

# MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

1179

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Diana Hall  
Operator's Signature

10/2/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1179

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Deanna Hall  
Operator's Signature

10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1179

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/20/03

Tape Number	Side A	Side B	Meter #
3	x		52.0-end
3		x	0-1.0
Committee Clerk Signature <i>Heidi Hammer</i>			

Minutes: Chair Keiser opened the hearing on HB 1179.

Charles Johnson, General Counsel for the North Dakota Insurance Department, appeared to introduce HB 1179. (See attached)

As no one else was present to testify in support of or in opposition to HB 1179, Chair Keiser closed the hearing.

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*Deanna Ball*  
Operator's Signature

*1/21/03*  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1179

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 11, 2003

Tape Number	Side A	Side B	Meter #
2		X	800-2391
Committee Clerk Signature <i>Elizabeth R. Fin</i>			

Minutes: Chair Kelser opened discussion on HB 1179

Rep. Severson handed out amendment .0105 and an e-mail from Chuck Johnson. HB 1179 will stay in tact and the amendment adds a new section.

Rep. Kelser: Does it relate to the banking bill with the same definition of "customer"? Rep. Kasper said it does not and is actually more restrictive.

Rep. Severson: Noted that amendment .0103 had a back page and the Insurance Commissioner wanted it removed.

Rep. Kelser: Asked if we would be better off separating insurance from securities.

Rep. Ruby: 1477 is a blended bill. They should have marketing agreements equal, but you can not have a lump restriction because insurance companies, securities, and banks have different needs for their respective customers.

Chair Kelser decided to close the hearing and sent the subcommittee back with HB 1179, 1485, and 1477 to clean up the language on the bills and amendments.

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*Domena Hall*  
Operator's Signature

10/2/03  
Date



2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1179

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2/12/03

Tape Number	Side A	Side B	Meter #
1		x	12.0-34.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Chairman Kelsner called for committee work on HB 1179. Rep. Severson walked the committee through the amendments. Conceptually, this is dealing with nonaffiliated third parties. Insurance Commissioner Poolman has covered the rules to this bill. This will put in into statute. Rep. Ruby moved to adopt the amendment .0106.

Rep. Nottestad seconded the motion. Rep. Kasper stated that this is excellent as it doesn't nix the joint marketing which allows securities and insurance industries to share their confidential information. Customers will have to sign a disclosure form.

Rep. Severson stated that he will resist the motion to adopt the amendments.

Roll call vote results were 11-3-0.

Rep. Severson moved a Do Pass As Amended. Rep. Klein seconded the motion.

Roll call votes results were: 14-0-0.

Rep. Severson will carry this on the floor.

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*Dorinda Hallmark*  
Operator's Signature

10/2/03  
Date

38121.0106  
Title.0200

Prepared by the Legislative Council staff for  
Representative Severson  
February 12, 2003

VR  
2/12/03

HOUSE AMENDMENTS TO HOUSE BILL NO. 1179 IBL 2-13-03

Page 1, line 6, after the third boldfaced period insert:

"1."

Page 1, line 7, after "disclose" insert "to a nonaffiliated third party a customer's"

Page 1, line 9, after "1436]" insert "or contrary to the rules adopted by the commissioner under this section", after the fourth period insert "2. a.", overstrike "may" and insert immediately thereafter "shall", and overstrike "as may be"

Page 1, line 10, after the period insert:

"b."

Page 1, line 12, after the period insert:

"c."

Page 1, line 13, replace "the provisions of the previous sentence, the rules must," with "subdivision b and" and after "exceptions" insert an underscored comma

Page 1, line 15, after the underscored comma insert "the rules must"

Page 1, line 17, after the underscored period insert:

"d. Notwithstanding subdivision b, the model regulation exemptions, and the exemptions under federal law, the rules must provide that an insurance company, nonprofit health service corporation, or health maintenance organization must have an individual's consent before disclosing the individual's information to a nonaffiliated third party under a joint marketing agreement, as defined under section 502(b)(2) of the federal Financial Services Modernization Act of 1999 [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)].

3."

Renumber accordingly

*Deanna Hall*

2/12/03

Date: 2/ <sup>12</sup> /03  
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1179

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

38 121.0106 / .0200

Action Taken

To adopt Amendments . 106

Motion Made By

Ruby

Seconded By

Nottestad

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe		✓
Vice-Chair Severson	✓	✓	Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓	✓			
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 11 No 3

Absent \_\_\_\_\_

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

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

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Deanna Hall  
Operator's Signature

10/2/03  
Date

Date: 2/12/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1179

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

38121.0106  
.0200

Action Taken

Do Pass to Am

Motion Made By

Severson

Seconded By

Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	✓	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes)

14

No

0

Absent

Floor Assignment

Severson

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

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Operator's Signature

Donna Hall

Date

10/2/03

REPORT OF STANDING COMMITTEE (410)  
February 13, 2003 8:52 a.m.

Module No: HR-28-2531  
Carrier: Severson  
Insert LC: 38121.0106 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1179: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1179 was placed on the Sixth order on the calendar.

Page 1, line 6, after the third boldfaced period Insert:

"1."

Page 1, line 7, after "disclose" Insert "to a nonaffiliated third party a customer's"

Page 1, line 9, after "1436]" Insert "or contrary to the rules adopted by the commissioner under this section", after the fourth period Insert "2. a.", overstrike "may" and Insert immediately thereafter "shall", and overstrike "as may be"

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Page 1, line 17, after the underscored period Insert:

"d. Notwithstanding subdivision b, the model regulation exemptions, and the exemptions under federal law, the rules must provide that an insurance company, nonprofit health service corporation, or health maintenance organization must have an individual's consent before disclosing the individual's information to a nonaffiliated third party under a joint marketing agreement, as defined under section 502(b)(2) of the federal Financial Services Modernization Act of 1999 (Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802(b)(2)).

3."

Renumber accordingly

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1179

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*Dennis G. Hall*  
Operator's Signature

10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1179

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-17-03

Tape Number	Side A	Side B	Meter #
1	xxx		5330-end
1		xxxx	0-end
2	xxx		0-680
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Mutch opened the hearing on HB 1179. All Senators were present.

HB 1179 relates to disclosing nonpublic personal information.

Testimony in support of HB 1179

Charles Johnson, General Council for the North Dakota Insurance Department, introduced the bill. See written testimony.

Senator Espeland: So you are saying that you would like to have it amended back saying that all insurance companies can share information with another small company for marketing purposes?

Charles: Yes, we feel it will create a more level playing field.

Senator Nething: You testify for the bill but you are opposed for the bill. We don't even have the old bill, we don't know what it's about. So basically you would favor a new bill like the old one.

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*Donna Baller*  
Operator's Signature

10/2/03  
Date

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1179

Hearing Date 03-17-03

**Charles:** The problem lies in section D on line 1 and page 2 like 6. The provision that prevent joint marketing.

**Senator Klein:** Would this bill be stronger than GLB?

**Charles:** Yes, this would go beyond Gramm-Leach Bliley. Even if the above sections were eliminated. Gramm-Leach Bliley policy issue started when banks that sell credit cards sold credit card information to telemarketers. And it was the banking industry that caused the whole GLB. Insurance companies are able to sell that information because they don't have it. Also banks know where you spend your money and how much. Medical information is valuable to a banker if you are applying for a home loan and they can give that out as well.

**Senator Krebsbach:** I would like to say for the record that financial institutions are precluded from releasing ANY personal financial information both under state regulation and federal regulation.

**Rep. Kasper:** I want to visit with you about the misrepresentation that you have been hearing and I would like to clear it up. I am a licensed insurance and securities broker for about 30 years. Opt-out means that notice is sent stating that they have the right to share the customers information. In the bottom there is a small print saying that you can opt-out by calling a toll free number or filling out a form and sending it in. If the customer doesn't do that, they have consented in the sharing of their information. I am not suggesting that many companies do that. National polls and studies show that over 60% of customers who receive those notices don't understand what they are and throw them away. Less than 2-3% actually do that and that is under current GLB law.

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*Dannan Hall*  
Operator's Signature

10/2/03  
Date



Page 3  
Senate Industry, Business and Labor Committee  
Bill/Resolution Number 1179  
Hearing Date 03-17-03

Opt-in is when a financial institution talks to the customer in advance and gets permission from the customer to share the information. As an insurance broker, when I talk to a client about life insurance product, I sit down with that customer and get rate data based on personal information. This health information is basically name, age, smoker or nonsmoker and current health. That is it. When getting quotes from different companies, I could get a form and have the customer sign stating that I can disclose financial information to multiple companies in order to get the best rate. That is opt-in. Written consent in advance. That is what this bill does.

