

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2155

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2155

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2155

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
2	x		23.8 to 38.4
(1/31) 3		x	0 to 5.5
Committee Clerk Signature <i>Doris E. Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2155, a bill for an act to provide for privacy of an individual's medical information; and to provide a penalty.

SENATOR KLEIN: Presented to the committee a letter from Atty. Gra. Wayne Stenehjem stating his objections to this bill. See enclosed letter.

ARNOLD THOMAS, ND Healthcare Assn., opposing this bill, it falls short and cannot be amended. Written testimony attached.

JOHN KAPSNER, ND Healthcare Assn. Opposing. The main problems are not addressed in this bill: how can people who should have access to records get them. A deceased person's record cannot be accessed by the surviving spouse. In the case of divorced parents which one gets access to the records? The issue of record within a record is not addressed. Sections 3 and 8 read together present difficulties: in malpractice cases all records are deemed needed, this bill would

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 215 5

Hearing Date January 29, 2001.

create additional litigation. This bill attempts to remedy a nonexistent problem. ND courts have protected medical information for years. We don't have the kinds of problems faced by other states. This bill requires more study and needs to be made consistent with federal law.

SENATOR EVERY: If this law is not needed how can you explain the release of Heidi Heitkamp's medical information?

JOHN KAPSNER: That's an issue of how a medical institution facility deals with breaches of confidentiality, laws cannot protect against this.

ROD ST AUBYN, Blue Cross/Blue Shield. In opposition. Written testimony attached. Suggests interim study.

JACK MCDONALD, ND Newspaper Assn. Opposed. Written testimony attached. Concerned about what is really going to be protected and how far this protection goes.

PAT WARD, ND Domestic Insurance Co. In opposition. Written testimony prepared by Brenda Blazer attached. There are a lot of federal regulations regarding privacy. Extremely difficult to do business different states when different laws apply. Favor model uniform laws.

Hearing closed.

January 31, 2001 Tape 3-B-0 to 5.5

Committee reconvened. Discussion held. SENATOR KLEIN: Moved do not pass. SENATOR ESPEGARD seconded. Roll call vote: 5 yes; 2 no. Motion carried. Carrier: SENATOR TOLLEFSON.

Date: 1/31/01  
Roll Call Vote #:

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**(BILL/RESOLUTION NO. 2155)**

Senate Industry, Business and Labor Committee

☐ Subcommittee on \_\_\_\_\_  
or  
☐ Conference Committee

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

Action Taken DNP

Motion Made By S. Klein Seconded By S. Espigard

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every		✓
Senator Klein - Vice Chairman	✓		Senator Mathern		✓
Senator Espigard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 5 No 2

Absent 0

Floor Assignment S. Tollefson

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

**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2001 8:32 a.m.

**Module No: SR-19-2061**  
**Carrier: Tollefson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2155: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends**  
**DO NOT PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING)** SB 2155 was  
placed on the Eleventh order on the calendar.

2001 TESTIMONY

SB 2155



OFFICE OF ATTORNEY GENERAL  
STATE OF NORTH DAKOTA

Wayne Stenehjem  
ATTORNEY GENERAL

January 29, 2001

CAPITOL TOWER

State Capitol  
600 E. Boulevard Ave.  
Dept. 125  
Bismarck, ND 58505-0040  
701-328-2210  
800-366-6888 (TTY)  
FAX 701-328-2226

Senator Duane Mutch  
Chairman  
Industry, Business & Labor Committee

Dear Senator Mutch:

Consumer Protection  
and Antitrust Division  
701-326-3404  
800-472-2600  
Toll Free in North Dakota  
FAX 701-328-3535

This morning your committee will be hearing SB 2155 and SB 2156, dealing with medical and financial privacy matters, respectively. Earlier this month I requested that each bill be withdrawn from consideration because I did not believe the subject matter of either bill was adequately studied before the bills were introduced. I have attached a summary of my concerns regarding each bill for your committee's review.

Gaming Division  
701-328-4848  
FAX 701-328-3535

The privacy of financial and medical records is an important issue for the citizens of North Dakota. I do not take the matter lightly. I do, however, recognize the complexities of the issue, and strongly urge the Legislative Assembly to avoid taking a haphazard approach to protecting our citizens. As you are no doubt aware, there are several federal privacy regulations that will affect the actions of all 50 states, and further regulation can be expected in the future. It is imperative that we understand the nuances of these federal regulations to avoid adopting conflicting or confusing privacy standards of our own.

Licensing Section  
701-328-2329  
FAX 701-328-3535

CAPITOL COMPLEX  
State Office Building  
900 E. Boulevard Ave.  
Bismarck, ND 58505-0041  
FAX 701-328-4300

Civil Litigation  
701-328-3640

Natural Resources  
701-328-3640

Racing Commission  
701-328-4290

The citizens of North Dakota are entitled to clear and understandable privacy standards. They would not be well served by incompatible laws that create more confusion than they solve. Instead, I encourage you and your committee members to endorse a concurrent study resolution that will be introduced today calling for an interim study of the entire privacy issue, and do not pass SB 2155 or SB 2156.

