

**2013 HOUSE JUDICIARY**

**HB 1117**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1117  
January 14, 2013  
Job 17171

Conference Committee

*Kristie Hetzler*

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

Confidentiality of consumer assistance records received by the insurance commissioner.

## Minutes:

Testimony 1

**Chairman Koppelman:** Opens

**David Zimmerman,** Consumer Assistance Division Director, ND Insurance Department: I am here to speak in favor of HB 1117, this bill protect consumers who contact the Insurance Department and specifically seeks to provide an appropriate degree of consumer confidentiality. Under current open records law any person can request information about cases that have been investigated by the Department. Including financial and personal health information and I believe consumers already think these types of records are confidential. This bill would allow Department staff to respond to open records requests as required by the open records law, but redact personal, financial, and health information such as SSN. (Please refer to testimony 1).

**Rep Delmore:** Are lawsuits common practice for agencies to do? Why it is necessary to add section 5, is it to protect your department?

**David Zimmerman:** Refers the question to a colleague, legal counsel.

**Adrienne Buckman:** I am legal counsel for the Insurance Department. Individuals that believe their information was mishandled would not be able to bring a private right of actions.

**Rep Delmore:** Does the Attorney General's Consumer Department have similar language for lawsuit?

**Adrienne Buckman:** I would have to research that question, I do not have an answer for you today.

**Rep Klemin:** The difference between confidently records and exempt records, as I was looking at the definitions here, as I understand it, exempt as defined as those records are not subject to disclosure but could be disclosed under certain circumstances? Confidential means they cannot be disclosed? Is that correct?

**Adrienne Buckman:** It is my understanding that confidential records cannot be disclosed unless it is specifically stated somewhere that they must be disclosed. And my definition of exempt is consistent with yours.

**Rep Klemin:** Subsection 4, on page 2, lines 13-15. These lines state the commissioner can does not have to follow the new language? Why is that?

**Adrienne Buckman:** This refers to administrative action or legal proceedings that the Commissioner would need to pursue for example if we needed to pursue an action against a company for claim settlement practices. Information that would relate to that specific claim that may have been settled unfairly.

**Rep Klemin:** It reads more broadly?

**Adrienne Buckman:** That's correct?

**Rep Klemin:** That information is inconsistent?

**Adrienne Buckman:** I need to research that more?

**Rep Kretschmar:** If there is a dispute on a claim and the insured contacts your department and your assisting them but it ends up in a civil lawsuit in District court, how much does the commissioner office assist in that lawsuit?

**Adrienne Buckman:** I don't understand the question.

**Rep Kretschmar:** Would assist the insurer or the insured in a lawsuit?

**Adrienne Buckman:** That would be very fact specific, it would depend on the dispute, and it is possible that the Insurance Dept would assist, but if there went on to be a civil lawsuit the Dept would no longer be involved. It would really depend on the facts to the case.

**Rep Kretschmar:** As of to date has the Dept. been involved in lawsuits with either the insured or insurer?

**Adrienne Buckman:** I do not have any specific numbers, but my understanding is yes we have been involved, if there were a civil lawsuit going on we would respond to the open records request if it was made by the insurer or the insured.

**Rep Kretschmar:** If a party in the lawsuit requested the Commissioner release this information, would he?

**Adrienne Buckman:** The information we would be seeking to protect with this statute would be redacted.

**Rep Klemin:** Subsection 4, in the event the Commissioner would use health or personal information in a legal action, does that allow the other information to be available to the opposing parties?

**Adrienne Buckman:** If the information is be gathered for instance in a fraud investigation that particular information would be confidential and would not be subject to disclosure until after the conclusion of our investigation.

**Rep Kreschmar:** I am not talking about fraud, in general?

**Adrienne Buckman:** I would need to confer with my colleagues on this point.

**Chairman Koppelman:** We will hold this open, is it possible that you can come back tomorrow with some of these answers?

**Adrienne Buckman:** Yes

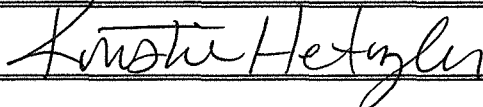
**Chairman Koppelman:** Anymore testimony for or against HB 1117? We will revisit the issue tomorrow. Closes

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1117  
January 15, 2013  
Job 17220

Conference Committee



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

Confidentiality of consumer assistance records received by the insurance commissioner.