Senator Espegard: If this bill doesn't pass, what happens?

Rep. Kasper: We are back to an opt-out standard in this industry and that is not what the people want.

Senator Espegard: Can it be referred?

Rep. Kasper: There is no law for that, we need to create one.

Senator Krebsbach: Is this effective to ALL insurance companies, both in state and out of state?

Rep. Kasper: The bill says "ND consumers" so I would assume that ANY company would have to get written consent in advance.

Senator Krebsbach: Then do we have uniformity with the financial institutions?

Rep. Kasper: This bill includes ALL insurance companies where ever they are located. Now these bills are not exporting law to other states, but if they want ND consumers, they must get an advance written consent.

Senator Krebsbach: Would you be open to amendments to include all three entities?

Rep. Kasper: I would certainly be willing to sit down and discuss those possibilities depending on what they are.

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*Dan H. H. H.*  
Operator's Signature

10/2/03  
Date

Page 4

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1179

Hearing Date 03-17-03

**Senator Mutch:** With the situation the insurance industry is in now raises the question of how this affects the reinsurer?

**Rep. Kasper:** If you read the fine print currently in place, you are allowing them to disclose that information. This is not the big deal that you are being led to believe it is. These bills just allow opt-in.

**Senator Nething:** Earlier we heard testimony that this would affect the sale of a business. So if you want to sell your business how would you disclose information to the potential buyer?

**Rep. Kasper:** I can't unless I get the customer's permission. And I feel that is right. What right do I have to give information to someone who MIGHT buy my business? These clients don't know this person and have no relationship with him. I should have to get their permission to do that. That is good public policy to have that prohibition. It is a little bigger step, but it is the right thing to do.

**Senator Mutch:** If I were to buy my competitor out, I wouldn't do it until I got to look at the customer list first and the money they owe and what their paying habits are and where they live.

**Rep. Ruby** spoke in support of the bill. We have heard in the previous bill that the sky is falling, and I'm sure you will hear it with this bill as well. It's not. If you want to opt-in you have to opt-in several times and if you opt-out, you only have to do it once. One thing we heard is that people want their personal nonpublic information protected. It is just one step of asking for permission to disclose that information in advance. I would ask that you would please remember that the voters want this.

**Testimony in opposition**

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*Donna Baller*  
Operator's Signature

10/2/03  
Date

Page 5

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1179

Hearing Date 03-17-03

Pat Ward, ACIL and State Farm Insurance, spoke in opposition. He stated that we do have NAIC model now and it seems to be working. There is no guarantee that everyone will read the bill the way Rep. Kasper does. The fact still exists that banks WERE selling information. That has to do with telephone privacy. We are not suggesting that the sky is falling. People get their dander up about this because they are getting phone calls when they are at home eating dinner with their family.

Senator Nething: You eluded to a potential problem of how the courts will interpret this. When an individual signs a waiver of liability to send his son to camp, the courts are saying that the waiver is no good because they didn't know what to anticipate at camp. People can say they didn't understand or know what they were signing. Suggests putting in a clause to say that when they do sign it, they understand it.

Pat: I think that it can be viewed in many different ways. This does not put us on a level playing field.

Roberta Meyer, on behalf of the American Council of Life Insurers, rose in opposition. See written testimony.

Senator Klein: If this bill is killed, will companies still be allowed to sell information?

Roberta: Companies are currently under strict confine of federal statutes.

Senator Heitkamp: Was section D what Pat Ward made reference to, the section that you guys tried to amend?

Roberta: I don't know that we did.

John Michaels, Farmers Insurance, rose to introduce Betsy Nealon on behalf of Farmers Insurance.

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Date

Page 6

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1179

Hearing Date 03-17-03

See attached testimony. Also see proposed amendments.

Senator Espgaard: Sounds like one of the main problems you have with this bill is your organization. Is there any chance that you can change that?

Betsy: No.

Hearing continued on Tape 2, side A, beginning.

Kent Olson, ND PIA spoke in opposition to the bill. He said it would affect crop insurance.

Rep. Frank Wald also spoke in opposition. He stated that if this passes a business owner wanting to sell would have to contact all of the clients and get a waiver signed in advance. In some cases this would require 4000 phone calls.

End hearing. No action taken at this time.

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*Doranne Ballantyne*  
Operator's signature

10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1179

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-25-03

Tape Number	Side A	Side B	Meter #
1		xxxxx	0-780
Committee Clerk Signature <i>Lisa VanBurkom</i>			

Minutes: Chairman Mutch opened the discussion on HB 1179. All Senators were present.

HB 1179 relates to disclosing nonpublic personal information.

Senator Klein presented amendments.

Senator Klein: The amendments address most of the concerns of the industry. We defined the word affiliate. Also subdivision B, so they can work with their company. Once again it makes it equal.

Senator Espgaard moved to adopt the amendments. Senator Krebsbach seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Senator Klein: One of the questions was how we affect the businesses located here in North Dakota? My understanding is they fall under the HIPA rules, so it won't change anything for them.

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*Dan Hall*  
Operator's Signature

*10/2/03*  
Date

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 1179

Hearing Date 03-25-03

Senator Klein moved a DO PASS AS AMENDED. Senator Every seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Klein

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Deanna Hall  
Operator's Signature

10/2/03  
Date

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179

Page 1, line 8, after "organization" insert "that is physically located in the state"

Page 1, line 11, after "section." insert "As used in this section, "customer" means any person that is a resident of or is domiciled in this state and that has or is transacting business with or has used or is using the services of an insurance company, nonprofit health service corporation, or health maintenance organization."

Page 1, line 22, after "disclosed." insert "As used in this section, "affiliate" includes those companies that are related to one another through a management contract in which one company controls the operations of another."

Page 1, remove lines 23 through 24

Page 2, remove lines 1 through 6

Renumber accordingly

Proposed by Senator Klein

38121.0201  
Title.0300

Adopted by the Industry, Business and Labor  
Committee

March 25, 2003

JB  
3-25-03

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179

Page 1, line 8, after "organization" insert "that is physically located in the state"

Page 1, line 11, after the period insert "As used in this section, "customer" means any person that is a resident of or is domiciled in this state and that has or is transacting business with or has used or is using the services of an insurance company, nonprofit health service corporation, or health maintenance organization."

Page 1, line 22, after the underscored period insert "As used in this section, "affiliate" includes those companies that are related to one another through a management contract in which one company controls the operations of another."

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 6

Renumber accordingly

Page No. 1

38121.0201

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Dannan Hallmark  
Operator's Signature

10/2/03  
Date



Date: 3-26-03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate 1179 Committee

☐ Check here for Conference Committee

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

Action Taken Adopt Amendments from Sen. Klein

Motion Made By Espgaard Seconded By Krebsbach

Sensors	Yes	No	Sensors	Yes	No
Mutch	X				
Klein	X				
Krebsbach	X				
Nething	X				
Heitkamp	X				
Evans	X				
Espgaard	X				

Total (Yes) 7 No 0

Absent 0

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

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

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Donna Helmer  
Operator's Signature

10/2/03  
Date

Date: 3-26-03  
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate 1179 Committee

☐ Check here for Conference Committee

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

Action Taken Do Pass As Amended

Motion Made By Klein Seconded By Every

Senators	Yes	No	Senators	Yes	No
Mufch	X				
Klein	X				
Krebsbach	X				
Nethung	X				
Heitkamp	X				
Every	X				
Espegaard	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Klein

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

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Operator's Signature

10/2/03  
Date

REPORT OF STANDING COMMITTEE (410)  
March 25, 2003 4:31 p.m.

Module No: SR-53-5744  
Carrier: Klein  
Insert LC: 38121.0201 Title: .0300

**REPORT OF STANDING COMMITTEE**

HB 1179, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1179 was placed on the Sixth order on the calendar.

Page 1, line 8, after "organization" insert "that is physically located in the state"

Page 1, line 11, after the period insert "As used in this section, "customer" means any person that is a resident of or is domiciled in this state and that has or is transacting business with or has used or is using the services of an insurance company, nonprofit health service corporation, or health maintenance organization."

Page 1, line 22, after the underscored period insert "As used in this section, "affiliate" includes those companies that are related to one another through a management contract in which one company controls the operations of another."

