

2013 SENATE INDUSTRY, BUSINESS, AND LABOR

SB 2304

2013 SENATE STANDING COMMITTEE MINUTES

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

SB 2304
February 5, 2013
Job Number 18263

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to insurance producer criminal history background checks; and to provide an effective date

Minutes:

Testimony Attached

Chairman Klein: Opened the hearing.

Senator Larsen: Said the bill came to him from the insurance department. It allows for background checks for people moving into the State and selling insurance. Currently if you live in the State and you are going to sell insurance, you have a background check done on you. What is happening is, if they move here from another state, the background checks are from the time they are in North Dakota. They currently do not go back and check on what they were doing before they moved here. Amendment was handed out for the collection and transmission of fingerprints (1). (1:00-3:35)

Kelvin W. Zimmer, Director of Produce Licensing North Dakota Insurance Department: Amendment (1) and Written Testimony (2). (4:25-14:03)

Senator Murphy: Asked if they are able to check an agent now that maybe a felon and take their license away.

Kelvin: Said if they are a current agent and we find that they have had a felony conviction and had not reported it to us, then yes. They can suspend, revoke or deny.

Senator Sorvaag: Asked if the intent was for the insurance department to pay for this or was the intent that the applicant would be charged for the background check.

Kelvin: Said they would require the applicant to pay the fee for the fingerprints for the background check.

Senator Sorvaag: Said then the expense would be offset with the fees and asked about the fiscal note.

Kelvin: Said unless the fiscal note has to do with the criminal bureau of investigations, they did not have a fiscal note for that, the insurance department.

Senator Murphy: Said he thought it was stated that it was around forty-four dollars apiece, not including the fingerprint check. The fiscal note must be indicating that you expect about one thousand applicants, isn't that how you arrived at that number?

Kelvin: Said yes, the forty-four fifty is the cost for the BCI check and the FBI fingerprint check.

Chairman Klein: Said it will cost you that but you also will collect it from the applicants.

Kelvin: Said that they would send that money to the BCI.

Senator Andrist: Said as he reads the amendment they wouldn't need both of the amendments. The second one appears to just add a word replacement.

Kelvin: Said that was correct.

Chairman Klein: Said we look to your amendment to encompass what Senator Larsen wanted plus provide those extra changes.

Evan Mandigo, Lobbyist on behalf of the Independent Insurance Agents of North Dakota: Said they are in favor of the bill and believe it provides a level playing field for all applicants for resident insurance license.

Norbert Mayer, North Dakota Insurance and Financial Advisors: Said they are hearing more and more about insurance fraud and one case is too much. (19:15-21:20)

Pat Ward, State Farm Insurance: In support of the bill and the amendments.

Kelvin Zimmer: Said he wanted to hand out the testimony of Steve Becher, Executive Director of Professional Insurance Agents of North Dakota, (4).

Chairman Klein: Closed the hearing.

Senator Sinner moved to adopt the amendments.

Senator Laffen seconded the motion.

Roll Call Vote: Yes - 7 No - 0

Senator Sinner moved a do pass as amended.

Senator Laffen seconded the motion.

Roll Call Vote: Yes - 7 No - 0 Absent: 0

Senate Industry, Business and Labor Committee
SB 2304
February 5, 2013
Page 3

Floor Assignment: Senator Sinner

FISCAL NOTE
Requested by Legislative Council
01/25/2013

Revised
Amendment to: SB 2304

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This bill requires the Office of Attorney General to conduct criminal history record checks for insurance salespersons.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The Insurance Department estimates 1,000 criminal history records checks will be needed for the biennium. The estimated biennial impact to perform these criminal history record checks would be \$44,500 in revenue and \$14,500 in expenses and appropriations.

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The \$14,500 in other funds from the applicants will be used to reimburse the FBI for fingerprint based criminal history record checks.

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

The Office of Attorney General's appropriation will need to be increased by \$14,500 in operating expenses to conduct the required criminal history record checks.

Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 02/04/2013

FISCAL NOTE
Requested by Legislative Council
01/25/2013

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 Bill/Resolution No.: SB 2304

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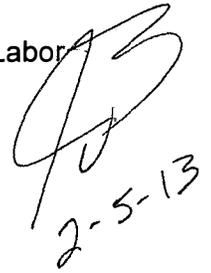
Telephone: 701-328-3622

Date Prepared: 02/04/2013

13.8251.01002
Title.02000

Adopted by the Industry, Business and Labor
Committee

February 5, 2013



Handwritten signature and date: 2-5-13

PROPOSED AMENDMENTS TO SENATE BILL NO. 2304

Page 1, line 2, replace "background" with "record"

Page 1, line 4, replace "background" with "record"

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Page 2, line 3, remove "background"

Page 2, line 10, after "for" insert "the collection and transmission of fingerprints for"

Page 2, line 10, replace "background" with "record"

Renumber accordingly

**2013 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2304**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 13.8251.1002

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

Motion Made By Senator Sinner Seconded By Senator Laffen

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent _____

Floor Assignment 0

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

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2304

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

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

Motion Made By Senator Sinner Seconded By Senator Laffen

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

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

REPORT OF STANDING COMMITTEE

SB 2304: 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). SB 2304 was placed on the Sixth order on the calendar.

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Renumber accordingly

2013 HOUSE INDUSTRY, BUSINESS, AND LABOR

SB 2304

2013 HOUSE STANDING COMMITTEE MINUTES

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

SB 2304
March 11, 2013
Job 19671

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to insurance producer criminal history background checks

Minutes:

Attachments 1, 2

Hearing opened.

Kelvin Zimmer, Director of Producer Licensing for the North Dakota Insurance Department: Refer to written testimony, attachment 1. Elaborated on written testimony.

7:53 **Representative N. Johnson:** Question regarding change made on Senate side from *background check to records check*.

8:08 **Kelvin Zimmer:** We changed it to make it uniform. It is a criminal records check.

8:21 **Representative M. Nelson:** Is being charged with a felony enough to deny the individual a license, or do they need to have been convicted? Would a history of a lot of misdemeanors be a factor? Where is the board drawing the line on this?

8:43 **Kelvin Zimmer:** Only criminal convictions, not charges, that an individual has would stop them from being licensed.

8:57 **Representative M. Nelson:** Is that a misdemeanor as well as a felony?

9:05 **Kelvin Zimmer:** All criminal convictions, whether felony or misdemeanor, must be reported. There are a few misdemeanors that we do not need to know about, such as minor traffic offenses.

9:28 **Representative M. Nelson:** How do you know if a current licensee receives a criminal conviction out of state?

9:35 **Kelvin Zimmer:** When an individual is renewing a license, the renewal application asks if there are any criminal convictions which were not been reported the last time the individual applied. If we would get information regarding that from someone, we could check with the Department of Insurance or with criminal justice folks in the other state.

10:14 **Representative Amerman:** Why wouldn't we want background checks on new non-resident producers? What if the other state just asks a yes or no question about the criminal history?

10:42 **Kelvin Zimmer:** Right now, no state does a background check on a non-resident producer. The National Association of Insurance Commissioners' licensing model indicates that the state only is responsible for the background check of their resident producers. We count on that resident's state that they have done all that necessary to ensure that those they have licensed are upstanding.

11:33 **Chairman Keiser:** So we're relying on those other states. What if the other states do not do a background check?

Kelvin Zimmer: Right now, there are 24 states and the District of Columbia that have fingerprinting in their statute.

Chairman Keiser: And have basically what we are proposing here?

Kelvin Zimmer: Yes.

Chairman Keiser: That means we're accepting from 26 states exactly what we're trying to prevent with this legislation.

12:38 **Kelvin Zimmer:** We go by the state that has licensed that individual. We do not have the manpower to do anything like that. Our biggest concern is the individuals who will come into homes to sell insurance. The best way we can do that is to make sure those who will sell insurance in this state are trustworthy.

13:27 **Representative Ruby:** If someone reveals convictions from several years ago, are they still potentially able to get licensed?

13:42 **Kelvin Zimmer:** It does not matter how long ago the convictions were; they need to be reported. There are a few felony convictions that by statute we will not allow them to become licensed in North Dakota. Those are dishonesty and breach of trust.

14:24 **Representative Kasper:** Where is this model legislation coming from?

