he would be of the mind that Legislative intent is to include disability insurance.

**Dan:** That is what we would look up, to see what was intended.

**Chairman Klein:** Legislative intent is used in the administrative rules process.

**Senator Schneider:** Moved to adopt the amendment.

**Senator Nodland:** Seconded the motion.

Roll Call Vote: Yes-7 No-0

**Senator Schneider:** Moved a do pass as amended.

**Senator Nodland:** Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist to carry the bill

PROPOSED AMENDMENTS TO SENATE BILL NO. 2237

Page 1, line 9, replace "abuse" with "domestic violence"

Page 1, line 9, replace the third underscored comma with "or"

Page 1, line 9, remove the second ", or"

Page 1, line 10, remove "should have sought"

Page 1, line 10, replace "abuse" with "domestic violence"

Page 1, line 11, replace the first "abuse" with "domestic violence"

Page 1, line 11, replace the second "abuse" with "domestic violence"

Page 1, line 13, remove ", or potential to be,"

Page 1, line 13, replace "abuse" with "domestic violence"

Page 1, line 16, replace the first "abuse" with "domestic violence"

Page 1, line 16, replace the second "abuse" with "domestic violence"

Page 1, line 16, after the underscored period insert "As used in this subdivision, domestic violence has the same meaning as provided under section 14-07.1-01. Under this subdivision, with respect to all other conditions a subject of domestic violence is subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are all other individuals."

Renumber accordingly

Date: 2/2/2011  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2237

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Schneider Seconded By Senator Murphy

| Senators                 | Yes | No | Senators              | Yes | No |
|--------------------------|-----|----|-----------------------|-----|----|
| Chairman Jerry Klein     | ✓   |    | Senator Mac Schneider | ✓   |    |
| VC George L. Nodland     | ✓   |    | Senator Philip Murphy | ✓   |    |
| Senator John Andrist     | ✓   |    |                       |     |    |
| Senator Lonnie J. Laffen | ✓   |    |                       |     |    |
| Senator Oley Larsen      | ✓   |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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



Date: 2/2/11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2237

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment  
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Larsen Seconded By Senator Nodland

| Senators                 | Yes | No | Senators              | Yes | No |
|--------------------------|-----|----|-----------------------|-----|----|
| Chairman Jerry Klein     | ✓   |    | Senator Mac Schneider |     | ✓  |
| VC George L. Nodland     | ✓   |    | Senator Philip Murphy |     | ✓  |
| Senator John Andrist     | ✓   |    |                       |     |    |
| Senator Lonnie J. Laffen | ✓   |    |                       |     |    |
| Senator Oley Larsen      | ✓   |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Larsen

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

February 11, 2011

JB  
2-14-11  
1 of 2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2237

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 7 of section 26.1-04-03 of the North Dakota Century Code, relating to prohibited practices in the insurance business."

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 7 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

7. Unfair discrimination.

- a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.
- b. Making or permitting any unfair discrimination, including consideration of an individual's history or status as a subject of domestic abuse, between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.
- c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.
- d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of

the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience."

2 of 2

Renumber accordingly

Date: 2/14/11  
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2237

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☒ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Schneider Seconded By Senator Nodland

| Senators                 | Yes | No | Senators              | Yes | No |
|--------------------------|-----|----|-----------------------|-----|----|
| Chairman Jerry Klein     | ✓   |    | Senator Mac Schneider | ✓   |    |
| VC George L. Nodland     | ✓   |    | Senator Philip Murphy | ✓   |    |
| Senator John Andrist     | ✓   |    |                       |     |    |
| Senator Lonnie J. Laffen | ✓   |    |                       |     |    |
| Senator Oley Larsen      | ✓   |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 2/14/11  
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2237

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Schneider Seconded By Senator Nodland

| Senators                 | Yes | No | Senators              | Yes | No |
|--------------------------|-----|----|-----------------------|-----|----|
| Chairman Jerry Klein     | ✓   |    | Senator Mac Schneider | ✓   |    |
| VC George L. Nodland     | ✓   |    | Senator Philip Murphy | ✓   |    |
| Senator John Andrist     | ✓   |    |                       |     |    |
| Senator Lonnie J. Laffen | ✓   |    |                       |     |    |
| Senator Oley Larsen      | ✓   |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |
|                          |     |    |                       |     |    |

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

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

**REPORT OF STANDING COMMITTEE**

**SB 2237: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2237 was placed on the Sixth order on the calendar.

Page 1, line 9, replace "abuse" with "domestic violence"

Page 1, line 9, replace the third underscored comma with "or"

Page 1, line 9, remove the second "or"

Page 1, line 10, remove "should have sought"

Page 1, line 10, replace "abuse" with "domestic violence"

Page 1, line 11, replace the first "abuse" with "domestic violence"

Page 1, line 11, replace the second "abuse" with "domestic violence"

Page 1, line 13, remove "or potential to be."

Page 1, line 13, replace "abuse" with "domestic violence"

Page 1, line 16, replace the first "abuse" with "domestic violence"

Page 1, line 16, replace the second "abuse" with "domestic violence"

Page 1, line 16, after the underscored period insert "As used in this subdivision, domestic violence has the same meaning as provided under section 14-07.1-01. Under this subdivision, with respect to all other conditions a subject of domestic violence is subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are all other individuals."

Renumber accordingly

**REPORT OF STANDING COMMITTEE**

**SB 2237, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2237 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 7 of section 26.1-04-03 of the North Dakota Century Code, relating to prohibited practices in the insurance business.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subsection 7 of section 26.1-04-03 of the North Dakota Century Code is amended and reenacted as follows:

7. Unfair discrimination.
  - a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.
  - b. Making or permitting any unfair discrimination, including consideration of an individual's history or status as a subject of domestic abuse, between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.
  - c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other conditions, including the underlying cause of the blindness or partial blindness, persons who are blind or partially blind shall be subject to the same standards of sound actuarial principles or actual or reasonably anticipated experience as are sighted persons.
  - d. Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience."

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2237



# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2237  
March 14, 2011  
15373

☐ Conference Committee

Committee Clerk Signature

*Ellen Letang*

## Explanation or reason for introduction of bill/resolution:

Prohibited practices in the insurance business

## Minutes:

**Chairman Keiser:** Opens the hearing of SB 2237. (Hearing started at 2:00)

**Janelle Moos~Executive Director of the North Dakota Council on Abused Women's Services.** (See attached testimony 1).

**Chairman Keiser:** You addressed health insurance; does this not cover all over forms of insurance, property, casualty and other forms?

**Janelle Moos:** The original intent of the bill was to cover insurance. What we currently have in statute is just related to property.

**Representative Ruby:** The issue with pre-existing conditions was set up more on whether this person had been abused before rather than a certain injury based on the fact of an act than it was on an injury?