Bureau of Criminal  
Investigation  
P.O. Box 1054  
Bismarck, ND 58502-1054  
701-328-5500  
800-472-2125  
Toll Free in North Dakota  
FAX 701-328-5510

Respectfully submitted,

  
Wayne Stenehjem  
Attorney General

Fire Marshal  
P.O. Box 1054  
Bismarck, ND 58502-1054  
701-328-5555  
FAX 701-328-5510

Fargo Office  
P.O. Box 2665  
Fargo, ND 58108-2665  
701-239-7126  
FAX 701-239-7129



## Summary of SB 2155 and SB 2156

**SB 2155** – This bill restricts the disclosure of personal medical information by a provider of goods, services or employment without the prior written consent from an individual. While the concept behind the bill is important, it appears to be premature given recent action at the Federal level. On December 21 the Clinton administration announced the final standards for the privacy of health information (known as the HIPPA regulations). SB 2155 does not track the terminology or structure of the HIPPA rules.

We need to ensure that the citizens of North Dakota are not faced with multiple (and perhaps conflicting) regulations in this area. To avoid unnecessary confusion between Federal and state regulations, it would be prudent to evaluate the final federal privacy regulation, determine whether the Bush Administration or Congress is going to delay or modify the regulation, and then add any additional privacy protection for health information that reflects appropriate privacy policy for North Dakota. To that end, I have drafted a concurrent study resolution calling for an interim study of not only medical privacy issues, but also financial privacy issues. Some may suggest that a special committee formed by the prior Attorney General studied privacy issues during the last interim. While it is true that a study committee was formed, it held only a few meetings (3) and did not include any representatives from the Legislature. We can do better than that. This is an important issue to legislators and they should be involved in the discussion.

**SB 2156** – Financial records privacy is the basis of this legislation. The bill protects information regarding customers (defined as any individual who has requested or obtained goods, services or employment) from being exploited by third parties who sell personal financial information without the consumer's prior written consent. Again this is important issue to the citizens of our state. It is also, however, crucial to recognize the importance of designing a privacy bill that provides protection to our citizens while not preventing them from receiving services without unduly burdensome requirements. The scope of SB2156 is so broad that it may prohibit or sharply curtail financial transactions we have come to take for granted. For instance, under the terms of SB 2156 a person's ability to receive cash from an ATM not owned by the customer's bank would be severely restricted due to the notice, disclosure and correction procedures required of third parties under the bill. Concerns have also been raised about the bills impact on North Dakota's growing telemarketing industry.

Financial privacy is another issue that would be well served by further detailed study during the interim. In order to adequately protect our citizens, we need to recognize the enormous complexity of the issue. As such we should follow the lead of 29 other states and reject premature efforts to enact a state-by-state privacy laws. By so doing we will allow the Federal legislation in this area (the Graham-Leach-Bliley Act) a chance to work, and give the Legislature an opportunity to examine the issue in-depth.



North Dakota Healthcare Association

**Vision**

*The North Dakota Healthcare Association will take an active leadership role in major healthcare issues*

**Mission**

*The North Dakota Healthcare Association exists to advance the health status of persons served by the membership*

2001 Session

Testimony: SB 2155

Chairman Mutch, members of the Industry, Business and Labor Committee. My name is Arnold Thomas. I am President of the ND Healthcare Association and appear today in opposition to SB 2155.

NDHA supports the purpose behind SB 2155, establishing sound policies protecting personal medical information generated through patient/provider relationships.

While the NDHA was a participant in the early discussions of this issue, we were not given the opportunity to review a proposed draft prior to introduction.

It is our opinion that this bill falls short of its objective and cannot be amended in a fashion that would address our substantive concerns.

With your permission, I have asked Mr. John Kapsner of the Vogel Law firm to review with you the concerns upon which we base our opposition to SB 2155.

Testimony for SB 2155  
Senate Industry Business & Labor Committee  
January 29, 2001

Mister Chairman and Committee Members, for the record I represent Blue Cross Blue Shield of North Dakota. BCBSND opposes SB 2155, but we do so with some reservations. We take privacy of medical records very seriously. Every employee during their new employee orientation receives specialized training concerning the privacy of medical records. New employees are told that any violation of this will result in their immediate termination, and it has occurred at least once.