## Minutes:

*Testimony 1*

**Chairman Koppelman:** HB1117 continued from yesterday, January 14, 2013.

**Adrienne Buckman:** I'm here in support of HB 1117, Subsection 5, to answer the question relating to whether language barring a private right of action exists elsewhere in the North Dakota Century Code, please see testimony 2. Another question regarding what information would subject to discovery procedures in the event of civil litigation, again please see testimony 2.

**Rep Klemin:** It seems to me that the way you are describing this to me is that you would want the records to be exempt instead of confidential record. So you want to make the records confidential while still preserving the ability of the Insurance Commissioner to use them in any regulatory or legal action. And it seems to me that we have a hybrid situation here. There confidential other than to the Commissioner, so isn't this really an exempt and not confidential record?

**Adrienne Buckman:** The Commissioner and the Department may have a situation where the personal or financial information of a consumer needs to be used for example if the Department receives several complaints regarding a specific practice of an insurance

company and we need to go in and do a market conduct examine on that company, that might be a situation when it would be a regulatory proceeding and the information would be used in order to discover or determine whether that insurance company needs to be regulated.

**Rep Klemin:** Goes over legal definition of confidential and exempt.

**Rebecca Ternes:** Deputy Insurance Commissioner: We could discuss this with Mary Kay Kelsch about this, I understand where you are coming from with the difference between confidential and exempt.

**Chairman Koppelman:** States it would be alright to get the questions answered and revisit HB 1117. Any other testimony?

**Chairman Koppelman:** Closes.

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1117  
January 15, 2013  
Job 17256

Conference Committee

*Kristie Helmsler*

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

Confidentiality of consumer assistance records received by the Insurance Commissioner.

## Minutes:

Testimony 1

**Chairman Koppelman:** Reopens HB 1117. Mr. McDonald is an attorney and works with the Open Records Law is in agreement with Rep. Klemin that it seems it should be an exempt record rather than a confidential. Let's hold on this to give them a chance to get back to us.

**Rep Toman:** What are the current rules on the exempt records?

**Rep Klemin:** States the definitions and how they differ.

**Chairman Koppelman:** Mr. McDonald did advise that there is a lot of misunderstanding between the two within several different agencies. Closes until legal team from Insurance Commissioner's office is ready.



# 2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee  
Prairie Room, State Capitol

HB 1117  
Job 17442  
DATE January 21, 2013

Conference Committee

*Cameron Heick*

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

Relating to confidentiality of consumer assistance records received by the Insurance Commissioner

## Minutes:

Testimony amendment 1

**Chairman Kim Koppelman:** Re-opened HB 1117

**Vice Chairman Larry Klemin:** The Insurance Commissioner brought HB 1117 to us to provide for confidentiality of consumer assistance records. And said they couldn't be released but then on page 2 subsection 4 they said there was nothing to prevent the Commissioner from making them public anyway in a regulatory or legal action. Unfortunately that's not a confidential record that's an exempt record. Right now in our open records law we have 2 kinds either open records or confidential records which can't be disclosed or exempt records which are still confidential but can be disclosed under certain circumstances. What they really want to provide for here is for exempt records. This is an amendment that was prepared by the Insurance Dept. instead of making them confidential records to make them exempt records. What this amendment does it makes them exempt and takes out the confidential words. Instead of saying they are confidential they say they are exempt. Since we already have a definition of that we no longer need subsection 4. Subsection 5 line 16 also was not necessary so that will also be deleted. This is an exempt record. This is what they wanted they just didn't have it right in their bill.

**Chairman Kim Koppelman:** Rep. Klemin moves the amendment. Second by Rep. Boehning.

**Rep. Kathy Hogan:** The third line on page 1 removes lines 10 through 15; I was seeing what exactly we were removing on that.

**Vice Chairman Larry Klemin:** The reason for that is if you go up to the previous line page 1 line 9 we replaced confidential unless the consumer gives written, with are exempt records as defined in subsection 5 of section 44-04-17.1 period.

**Rep. Kathy Hogan:** Period.

**Vice Chairman Larry Klemin:** Since we already have that in statue we don't need to say it again here.

**Rep. Kathy Hogan:** So I was trying to see how it read.

**Chairman Kim Koppelman:** They were basically trying to make it a confidential record and then give all kinds of exceptions as it where it wouldn't be confidential but that undermines the definition of confidential. Exempt records that say they can be kept confidential in some circumstances but in others it may not be and that really fits better.

