

SENATE BILL NO. 2155

Introduced by

Industry, Business and Labor Committee

(At the request of the Attorney General)

1 A BILL for an Act to provide for privacy of an individual's medical information; and to provide a
2 penalty.

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

4 **SECTION 1. Definitions.** As used in this Act:

- 5 1. "Custodian" means a person who possesses personal medical information that is
6 subject to the disclosure restrictions in this Act.
- 7 2. "Legal representative" includes legal custodian and a parent of a minor child.
- 8 3. "Personal medical information" means oral or recorded information concerning an
9 individual's past, present, or future physical or mental health or condition, including
10 physical condition, identifying physical characteristics, health history, evaluation,
11 tests, diagnosis, treatment, and prescribed drugs, medical devices, or health care
12 equipment or supplies, which has been:
 - 13 a. Provided by the individual for the purpose of obtaining or requesting any kind
14 of goods, services, or employment; or
 - 15 b. Generated by any person in the course of, or as a result of, responding to the
16 individual's request for goods or services or providing goods or services in an
17 emergency in which the individual, or the individual's legal representative, is
18 unable to request the goods or services.
- 19 4. "Subject" means the individual who is the subject of an item of personal medical
20 information.
- 21 5. "Third party" means any custodian to whom personal medical information is
22 properly disclosed under this Act other than the custodian who originally obtained
23 the information from the subject or generated the information in response to the
24 subject's request for goods or services.

1 **SECTION 2. Right to privacy in medical information.** Every individual in this state
2 has a right to privacy in the individual's personal medical information. Disclosure of personal
3 medical information by a provider of goods, services, or employment, to a person other than the
4 subject of the personal medical information, including secondary disclosure and internal
5 disclosure to an employee of the provider, is permitted only with the prior written consent of the
6 subject or the subject's legal representative or as required by law or authorized in this Act.

7 **SECTION 3. Form of written consent.** A subject's consent to disclosure of the
8 subject's personal medical information is valid only if it is expressed in a separate written
9 release that is signed and dated by the subject or the subject's legal representative. The
10 release must contain a general description of the personal medical information to be disclosed,
11 the reason for the disclosure, the custodian who will be disclosing the information, and the
12 person to whom the information will be disclosed. The release also must identify the exclusive
13 uses that may be made of the information. A release is binding on any third party to whom the
14 information is disclosed pursuant to the release. The release must also state the length of time
15 the release is valid, not to exceed three years, and state that the release may be revoked at any
16 time by written communication to the custodian. If the release is not prepared by the subject of
17 the personal medical information, the release must be written in an easily understood manner
18 and contain a notice in substantially the following form:

19 Your signature on this document authorizes the disclosure of the listed items of
20 your personal medical information to the listed persons. Any use of your personal
21 medical information other than the uses listed in this document or specifically
22 authorized by law is prohibited. This release expires three years from the date it is
23 signed, unless an earlier date is specified in this document. You may revoke this
24 release in writing at any time.

25 **SECTION 4. Permitted uses of personal medical information without consent.**
26 This Act does not prohibit the following disclosures of personal medical information without the
27 prior written consent of the subject:

- 28 1. Disclosure to employees of the custodian or to third parties to the extent necessary
29 for the custodian to respond to a request for goods or services from the subject or
30 the subject's legal representative or to provide goods or services to the subject in

an emergency in which the subject, or the subject's legal representative, is unable to request the goods or services.

2. Disclosure to the extent necessary to obtain payment for the goods or services requested by or provided to the subject, including disclosures that are incident to a court proceeding to obtain payment.
3. Disclosure to a federal, state, or local government agency in response to a court order or a subpoena issued by a court or a government agency.
4. Disclosure to a third party to assist the custodian in obtaining legal, medical, accounting, or other professional services.
5. Disclosure that is incidental to the sale of the custodian's business.
6. Disclosure for research or statistical purposes which does not identify the subject and which could not reasonably lead to the subject's identification.
7. Disclosure to any person legally authorized to make health care decisions on behalf of the subject.
8. Any other disclosure required by federal or state law or regulations or authorized under chapter 23-01.3.

SECTION 5. Third-party recipients of personal medical information. Any third party to whom personal medical information is properly disclosed under this Act is subject to this Act and may not further disclose the information except as authorized in this Act or with a proper written release that has been independently obtained from the subject or the subject's legal representative.

SECTION 6. Right to access. Any custodian who has used personal medical information to deny the subject's request for goods or services must give the subject the opportunity to correct any inaccuracies in the information. The custodian also must notify the subject of the personal medical information that was used to deny the request, from whom the information was obtained, and of the right to correct any inaccuracies.

SECTION 7. Public records exemption. Personal medical information in the possession or control of a public entity is an exempt record as defined in section 44-04-17.1 unless made confidential under any other law.

SECTION 8. Restriction on obtaining medical information. A provider of goods or services may not require a subject to provide more personal medical information than is

1 reasonably necessary to respond to the subject's request for goods or services, establish the
2 relationship between the subject and the provider or maintain the relationship, protect against
3 fraud or unauthorized transactions, or comply with applicable law. Any additional personal
4 medical information that is requested must be specified as optional and the subject must be
5 given the option not to provide it. A subject who chooses not to provide optional information
6 may not be denied goods or services as a result of that refusal.

7 **SECTION 9. No-contact lists.** Upon request by the subject of personal medical
8 information, a custodian shall refrain from using the information to contact the subject once the
9 requested goods or services have been provided and payment for the goods or services has
10 been received. This section does not apply to warnings or notices of deficiencies in the goods
11 or services provided.

12 **SECTION 10. Safeguards.** A custodian shall use reasonable care to protect the
13 confidentiality of personal medical information and to safeguard the information from loss,
14 misuse, theft, unauthorized access, disclosure, defacement, or alteration.

15 **SECTION 11. Violations - Penalty.**

- 16 1. A violation of this Act by a custodian who is licensed by the state to engage in a
17 profession, occupation, or service, is grounds for the appropriate licensing authority
18 in this state to take disciplinary action against the custodian.
- 19 2. In addition to other legal remedies, a subject whose personal medical information
20 is disclosed in violation of this Act is entitled to recover five hundred dollars or the
21 amount of any actual damages to the individual, whichever is greater, in a civil
22 court action in any court of competent jurisdiction. A subject who brings a
23 successful action for a violation of this Act is entitled to court costs and reasonable
24 attorney's fees incurred in the action.

25 **SECTION 12. More restrictive laws.** Nothing in this Act authorizes disclosure of
26 personal medical information which is prohibited by any other federal or state law or regulation.