14:51 **Kelvin Zimmer:** If I said model legislation, I misspoke. I meant model licensing practices from the National Association of Insurance Commissioners. It is a model act. All states are asked to abide by certain requirements, and one of them is fingerprinting and doing a background check.

15:31 **Representative Gruchalla:** This is the normal criminal history record check that is done by BCI by everyone who is applying for a job in law enforcement or in the insurance department, right?

Kelvin Zimmer: Yes.

15:55 **Representative Gruchalla:** You're saying that this will be done for all fifty states?

16:03 **Kelvin Zimmer:** No. The District of Columbia and 24 states have the same law that we are looking to have.

16:15 **Representative Gruchalla:** However, if you run a background check, all fifty states will report a criminal violation?

Kelvin Zimmer: Yes. Any violation that is to be fingerprinted and reported to the FBI is something on which we would be notified.

16:38 **Representative M. Nelson:** What does fingerprinting accomplish?

16:45 **Kelvin Zimmer:** Right now, there is no fingerprinting for the applicants. Reviewed current procedure for application and background check. With this bill, when they go to take their test and pass both parts of the insurance test, they would be fingerprinted at that time.

Representative M. Nelson: What is the reason for the fingerprinting?

17:48 **Kelvin Zimmer:** To do the background checks. That is what we'd use to send to the Bureau of Criminal Investigations, and they would forward it on to the Federal Bureau of Investigations to do their background check with the fingerprints.

18:06 **Chairman Keiser:** Do you through the commissioner have authority to make determinations on a case-by-case basis?

18:33 **Kelvin Zimmer:** We do. When they apply for a license, we take a look at those charges. There are certain convictions for which there is no leeway, but we would take a look at everything else.

Support:

Steve Becher, Executive Director of Professional Insurance Agents of North Dakota: Refer to written testimony, attachment 2.

21:33 **Chairman Keiser:** What about existing agents?

Steve Becher: That is something we discussed. Because of the sheer cost involved to the agencies, our agents are reluctant to do that. We have fraud investigators who do investigate if they get a report.

22:35 **Norbert Mayer, representing North Dakota Association of Insurance and Financial Advisors:** We think this is an excellent tool for the commissioner to have. We support this bill. Every once in a while, we have an individual within the licensed group, but to dig all of those out would be a major problem.

Opposition:

Neutral:

23:25 **Chairman Keiser:** Question regarding the revenue shown on the fiscal note.

23:50 **Kelvin Zimmer:** When the applicant passes the exams and is fingerprinted, they will then write a check to BCI for \$44.50, and that will be sealed up with the fingerprint card and sent to our office. We will review those and forward them immediately to BCI.

Chairman Keiser: They will pay that money before they do the test or after?

Kelvin Zimmer: After they take the test and pass both sections, then they will be fingerprinted and will pay those fees.

Chairman Keiser: So why is the appropriation there?

24:44 **Rebecca Ternes, deputy insurance commissioner:** That shows an increase of expected applicants in the next year. The department will not be receiving any of these funds.

25:10 **Representative M. Nelson:** A lot of these agents are also selling securities. Are criminal background checks required for securities now?

Rebecca Ternes: I am not sure but I believe they are at the federal level through the SEC.

25:46 **Representative Kasper:** Yes, for security license you have to be fingerprinted.

Hearing closed.

Motion for Do Pass made by **Representative Kasper** and seconded by **Representative N. Johnson**.

Roll call vote on Do Pass motion. Motion carries.

Yes = 13

No = 0

Absent = 2

Carrier: Representative Gruchalla

FISCAL NOTE
Requested by Legislative Council
01/25/2013

Revised
 Amendment to: SB 2304

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Name: Kathy Roll

Agency: Office of Attorney General

Telephone: 701-328-3622

Date Prepared: 02/04/2013

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Requested by Legislative Council
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Date Prepared: 02/04/2013

Date: 3-11-2013
 Roll Call Vote #: _____

**2013 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2304**

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

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

Motion Made By Kasper Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker		ab	Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog		ab			
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 13 No 0

Absent 2

Floor Assignment Gruchalla

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

REPORT OF STANDING COMMITTEE

SB 2304, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2304 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2304