The reason that we are opposed to this bill is based on the fact that the insurance industry is already covered under two federal laws covering medical record privacy issues. Under the HIPAA privacy regulations, which were recently released by the Clinton Administration in late December, new privacy standards must be met by July 1, 2002. BCBSND has been working on these regulations along with the standardization of codes required by the HIPAA act for many months. We have over 120 people working on this project and have spent close to \$23 million on this project alone. Now we are faced with another new federal regulation mandate, the Gramm Leach Bliley Act. GLB, as we call it, allows financial institutions to enter the insurance market. Along with that, new privacy regulations also are required. The GLB regulations become effective on July 1, 2001. There is an exemption proposed by the National Association of Insurance Commissioners (NAIC) in GLB, which states that we are exempt from GLB privacy regulations if we are HIPAA compliant. The only problem is we do not anticipate that we will be HIPAA compliant until after the July 1, 2001 deadline for GLB. As a result, we are faced with the challenge and expense of being GLB compliant first and then HIPAA compliant. This additional expense can only be passed on to our policy holders, especially at a time in which many employers say they can not accept any further insurance cost increases.

I have heard that Attorney General Stenehjem has proposed that these privacy issues should be studied during the interim. We would support this suggestion instead of rushing into new legislation at a time when we are already facing extra costs and limited amount of time of implementing new federal legislation.

Mr. Chairman and Committee Members, we would urge you to defeat this bill at this time and consider studying this issue during the interim. Thank you.

Dan Ulmer and Rod St. Aubyn  
Government Relations  
Blue Cross Blue Shield of North Dakota

January 29, 2001

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE  
SB 2155

SENATOR MUTCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. As you know, we track legislation that involves open meetings and open records. We oppose SB 2155.

SB 2155, while well intentioned, creates in Section 2 a vague and ambiguous new right under state law about which only one thing is certain: it will take a lot of lawsuits, and a lot of lawyers, to determine exactly what this right is, how it is defined and how it is to be interpreted.

Under the definitions, for example, could a newspaper report on the heart attack and condition of a state official if it obtained that information from a variety of sources? Who knows? Under Section 2, we are giving everybody a right to privacy to this information that doesn't now exist. Does this mean a person can sue everytime they receive an unwanted mail solicitation or telemarketing phone call concerning health care? How do businesses protect all of this information. Can they be sued if they don't protect it well enough? Who knows?

The 107<sup>th</sup> Congress is just a few days old, and there are already about 10 different privacy bills being floated about. The Federal Trade Commission has issued a gigantic report on privacy and has just issued new federal regulations. There are tough federal privacy laws concerning banks, insurance companies and the security industry. There are federal laws concerning telemarketing and privacy.

In this legislative session, we have these two bills concerning privacy rights of individuals. There are at least two, if not more, bills dealing with the privacy rights of banking customers. I am told there will be bills dealing with privacy rights in the insurance industry. The House Judiciary Committee is considering a resolution that would enshrine this vague right in our Constitution. We are suffering from a plethora of privacy legislation, and we have another big deadline today for introduction of bills.

This is a subject that is far too important and far reaching to handle on such a piecemeal, hodge-podge basis. Attorney General Wayne Stenehjem has indicated he wants to convene a two-year study of the privacy issue and come up with some comprehensive proposals. We think this is a far better approach to the situation than rushing in now with several legislative enactments that may or may not be in conflict.

You have heard today, and will hear from others, the wide variety of concerns they have on how this will be interpreted. When a court looks for legislative intent, they will only find that no one was certain what was intended. I don't think this is the background for creation of such an important new right.

We respectfully request a do not pass. If you have any questions, I'd be glad to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION:

*Pat Wadell*

Brenda L. Blazer  
Heath Insurance Association of America

TESTIMONY ON SENATE BILLS 2155 AND 2156  
Senate Industry, Business & Labor Committee  
January 29, 2000

The Health Insurance Association of America (HIAA) is an insurance trade association representing insurance companies that write accident and health insurance on a nationwide basis. The HIAA supports uniform laws with respect to privacy of medical and financial information. HIAA strongly opposes Senate Bills 2155 and 2156.

The handling of personal financial information and personal medical information have been the subject of federal laws and regulations pursuant to Gramm-Leach-Bliley and HHS regulations. Both the National Council of Insurance Legislators and the National Association of Insurance Commissioners have developed model laws to encourage uniformity in privacy requirements. Insurance companies who do business in a number of states would find compliance with the federal laws and regulations in addition to compliance with differing state laws to be very costly and perhaps cost prohibitive.

Senate Bills 2155 and 2156 are not patterned after, or consistent with, federal legislation or regulations or with proposed model laws which have been developed to deal with privacy of financial and medical information. SB 2155 and 2156 would require insurance companies to comply with laws in North Dakota inconsistent with compliance necessary to meet the requirements of federal law and regulations. Senate

Bills 2155 and 2156 would send a clear message to out-of-state insurance companies that North Dakota is making it as difficult as possible for them to do business in this state.

HIAA respectfully requests the Committee give SB 2155 and SB 2156 a "do not pass" recommendation.