**Janelle Moos:** Not specifically, if the victim went in on multiply times based on injuries that they have received because of being a victim of violence, they had substantial injuries to their neck or back that was somehow prohibiting them. It's not the act of domestic violence but those injuries are most often because of the violence they experienced in their own relationship. Those were the things that insurance companies based on police or medical reports as the pre-existing conditions, not necessarily the act of domestic violence.

**Representative Ruby:** From one incidence or ongoing?

**Janelle Moos:** It could be either one.

**Representative Frantsvog:** Does this cover all types of insurance?

**Janelle Moos:** We added domestic violence to subsection B and its relating to accident or health insurance.

**Vice Chairman Kasper:** Five years ago, a person was subject to abuse and that person became permanently disabled and now they want to apply for health insurance. Would this bill say that the underwriters cannot underwrite based upon that condition that happened five years ago or does it say from this day forward, you cannot underwrite on the abuse?

**Janelle Moos:** It would be if that individual could demonstrate that the injuries were the result of domestic violence.

**Vice Chairman Kasper:** How would that person demonstrate that it was in fact because of domestic violence?

**Janelle Moos:** Those medical or police records that can demonstrate whether or not they were victims. Information is available.

**Chairman Keiser:** Would you let Senator Schneider testify so he can go back to his hearing.

**Senator Mac Schneider~District 42-Grand Forks:** (See attached testimony 2).

**Chairman Keiser:** Any questions for Senator Mac Schneider?

**Representative Ruby:** In the case of reporting, if the injury was related to domestic violence, would it be required to be in the police reports or could it be somebody who says that it was related to domestic violence?

**Janelle Moos:** There are no requirements specifically related to police reports, those are examples used in order for insurance companies to determine the rates.

**Representative Ruby:** So if someone said that my pre-existing condition was a result of domestic violence, there would be no documentation needed to be shown?

**Janelle Moos:** There will still have to be some sort of documentation.

**Representative Ruby:** Is it common where there are cases that have had violence to them and later down the road they are changing insurances and that insurance company would deny because of some serious condition. That condition would require more medical treatment at a later date. Is it very common?

**Janelle Moos:** That's correct. The insurance did an outreach with the three biggest insurances and they all currently don't have issues with it. The injuries they suffer vary, but the insurance companies are supportive of us making this change in the statute.

**Representative Ruby:** Has there been an incident where an unethical insurer has denied someone because they didn't leave the abuser?

**Janelle Moos:** No we don't have a specific case but it's been happening nationally.

**Representative M Nelson:** Is this written broadly enough to cover children who might be abused by their parents and when they grow up, they will need their own health insurance.

**Janelle Moos:** We haven't talked specifically about the coverage for children.

**Representative M Nelson:** The definition for domestic abuse wouldn't just be between spouses, it would also include children?

**Janelle Moos:** That is correct. Our definition under century code is quite extensive.

**Chairman Keiser:** Worker's compensation will cover an injury related to a job related exposure. In this application of domestic violence, there would be mental and physical impacts from the abuse and those should be covered without discrimination. What about all the other things? For example, if they developed cancer, would they be exempted from underwriting non-related diseases injuries for a person coming in with this kind of coverage?

**Janelle Moos:** Dan would be more effective in answering that question.

**Chairman Keiser:** Others in support.

**Dan Ulmer~Blue Cross Blue Shield:** We like the bill. When the bill originally came in it basically required our staff to ask whether or not the injury suffered from domestic violence. We don't do that and it's prohibited under federal law. We don't ask the cause. The only time we ask the cause is whether or not it's work related and then it becomes a WSI issue. We have to do that by law. If you read in section d, your question about cancer, can you underwrite based on the disorder. What we would do is a risk analysis and this will go away in 2014 if PPACA holds. There are three categories, high, medium and low as to how we classify the risk. Whether or not we can deny, as in the individual market, we are allowed to deny those folks and we sent them off to CHAN because they are considered a higher risk. In the group market, we don't even ask. We underwrite as a whole for group insurance.

**Chairman Keiser:** If you are going to classify them this way, you would have normally classified them anyway. What does this bill do?

**Dan Ulmer:** Not much considering what our existing practice is other than we can't ask whether or not this injury was a result of domestic violence.

**Representative Frantsvog:** If you can't ask, but could they tell you.

**Dan Ulmer:** No, it would not have an effect, it's not the cause.

**Vice Chairman Kasper:** You can underwrite based upon the health of the person currently, you just can't say, how did you get to that position?

**Dan Ulmer:** That's correct. We can't ask the cause only if it's in a work related injury.

**Vice Chairman Kasper:** If the person would disclose to you that it was domestic abuse, would that prohibit you from underwriting their current health status or would you still be able to underwrite the current health status?

**Dan Ulmer:** We are not interested in cause; we are interested in the health status.

**Vice Chairman Kasper:** What I'm asking is could they say, "you can't use my current health status because it's the result of domestic abuse"?

**Dan Ulmer:** I don't believe so.

**Chairman Keiser:** Anyone else here to testify in support SB 2237?

**Amy Fisher~Buxton, North Dakota:** (See attached testimony 3).

**Chairman Keiser:** Anyone else here to testify in support SB 2237?

**Michael Fix~Director of the Life and Health Division and Actuary-North Dakota Insurance Department:** (See attached testimony 4).

**Chairman Keiser:** In your survey, what is the number of documented abuse cases annually in our state?

**Janelle Moos:** There are 4600 that come in each year and they are new victims.

**Chairman Keiser:** Anyone else here to testify in support SB 2237?

**Paul Sanderson~Attorney for Zuger Kirmis & Smith-Property Casualty Insurers Association of America:** (See attached testimony 5).

**Representative Ruby:** When the current prohibition was enacted for property and casualty, were there instances or complaints based on that being done in the past that initiated that prohibition?

**Paul Sanderson:** I wasn't around in 1991 to specifically answer that. Not a single one said that they currently do that in their practice or had any complaints about. We don't see this as a problem in the insurance industry.

**Chairman Keiser:** It is my recollection on the P & C side, there was always a concern with a felonious act. Would that be covered?

**Representative Ruby:** If someone who is an abuser and they have a history of doing that type of activity, could they be denied?

**Chairman Keiser:** If it's a felony.

**Paul Sanderson:** I believe the current state of the law directly addresses the issue you raised.

**Chairman Keiser:** Correct.

**Chairman Keiser:** Anyone else here to testify in support, in opposition, in neutral SB 2237? Closes the hearing, what are the wishes of the committee?

**Vice Chairman Kasper:** Moves a Do Pass.

**Representative Nathe:** Second.

**Chairman Keiser:** Further discussion?

Roll call was taken on SB 2237 for a Do Pass with 14 yeas, 0 nays, 0 absent and Representative Frantsovog is the carrier.