Voice vote on amendment carried.

Rep. Maragos moved do pass on the bill as amended. Second by Rep. Hogan.

13-0-1 Passes

Carried by Rep. Hogan.

January 22, 2013

1/22/13  
TD

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1117

Page 1, line 2, remove " confidentiality of"

Page 1, line 7, replace "Confidentiality of consumer" with "Consumer"

Page 1, line 7, after "records" insert "- Exempt"

Page 1, line 9, remove "confidential unless the consumer gives written"

Page 1, remove lines 10 through 14

Page 1, line 15, replace "c. As permitted or required by other law" with "an exempt record as defined in section 44-04-17.1"

Renumber accordingly

Date: 1-21-13  
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1117**

House Judiciary 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 Rep. Klemin Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

*Voice Vote Carried*

Date: 1-21-13  
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1117

House Judiciary 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 Rep. Maragos Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore		
Vice Chairman Lawrence Klemin	/		Rep. Ben Hanson	/	
Rep. Randy Boehning	/		Rep. Kathy Hogan	/	
Rep. Roger Brabandt	/				
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson	/				
Rep. Andrew Maragos	/				
Rep. Gary Paur	/				
Rep. Vicky Steiner	/				
Rep. Nathan Toman	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Hogan

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

**REPORT OF STANDING COMMITTEE**

**HB 1117: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1117 was placed on the Sixth order on the calendar.

Page 1, line 2, remove " confidentiality of"

Page 1, line 7, replace "**Confidentiality of consumer**" with "**Consumer**"

Page 1, line 7, after "**records**" insert "**- Exempt**"

Page 1, line 9, remove "**confidential unless the consumer gives written**"

Page 1, remove lines 10 through 14

Page 1, line 15, replace "**c. As permitted or required by other law**" with "**an exempt record as defined in section 44-04-17.1**"

Renumber accordingly

**2013 SENATE JUDICIARY**

**HB 1117**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1117  
3/20/2013  
Job #20226

Conference Committee

Committee Clerk Signature



**Minutes:**

*Attached testimony*

**Relating to consumer assistance records received by the insurance commissioner**

**Senator David Hogue - Chairman**

David Zimmerman - Director of the Consumer Assistance Division for ND Insurance Dept. - See written testimony. (1) Senator Hogue asks him to describe a complaint process. Mr. Zimmerman gives examples, Medicare, coverage denial, vehicle crash information etc. Senator Sitte asks what extent and how widespread is the availability of this information. Mr. Zimmerman relays the consumer should have control. He says when they are seen in a healthcare situation, all billing information, all medical information that supports that billing moves forward to the insurer. His department gets involved when there is a disagreement of what they will cover and what they won't. Senator Sitte asks if this bill should include the birthdate as protected information. Mr. Zimmerman replies the more protection we can offer the consumer the better.

Opposition - none

Neutral - none

Close the hearing 1117



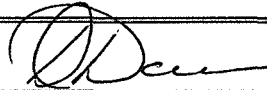
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee  
Fort Lincoln Room, State Capitol

HB1117  
3/27/2013  
Job #20612

Conference Committee

Committee Clerk Signature



**Minutes:**

Vote

Senator David Hogue - Chairman

Committee work

Senator Sitte proposes an amendment to add the birthdate on page 2, line one.

Senator Sitte moves her amendment - 13.8061.02001

Senator Armstrong seconded

Discussion

The committee discusses whether this will affect clinics from asking for your date of birth. Senator Sitte points out that this only deals with records from the Insurance Commissioner. Senator Hogue explains how this works when a claim is made to the Insurance Commissioner. Senator Sitte provides a handout explaining who gets your medical information. The committee discusses information given out to various companies.

Vote on the amendment

Verbal vote - all yes

Motion passes

Senator Sitte moves a do pass as amended

Senator Armstrong seconded

Vote - 7 yes, 0 no

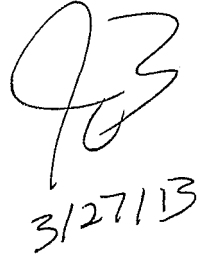
Motion passes

Senator Berry will carry

13.8061.02001  
Title.03000

Adopted by the Judiciary Committee

March 27, 2013

Handwritten initials "JG" and the date "3/27/13" in the top right corner.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1117

Page 2, line 1, after the first underscored comma insert "date of birth."