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 6

Renumber accordingly

2003 HOUSE INDUSTRY, BUSINESS AND LABOR  
CONFERENCE COMMITTEE  
HB 1179

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Date

# 2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1179

House Industry, Business and Labor Committee

☒ Conference Committee

Hearing Date April 9, 2003

Tape Number	Side A	Side B	Meter #
1	x		13.0-end
1		x	0.0-1.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Conference Committee Chair Severson called the committee meeting to order. All six of the appointed members were present: Senators Klein, Espgaard and Every and Representatives Severson, Kasper and Ekstrom.

Senator Klein briefed the committee on the Senate amendments with which the House did not concur. To create parity, the language, *physically located in the state*, which was removed from the bank privacy bill, was added to HB 1179. Language regarding customer was also added. One of the insurance groups, Farmers Insurance, had concerns about a definition for the word affiliate, so that they could maintain working relationships with a few affiliates that they do business with. The bill passed the Senate IBL committee and the floor unanimously.

Rep. Kasper distributed copies of his amendments that would clarify situations pertaining to itinerants and a letter from Scott Miller, Assistant Attorney General. Miller's correspondence explained that the Equal Protection clause of the United States Constitution stipulates that we cannot just deal with customers who are residents of the state. His amendment protects the fact

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that we are addressing people who do business in this state as well as people who do business while they are in the state. This would accomplish the same thing as one of the Senate amendments, it just uses different language. We're re-amending the House version.

Jennifer Clark, Legislative Council, took the podium to explain the amendments that Rep. Kasper had drafted. (.0204) The Senate amendments mimic the language of the banking law to define customer as a resident or a person domiciled in the state, doing business with an insurance entity in the state. This entity can be a person or a business. The third piece that was not included was the person who stops over and does business in the state. The words *physically located* are key here.

Senator Espgaard: How would "physically located" be defined?

Clark: You've got three different entities: an individual resident of the state, the business entity domiciled here, and an individual doing business. The reason for putting *domiciled* in is because domiciled refers to business entities. Resident refers to an individual.

Rep. Kasper: My amendment refers to that person traveling through the state. But for that, there isn't any difference between the Senate and House amendments.

Senator Espgaard: I don't see much difference between these amendments at all, Jennifer. They are just more wordy. What is the difference?

Clark: I think the difference is the language "physically located in the state". A person physically located in the state may not be a resident. A person is either a resident or domiciled in this state.

Senator Klein: Why don't we strike the language regarding customer entirely? What does that do?

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**Chuck Johnson:** Insurance and banking regulations are different. The insurance accepts that any transaction that occurs within a state's boundaries is governed by the laws of that state. That is not true in the banking industry as they are federally regulated. So it is not necessary, in our insurance world, to define a customer as someone who is living here, residing here, has family here or is passing through. Under present law, anyone in our state who transacts business relative to insurance must do so on a form approved by our state, the policy must be approved by our state and a licensed agent must have sold it to them. As far as the insurance department is concerned, there is nothing to be gained by adding more to the definition of customer. Since you are broadening the definition of customer, right now Gramm-Leach-Bliley and our rules define customer as someone who purchases insurance for family, household, or personal use. It does not extend into the commercial market. By using this definition of customer, you will broaden our rules to include all commercial insurance customers and policies. Commercial is vastly different than personal insurance. Agents that deal with commercial customers have a need to continually shop around for surplus lines. By adopting the opt-out standard for commercial as well as individual customers, we will be placing an increased burden on commercial agents. Our original bill as drafted proposed to retain the customer definition we have now which parallels the Gramm-Leach-Bliley one.

**Representative Kasper:** On page 1, lines 23-24, we address the issue of affiliates. The problem is that states can be more, not less protective of confidential information. What we were intending to do was to say that companies not under common ownership are really affiliates. I consulted Pat Ward about this. I asked him how do they provide notices and how do they work now? He said they consider themselves non-affiliates when they send opt out notices. What this

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amendment will do is the same thing the Senate amendment will do, only in different language. It doesn't call them "affiliates" it describes what they do.

**Senator Klein:** Why do we need 6 lines when the Senate said it in 3 lines?

**Representative Severson:** When Representative Keiser looked at this, the issue of the nonaffiliated third party came in, the joint marketing was removed and these amendments were added. He wanted us to eliminate the problems between our versions.

**Representative Kasper:** The answer is, by identifying these non-common ownership companies as affiliates, we have a potential of violating the Gramm-Leach-Bliley because we have to comply with Gramm-Leach-Bliley law or give them more protection. The word affiliate causes the problem. This language does the same thing as your amendment, only it requires more words to say it.

**Senator Espgaard:** If this whole bill wasn't here, we're fine with Gramm-Leach-Bliley. What we're doing here is putting more controls on businesses than originally intended. When we start wordsmithing, that's when we get into disagreements. We tried to make it easy to work with this on the Senate side.

**Representative Severson:** I made sure the Insurance Commissioner is aware of what is going on with this bill, since the House didn't concur with the Senate amendments. I asked him for suggestions and I have amendments from the Insurance Commissioner's office to review with you now.

**Chuck Johnson:** The Insurance Commissioner would like to have the *physically located in the state* language removed. So the law as written would only apply to domestic companies, subject to opt out standards. The rest of the 2,480 companies that we regulate would be operating on an

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opt in standard. That sets up a dual set of regulations. It removes our regulation authority over foreign companies, they'd be subject only to Gramm-Leach-Bliley, we don't have corresponding state law to enforce against foreign companies, even though they are collecting personal information from residents in our state, for example. Those companies could share information.

**Senator Klein:** Since GLB became law, how many complaints has the Insurance Commissioner received about the sharing of information?

**Johnson:** We haven't received complaints about the sharing of information, we've received complaints about agents who roll customers over to a new company's policies without informing the customers prior to taking that action. This opt-in standard might make it more difficult for agents to shop around for coverage.

**Senator Klein:** How many companies have left the state? And won't this bill make North Dakota the second most strict state in the country? Won't that discourage new companies from coming into the state?

**Johnson:** Around twenty. It does set up a higher standard and companies would have to deal with North Dakota separately if we have the opt in. Other states have an opt out standard.

**Senator Klein:** Wasn't the purpose of GLB to standardize insurance procedures?

**Johnson:** That was what the NAIC hoped to accomplish when it set up the model rules to implement GLB, they wanted all the states to be standard in their procedures.

**Pat Ward:** I don't think a company wouldn't come here because of a stricter law. They would have to have separate paperwork. I talked to Farmers Insurance, their legal department has looked at GLB's definition of control and they are fine with it. Regardless of whether you go with Kasper's amendments or the engrossed house bill, if you were to do that, you wouldn't

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need Section D. The industry doesn't have any heartburn over this "physically located in the state" anymore. I think it is better to omit the definition of customer, too.

**Senator Espegard:** Will this be in compliance with HIPA?

**Rep. St. Aubyn:** Once you are compliant with HIPA, you are exempt from GLB.

**Senator Klein:** We've had so many changes here, I think we need to refine these amendments, this is not what I want to take back to the floor. We've taken care of the affiliate and the customer. I am concerned with the "physically located in the state". My amendments would keep that in. I need to think this through. I thought we wanted to make this similar to banking regulations.

**Representative Severson:** We'll have to finalize this later. I'll schedule another meeting for tomorrow. The meeting is adjourned.

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BILL/RESOLUTION NO. HB 1179

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date April 10, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.0-28.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Conference Committee Chairman Severson called the meeting to order. All appointed committee members were present.

Senator Espegard stated that he can't discern that there is anything in Gramm-Leach-Bliley today that would prohibit an insurance company from doing what you say he is going to do anyway. Maybe we need an insurance person to explain this to us. What does issue 1 do? Why put something into law that you are allowed to do anyway? Secondly, after the comma, the rules must disclose, etc. I think HIPA takes care of that and overrides GLB.

Representative Kasper: When an insured applies for life or health insurance, in order for underwriting to occur, the insured must give signed consent on the application. In fine print, there is a disclosure section. This simply states that is what is needed to do under the law. The way I interpret it, that is. This puts us in compliance with GLB, we're not going further than GLB.

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**Senator Espegard:** Doesn't GLB take care of everything that is in this bill? Should we consult the Insurance Commissioner for clarification? Why do we need this bill?

**Senator Klein:** If this mirrors GLB, why will we become the second strictest state in the country?

**Representative Severson:** When Commissioner Poolman brought this to us, he said it was stronger than GLB.

**Representative Kasper:** This is restricting an insurance company from sharing personal and confidential information with entities outside that insurance company. For underwriting a product, fine, the insurance company has a need for that information. But if they passed that information on to a marketing company that is not a financial institution, then Section C applies, then they must disclose to the consumer and get written consent to share that information. That is what we intend to do with this bill.