Date: March 14, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2237

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

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

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Nathe

| Representatives          | Yes | No | Representatives          | Yes | No |
|--------------------------|-----|----|--------------------------|-----|----|
| Chairman Keiser          | ✓   |    | Representative Amerman   | ✓   |    |
| Vice Chairman Kasper     | ✓   |    | Representative Boe       | ✓   |    |
| Representative Clark     | ✓   |    | Representative Gruchalla | ✓   |    |
| Representative Frantsvog | ✓   |    | Representative M Nelson  | ✓   |    |
| Representative N Johnson | ✓   |    |                          |     |    |
| Representative Kreun     | ✓   |    |                          |     |    |
| Representative Nathe     | ✓   |    |                          |     |    |
| Representative Ruby      | ✓   |    |                          |     |    |
| Representative Sukut     | ✓   |    |                          |     |    |
| Representative Vigesaa   | ✓   |    |                          |     |    |
|                          |     |    |                          |     |    |

Total Yes 14 No 0

Absent 0

Floor Assignment Rep Frantsvog

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

**REPORT OF STANDING COMMITTEE**

**SB 2237, as reengrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2237 was placed on the Fourteenth order on the calendar.**

2011 TESTIMONY

SB 2237



**TESTIMONY OF SEN. MAC SCHNEIDER (DISTRICT 42 – GRAND FORKS)**  
**SENATE INDUSTRY BUSINESS AND LABOR COMMITTEE**  
**SENATE BILL 2237**

I am the prime sponsor of Senate Bill 2237, legislation which would provide protections to victims of domestic violence regarding the issuance and administration of insurance policies.

The legislation does three things. First, an insurer would be prohibited from denying or restricting coverage because of an individual's status as a victim or potential victim of abuse. Second, the bill also prohibits this status from being taken into account as a rating factor when determining premiums. Finally, the legislation makes clear that an insurer may not limit coverage or deny a claim that arises as a result of abuse – essentially prohibiting insurers from considering injuries arising from domestic violence as pre-existing conditions.

There is precedent for these protections in both North Dakota and around the country. Under Section 26.1-39-24 of the Century Code, property and casualty insurers are currently prohibited from basing an underwriting or claim-handling decision solely on whether an individual has been a victim of domestic violence. Nationally, the overwhelming majority of states have already (and long ago) codified the very protections provided in this bill. Please see the attached document for a 50 state survey on this issue.

This legislation is also needed. While the federal health care reform law prohibits insurers from considering pre-existing conditions when denying coverage or claims, this provision of the law does not take effect until 2014 and is potentially subject to legislative change.

Admittedly, the vast majority of insurers, including the largest insurer in the state, are being good corporate citizens and do not purposely deny coverage to individuals based on their status as victims of domestic violence. However, it is not difficult to imagine that an insurer – innocently and in the normal course of business – might deny coverage for a cervical spine condition or other injury without even knowing that such a pre-existing condition was a result of domestic violence. Likewise, the insured-victim may not even think twice about such a denial. Under this legislation, those who provide aid to victims of abuse can counsel them about their rights and make certain insurers have the knowledge to do the right thing.

Finally, as some members of this committee are aware, the North Dakota Legislature rejected a similar measure in the mid 1990s. The state has come a long way since that time. This is an opportunity to provide meaningful protections to victims of domestic abuse while also righting an historical wrong.

Thank you for your consideration. I would be happy to answer any questions.

**STATE LAWS PROHIBITING INSURANCE DISCRIMINATION  
ON THE BASIS OF DOMESTIC VIOLENCE\***

| State                | Statute  | Lines of Insurance Covered         |
|----------------------|--|------------------------------------|
| Alabama              | ALA. CODE §§ 10A-20-6.16(a)(2); 27-55-1 to -9  | Health, Life, Disability, Property |
| Alaska               | ALASKA STAT. §§21.36.430   | Health, Life, Disability, Property |
| Arizona              | ARIZ. REV. STAT. ANN. § 20-448G to -L  | Health, Life, Disability, Property |
| Arkansas             | ARK. CODE ANN. § 23-66-206(14)(G)(i)   | Health, Life, Disability, Property |
| California           | CAL. HEALTH & SAFETY CODE § 1374.75; CAL. INS. CODE §§ 675, 675.5, 676.9, 10144.2, 10144.3     | Health, Life, Disability, Property |
| Colorado             | COLO. REV. STAT. ANN. §§ 10-3-1104.8, 10-3-1108  | Health, Life, Disability, Property |
| Connecticut          | CONN. GEN. STAT. ANN. §§ 38a-816(18), 38a469   | Health                             |
| Delaware             | DEL. CODE ANN. tit. 18 §§ 2302(5), 2304(24)-(25), 3340, 3357                                   | Health, Life, Disability, Property |
| District of Columbia |  |                                    |
| Florida              | FLA. STAT. ANN. § 626.9541(g)(3)(e)  | Health, Life, Disability, Property |
| Georgia              | GA. CODE ANN. § 33-6-4(b)(15)  | Health, Life, Disability, Property |
| Hawaii               | HAW. REV. STAT. ANN. §§ 431:10-217.5, 432:1-101.6, 432:2-103.5, 432D-27                        | Health, Life, Disability, Property |
| Idaho                |  |                                    |
| Illinois             | 215 ILL. COMP. STAT. ANN. 5/155.22a-b, 5 ILL. COMP. STAT. ANN. 375/2, -3, -10                  | Health, Life, Disability, Property |
| Indiana              | IND. CODE ANN. § 27-8-24.3-1 to -10  | Health, Life, Disability           |
| Iowa                 | IOWA CODE ANN. § 507B.4(7)(c)  | Health, Life, Disability, Property |
| Kansas               | KAN. STAT. ANN. § 40-2404(7)(d)  | Health, Life Disability            |
| Kentucky             | KY. REV. STAT. ANN. §§304.12-211, 304.17A155   | Health, Property                   |
| Louisiana            | LA. REV. STAT. ANN. 22:1078  | Health                             |
| Maine                | ME. REV. STAT. ANN. tit. 24-A, § 2159-B  | Health, Life, Disability           |
| Maryland             | MD. CODE ANN., INS. §27-504  | Health, Life                       |
| Massachusetts        | MASS. GEN. LAWS ANN. ch. 175, §§95B, 108G, 120D; ch. 176A, §3A; ch. 176B, §5A; ch. 176 G, § 19 | Health, Life, Disability, Property |