Renumber accordingly

Date: 3/27/13  
 Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1117

Senate JUDICIARY Committee

Check here for Conference Committee 13.8061.0200

Legislative Council Amendment Number Insert birthdate - Sitte

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

Motion Made By S. Sitte Seconded By S. Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue			Senator Carolyn Nelson		
Vice Chairman Margaret Sitte			Senator John Grabinger		
Senator Stanley Lyson					
Senator Spencer Berry					
Senator Kelly Armstrong					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent Verbal vote - all yes

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

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

Date: 3/27/13  
 Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1117

Senate JUDICIARY 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 S Sitte Seconded By S Armstrong

Senators	Yes	No	Senator	Yes	No
Chairman David Hogue	X		Senator Carolyn Nelson	X	
Vice Chairman Margaret Sitte	X		Senator John Grabinger	X	
Senator Stanley Lyson	X				
Senator Spencer Berry	X				
Senator Kelly Armstrong	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S Berry

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

**REPORT OF STANDING COMMITTEE**

**HB 1117, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1117 was placed on the Sixth order on the calendar.**

Page 2, line 1, after the first underscored comma insert "date of birth."

Renumber accordingly

**2013 TESTIMONY**

**HB 1117**

HB 1117

①  
testimony

TESTIMONY

**Presented by:** David R. Zimmerman  
Consumer Assistance Division Director  
North Dakota Insurance Department

**Before:** House Judiciary Committee  
Representative Kim Koppelman, Chairman

**Date:** January 14, 2013

Good morning, Chairman Koppelman and members of the House Judiciary Committee. My name is David Zimmerman and I am the Director of the Consumer Assistance Division for the North Dakota Insurance Department. I am here in support of House Bill No. 1117.

This is a bill that seeks to protect consumers who contact the Insurance Department and specifically seeks to provide an appropriate degree of consumer confidentiality. Under current open records law any person can request information about cases that have been investigated by the Department. These case files may include financial and personal health information. At present, the North Dakota Insurance Department does not meet the definition of a HIPAA-covered entity and, therefore, cannot currently keep these records private even though we suspect consumers assume that is the case.

This bill would allow Department staff to respond to open records requests as required by the open records law, but redact personal, financial, and health information.

This bill would be a new section in the insurance title of the Century Code (in Chapter 26.1-02) that would make a change to the open records law. In subsection 1, the bill makes personal, financial, or health information confidential. The second subsection defines what is personal, financial or health information. Subsection 3 provides that when there is a complaint against a regulated entity, such as an insurance company or an insurance agency, the name of a regulated entity is not confidential and would still be

an open record. Section 4 allows the Commissioner to use personal, financial, or health information as part of regulatory or legal action. Section 5 addresses the situation where persons believe their information was mishandled and they want to start a lawsuit. Section 5 would not allow that lawsuit to be based on this section.

The Department receives personal financial information such as income and assets as well as detailed medical information when it assists North Dakotans in finding free and reduced prescriptions through the Prescription Connection Program and when assisting our citizens in finding Medicare subsidies and plans, such as Part D drug plans. When we assist people in general life and health or property and casualty insurance complaints, we may also receive this information.

Recently, because of the federal health care law, the Department also began processing external health insurance appeals. Very extensive personal health information is usually provided to the Department as it passes from consumer to insurer and ultimately the independent review organization that makes the final determination.

The Department acknowledges there are already certain protections for information the Department acquires in a consumer complaint. There is a section of the open records law, N.D.C.C. § 44-04-18.17, that protects some consumer information from disclosure in an open records request. However, the already existing protections do not cover all situations. The existing protections do not cover medical information at all. Protection for financial information such as a consumer's income and expenses and eligibility for public assistance is inadequate in current law.

Mr. Chairman and members of the committee, I thank you for your time and respectfully ask for your support of House Bill No. 1117. I would be happy to answer any questions you may have. Thank you.