13.8251.01001
Title.

Prepared by the Legislative Council staff for
Senator Larsen

February 1, 2013

(1)

PROPOSED AMENDMENTS TO SENATE BILL NO. 2304

Page 2, line 10, after "for" insert "collection and transmission of fingerprints for"

Renumber accordingly

February 5, 2013

PROPOSED AMENDMENTS TO SENATE BILL NO. 2304

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Renumber accordingly

SENATE BILL NO. 2304

Presented by: Kelvin W. Zimmer
Director of Producer Licensing
North Dakota Insurance Department

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

Date: February 5, 2013

TESTIMONY

Good morning, Chairman Klein and members of the Senate Industry, Business, and Labor Committee. My name is Kelvin Zimmer and I am the Director of Producer Licensing for the North Dakota Insurance Department. I am here in support of Senate Bill No. 2304.

This bill requires a criminal history record check (also known as a “background check”) with fingerprinting for applicants who wish to obtain a North Dakota resident insurance producer or agent license for the first time. Fingerprinting new agents provides the Department, and more importantly North Dakota consumers, with an assurance that agents entering our homes and accessing sensitive personal information will have been thoroughly reviewed.

An individual moved here recently from Illinois and applied for a resident license. He had never been licensed in any state before. On his application he stated he had no criminal convictions. The Department did a North Dakota online court records search and found that this individual had been in custody in the Ward County jail and was extradited back to Illinois for failure to appear for court proceedings. He had been convicted of aggravated driving under the influence and three counts of aggravated battery (assault on correctional officers) which were both felony convictions. This

individual was denied a North Dakota insurance license but had we not done a background check, his dishonesty on the application would have resulted in a license.

This bill has two parts. In Section 1, the bill amends the Attorney General's Bureau of Criminal Investigation (BCI) laws by adding the Insurance Department to the list of agencies for whom BCI may do criminal background checks. Section 2 of the bill changes the insurance licensing laws by adding the criminal background check as a requirement for a resident license. The bill also has a slightly delayed effective date in order to align with a new contract for our agent test vendor which we expect to collect the fingerprints.

Under current law, there is no requirement for a criminal background check to be conducted on applicants for a resident insurance producer license. In many cases, the Department must rely on the honesty of applicants to determine whether they have a criminal history. The application form asks "have you been convicted of a crime," and the applicant checks "yes" or "no." The Department does an online search of North Dakota and Minnesota court records for every applicant for a North Dakota resident license. We search those states because the court records are available online. For other states, it is not practical to do our own online search and many states do not make them available online.

Another problem is that in some cases, we do not know which state to search. There are three categories of applicants that we currently see:

1. Individuals who have lived in North Dakota for a period of time, if not all their lives, and are applying for a North Dakota resident producer license. A records search is done on these individuals in North Dakota and Minnesota records.
2. Individuals who are applying for a North Dakota nonresident producer license who hold a resident producer license in another state. We do not

conduct any background checks; we look to the resident state to conduct background checks and to ensure that these individuals are in good standing.

3. Individuals that just moved to North Dakota who have lived somewhere else, and have not been licensed as a producer in any other state, and now want to apply for a North Dakota resident producer license. The application form asks where they have been employed for the past five years. An applicant's response to this question may be incomplete or inaccurate or both. Other than this information, we do not have a way to do a criminal background check on these applicants as we have no idea where they may have been. This bill would get that information for us by accessing national criminal history record information through BCI.

In 2012 we had 73 individuals who applied for a North Dakota resident license who fit into the third category. As of February 1, we have 10 so far in 2013. Our numbers of applicants for a resident license have grown in recent years and we expect that trend to continue. Given the growth of both population and commercial interest, there is simply more insurance to sell.

There will be an additional cost of \$44.50 to each applicant for the background check and possibly some additional cost for taking fingerprints from the test vendor; however, only applicants who have passed their licensing exam would incur these costs and there would be no additional trips to other locations nor any additional paperwork to complete the process. The benefits of public safety outweigh this modest additional cost to applicants.

Please note the Department has written the bill to ensure that no agents currently licensed have to be fingerprinted and no agents that lapse their license for less than one year have to be fingerprinted.