**\*This chart is up to date as of September, 2010. It does not list state statutes adopted to implement the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that prohibit group health plans and health insurers offering group coverage from discriminating on the basis of health factors — including “conditions arising out of domestic violence” — in eligibility, benefits, and premiums.**

|                |   |                                    |
|----------------|---|------------------------------------|
| Michigan       | MICH. COMP. LAWS ANN. §§ 500.2246, 500.3406j, 550.1401(3)(d)  | Life, Disability                   |
| Minnesota      | MINN. STAT. ANN. § 72A.20 Subd. 8(d)  | Health, Life                       |
| Mississippi    |   |                                    |
| Missouri       | MO. ANN. STAT. §§ 375.1300, 375.1312  | Health, Life, Disability, Property |
| Montana        | MONT. CODE ANN. §§33-18-242, 33-18-216  | Health, Life, Disability, Property |
| Nebraska       | NEB. REV. STAT. ANN. §§ 44-7401 to 44-7410  | Health, Life, Disability, Property |
| Nevada         | NEV. REV. STAT. ANN. §§ 689A.413, 689B.068, , 689C.196, 695A.195, 695 B.316, 695C.203, 695D.217, 695F.090                           | Health                             |
| New Hampshire  | N.H. REV. STAT. ANN. § 417:4 VIII (f)   | Health, Life, Disability, Property |
| New Jersey     | N.J. STAT ANN. §§ 17:23A-13.3, 17:29B-17, 17:48-6t, 17:48A-7s, 17:48E-35.18, 17B:26-2.1q, 17B:27-46.1t; N.J. ADMIN.CODE § 11:4-42.5 | Health, Life, Property             |
| New Mexico     | N.M. STAT. ANN. §§59A-16B-1 to -10  | Health, Life, Disability, Property |
| New York       | N.Y. INS. LAW §2612   | Health, Life, Disability, Property |
| North Carolina |   |                                    |
| North Dakota   | N.D. CENT. CODE §26.1-39-24   | Property                           |
| Ohio           | OHIO REV. CODE ANN. § 3901.21(Y)  | Health, Life                       |
| Oklahoma       | S.B. 1251, 52d Leg., 2d Reg. Sess. (Okla.2010) (to be codified at Okla. Stat. tit. 36, § 6060.10A)                                  | Health                             |
| Oregon         | OR. REV. STAT. ANN. §746.015(4)   | Health, Life, Disability, Property |
| Pennsylvania   | 40 PA. STAT. ANN. §§1171.3, 1171.5 (14)   | Health, Life, Disability, Property |
| Rhode Island   | R.I. GEN. LAWS §§ 27-59-5; 27-60-1 to -7; 27-61-1 to -7   | Health, Life                       |
| South Carolina |   |                                    |
| South Dakota   |   |                                    |
| Tennessee      | TENN. CODE ANN. §§ 56-8-301 to -306   | Health                             |
| Texas          | TEX. INS. CODE ANN. §§ 544.151 to -.158   | Health, Life                       |
| Utah           | UTAH CODE ANN. §§ 31A-21-501 to -506  | Health, Life, Disability           |
| Vermont        |   |                                    |
| Virginia       | VA. CODE ANN. § 38.2-508 (7)  | Health, Life, Disability, Property |
| Washington     | WASH. REV. CODE ANN. § 48.18.550  | Health, Life, Disability, Property |
| West Virginia  | W. VA. CODE ANN. § 33-4-20  | Health, Life, Disability           |
| Wisconsin      | WIS. STAT. ANN. § 631.95  | Health, Life, Disability, Property |
| Wyoming        |   |                                    |

\*This chart is up to date as of September, 2010. It does not list state statutes adopted to implement the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that prohibit group health plans and health insurers offering group coverage from discriminating on the basis of health factors — including “conditions arising out of domestic violence” — in eligibility, benefits, and premiums.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES  
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Testimony on SB 2237

Senate Industry, Business and Labor

January 24, 2011

Chair Klein and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of SB 2237.

Information that insurance practices negatively affect victims of domestic violence first came to light in 1994 when two insurance companies denied health, life and disability insurance to a Pennsylvania woman based on information in her medical records that her husband had abused her. As domestic violence advocates soon discovered, her experience was not an isolated instance. An investigation quickly exposed the common and widespread practice of underwriting on the basis of domestic violence. When applying for insurance, individuals are asked to sign a release to permit insurers to obtain medical records- that often reveal abuse. Companies also maintain databases on risk factors that they are required to report into and information related to abuse is often disclosed at that time. Insurers also get information from other records including police reports, public court documents, credit reports, and court orders for protection.

In 1994, no law prohibited insurers from taking domestic violence into account in determining whom to insure, what to insure, and how much to charge. This prompted victim advocates, legislators, and state insurance regulators to work together to gather information on the scope of the problem and develop legislative solutions. The National Association of Insurance Commissioners (NAIC) developed comprehensive model legislation to prohibit this discrimination in all lines of insurance. The model bills define essential terms and specific prohibited actions, recommend development of protocols for insurance company employees to follow to protect the safety and privacy of victims, and address enforcement.

Since 1994, forty-two states have adopted some form of legislation prohibiting insurance discrimination against victims of domestic violence. These laws were adopted over a span of years during which the learning curve about the types of insurance practices that affect victims was continuously rising and the period in which the NAIC model laws were evolving. As a result, state laws vary widely in scope of coverage, including types of insurance to which they apply, types of practices prohibited, and remedies provided. I've included a chart with my testimony that provides an overview of all current state statutes that prohibit insurance discrimination based on domestic violence.

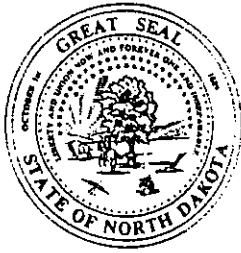
North Dakota is one of only 8 states that currently don't have laws that specifically bar insurance companies from using domestic violence as a pre-existing condition to deny health coverage. Many insurance companies deny victims of domestic violence access to insurance by using domestic violence as an underwriting criterion (basis for determining who to cover, what to cover, and how much to charge). Insurance companies can deny coverage on the basis of abuse related medical conditions or claims. Such discrimination can occur in all lines of insurance including health, life, disability, property, and casualty.

Each year since 1995, Congress has introduced legislation prohibiting insurance discrimination against victims of abuse. Starting in 1998, insurance protections for victims of domestic violence have been included as a subtitle in several packages of bills, including the Violence Against Women Act, aimed at providing comprehensive solutions to domestic violence. Until last year, with the passage of the Patient Protection and Affordable Care Act, Congress had adopted only limited protections for domestic violence victims.

The federal law would ban insurance companies from denying coverage based on preexisting conditions, but most of the provisions of the new law don't take effect until 2014. Although we've been assured that the largest insurance providers in North Dakota don't currently engage in this practice, it's essential during this time of uncertainty at the federal level, the legislature take proactive steps to protect victims of domestic violence. And since the three largest insurance providers have assured us they aren't denying coverage right now and don't plan to do so in the future, then they shouldn't take issue with making this change in state law. We've appreciated the support we've received from Commissioner Hamm's office over the last year as we've weighed the risk and need for protection of victims of domestic violence.

Domestic violence is a crime- not a career, lifestyle, or choice. No one chooses to be battered, and leaving a violent domestic situation is a difficult process complicated by concerns for safety and economics. A person's likelihood of being a victim should not be used as a basis for underwriting insurance and therefore, we urge you to support SB 2237.

Thank you.



North Dakota  
Insurance Department

Adam W. Hamm, Commissioner

September 13, 2010

Janelle Moos, M.S.  
Executive Director  
ND Council on Abused Women's Services  
Coalition Against Sexual Assault in ND  
418 E. Rosser Ave. #320  
Bismarck, ND 58501

Dear Janelle:

This letter is sent as a follow-up to our recent meeting regarding whether North Dakota health insurers consider domestic violence a pre-existing condition.