**North Dakota Insurance Department  
Consumer Assistance Division Statistics**

<b>Case Type</b>	<b>Description of Cases</b>	<b>Annual Average of Consumers Assisted</b>
State Health Insurance Counseling (SHIC) program	<ul style="list-style-type: none"> <li>• Assistance with inquiries/complaints related to Medicare products</li> </ul>	10,000–12,000
Prescription Connection (PC)	<ul style="list-style-type: none"> <li>• Assistance provided to low income individuals seeking to attain prescriptions at reduced costs or free</li> </ul>	300–500 per year
Property & Casualty Insurance	<ul style="list-style-type: none"> <li>• Investigation of inquiries and/or complaints by consumers related to these products/agents/companies</li> </ul>	230 inquiries and 147 complaints in 2012
Life & Health Insurance	<ul style="list-style-type: none"> <li>• Investigation of inquiries and/or complaints by consumers related to these products/agents/companies</li> </ul>	660 inquiries and 62 complaints in 2012
External Healthcare Review	<ul style="list-style-type: none"> <li>• Provide for use of an independent review organization to review health insurance denials</li> </ul>	To date there have been 4 cases – all upheld; with 1 in process

TESTIMONY

HB 1117 testimony (Z)

**Presented by:** Adrienne L. Buckman  
Legal Counsel  
North Dakota Insurance Department

**Before:** House Judiciary Committee  
Representative Kim Koppelman, Chairman

**Date:** January 15, 2013

Good morning, Chairman Koppelman and members of the House Judiciary Committee. My name is Adrienne Buckman and I am Legal Counsel for the North Dakota Insurance Department. I am here in support of House Bill No. 1117. Thank you for the opportunity to address some questions which were raised during the hearing on this bill yesterday morning.

A question was asked regarding whether subsection 5 of this bill relating to whether language barring a private right of action exists elsewhere in the North Dakota Century Code. I found that this language has been used in limited situations, so I considered the potential effects of amending out subsection 5 of this bill. Case law generally supports the position that if a private right of action is not included within a statute, such a private right of action will not simply be implied. Based on this research, the Department would be agreeable to amending subsection 5 out of this bill.

Questions were also raised regarding what information would be subject to discovery procedures in the event of civil litigation. This bill allows the Insurance Commissioner authority to redact from the Department's records any personal health or financial information of a consumer which may have been disclosed to the Department. Subsection 4 of this bill is meant for clarification purposes only and seeks to preserve the present ability of the Commissioner to continue to use personal health and financial information of a consumer in furtherance of its internal investigations of insurance companies and insurance producers or for other regulatory purposes.

Mr. Chairman and members of the committee, I thank you for your time and respectfully ask for your support of House Bill No. 1117. I would be happy to answer any questions you may have. Thank you.

1-21-13  
Rep. Klein 1

January 16, 2013

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1117**

Page 1, line 7, replace "Confidentiality of consumer" with "Consumer" and after "records" and before the period insert "exempt"

Page 1, line 9, replace "is confidential unless the consumer gives written" with "are exempt records as defined in subsection 5 of section 44-04-17.1."

Page 1, remove lines 10 through 15

Page 2, remove lines 13 through 16

Renumber accordingly

HOUSE BILL NO. 1117

**Presented by:** David R. Zimmerman  
Consumer Assistance Division Director  
North Dakota Insurance Department

**Before:** Senate Judiciary Committee  
Senator David Hogue, Chairman

**Date:** March 20, 2013

TESTIMONY

Good morning, Chairman Hogue and members of the Senate Judiciary Committee. My name is David Zimmerman and I am the Director of the Consumer Assistance Division for the North Dakota Insurance Department. I am here in support of House Bill No. 1117.

This is a bill that seeks to protect consumers who contact the Insurance Department and specifically seeks to provide an appropriate degree of consumer confidentiality. Under current open records law any person can request information about cases that have been investigated by the Department. These case files may include financial and personal health information. At present, the North Dakota Insurance Department does not meet the definition of a HIPAA-covered entity and, therefore, cannot currently keep these records private even though we suspect consumers assume that is the case.

This bill would allow Department staff to respond to open records requests as required by the open records law, but redact personal, financial, and health information.

This bill would be a new section in the insurance title of the Century Code (in Chapter 26.1-02) that would make a change to the open records law. In subsection 1, the bill makes personal, financial or health information exempt. The second subsection defines what is personal, financial or health information. Subsection 3 provides that when there

is a complaint against a regulated entity, such as an insurance company or an insurance agency, the name of a regulated entity is not confidential or exempt and would still be an open record.