**Senator Espegard:** What does GLB say specifically about the sharing of health information and conditions with outside marketing groups?

**Representative Kasper:** GLB says the opposite of this. When we notify you about how we use your provided information, if you don't respond to that notification, the insurance company can do what they wish with that confidential information. What this says, if you are going to use my information for any purposes other than insurance, you must disclose to me in advance and I must sign off in advance or you are prohibited. This is protecting our citizens.

**Senator Espegard:** So we are restricting our domestic companies, not the 2300 outside companies?

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**Representative Kasper:** I don't believe so. When the words *domiciled in the state of ND* were omitted, that would have restricted it to North Dakota companies. The Commissioner wanted that omitted so that he could require the rules to apply to domestic and outside companies.

**Pat Ward:** There are two issues here. What Representative Kasper is saying is correct. It applies to all customers, whether or not their insurance company is based in our state. The second thing is that the difference between this and GLB is that this is more restrictive in the sense that it would be opt in. GLB is opt out. Under current rules, we're opt in for medical information but opt out for financial information. This makes financial opt in as well.

**Senator Espgaard:** How about car insurance?

**Pat Ward:** I don't think they get much information.

**Representative Kasper:** Credit underwriting provides information for car and homeowners insurance.

**Senator Klein:** So, under the way this bill is currently written, the Commissioner will allow the sharing of information only if it relates to insurance that a customer has inquired about? If it relates to the company selling my information is when the opt in proposal kicks in?

**Pat Ward:** Yes, I think that is correct. Selling personal financial information outside their group of companies for some purpose other than insurance, they would need an opt in authorization in advance. State Farm is one of my clients, as you know. If they have your auto policy and their agent wants to talk to you about homeowners, he can do that. But State Farm in Bloomington, Illinois couldn't do is sell your information to a company who wants to sell you material goods, something outside of insurance. That's what makes it restrictive.

**Senator Klein:** So this isn't as onerous as I believed it to be when we left here yesterday.

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**Senator Espgaard:** I'm not as concerned about the direct writer as I am about an independent agent whose company has left the state. Can he shop for my insurance without me signing off on ten different forms? He is in possession of financial information about me.

**Pat Ward:** He could get a blanket authorization from you. That would expedite the process for him to shop around and get a new policy for you.

**Senator Klein:** Doesn't this go back to the little guy/big guy scenario? State Farm doesn't have a problem with the bill but an independent agent has more obstacles to get through. They're at a disadvantage.

**Representative Ekstrom:** From a practical standpoint, if you're using an independent agent, he is by definition an independent agent and he is going to go out, initially, not in a cancellation situation, you give him the authorization to go find insurance for you. In my experience, my agent went all over to get quotes for me and came back to me. I signed something so he could do that for me.

**Senator Klein:** Can he do that after this passes?

**Insurance Commissioner's Representative:** If a customer contacts an agent and wants him to find insurance for him, he's shopping and securing a product for you, then he can go ahead without getting the opt in signed. But if, later, your company leaves the state, and your agent has to shop you to other companies, if he gets your permission, it's OK, but under this law, he would have to get an opt in from you. We had problems when companies leave the state, they don't contact all their existing customers to see if they can roll them into a new company. Some companies rolled their customers over without contacting them and then those customers get

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billings from a new, strange company. That would not be allowed under the opt in law. The agent would have to have a broad authorization.

**Representative Ekstrom:** That's my point, that's been my experience.

**Senator Espegard:** Why do we want to be more strict than 49 other states? Why make it so tough on our North Dakota insurance agents?

**Representative Kasper:** Isn't it the right of the insured that they are informed of a cancellation in advance of the fact? And isn't it the customer's right to know that their agent is going to shop them around? A simple phone call from an agent asking for a signed opt in would accomplish this.

**Senator Espegard:** It's law to be notified by your company. Customers get notification in the mail. We change a law that they have to be notified within 45 days. Shouldn't we expect the consumer to be proactive in their own interests?

**Representative Ekstrom:** My situation was not a cancellation. Our policies were rolled over to different companies and we weren't notified in advance. Automatic withdrawals were made from our bank accounts to pay premiums for companies we didn't know were insuring us.

**Rod St. Aubyn:** That must have been an acquisition or merger situation. At least a 30 or 60 day notice is required by law for that.

**Representative Kasper:** There is another situation in that respect, with companies pulling out of the state or cancelling a policy. An insurer may not want to continue doing business with that independent agent. Under Senator Espegard's scenario, he may want to retain that agent. There are instances where a person might want to change agents. The information held by an independent agent could be obsolete. To presume that an agent doesn't have to make contact for

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an update of information is a stretch. I don't see public harm requiring that cancellation for direct or indirect writers that they have to be notified and they have to be authorized to go for it. I think it is in the best interests for the citizens of our state to have that protection.

**Senator Espgaard:** Regarding health information, am I correct in assuming that HIPA overrides this?

**Rod St. Aubyn:** Section C is appropriate as long as it still allows for the affiliate exception provided by the NAIC model, HIPA compliance exempts us from this statute.

**Senator Espgaard:** Does the Insurance Commissioner still want this bill?

**Chuck Johnson:** It's my understanding the Commissioner is not strongly supporting continuation of the bill. He wouldn't be disappointed if it went away. We do have protection for opt in for medical, other information is protected on an opt out basis. So individuals who don't want their existing agent to shop around have the right to opt out. This bill says that every agent would have to have written permission. Essentially, you are elevating the level of accountability for insurance agents. If this bill passes, every agent must get opt in notices from every customer. Under existing laws, only those customers who want to make certain they know what their agents are doing will require that their agent get their opt in.

**Senator Espgaard:** How does this work if my agent is in Minnesota? Would that agent have to follow this law?

**Chuck Johnson:** That agent operates under Minnesota law, you are then subject to Minnesota law. They probably won't write auto insurance for you in Minnesota if you have a North Dakota license. In other insurance instances, the Minnesota agent won't have to follow this opt in procedure.

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**Representative Kasper:** I am more concerned that this bill would allow further restriction for marketing purposes, not for financial products, which is the part of the bill I think we should keep. I guess we need to work on the concerns Senator Espegard has, but let's not throw this bill out.

**Senator Klein:** We have to do further work on this. We're moving in the right direction, though. On engrossed HB 1179 .0200: physically located is out, the customer language is out, affiliated language is out, we're dealing with the changes to Section C. Am I correct? The lines in 8, 9 & 10 relate to C.

**Senator Espegard** moved that the Senate recede from their amendments printed in the House Journal and we now deal with Engrossed HB 1179 and remove 23-24 on Page 1 and lines 1-6 on Page 2 and renumber accordingly.

**Representative Ekstrom** seconded the motion.

A voice vote carried the motion unanimously. The motion carried. The committee will meet on Friday at 9:45 am to review and approve the final amendments.

**Representative Severson** adjourned the meeting.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1179

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date April 11, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.0-5.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: Conference Committee Chair Severson called the meeting to order. All appointed members of the committee were present. Copies of the amendments decided upon during yesterday's meeting were distributed and further discussion ensued.

Senator Klein stated that he telephoned his local agent last evening to learn how he shops for insurance for his customers.

Senator Klein moved that amendments .0206 be adopted.

Senator Every seconded the motion.

Senator Klein stated that changing *must* to *may* in Section C will provide the Insurance commissioner with the proper latitude necessary. In two years, this can be looked at to see if problems with the privacy side of insurance have been addressed properly.

Representative Kasper stated that this amendment will allow the exemptions Senator Klein has mentioned, to allow acceptable shopping around, etc.

Results of the roll call vote were unanimous: 6-0.

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**Representative Ekstrom** moved that the Senate recede from its amendments on HB 1179 and that it be further amended and recommend a **Do Pass**.