We worked with BCI in preparing this legislation and have found support for the bill in the insurance agent groups. They, too, recognize the importance of safeguarding their profession and take pride in doing the best they can for their customers.

I thank you for your time and respectfully ask for your support of Senate Bill No. 2304. I would be happy to answer any questions you may have. Thank you.

Testimony for Senate Bill 2304 – Senate IBL Committee

Chairman Klein and members of the Senate Industry, Business, and Labor Committee my name is Steve Becher, Executive Director of Professional Insurance Agents of North Dakota (PIAND) and while I am not able to attend today I wanted to provide written testimony in support of Senate Bill 2304. PIAND is a trade association representing 305 main street insurance agencies across the state of North Dakota with over 1,000 independent insurance agents.

It is very important to the insurance industry that new agents receiving a license don't have anything in their background that could jeopardize the integrity of our industry. Insurance agents have a huge fiduciary responsibility to our clients as they rely on the agent to help them make financial decisions that could impact their family or business. Consumers entrust their money to an agent through premiums paid as well as through investment accounts such as annuities. They also entrust all of their personal information such as date of birth, social security number, driver's license number, etc. and they have the right to know that the information is secure and will be kept confidential. Background checks of new insurance producers will allow the Insurance Department to have one more tool to safeguard the integrity of the insurance industry.

PIAND was afforded the opportunity to meet with the insurance department prior to the introduction of this bill to discuss the need for the bill as well as the potential costs involved to our agents. We are in agreement with the department that current practice is not good enough as North Dakota applicants for an agent license are having their background checked through ND databases, but applicants coming from another state could have numerous criminal violations from their former state and if they don't disclose the violations on the application the Insurance Department has no way of uncovering those violations.

For these reasons, I would encourage a "Do Pass" on SB2304. Should you have any questions I would welcome an email at steve@piand.com or call my cell phone at 701-412-1547.

① SB 2304
3-11-2013

SENATE BILL NO. 2304

Presented by: Kelvin W. Zimmer
Director of Producer Licensing
North Dakota Insurance Department

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

Date: March 11, 2013

TESTIMONY

Good morning, Chairman Keiser and members of the House Industry, Business, and Labor Committee. My name is Kelvin Zimmer and I am the Director of Producer Licensing for the North Dakota Insurance Department. I am here in support of Senate Bill No. 2304. This bill was amended in the Senate IBL Committee to use consistent terminology and for clarification. The amendments did not change anything substantive in the bill.

This bill requires a criminal history record check (also known as a “background check”) with fingerprinting for applicants who wish to obtain a North Dakota resident insurance producer or agent license for the first time. Fingerprinting new agents provides the Department, and more importantly North Dakota consumers, with an assurance that agents entering our homes and accessing sensitive personal information will have been thoroughly reviewed.

An individual moved here recently from Illinois and applied for a resident license. He had never been licensed in any state before. On his application he stated he had no criminal convictions. The Department did a North Dakota online court records search and found that this individual had been in custody in the Ward County jail and was extradited back to Illinois for failure to appear for court proceedings. He had been convicted of aggravated driving under the influence and three counts of aggravated

battery (assault on correctional officers) which were both felony convictions. This individual was denied a North Dakota insurance license but had we not done a background check, his dishonesty on the application would have resulted in a license.

This bill has two parts. In Section 1, the bill amends the Attorney General's Bureau of Criminal Investigation (BCI) laws by adding the Insurance Department to the list of agencies for whom BCI may do criminal background checks. Section 2 of the bill changes the insurance licensing laws by adding the criminal background check as a requirement for a resident license. The bill also has a slightly delayed effective date in order to align with a new contract for our agent test vendor which we expect to collect the fingerprints.

Under current law, there is no requirement for a criminal background check to be conducted on applicants for a resident insurance producer license. In many cases, the Department must rely on the honesty of applicants to determine whether they have a criminal history. The application form asks "have you been convicted of a crime," and the applicant checks "yes" or "no." The Department does an online search of North Dakota and Minnesota court records for every applicant for a North Dakota resident license. We search those states because the court records are available online. For other states, it is not practical to do our own online search and many states do not make them available online.

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For these reasons, I encourage a "Do Pass" on SB2304 and would welcome any questions that you may have.