The Department receives personal financial information such as income and assets as well as detailed medical information when it assists North Dakotans in finding free and reduced prescriptions through the Prescription Connection Program and when assisting our citizens in finding Medicare subsidies and plans, such as Part D drug plans. When we assist people in general life and health or property and casualty insurance complaints, we may also receive this information.

Recently, because of the federal health care law, the Department also began processing external health insurance appeals. Very extensive personal health information is usually provided to the Department as it passes from consumer to insurer and ultimately the independent review organization that makes the final determination.

When this bill was heard in the House Judiciary Committee, committee members suggested amendments making the financial and personal health records exempt under open records laws rather than confidential, and removing some language that was confusing and ultimately unnecessary. The Department agreed and the bill was amended to make those changes.

In conclusion, this bill would allow Department staff to continue to respond to open records requests as required by the open records law, but to have the ability to redact personal information such as financial and personal health information. The focus and purpose of this bill is consumer protection for North Dakota residents seeking assistance from the Insurance Department's Consumer Assistance Division.

Mr. Chairman and members of the committee, I thank you for your time and respectfully ask for your support of House Bill No. 1117. I would be happy to answer any questions you may have. Thank you.

<b>North Dakota Insurance Department  Consumer Assistance Division Statistics</b>		
<b>Case Type</b>	<b>Description of Cases</b>	<b>Annual Average  of Consumers  Assisted</b>
State Health Insurance Counseling (SHIC) program	<ul style="list-style-type: none"> <li>Assistance with inquiries / complaints related to Medicare products</li> </ul>	10,000 – 12,000
Prescription Connection (PC)	<ul style="list-style-type: none"> <li>Assistance provided to low income individuals seeking to attain prescriptions at reduced costs or free</li> </ul>	300 – 500 per year
Property & Casualty Insurance	<ul style="list-style-type: none"> <li>Investigation of inquiries and/or complaints by consumers related to these products / agents / companies</li> </ul>	230 inquiries and 147 complaints in 2012
Life & Health Insurance	<ul style="list-style-type: none"> <li>Investigation of inquiries and/or complaints by consumers related to these products / agents / companies</li> </ul>	660 inquiries and 62 complaints in 2012
External Healthcare Review	<ul style="list-style-type: none"> <li>Provide for use of an Independent Review Organization to review health insurance denials</li> </ul>	To date there have been 4 cases – all upheld; with 1 in process

Comm work 1117 C

13.8061.0200\_  
Sixty-third  
Legislative Assembly  
of North Dakota

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1117**

Page 2, line 1, after first "number," insert "date of birth,"