**Representative Kasper** seconded the motion.

**Results of the roll call vote were unanimous: 6-0.**

**Representative Severson** adjourned the meeting.

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38121.0307

House Industry, Business  
and Labor Committee

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179

That the Senate recede from it's amendments as printed on page 562 of the House Journal and page 995 of the Senate Journal and that Engrossed House Bill No. 1179 be amended as follows:

Page 1, line 8, remove "that is physically located in the state"

Page 1, line 11, remove "As"

Page 1, remove lines 12 through 15

Renumber Accordingly

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**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179  
WITH SENATE AMENDMENTS**

**Page 1, line 13, after "domiciled" insert "or physically located"**

**Renumber accordingly**

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10/2/03  
Date

38121.0204  
Title.

Prepared by the Legislative Council staff for  
Representative Kasper  
April 9, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179

That the Senate recede from its amendments as printed on page 1142 of the House Journal and page 984 of the Senate Journal and that Engrossed House Bill No. 1179 be amended as follows:

Page 1, line 11, after the period insert "As used in this section, "customer" includes a person that is a resident of, is domiciled in, or is physically located in this state."

Page 1, line 23, after "Notwithstanding" insert "the authorization requirement under" and replace " b. the model regulation exemptions, and the" with "c"

Page 1, line 24, remove "exemptions under federal law" and replace "an insurance" with "the opt-out authorization proceeding for disclosure of nonpublic personal information under title V of the Gramm-Leach-Bliley Act (Pub. L. 106-102; 113 Stat. 1436) applies if the disclosure is related to the provision of financial products or services and that disclosure is made to a company that is related to the disclosing company through a management contract in which one of the companies controls the operations of the other company."

*process*

Page 2, remove lines 1 through 6

Renumber accordingly

38121.0206  
Title.

Prepared by the Legislative Council staff for  
Senator Klein

April 10, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1179

That the Senate recede from its amendments as printed on page 1142 of the House Journal and page 984 of the Senate Journal and that Engrossed House Bill No. 1179 be amended as follows:

Page 1, line 19, replace "must" with "may"

Renumber accordingly

Page No. 1

38121.0206

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Date

38121.0207  
Title.0500

Adopted by the Conference Committee  
April 11 2003

**Conference Committee Amendments to Engrossed HB 1179 - 04/11/2003**

That the Senate recede from its amendments as printed on page 1142 of the House Journal and page 984 of the Senate Journal and that Engrossed House Bill No. 1179 be amended as follows:

Page 1, line 19, replace "must" with "may"

Page 1, remove lines 23 and 24

**Conference Committee Amendments to Engrossed HB 1179 - 04/11/2003**

Page 2, remove lines 1 through 6

Renumber accordingly



REPORT OF CONFERENCE COMMITTEE  
(ACCEDE/RECEDE) - 420

07398

(Bill Number) HB 1179 (, as (re)engrossed):

Your Conference Committee

For the Senate: 4/9 4/10 4/11 V  
Sen Klein P P  
Espgaard P P  
Every P P

For the House: 4/9 4/10 4/11 V  
Rep Severson P P  
Casper P P  
Eckstrom P P

☒ recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)  
the (Senate/House) amendments on (S/H) page(s) 1142 -

☐ and place \_\_\_\_\_ on the Seventh order.

☒ , adopt (further) amendments as follows, and place  
1179 on the Seventh order:

☐ having been unable to agree, recommends that the committee be discharged  
and a new committee be appointed.

((Re)Engrossed) \_\_\_\_\_ was placed on the Seventh order of business on the  
calendar.

DATE: 4/11/03  
CARRIER: SEVERSON  
LC NO. \_\_\_\_\_ of amendment  
LC NO. \_\_\_\_\_ of engrossment  
Emergency clause added or deleted \_\_\_\_\_  
Statement of purpose of amendment \_\_\_\_\_

(1) LC (2) LC (3) DESK (4) COMM.

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Donna Hall  
Operator's Signature

10/2/03  
Date

**REPORT OF CONFERENCE COMMITTEE (420)**  
April 11, 2003 3:09 p.m.

Module No: SR-66-7580

Insert LC: 38121.0207

**REPORT OF CONFERENCE COMMITTEE**

**HB 1179, as engrossed:** Your conference committee (Sens. Klein, Espeland, Every and Reps. Severson, Kasper, Ekstrom) recommends that the **SENATE RECEDE** from the Senate amendments on HJ page 1142, adopt amendments as follows, and place HB 1179 on the Seventh order:

That the Senate recede from its amendments as printed on page 1142 of the House Journal and page 984 of the Senate Journal and that Engrossed House Bill No. 1179 be amended as follows:

Page 1, line 19, replace "must" with "may"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 6

Renumber accordingly

Engrossed HB 1179 was placed on the Seventh order of business on the calendar.

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10/2/03  
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2003 TESTIMONY

HB 1179

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**HOUSE BILL NO. 1179**

**Presented by:** Charles E. Johnson  
General Counsel  
North Dakota Insurance Department

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

**Date:** January 20, 2003

**TESTIMONY**

Mr. Chairman and members of the committee:

Good afternoon, my name is Charles Johnson, General Counsel with the North Dakota Insurance Department. I stand before you today to introduce House Bill No. 1179.

If you recall, last session you passed Senate Bill No. 2127, a bill to enact the privacy protections of the federal Gramm-Leach-Bliley Act in North Dakota as they apply to insurance companies. That law allowed the Insurance Department to adopt rules to implement the law provided the rules were no more restrictive than the NAIC model rules. The NAIC model rules provided for "opt in" protection for personal medical information and "opt out" protection for all financial information. Our rules now provide those protections for North Dakota policyholders.

This bill modifies the present privacy law to allow the Insurance Commissioner to adopt rules that are more restrictive than the NAIC model rules to provide "opt in" protection for all nonpublic personal financial and medical information collected by insurance companies and other similar organizations. It should be noted that the protection is subject to the certain exceptions, including those that allow companies to share information with affiliates.

This bill is in response to the results of last summer's referral vote on the banking privacy laws wherein the public voted overwhelmingly for "opt in" protection for financial

Information. The Commissioner intends to notice and adopt privacy rules that will provide "opt in" protection for personal financial information if this bill passes.

The wording in this bill will preclude the Commissioner from adopting rules less restrictive than those requiring "opt in" protections for a consumer's personal financial and medical information.

The Department asks for a "do pass" recommendation.

Thank you. If there are any questions, I would be happy to answer them.

**STATE OF NORTH DAKOTA**

**SENATE  
INDUSTRY, BUSINESS, AND LABOR COMMITTEE**

**TESTIMONY  
OF  
ROBERTA B. MEYER  
ON BEHALF OF  
THE AMERICAN COUNCIL OF LIFE INSURERS  
RELATING TO**

**HOUSE BILL 1179**

**MARCH 17, 2003**

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*Dorinda Baller*  
Operator's Signature

10/2/03  
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My name is Roberta Meyer. I represent the American Council of Life Insurers (ACLI). The ACLI is a national trade association representing over 400 member life insurers which account for approximately 80 percent of the assets of United States life companies and 83 percent of the assets of the insured pension business. We very much appreciate the opportunity to present our views in relation to HB 1179 to this Committee. We believe that HB 1179 is an extremely important piece of legislation.

ACLI member companies are gravely concerned by HB 1179. The ACLI strongly supports the privacy provisions set forth in Title V of the Gramm-Leach-Bliley Financial Services Modernization Act of 1999 (GLBA) and the National Association of Insurance Commissioners Model Privacy of Consumer Financial and Health Information Regulation (NAIC Model Regulation), designed to give insurers guidance in implementing their obligations under Title V of the GLBA. The GLBA and the NAIC Model Regulation (with respect to insurers) represent a delicate balancing of consumers' privacy concerns and financial institutions' need to obtain and use consumer information to serve their existing and prospective customers. The GLBA and the NAIC Model Regulation establish a comprehensive, uniform approach to privacy protection. They protect the privacy of consumers while preserving the ability of our nation's financial institutions to conduct their business and to continue to develop new products and services of benefit to consumers.

The ACLI must respectfully strongly oppose HB 1179 because it would require the North Dakota Insurance Commissioner to adopt privacy rules that significantly

deviate from both the GLBA and the NAIC Model Regulation. As passed by the North Dakota House of Representatives, the bill would require adoption of rules which:

- (1) prohibit disclosure of nonpublic personal health and financial information by an insurer to a nonaffiliated third party unless: (a) the disclosure fits within one of the exceptions in the NAIC Model Regulation; or (b) an authorization (or opt-in) is obtained from the individual who is the subject of the information ; and
- (2) notwithstanding the exceptions of the NAIC Model Regulation, require an insurance company to obtain an individual's consent (or opt-in) before disclosing the individual's information to a nonaffiliated third party under a joint marketing agreement.