As we discussed during our latest meeting, the North Dakota Insurance Department (Department) contacted all major health insurers writing in North Dakota in the fall of 2009 and was informed that none of them view domestic violence as a pre-existing condition. Additionally, since our latest meeting with you on August 10, 2010, my staff has again contacted all major North Dakota health insurers to see if anything has changed. During those conversations, they stated to the Department that it is not their practice to deny coverage due to domestic violence and that they will not do so in the future.

Thank you very much for meeting with the Department on this important issue and for conveying your concerns. Please let me know if you have any additional questions or concerns regarding this issue.

Sincerely,



Adam Hamm  
Insurance Commissioner

AH:bp

**SENATE BILL NO. 2237**

**Presented by:** Michael L. Fix  
Director of the Life and Health Division and Actuary  
North Dakota Insurance Department

**Before:** Senate Industry, Business and Labor Committee  
Senator Jerry Klein, Chairman

**Date:** January 24, 2011

**TESTIMONY**

Good morning, Chairman Klein and members of the committee. My name is Michael Fix, and I am the Director of the Life and Health Division and Actuary for the North Dakota Insurance Department. I appear before you today in support of Senate Bill No. 2237.

In August of last year, we met with Janelle Moos, the Executive Director of the North Dakota Council on Abused Women's Services Coalition Against Sexual Assault in North Dakota, regarding whether North Dakota insurers considered domestic violence as a pre-existing condition that would preclude coverage under a health insurance policy. North Dakota had been identified as one of nine states that did not specifically prohibit by statute this practice.

The North Dakota Insurance Department has not received complaints about this practice, and when we asked the major insurance carriers in North Dakota, we learned none of them currently use domestic violence as a pre-existing condition to deny claims nor as an underwriting criteria to deny coverage. Later, we specifically asked each company whether they intended to change this practice in the future and they confirmed that they do not. A letter to Janelle Moos to this effect was sent September 13, 2010, and a copy has been included with this testimony.

Even though there have been no complaints registered with the Insurance Department on this issue, and North Dakota insurers have assured us that they do not and will not consider domestic violence as a pre-existing condition, we support passage of Senate Bill No. 2237.

Thank you and I will be happy to take any questions.



**TESTIMONY OF PAUL SANDERSON IN SUPPORT OF SENATE BILL 2237**

**SENATE IBL COMMITTEE**

**JANUARY 24, 2011**

Chairman Klein and Members of the Senate IBL Committee, my name is Paul Sanderson. I am an attorney in the Bismarck law firm of Zuger Kirmis & Smith. I represent the Property Casualty Insurers Association of America. PCI is the nation's premier insurer trade association, representing over 1,000 companies that write over \$180 billion in insurance premiums for automobile, homeowners, and business insurance.

PCI supports SB 2237, however we believe an amendment is necessary to prevent any unintended consequences. It is our understanding that this bill is intended to govern health insurance. Considering that property and casualty insurers are already governed by a similar provision, it seems the appropriate location for this bill would be in Chapter 26.1-36 governing Accident and Health Insurance rather than Chapter 26.1-04 governing prohibited practices in the insurance business. Specifically, N.D.C.C. § 26.1-36-12 governs provisions prohibited in individual and group accident and health insurance policies. I have offered a friendly amendment to accomplish this move. This amendment would ensure there is no conflict between this bill and the current law in N.D.C.C. § 26.2-39-24.

Our amendment to SB 2237 would also clarify the restrictions contained in the bill. The amendments would insert the word "solely" into the language of the statute to ensure that domestic violence and abuse is not the sole basis for limiting a person's access to insurance. The industry agrees that limiting a person's access to insurance solely because of an incident of domestic violence is prohibited. However, if a person who has a substantial loss or claim history and may also have an incident of domestic violence, the insurer should have the latitude to rate their business in light of the loss history.

A similar provision exists in N.D.C.C. § 26.2-39-24 governing property and casualty insurance. That section includes the word "solely". The current statute recognizes that domestic violence may not be the exclusive factor for limiting access to insurance coverage.

For the foregoing reasons, PCI supports SB 2237 with the proposed amendment and urges a Do Pass on this bill as amended.

PCI'S PROPOSED AMENDMENTS TO SB 2237  
Version 11.0656.01000

Page 1, line 1, remove "subdivision to"

Page 1, line 1, remove "7"

Page 1, line 1, replace "04-03" with "36-12"

Page 1, line 2, after the second "the" insert "accident and health"

Page 1, line 4, remove "subdivision to"

Page 1, line 4, remove "7"

Page 1, line 4, replace "04-03" with "36-12"

Page 1, line 8, after "policy" insert "solely" and after "coverage" insert "solely"

Page 1, line 12, after "policy" insert "solely"

Page 1, line 16, after "insured" insert "solely"

Renumber accordingly

## Testimony on SB 2237

## Senate Industry Business and Labor Committee

Mr. Chariman and members of the Senate IBL committee I'm Dan Ulmer representing Blue Cross Blue Shield of North Dakota and although we are neutral on this bill we believe it's important for you to understand the status of this issue.

There is already a federal law prohibiting health insurance companies from doing this. Back in 1996, through enactment of the HIPAA nondiscrimination requirements (45 CFR Part 2590), group health plans were prohibited from discriminating against individuals based on health status-related factors. This prohibition extends to rating products or costs, or extending benefits based upon health status-related factors, such as injuries received previously as a result of many factors including domestic abuse victims. Policy language violating the nondiscrimination laws was eliminated from BCBSND health plans at this time. As a result, under the current federal law, for its group business BCBSND is prohibited from denying; refusing to reissue or renew; or terminating a policy based on any health status-related factor, such as that individual suffered injuries as a result of domestic abuse. Similarly, under these same restrictions, BCBSND cannot add any surcharge or use such injuries as a rating factor or exclude or limit coverage for any such losses.

In other words, BCBSND is already prohibited from doing that which this proposed bill seeks to limit and identify as discriminatory under the North Dakota law.

Similarly, BCBSND has interpreted Section 26.1-04-03(7)(b), N.D.C.C., as extending this very same federal prohibition to individual and group fully insured business as well.

Short of this fact, that there already exists a prohibition under federal and state law related to using health status-related factors, We are concerned that HSB 2237 goes well beyond concerns related to domestic abuse in setting the practices intended to be prohibited.

The bill indicates that an insurer violates this prohibition if an individual "should have sought medical or psychological treatment". Our employees, particularly the folks in Member Services that handle these issues, are good, but charging them with obligations related to reading peoples' minds or telling the future appears to go beyond reasonable. We recommend that this language be deleted from the proposed bill. Similarly, this proposed law makes it a prohibited practice to factor the "potential to be the subject of abuse" as a rating factor or the potential for abuse. Such contingent language should be deleted from the proposed bill.