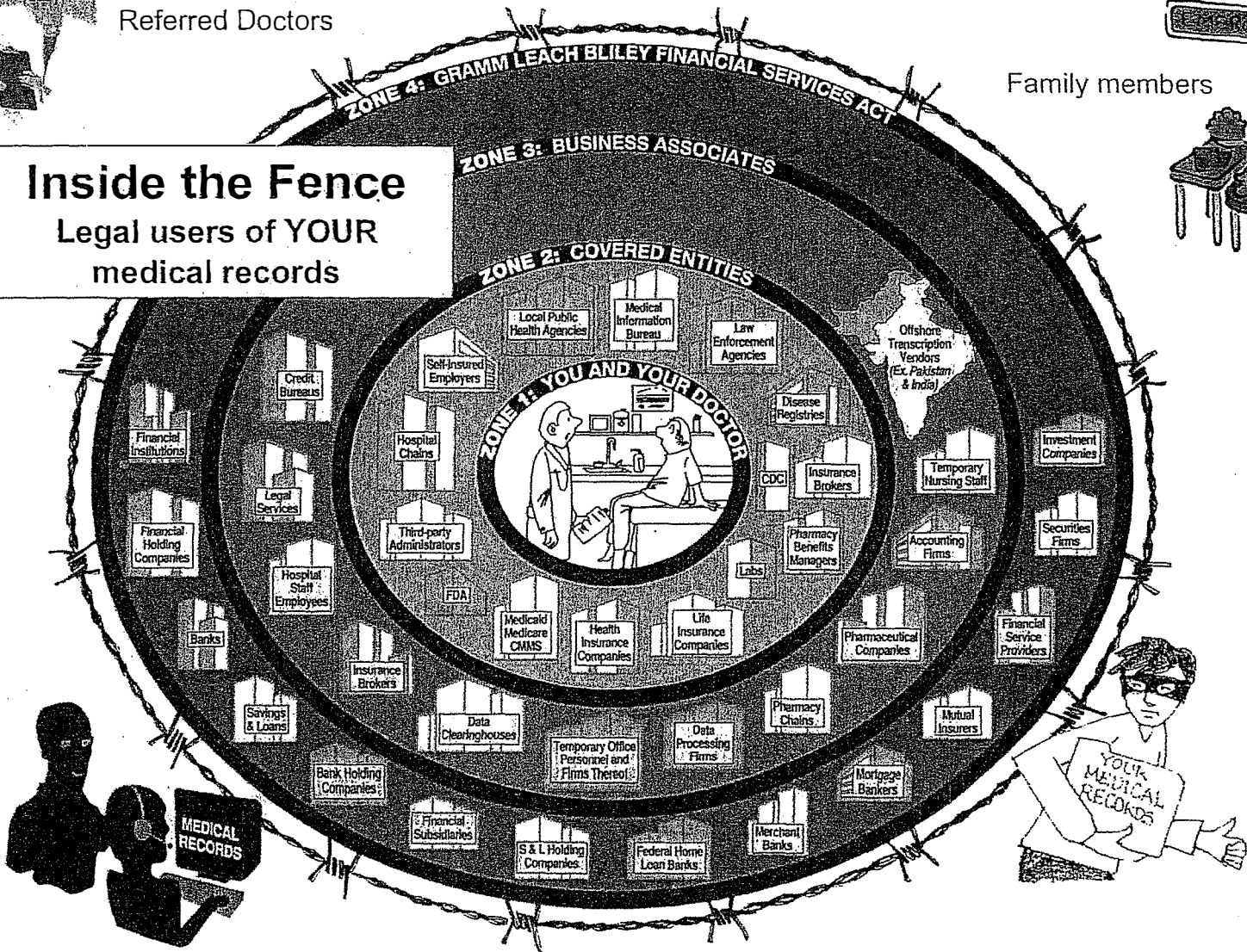


Referred Doctors



Family members

**Inside the Fence**  
Legal users of YOUR  
medical records



[www.patientprivacyrights.org](http://www.patientprivacyrights.org)

ATTN: MR. P. 1  
COMM. CODE 1119  
12

<http://arstechnica.com/tech-policy/2009/09/your-secrets-live-online-in-databases-of-ruin/>

## "Anonymized" data really isn't—and here's why not

### Companies continue to store and sometimes release vast databases of " ...

by [Nate Anderson](#) - Sept 8 2009, 6:25am CDT

The Massachusetts Group Insurance Commission had a bright idea back in the mid-1990s—it decided to release "anonymized" data on state employees that showed every single hospital visit. The goal was to help researchers, and the state spent time removing all obvious identifiers such as name, address, and Social Security number. But a graduate student in computer science saw a chance to make a point about the limits of anonymization.

Latanya Sweeney requested a copy of the data and went to work on her "reidentification" quest. It didn't prove difficult. Law professor Paul Ohm describes Sweeney's work:

At the time GIC released the data, William Weld, then Governor of Massachusetts, assured the public that GIC had protected patient privacy by deleting identifiers. In response, then-graduate student Sweeney started hunting for the Governor's hospital records in the GIC data. She knew that Governor Weld resided in Cambridge, Massachusetts, a city of 54,000 residents and seven ZIP codes. For twenty dollars, she purchased the complete voter rolls from the city of Cambridge, a database containing, among other things, the name, address, ZIP code, birth date, and sex of every voter. By combining this data with the GIC records, Sweeney found Governor Weld with ease. Only six people in Cambridge shared his birth date, only three of them men, and of them, only he lived in his ZIP code. In a theatrical flourish, Dr. Sweeney sent the Governor's health records (which included diagnoses and prescriptions) to his office.

Boom! But it was only an early mile marker in Sweeney's career; in 2000, she showed that 87 percent of all Americans could be uniquely identified using only three bits of information: ZIP code, birthdate, and sex.

Such work by computer scientists over the last fifteen years has shown a serious flaw in the basic idea behind "personal information": almost all information can be "personal" when combined with enough other relevant bits of data.