The ACLI respectfully submits that contrary to its apparent intent, if enacted, HB 1179 would have the unintended consequence of requiring adoption of rules which will operate contrary to the best interests of North Dakota consumers. The imposition of an opt-in requirement before an individual's information may be disclosed by an insurer to a nonaffiliated third party under a joint marketing agreement is particularly objectionable. Such a requirement is likely to significantly jeopardize the many benefits that North Dakota consumers now derive from joint marketing agreements between financial institutions. These agreements make it possible for insurers to offer their customers an array of innovative products which



are tailored to their particular needs and interests and provided in a cost effective, efficient manner that would not otherwise be possible.

More specifically, consumer benefits from the joint agreements between financial institutions include the following:

- (1) They enable financial institutions, particularly smaller financial institutions, to bundle together financial products and services (including insurance, banking, and securities products). This increases for consumers the array of financial products available to them and the number of financial institutions offering such combinations of financial products and services.
- (2) They make it possible for financial institutions to send information about new products and services that are tailored to the interests and needs of particular consumers.
- (3) They make possible 24-7 communication of information about innovative new products and services in a more cost effective and efficient manner than otherwise would be possible, the benefits of which evolve to consumers.

A North Dakota requirement of an opt-in prior to the sharing of nonpublic personal financial information by insurers with non-affiliates in connection with joint agreements would be the only such requirement in the country. The imposition of such a requirement in North Dakota will interfere with the smooth and efficient flow of information about products and services to North Dakota consumers. Unless they opt-in, North Dakota consumers will have a difficult time learning about new

products and services available from insurance companies and other financial services companies. (Both New Mexico and Vermont have GLBA have privacy regulations which generally track the NAIC Model Regulation but which impose general opt-in requirements. However, both of these regulations provide exceptions for disclosures pursuant to joint agreements between financial institutions. The Vermont regulation imposes some limitations on the information that may be shared under these circumstances. However, it still permits the sharing of the consumer's name, contact information and the insurer's experience and transaction information in relation to that individual without an opt-in..)

One of the major objectives of Congress in enacting the GLBA which is applicable to all financial institutions (and of the NAIC in developing the Model Regulation with respect to insurers) was to provide consumers with the opportunity to understand what policies financial institutions (or insurers) follow regarding the sharing of their personal information. At the same time, Congress and the NAIC recognized the importance information flows play in our economy. Congress and the NAIC did not want to interfere with the customary operational needs of financial institutions (or insurers). As a result, they struck a delicate balance.

They chose to preserve the ability of institutions to compete on a level playing field in the financial services arena. They also empowered consumers to take control by requiring financial institutions (or insurers) to provide customers with information regarding their privacy policies and leaving it to consumers, under appropriate

circumstances, to choose whether or not to permit financial institutions (or insurers) with which they do business to share their personal information.

U.S. financial institutions, including the nation's insurers, rely on information flows to develop and deliver products and services to consumers. The world looks to U.S. financial markets and financial institutions as a wellspring for new products and services. Our financial institutions are constantly inventing new products and services, and improving the existing ones. The creative genius of our financial industry is based upon the continued ability to obtain and use information.

The GLBA and the NAIC Model Regulation recognize that information is the lifeblood of all financial institutions. Insurance companies, banks and securities firms cannot develop and offer products and services unless they can collect and use information from customers to determine their needs.

The GLBA and the NAIC Model Regulation preserve the ability of financial institutions (or insurers) to collect and use information so that they can continue to serve their customers' needs. At the same time, they require financial institutions (or insurers) to provide important information to consumers about what types of personal information are collected and how the information is used, as well as to provide consumers with an opportunity to opt-out from information sharing with unaffiliated third parties.

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*Deanna G. Ball*  
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How do the GLBA and the NAIC Model Regulation go about achieving this goal?

They require every financial institution (or insurer) to provide customers with a copy of its privacy policy and practices at the time a product or service is provided, and each year thereafter. The financial institution's (or insurer's) privacy policy is required to contain information regarding the institution's information collection and disclosure practices. A financial institution (or insurer) that intends to share a consumer's nonpublic personal information with an unaffiliated third party is required to provide notice to the consumer of the intended disclosure and provide the consumer with an opportunity to instruct the institution not to make such disclosure, i.e., the customer may opt-out from the disclosure of nonpublic personal information to unaffiliated third parties. The NAIC Model Regulation also requires an insurer to obtain the customer's authorization prior to disclosure of nonpublic personal health information unless the disclosure is for the performance of specified insurance functions by or behalf of the insurer.

Under both the GLBA and the NAIC Model Regulation, financial institutions (or insurers) that offer financial products and services pursuant to joint agreements may share nonpublic personal financial information about consumers (i.e. an insurer may share nonpublic personal financial information with another financial institution with which it has a joint marketing agreement) provided:

- (1) the consumer is informed (by notice provided by the disclosing insurer ) that his or her information will be shared; and

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(2) the financial institution to whom the information is provided agrees by contract to maintain the confidentiality of the information.

This is a narrowly constructed provision under both the GLBA and the NAIC Model Regulation. Consumers are protected when disclosures are made in connection with these agreements.

First, GLBA Section 502(b)(2) requires a financial institution to "... fully disclose the providing of such information ..." Sections 5, 7, and 14 of the NAIC Model Regulation require that if an insurer discloses nonpublic personal financial information to a nonaffiliated third party financial institution pursuant to a joint agreement, the initial, annual, and revised notices (the insurer is required to provide consumers and customers) must include "... a separate description of the categories of information the licensee (the insurer) discloses and the categories of third parties with whom the licensee has contracted."

Second, GLBA Section 502(b)(2) requires the disclosing financial institution to enter "... into a contractual agreement with the third party that requires the third party to maintain the confidentiality of such information." Similarly, Section 14 of the NAIC Model Regulation requires a licensee to enter "... into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purpose for which the licensee disclosed the information ..."

Third, only financial institutions qualify under the joint agreements provision. Under both GLBA and the NAIC Model Regulation, an insurer may not use the provision to share information with an entity that is not a financial institution. All financial institutions, of course, are subject to the provisions of the GLBA, including the requirement to safeguard the security as well as the confidentiality of consumer information. As a result, consumer information should be protected from possible abuse. Also, consumers reasonably *anticipate* sharing of their personal information with other *financial* institutions.

The joint agreements exception was enacted by Congress to enable smaller financial institutions to compete on a level playing field with larger financial institutions (that could offer a complete array of financial products through affiliates). Because smaller institutions do not typically have affiliates offering other types of financial products, Congress was concerned that they would be at a competitive disadvantage in their ability to market to prospective customers. The joint agreement provision preserves competitive balance by enabling these financial institutions to compete through arrangements with nonaffiliated financial institutions.

As noted previously, these agreements work to consumers' advantage for a variety of reasons:

- (1) The bundling of financial products and services (including insurance, banking, and securities products) made possible by these agreements increases the array of financial products available to consumers and the number of

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financial institutions offering such combinations of financial products. (Joint agreements make it possible for insurers to share information with banks and securities firms and for banks and securities firms to share information with insurers so that consumers may be offered various packages of financial products and services that meet their needs.)

(2) The sharing of nonpublic personal information between financial institutions which are parties to a joint agreement make it possible for them to better tailor the products they offer to the particular interests and needs of individual consumers.

(3) Joint agreements also make possible 24-7 communication of information about innovative new products and services in a more cost effective and efficient manner than otherwise would be possible.

In sum, *any* legislation that limits the joint agreement provision runs the risk of jeopardizing the array and the ease and efficiency with which financial products and services are currently made available to consumers. Accordingly, the imposition of a North Dakota opt-in requirement before information can be shared by insurers pursuant to joint agreements is likely to interfere with the smooth and efficient flow of information about financial products and services to North Dakota consumers.

The burden of requiring consumers to opt-in in order to share information is significant. Unless they take the affirmative steps to opt-in, North Dakota consumers

will have a difficult time learning about new products and services available from insurance companies and other financial services companies.

To ensure that consumers have been given sufficient opportunity to make their choices known, insurers will have to send repeated communications to customers who have failed to opt-in. Opt-in, therefore, has the unintended consequence of increasing the number of times a consumer is contacted to determine whether the consumer simply failed to remember to opt-in or whether the consumer truly does not desire to have his or her nonpublic personal information shared with others. Not only is this likely to be annoying to consumers, it is also likely to increase the costs to insurers which will have to develop new mechanisms to contact consumers and to maintain records of customers who have and have not "opted in." Unfortunately, insurers' increased costs in connection with these efforts may lead to increased costs for North Dakota consumers.