The bill does not limit the discriminatory prohibitions to "domestic abuse" but to simply "abuse" including being the (current, past or future) subject of abuse, seeking treatment for abuse or shelter from abuse. The term "abuse" is rather amorphous when used in this context in that it could be interpreted as being from the perspective of the "abused" and all that this could encompass. We

recommend that this term be qualified to include "domestic abuse" along with a definition of this term thereby possibly limiting its application.

If this bill were to pass, we may have to ask an applicant if they were, are, or might be abused and our staff would then have to determine if there is a potential to be abused. This aspect of complying with the bill makes compliance nearly impossible. Moreover, under the federal nondiscrimination restrictions, BCBSND is prohibited from asking the very questions about domestic abuse that would need to be asked because any such inquiries on their face violate the HIPAA nondiscrimination rules. Since 1996, BCBSND has been required to remove language from its plan documents that touch upon discriminatory practices including the criminal act exclusion, nonconfinement clause language, continuity care of certain benefits (e.g., dental care) and others that potentially violate federal laws.

BCBSND does not engage in the activities that this proposed bill is aimed at prohibiting, but because the manner in which it is drafted, it could expand the benefits and individuals that BCBSND is required to extend coverage for and to.

Mr Chairman and members of the committee I would be happy to try to answer any questions you may have.

Dan Ulmer AVP Government Relations BCBSND

coercion, or intimidation resulting in or tending to result in unreasonable restraint of, or monopoly in, the business of insurance.

5. False financial statements. Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of any person with intent to deceive. Making any false entry in any book, report, or statement of any person with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom the person is required by law to report, or who has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of the person in any book, report, or statement of the person.

6. Stock operations and advisory board contracts. Issuing or delivering or permitting agents, officers, or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

7. Unfair discrimination.

a. Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

b. Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatsoever.

c. Refusing to insure, or refusing to continue to insure, or limiting the amount, extent, or kind of life insurance, accident and sickness insurance, health services, or health care protection insurance available to an individual, or charging an individual a different rate for the same coverage solely because of blindness or partial blindness. Refusal to insure includes denial by an insurer of disability insurance coverage on the grounds that the policy defines "disability" as being presumed in the event that the insured loses the insured's eyesight; however, an insurer may exclude from coverage disabilities consisting solely of blindness or partial blindness when such condition existed at the time the policy was issued. With respect to all other

Testimony 1

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES  
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

4 Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Testimony on SB 2237

House Industry, Business and Labor

March 14, 2011

Chair Keiser and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of SB 2237.

Information that insurance practices negatively affect victims of domestic violence first came to light in 1994 when two insurance companies denied health, life and disability insurance to a Pennsylvania woman based on information in her medical records that her husband had abused her. As domestic violence advocates soon discovered, her experience was not an isolated instance. An investigation quickly exposed the common and widespread practice of underwriting on the basis of domestic violence. When applying for insurance, individuals are asked to sign a release to permit insurers to obtain medical records- that often reveal abuse. Companies also maintain databases on risk factors that they are required to report into and information related to abuse is often disclosed at that time. Insurers also get information from other records including police reports, public court documents, credit reports, and court orders for protection.

In 1994, no law prohibited insurers from taking domestic violence into account in determining whom to insure, what to insure, and how much to charge. This prompted victim advocates, legislators, and state insurance regulators to work together to gather information on the scope of the problem and develop legislative solutions. The National Association of Insurance Commissioners (NAIC) developed comprehensive model legislation to prohibit this discrimination in all lines of insurance. The model bills define essential terms and specific prohibited actions, recommend development of protocols for insurance company employees to follow to protect the safety and privacy of victims, and address enforcement.

Since 1994, forty-two states have adopted some form of legislation prohibiting insurance discrimination against victims of domestic violence. These laws were adopted over a span of years during which the learning curve about the types of insurance practices that affect victims was continuously rising and the period in which the NAIC model laws were evolving. As a result, state laws vary widely in scope of coverage, including types of insurance to which they apply, types of practices prohibited, and remedies provided. I've included a chart with my testimony that provides an overview of all current state statutes that prohibit insurance discrimination based on domestic violence.

North Dakota is one of only 8 states that currently don't have laws that specifically bar insurance companies from using domestic violence as a pre-existing condition to deny health coverage. Many insurance companies deny victims of domestic violence access to insurance by using domestic violence as an underwriting criterion (basis for determining who to cover, what to cover, and how much to charge). Insurance companies can deny coverage on the basis of abuse related medical conditions or claims. Such discrimination can occur in all lines of insurance including health, life, disability, property, and casualty.

Each year since 1995, Congress has introduced legislation prohibiting insurance discrimination against victims of abuse. Starting in 1998, insurance protections for victims of domestic violence have been included as a subtitle in several packages of bills, including the Violence Against Women Act, aimed at providing comprehensive solutions to domestic violence. Until last year, with the passage of the Patient Protection and Affordable Care Act, Congress had adopted only limited protections for domestic violence victims.

The federal law would ban insurance companies from denying coverage based on preexisting conditions, but most of the provisions of the new law don't take effect until 2014. Although we've been assured that the largest insurance providers in North Dakota don't currently engage in this practice, it's essential during this time of uncertainty at the federal level, the legislature take proactive steps to protect victims of domestic violence. As you can see SB 2237 was amended on the Senate side and we are supportive of the changes. We've appreciated the support we've received from Commissioner Hamm's office over the last year as we've weighed the risk and need for protection of victims of domestic violence.

Domestic violence is a crime- not a career, lifestyle, or choice. No one chooses to be battered, and leaving a violent domestic situation is a difficult process complicated by concerns for safety and economics. A person's likelihood of being a victim should not be used as a basis for underwriting insurance and therefore, we urge you to support SB 2237.

Thank you.



## SENATE BILL 2237: FACT AND FICTION

### LEGISLATION WOULD PROVIDE MEANINGFUL INSURANCE PROTECTIONS TO VICTIMS OF DOMESTIC VIOLENCE

Claim: Federal law currently prevents discrimination based on a history of domestic violence.

- *False:* 29 U.S.C. § 1182(a)(1)(G) does prohibit discrimination based on conditions arising out of domestic violence, but only for “**group health plan[s].**” It does not prohibit discrimination in the individual health insurance market, nor does it govern disability policies or other forms of insurance.

Claim: This legislation is not needed given that insurers will no longer be able to consider preexisting conditions under the federal health care reform law.

- *False:* The federal health care reform law’s ban on consideration of preexisting conditions **does not take effect until 2014.** And, of course, this provision is potentially subject to legislative change.

Claim: We haven’t heard any complaints. There must not be a problem.

- *Logically invalid:* Such thinking demonstrates a woeful ignorance of domestic violence, which is often (and appropriately) called “the silent crime.” Importantly, North Dakota **already provides similar protections to victims of domestic violence regarding property and casualty insurance.** See N.D.C.C. § 26.1-39-24. The same rationale for this statute supports passage of Senate Bill 2237.