That's the claim advanced by Ohm in his lengthy new paper on "the surprising failure of anonymization." As increasing amounts of information on all of us are collected and disseminated online, scrubbing data just isn't enough to keep our individual "databases of ruin" out of the hands of the police, political enemies, nosy neighbors, friends, and spies.

If that doesn't sound scary, just think about your own secrets, large and small—those films you watched, those items you searched for, those pills you took, those forum posts you made. The power of reidentification brings them closer to public exposure every day. So, in a world where the PII concept is dying, how *should* we start thinking about data privacy and security?

## Don't ruin me

For almost every person on earth, there is at least one fact about them stored in a computer database that an adversary could use to blackmail, discriminate against, harass, or steal the identity of him or her. I mean more than mere embarrassment or inconvenience; I mean legally cognizable harm.

Examples of the anonymization failures aren't hard to find.

When AOL researchers released a massive dataset of search queries, they first "anonymized" the data by scrubbing user IDs and IP addresses. When Netflix made a huge database of movie recommendations available for study, it spent time doing the same thing. Despite scrubbing the obviously identifiable information from the data, computer scientists were able to identify individual users in both datasets. (The Netflix team then moved on to Twitter users.)

In AOL's case, the problem was that user IDs were scrubbed but were replaced with a number that uniquely identified each user. This seemed like a good idea at the time, since it allowed researchers using the data to see the complete list of a person's search queries, but it also created problems; those complete lists of search queries were so thorough that individuals could be tracked down simply based on what they had searched for. As Ohm notes, this illustrates a central reality of data collection: "data can either be useful or perfectly anonymous but never both."

The Netflix case illustrates another principle, which is that the data itself might seem anonymous, but when paired with other existing data, reidentification becomes possible. A pair of computer scientists famously proved this point by combing movie recommendations found on the Internet Movie Database with the Netflix data, and they learned that people could quite easily be picked from the Netflix data.

Such results are obviously problematic in a world where Google retains data for years, "anonymizing" it after a certain amount of time but showing reticence to fully delete it. "Reidentification science disrupts the privacy policy landscape by undermining the faith that we have placed in anonymization," Ohm writes. "This is no small faith, for technologists rely on it to justify sharing data indiscriminately and storing data perpetually, all while promising their users (and the world) that they are protecting privacy. Advances in reidentification expose these promises as too often illusory."

For users, the prospect of some secret leaking to the public grows as databases proliferate. Here is Ohm's nightmare scenario: "For almost every person on earth, there is at least one fact about them stored in a computer database that an adversary could use to blackmail, discriminate against, harass, or steal the identity of him or her. I mean more than mere embarrassment or inconvenience; I mean legally cognizable harm. Perhaps it is a fact about past conduct, health, or family shame. For almost every one of us, then, we can assume a hypothetical 'database of ruin,' the one containing this fact but until now splintered across dozens of databases on computers around the world, and thus disconnected from our identity. Reidentification has formed the database of ruin and given access to it to our worst enemies."

Because most data privacy laws focus on restricting personally identifiable information (PII), most data privacy laws need to be rethought. And there won't be any magic bullet;

the measures that are taken will increase privacy or reduce the utility of data, but there will be no way to guarantee maximal usefulness and maximal privacy at the same time.

There are approaches that can reduce problems. Instead of releasing these huge anonymized databases, for instance, make them interactive, or have them report most results in the aggregate. (But such techniques sharply limit the usefulness of the data.)

Ohm's alternative is an admittedly messier system, one that can't be covered with simple blanket laws against recording Social Security numbers or releasing people's name and addresses. Such an approach has failed, and now looks like playing "Whac-A-Mole" with personal data. "The trouble is that PII is an ever-expanding category," writes Ohm. "Ten years ago, almost nobody would have categorized movie ratings and search queries as PII, and as a result, no law or regulation did either." Expanding privacy rules each time some new reidentification technique emerges would be unworkable.

Instead, regulators will need to exercise more judgment, weighing harm against benefits, and the rules may turn out to be different for crucial systems like healthcare. At the same time, the US needs comprehensive legislation on data privacy to set a minimum threshold for all databases, since Netflix, AOL, and others have made clear that we have no real idea in advance which pieces of seemingly harmless data will turn out to identify us and our secrets.