Moreover, it is often unclear why consumers choose not to opt-in. Do consumers fail to opt-in because of concerns about privacy, or merely because they overlooked the response card? In this instance, commerce must be halted until the consumer's preference is determined.

In conclusion, the ACLI respectfully reiterates its grave concerns with an<sup>d</sup> strong opposition to H.B. 1179. The ACL believes that the rules required to be adopted by this bill are likely to have significant unintended adverse consequences contrary to the



best interests of North Dakota consumers and financial institution insurers doing business in your state. The ACLI respectfully urges that H.B. 1179 not be reported out of the Senate Industry, Business, and Labor Committee. Again, we appreciate being given the opportunity to present our views to this Committee and would be glad to respond to any questions. Thank you.

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# Farmers' Privacy Notice

*In the course of our business relationship with you, we collect information about you that is necessary to provide you with our products and services. We treat this information as confidential and recognize the importance of protecting it. We value your confidence in us.*



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Operator's Signature

10/2/03  
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This notice from the member companies of the Farmers Insurance Group of Companies\* listed on the back of this notice\* describes our privacy practices regarding information about our customers and former customers that obtain financial products or services from us for personal, family or household purposes.

**Information we collect**

We collect and maintain information about you to provide you with the coverage, product or service you request and to service your account.

We collect certain information ("nonpublic personal information") about you and the members of your household ("you") from the following sources:

- Information we receive from you on applications or other forms, such as your social security number, assets, income and property information;
- Information about your transactions with us, our affiliates or others, such as your policy coverage, premiums and payment history;
- Information we receive from a consumer reporting agency or insurance support organization, such as motor vehicle records, credit report information and claims history; and
- If you obtain a life, long-term care or disability product, information we receive from you, medical professionals who have provided care to you and insurance support organizations regarding your health.

**How we protect your information**

At Farmers, our customers are our most valued assets. Protecting your privacy is important to us. We restrict access to personal information about you to those individuals, such as our employees and agents, who provide

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*Deanna Baller*  
Operator's Signature

10/2/03  
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you with our products and services. We require those individuals to whom we permit access to your customer information to protect it and keep it confidential. We maintain physical, electronic, and procedural safeguards that comply with applicable regulatory standards to guard your nonpublic personal information.

We do not disclose any nonpublic personal information about you, as our customer or former customer, except as described in this notice.

**Information we disclose**

We may disclose the nonpublic personal information we collect about you, as described above, to companies that perform marketing services on our behalf or to other financial institutions with which we have joint marketing agreements and to other third parties, all as permitted by law.

Many employers, benefit plans or plan sponsors restrict the information that can be shared about their employees or members by companies that provide them with products or services. If you have a relationship with Farmers or one of its affiliates as a result of products or services provided through an employer, benefit plan or plan sponsor, we will abide by the privacy restrictions imposed by that organization.

We are permitted to disclose personal health information (1) to process your transaction with us, for instance, to determine eligibility for coverage, to process claims or to prevent fraud; (2) with your written authorization, and (3) otherwise as permitted by law.

**Sharing information with affiliates**

The Farmers family encompasses various affiliates that offer a variety of financial products and services in addition to insurance. Sharing information enables our affiliates to offer you a more complete range of products and services.

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We may disclose nonpublic personal information, as described under **Information we collect**, to our affiliates, which include:

- Financial service providers such as insurance companies and reciprocals, investment companies, underwriters and brokers/dealers; and
- Non-financial service providers, such as management companies, attorneys-in-fact and billing companies.

We are permitted by law to share with our affiliates our transaction and experience information with you.

In addition, we may share with our affiliates consumer report information, such as information from credit reports and certain application information, that we have received from you and from third parties, such as consumer reporting agencies and insurance support organizations.

**Your choice**

If it is your decision *not* to opt-out and to allow sharing of your information with our affiliates, you do not need to request an Opt-Out Form or respond to us in any way.

*If you have previously submitted a request to opt-out on each of your policies, no further action is required.*

If you prefer that we not share consumer report information with our affiliates, except as otherwise permitted by law, you may request an *Opt-Out Form* by calling tollfree, 1-866-813-7551. A form will be mailed to your attention. Please verify that *all* of your Farmers policy numbers are listed. If not, please add the policy numbers on the form and mail to the return address printed on the form. We will implement your request within a reasonable time after we receive the form.

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**Modifications to our privacy policy**

We reserve the right to change our privacy practices in the future, which may include sharing nonpublic personal information about you with nonaffiliated third parties. Before we do that, we will provide you with a revised privacy notice and give you the opportunity to opt out of that type of information sharing.

**Website**

Our website privacy notices, such as the one located at farmers.com, contain additional information particular to website use. Please pay careful attention to those notices if you transmit personal information to Farmers over the Internet.

**Recipients of this notice**

We are providing this notice to the named policyholder residing at the mailing address to which we send your policy information. If there is more than one policyholder on a policy, only the named policyholder on that policy will receive this notice, though any policyholder may request a copy of this notice. You may receive more than one copy of this notice if you have more than one policy with Farmers. You also may receive notices from affiliates, other than those listed below. Please read those notices carefully to determine your rights with respect to those affiliates' privacy practices.

**More information about the federal laws**

This notice is required by federal law. If you would like additional information about these federal laws, please visit our website at farmers.com.

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*Donna Ballard*  
Operator's Signature

10/2/03  
Date

**Signed:**

Farmers Insurance Exchange, Fire Insurance Exchange, Truck Insurance Exchange, Mid-Century Insurance Company, Farmers Insurance Company, Inc. (A Kansas Corp.), Farmers Insurance Company of Arizona, Farmers Insurance Company of Idaho, Farmers Insurance Company of Oregon, Farmers Insurance Company of Washington, Farmers Insurance of Columbus, Inc., Farmers New Century Insurance Company, Farmers Group, Inc., Farmers Reinsurance Company, Farmers Services Insurance Agency, Farmers Services Corporation, Farmers Texas County Mutual Insurance Company, Farmers Underwriters Association, Farmers Value Added, Inc., Farmers Financial Solutions, LLC, FFS Holding, LLC, F.I.G. Holding Company, FIG Leasing Co., Inc., FIG Travel, Inc., Fire Underwriters Association, Illinois Farmers Insurance Company, Mid-Century Insurance Company of Texas, Prematic Service Corporation (California), Prematic Service Corporation (Nevada), Texas Farmers Insurance Company, Farmers New World Life Insurance Company, Farmers Annuity Separate Account A, Farmers Variable Life Separate Account A, Truck Underwriters Association, Civic Property and Casualty Company, Exact Property and Casualty Company and Neighborhood Spirit Property and Casualty Company.

\*The above is a list of the affiliates on whose behalf this privacy notice is being provided. It is not a comprehensive list of all affiliates of the Farmers Insurance Group of Companies.



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*Deanna H. [Signature]*  
Operator's Signature

*10/2/03*  
Date

FARMERS LEGISLATIVE ACTION GROUP

NORTH DAKOTA

Betsy M. Nealon, AAI, LUTC  
John D. Michels, PhD  
Bob Fischer, SCLA, GCA  
Scott Karsky  
Jim Bierschbach, LUTC  
Alan Henning, LUTC  
Chad Hanson

March 14, 2003

Mr. Chairman and members of the committee, thank you for allowing me the time to voice my opposition to House Bill 1179. My name is Betsy Nealon and I am the Executive Director of North Dakota for Farmers Insurance Group. I have traveled to Bismarck today to explain the reasons for our opposition to this bill.

As the fifth largest auto insurer and sixth largest home insurer in North Dakota servicing almost 32,000 policies, Farmers Insurance Group is concerned about House Bill 1179 and we foresee that this bill, if enacted, will be a disservice to North Dakota's citizens and the state's regulated insurance companies committed to meeting the needs of your constituents. While we recognize privacy is a vital concern for North Dakota citizens, House Bill 1179 will unfortunately cause confusion among consumers, generate more contact from those already chosen by consumers to be their trusted advisors, hamper economic development in the state, and deprive customers of discounts. While Farmers generally supports the privacy of consumer financial and health information, we oppose "opt-in" legislation.