Claim: Insurers do not deny or restrict coverage to victims of domestic violence now.

- *Not capable of being proved:* Insurers candidly admit that they are unconcerned with the cause of an injury when extending coverage or considering a claim. Thus, even when insurers are acting as good corporate citizens and not overtly basing denials upon instances of domestic violence, innocent denials can nonetheless occur. That is why **42 states have enacted legislation** which makes such denials a prohibited insurance practice.

###

**STATE LAWS PROHIBITING INSURANCE DISCRIMINATION  
ON THE BASIS OF DOMESTIC VIOLENCE\***

| State                | Statute  | Lines of Insurance Covered         |
|----------------------|--|------------------------------------|
| Alabama              | ALA. CODE §§ 10A-20-6.16(a)(2); 27-55-1 to -9  | Health, Life, Disability, Property |
| Alaska               | ALASKA STAT. §§21.36.430   | Health, Life, Disability, Property |
| Arizona              | ARIZ. REV. STAT. ANN. § 20-448G to -L  | Health, Life, Disability, Property |
| Arkansas             | ARK. CODE ANN. § 23-66-206(14)(G)(i)   | Health, Life, Disability, Property |
| California           | CAL. HEALTH & SAFETY CODE § 1374.75; CAL. INS. CODE §§ 675, 675.5, 676.9, 10144.2, 10144.3     | Health, Life, Disability, Property |
| Colorado             | COLO. REV. STAT. ANN. §§ 10-3-1104.8, 10-3-1108  | Health, Life, Disability, Property |
| Connecticut          | CONN. GEN. STAT. ANN. §§ 38a-816(18), 38a469   | Health                             |
| Delaware             | DEL. CODE ANN. tit. 18 §§ 2302(5), 2304(24)-(25), 3340, 3357                                   | Health, Life, Disability, Property |
| District of Columbia |  |                                    |
| Florida              | FLA. STAT. ANN. § 626.9541(g)(3)(e)  | Health, Life, Disability, Property |
| Georgia              | GA. CODE ANN. § 33-6-4(b)(15)  | Health, Life, Disability, Property |
| Hawaii               | HAW. REV. STAT. ANN. §§ 431:10-217.5, 432:1-101.6, 432:2-103.5, 432D-27                        | Health, Life, Disability, Property |
| Idaho                |  |                                    |
| Illinois             | 215 ILL. COMP. STAT. ANN. 5/155.22a-b, 5 ILL. COMP. STAT. ANN. 375/2, -3, -10                  | Health, Life, Disability, Property |
| Indiana              | IND. CODE ANN. § 27-8-24.3-1 to -10  | Health, Life, Disability           |
| Iowa                 | IOWA CODE ANN. § 507B.4(7)(c)  | Health, Life, Disability, Property |
| Kansas               | KAN. STAT. ANN. § 40-2404(7)(d)  | Health, Life Disability            |
| Kentucky             | KY. REV. STAT. ANN. §§304.12-211, 304.17A155   | Health, Property                   |
| Louisiana            | LA. REV. STAT. ANN. 22:1078  | Health                             |
| Maine                | ME. REV. STAT. ANN. tit. 24-A, § 2159-B  | Health, Life, Disability           |
| Maryland             | MD. CODE ANN., INS. §27-504  | Health, Life                       |
| Massachusetts        | MASS. GEN. LAWS ANN. ch. 175, §§95B, 108G, 120D; ch. 176A, §3A; ch. 176B, §5A; ch. 176 G, § 19 | Health, Life, Disability, Property |

**\*This chart is up to date as of September, 2010. It does not list state statutes adopted to implement the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that prohibit group health plans and health insurers offering group coverage from discriminating on the basis of health factors — including “conditions arising out of domestic violence” — in eligibility, benefits, and premiums.**

|                |   |                                    |
|----------------|---|------------------------------------|
| Michigan       | MICH. COMP. LAWS ANN. §§ 500.2246, 500.3406j, 550.1401(3)(d)  | Life, Disability                   |
| Minnesota      | MINN. STAT. ANN. § 72A.20 Subd. 8(d)  | Health, Life                       |
| Mississippi    |   |                                    |
| Missouri       | MO. ANN. STAT. §§ 375.1300, 375.1312  | Health, Life, Disability, Property |
| Montana        | MONT. CODE ANN. §§33-18-242, 33-18-216  | Health, Life, Disability, Property |
| Nebraska       | NEB. REV. STAT. ANN. §§ 44-7401 to 44-7410  | Health, Life, Disability, Property |
| Nevada         | NEV. REV. STAT. ANN. §§ 689A.413, 689B.068, , 689C.196, 695A.195, 695 B.316, 695C.203, 695D.217, 695F.090                           | Health                             |
| New Hampshire  | N.H. REV. STAT. ANN. § 417:4 VIII (f)   | Health, Life, Disability, Property |
| New Jersey     | N.J. STAT ANN. §§ 17:23A-13.3, 17:29B-17, 17:48-6t, 17:48A-7s, 17:48E-35.18, 17B:26-2.1q, 17B:27-46.1t; N.J. ADMIN.CODE § 11:4-42.5 | Health, Life, Property             |
| New Mexico     | N.M. STAT. ANN. §§59A-16B-1 to -10  | Health, Life, Disability, Property |
| New York       | N.Y. INS. LAW §2612   | Health, Life, Disability, Property |
| North Carolina |   |                                    |
| North Dakota   | N.D. CENT. CODE §26.1-39-24   | Property                           |
| Ohio           | OHIO REV. CODE ANN. § 3901.21(Y)  | Health, Life                       |
| Oklahoma       | S.B. 1251, 52d Leg., 2d Reg. Sess. (Okla.2010) (to be codified at Okla. Stat. tit. 36, § 6060.10A)                                  | Health                             |
| Oregon         | OR. REV. STAT. ANN. §746.015(4)   | Health, Life, Disability, Property |
| Pennsylvania   | 40 PA. STAT. ANN. §§1171.3, 1171.5 (14)   | Health, Life, Disability, Property |
| Rhode Island   | R.I. GEN. LAWS §§ 27-59-5; 27-60-1 to -7; 27-61-1 to -7   | Health, Life                       |
| South Carolina |   |                                    |
| South Dakota   |   |                                    |
| Tennessee      | TENN. CODE ANN. §§ 56-8-301 to -306   | Health                             |
| Texas          | TEX. INS. CODE ANN. §§ 544.151 to -.158   | Health, Life                       |
| Utah           | UTAH CODE ANN. §§ 31A-21-501 to -506  | Health, Life, Disability           |
| Vermont        |   |                                    |
| Virginia       | VA. CODE ANN. § 38.2-508 (7)  | Health, Life, Disability, Property |
| Washington     | WASH. REV. CODE ANN. § 48.18.550  | Health, Life, Disability, Property |
| West Virginia  | W. VA. CODE ANN. § 33-4-20  | Health, Life, Disability           |
| Wisconsin      | WIS. STAT. ANN. § 631.95  | Health, Life, Disability, Property |
| Wyoming        |   |                                    |

**\*This chart is up to date as of September, 2010. It does not list state statutes adopted to implement the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that prohibit group health plans and health insurers offering group coverage from discriminating on the basis of health factors — including “conditions arising out of domestic violence” — in eligibility, benefits, and premiums.**

**TESTIMONY OF SEN. MAC SCHNEIDER (DISTRICT 42 – GRAND FORKS)  
HOUSE INDUSTRY BUSINESS AND LABOR COMMITTEE  
SENATE BILL 2237**

I am the prime sponsor of Senate Bill 2237, legislation which would provide protections to victims of domestic violence regarding the issuance and administration of insurance policies.

Under the version of the bill now before you, the legislation very simply clarifies that consideration of an individual's history or status as a subject of domestic abuse is a practice that constitutes unfair discrimination and is a prohibited practice in the insurance business in North Dakota.

There is precedent for these protections in both North Dakota and around the country. Under Section 26.1-39-24 of the Century Code, property and casualty insurers are currently prohibited from basing an underwriting or claim-handling decision solely on whether an individual has been a victim of domestic violence. Nationally, the overwhelming majority of states have already (and long ago) codified the very protections provided in this bill. Please see the attached document for a 50 state survey on this issue.

Admittedly, the vast majority of insurers, including the largest insurer in the state, are being good corporate citizens and do not purposely deny coverage to individuals based on their status as victims of domestic violence. However, it is not difficult to imagine that an insurer – innocently and in the normal course of business – might deny coverage for a cervical spine condition or other injury without even knowing that such a pre-existing condition was a result of domestic violence. Likewise, the insured-victim may not even think twice about such a denial. Under this legislation, those who provide aid to victims of abuse can counsel them about their rights and make certain insurers have the knowledge to do the right thing.

Finally, as some members of this committee are aware, the North Dakota Legislature rejected a similar measure in the mid 1990s. The state has come a long way since that time. This is an opportunity to provide meaningful protections to victims of domestic abuse while also righting an historical wrong.

Thank you for your consideration. I would be happy to answer any questions.

House Industry, Business and Labor Committee

March 14, 2011

Chairman Keiser and member of the Industry, Business and Labor Committee, my name is Amy Fisher from rural Buxton, North Dakota and I am here today to support SB 2237.

I am a survivor of 21 years of physical, emotional, financial and verbal domestic abuse. I stayed in this relationship for many reasons. I was so young when I met my abuser that he completely controlled every part of my life...including my reasoning. I had a high school education, I was not allowed to have a job, had three kids and was in complete fear that he would kill me. He isolated me from my immediately family by moving me to North Dakota from Nebraska. I left many times. His stalking was unbearable. I had no money, no job, no work experience, and small children.

I have been on my own for seven years. In those seven years I have obtained my BSW and my LSW and now work in the field of domestic violence.

When I lived with my abuser I was so controlled that I was not allowed to eat. He weighed me each Sunday, and if I gained weight I was in trouble. I was hospitalized for anorexia. With the law as it is now this hospitalization could be used against me when buying health insurance. Women in situations of domestic violence should not be punished for something over which they have no control. The law as it stands now does not offer domestic violence victims a fair deal.

Even if an insurance company has never used the current statute as a mechanism to deny coverage, this is not good policy. I support the change and urge your do pass recommendation on SB 2237.

Thank you and I will stand for any questions.

**SENATE BILL NO. 2237**

**Presented by:** Michael L. Fix  
Director of the Life and Health Division and Actuary  
North Dakota Insurance Department

**Before:** House Industry, Business and Labor Committee  
Representative George Keiser, Chairman

**Date:** March 14, 2011

**TESTIMONY**

Good morning, Chairman Keiser and members of the committee. My name is Michael Fix, and I am the Director of the Life and Health Division and Actuary for the North Dakota Insurance Department. I appear before you today in support of Senate Bill No. 2237.

In August of last year, we met with Janelle Moos, the Executive Director of the North Dakota Council on Abused Women's Services Coalition Against Sexual Assault in North Dakota, regarding whether North Dakota insurers considered domestic violence as a pre-existing condition that would preclude coverage under a health insurance policy. North Dakota had been identified as one of nine states that did not specifically prohibit by statute this practice.

The North Dakota Insurance Department has not received complaints about this practice, and when we asked the major insurance carriers in North Dakota, we learned none of them currently use domestic violence as a pre-existing condition to deny claims nor as an underwriting criteria to deny coverage. Later, we specifically asked each company whether they intended to change this practice in the future and they confirmed that they do not. A letter to Janelle Moos to this effect was sent September 13, 2010, and a copy has been included with this testimony.

Even though there have been no complaints registered with the Insurance Department on this issue, and North Dakota insurers have assured us that they do not and will not consider domestic violence as a pre-existing condition, we support passage of Senate Bill No. 2237.

Thank you and I will be happy to take any questions.



North Dakota  
Insurance Department

Adam W. Hamm, Commissioner

September 13, 2010

Janelle Moos, M.S.  
Executive Director  
ND Council on Abused Women's Services  
Coalition Against Sexual Assault in ND  
418 E. Rosser Ave. #320  
Bismarck, ND 58501

Dear Janelle:

This letter is sent as a follow-up to our recent meeting regarding whether North Dakota health insurers consider domestic violence a pre-existing condition.

As we discussed during our latest meeting, the North Dakota Insurance Department (Department) contacted all major health insurers writing in North Dakota in the fall of 2009 and was informed that none of them view domestic violence as a pre-existing condition. Additionally, since our latest meeting with you on August 10, 2010, my staff has again contacted all major North Dakota health insurers to see if anything has changed. During those conversations, they stated to the Department that it is not their practice to deny coverage due to domestic violence and that they will not do so in the future.

Thank you very much for meeting with the Department on this important issue and for conveying your concerns. Please let me know if you have any additional questions or concerns regarding this issue.

Sincerely,

  
Adam Hamm  
Insurance Commissioner

AH:bp



TESTIMONY OF PAUL SANDERSON IN SUPPORT OF SENATE BILL 2237

HOUSE IBL COMMITTEE

MARCH 14, 2011

Chairman Keiser and Members of the House IBL Committee, my name is Paul Sanderson. I am an attorney in the Bismarck law firm of Zuger Kirmis & Smith. I represent the Property Casualty Insurers Association of America. PCI is the nation's premier insurer trade association, representing over 1,000 companies that write over \$180 billion in insurance premiums for automobile, homeowners, and business insurance.

PCI supports SB 2237. The industry agrees that unfairly discriminating or limiting a person's access to insurance solely because of a history of domestic violence is prohibited. Property and casualty insurers are already governed by a similar provision in N.D.C.C. § 26.1-39-24. There does not appear to be any conflict between this bill and the current law governing property and casualty insurers under N.D.C.C. § 26.1-39-24.

For the foregoing reasons, PCI supports SB 2237 and urges a Do Pass on this bill.