There are 7 primary reasons for our opposition:

1. The NAIC Model the bill is based on expands the definition of customers to include all claimants and beneficiaries. If claimants and beneficiaries are included in the privacy regulations, it will be difficult for insurers to provide the required privacy notices and opt-in forms to these individuals. Such a requirement is an unduly burdensome extension of the privacy protections beyond Gramm-Leach-Bliley's intent.
2. The model that this bill is based on centers on the definition of "affiliate", and that term precludes various entities at Farmers from sharing information. At Farmers, the insuring entities are known as exchanges, in essence owned by their policyholders. Instead of performing their own administrative functions, the exchanges contract with an entity known as an attorney-in-fact to perform these functions. The attorney-in-fact, or the management company, has no ownership control or even a seat on the boards of governors of the exchanges. The management company only manages certain aspects of the exchanges by the virtue of their contractual obligation. This bill does not rely on a sufficiently broad definition of the term "affiliate" that would include the relationship Farmers' attorney-in-fact has with its exchanges. Without a broader definition of the term, it is questionable whether the exchanges can share information about insureds with the management company. An exchange's claims department would not be permitted to freely share information with the management company's underwriting department. Additionally, Farmers' exchanges would

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not be allowed to share information with one another. One Farmers exchange insuring a consumer's auto could not freely communicate and offer discounts with another Farmers exchange insuring the same consumer's home. We concur with the proposed language offered by our competitor, State Farm, which adds on page 2, line 6 "except where the non-affiliated third party enters into a contractual agreement with the insurance company, non-profit health service corporation, or health maintenance organization to maintain the confidentiality of the individual's information."

3. Opt-in requirements will increase the number of times insurance agents will contact the consumer. On each occasion an insurance agent wants to offer a consumer a new product or service, the provider will need the consumer's permission. Ironically, opt-in privacy requirements will increase the number of times that a business will intrude into a consumer's privacy. Consumers will be inundated with requests to talk about new products and will then be confused wondering why their prior written consent to discuss a new product does not apply to subsequently released products and services. Our Farmers agents will be burdened with explaining permission slips. Most importantly, insurance within one of our exchanges often makes the customer eligible for a discount within another exchange, for instance an auto discount if a life policy is purchased. Opt-in legislation may prevent this sharing of information and deprive the consumer of savings on specific, mandated insurance.
4. Opt-in requirements will be expensive to implement, leading to higher insurance rates. Information sharing reduces marketing expenses by reducing the cost of soliciting our own customers and improving the chances that the customer contacted will be interested in the product or service offered. More efficient marketing practices translate into more competitive markets and lower prices for the consumer. Thus, House Bill 1179 cannot be taken as an indicator friendly to the economic development in the state. We, the insurance industry and Farmers Insurance Group in particular, just like you, are trying to manage our expenses, but not to the detriment of our customers just as you are not to the detriment of your citizens. This legislation needlessly increases costs without any resultant benefit.
5. Insurance companies tightly protect the personal information of our customers. If there exists a problem of selling and buying personal information, it does not stem from the actions of competing insurance companies, especially Farmers Insurance. Bills meant to reach beyond what suffices within the Gramm-Leach-Bliley Act should target those industries in gross neglect of the trust their customers have placed in them.
6. Opt-in requirements will increase barriers for new entrants in the insurance industry who often must rely on consumer information from their affiliates. Without this information, new entrants will face difficulty being competitive.
7. Opt-in legislation would devastate joint marketing ventures between different institutions who offer products and services to the others' customers because one company may not offer a product offered by the other. With opt-in legislation, the exchange of information between partners in the joint venture would be virtually impossible. Cross marketing could occur if the two companies have the same owner. Smaller companies wishing to form joint ventures

with other smaller companies would be disadvantaged compared to large companies capable of marketing numerous products by themselves.

In Summary, we propose one of three ways to amend this bill so we can support it:

1. Include a definition of affiliate that would include those companies that are related to one another through a management contract where one company controls the operations of another.
2. Or, if the bills would substitute the word "sell" for the word "disclose", the spirit of the bills are maintained and affiliated companies such as ours are allowed to continue to do business consistent with what our customers expect of us.
3. Or add the proposed language offered by our competitor, State Farm, which adds on page 2, line 6 "except where the non-affiliated third party enters into a contractual agreement with the insurance company, non-profit health service corporation, or health maintenance organization to maintain the confidentiality of the individual's information."

Before I answer any questions you may have, please let me stress that we are also concerned about privacy and we believe we and you can achieve our goals and still protect the privacy of the citizens while still serving our customers and protecting them.

Thank you again for this opportunity to address you, and I would be happy to answer any questions.

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Donna Ballin  
Operator's Signature

10/2/03  
Date

**ENGROSSED HOUSE BILL NO. 1179**

**Presented by:** Charles E. Johnson  
General Counsel  
North Dakota Insurance Department

**Before:** Senate Industry, Business and Labor Committee  
Senator Duane Mutch, Chairman

**Date:** March 17, 2003

**TESTIMONY**

Mr. Chairman and members of the committee:

Good morning, my name is Charles Johnson, General Counsel with the North Dakota Insurance Department. I stand before you today to introduce Engrossed House Bill No. 1179. The Insurance Department sponsored this bill. It was amended in the House.

If you recall, last session the legislature passed Senate Bill No. 2127, a bill to enact the privacy protections of the federal Gramm-Leach-Bliley Act in North Dakota as they apply to insurance companies. That law allowed the Insurance Department to adopt rules to implement the law provided the rules were no more restrictive than the NAIC model rules. The NAIC model rules provided for "opt in" protection for personal medical information and "opt out" protection for all financial information. Our rules now provide those protections for North Dakota policyholders.

This bill modifies the present privacy law to allow the Insurance Commissioner to adopt rules that are more restrictive than the NAIC model rules to provide "opt in" protection for all nonpublic personal financial and medical information collected by insurance companies and other similar organizations. It should be noted that the protection is subject to the certain exceptions, including those that allow companies to share information with affiliates.

This bill is in response to the results of last summer's referral vote on the banking privacy

laws wherein the public voted overwhelmingly for "opt in" protection for financial information. The Commissioner intends to notice and adopt privacy rules that will provide "opt in" protection for personal financial information if this bill passes.

The wording in this bill will preclude the Commissioner from adopting rules less restrictive than those requiring "opt in" protections for a consumer's personal financial and medical information.

The House amendments to this bill remove the exception presently in our rules that allows for the sharing of information with nonaffiliates for joint marketing purposes. If this bill passes in its present form, our present rules will also have to be amended to remove the joint marketing exception.

The Department asks that the bill be restored to its original form so that sharing for joint marketing purposes is allowed. The Department believes that sharing for joint marketing is important for small North Dakota insurance companies and North Dakota agents who are not part of large conglomerates. It should be noted that conglomerates can share marketing information between affiliates. Sharing for joint marketing will allow our small companies to compete more fairly with the large conglomerates.

Thank you. If there are any questions, I would be happy to answer them.



OFFICE OF ATTORNEY GENERAL  
STATE OF NORTH DAKOTA

MEMORANDUM

Wayne Stenehjem  
ATTORNEY GENERAL

TO: Representative Jim Kasper  
FROM: Scott A. Miller, Assistant Attorney General *SA*  
RE: House Bill No. 1179  
DATE: April 8, 2003

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Reasons the proposed amendment to engrossed House Bill no. 1179 to include not only residents of North Dakota, but also visitors to North Dakota, in the privacy protections is necessary:

1) The Privileges and Immunities clause:

The United States Supreme Court has interpreted the Privileges and Immunities provision in Article IV, § 2, of the United States Constitution to mean that "a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the 'Privileges and Immunities of Citizens in the several States' that he visits." Saenz v. Roe, 526 U.S. 489, 501 (1999). While this protection is not "absolute," . . . the Clause 'does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States.' Id. at 502 (citation omitted). Thus, barring a substantial reason to the contrary, a visitor to North Dakota is entitled to the same protections from North Dakota laws as North Dakota residents enjoy, including the privacy protections.

2) The Equal Protection clause:

The Equal Protection clause in the Fourteenth Amendment to the United States Constitution essentially requires the government to treat individuals equally in the enforcement of its laws. By only applying the privacy protections to North Dakota residents and excluding visitors from the protection of those laws, one could argue the statute violates the Equal Protection requirement.

In short, the reason the amendment is necessary is to preclude a constitutional challenge to the privacy statutes. Without the amendment the statutes could be subject to both a privileges and immunities challenge and an equal protection challenge. Adding the protection to visitors to the state will not expand the protection beyond North Dakota's borders.

You also asked me to address the effect of removing "that is physically located in the state" on page 1, line 8. The effect would be to apply the confidentiality laws to all insurance companies doing business in North Dakota, rather than only those located in the state.

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Dennis Ballman  
Operator's Signature

10/2/03  
Date