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Yolanda Richardson  
Operator's Signature

10/16/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1485

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1485

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date February 3, 2003

Tape Number	Side A	Side B	Motor #
4	X		3390-5150
Committee Clerk Signature <i>Elizabeth B. Finner</i>			

Minutes: **Chair Kelser** Opened hearing on HB 1485

**Rep. Gulleason**: Supports with written testimony

**Pat Ward (ND Domestic Insurance Companies)**: Opposed. Cumbersome for the insurance industry.

**Rep. Kasper**: What is the worst part of this bill? Ward replied that this is over broad. Many companies have joint marketing agreements, other products they sell through other members. As this bill stands without amendments, none of that will be allowed.

**Rod St. Aubyn (BC/BS of ND)**: Opposed with written testimony. Offered amendment.

Opposes without the amendment.

**John Michels (Farmers Insurance Group)**: Agrees with Pat Ward concerning the joint marketing agreements insurance companies have. They offer value-added products as well.

**Rep. Kasper**: What problem would you have to sign an opt-in form? Michels said they currently have an opt-out form. Kasper then asked if the policy holders would not understand if

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 1485

Hearing Date February 3, 2003

they explained the situation. They would then know up front.. Michels said they already know up front to opt-out.

**Mike Mullen** (Assistant AG): Neutral with testimony

**Rep. Kelser**: What is the penalty for violating HIPAA? Mullen said that penalties can add up to \$25,000/yr. from both civil and criminal penalties. Each violation can be a separate amount.

Usually they just send a letter to get into compliance.

**Chair Kelser**: Closed hearing on 1485

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1485

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2/12/03

Tape Number	Side A	Side B	Meter #
1		x	34.0-36.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** called for committee work on HB 1485.

**Rep. Severson** stated that HB 1477 was studied in the subcommittee. The language included in the two bills that were amended (HB 1179 & HB 1477) render this unnecessary.

**Rep. Severson** moved a Do Not Pass. **Rep. Klein** seconded the motion.

Results of the roll call vote were 12-2-0.

**Rep. Tieman** will carry this on the floor.

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*Salvatore Riccardi*  
Operator's Signature

*10/6/03*  
Date

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

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1485**

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30117.0205  
.0300

Action Taken DNP

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) 12 No 2

Absent 0

Floor Assignment Tieman

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

Salvatore Ricchord  
Operator's Signature

10/16/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
February 12, 2003 2:10 p.m.

Module No: HR-27-2435  
Carrier: Tleman  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1485: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)  
recomimends **DO NOT PASS** (12 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1485 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-27-2435

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Richard Costa  
Operator's Signature

10/16/03  
Date

2003 TESTIMONY

HB 1485

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Yolanda Richardson  
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10/16/03  
Date



HB 1485

Rep. Pam Gulleason

We all understand that the market for personal information is an expanding one. Interest in that information comes from credible sources, such as legitimate businesses and organizations, of course, from non-credible sources, such as theft rings and organized crime.

**Accessing that personal information a lot easier than you might think.** Hundreds of databases already exist that contain detailed information about your personal life, your buying habits and other lifestyle characteristics. This information is not always secretly hidden away or hard to find. Identity theft is a rapidly growing crime. In some areas it is the fastest growing crime. Recently (last two months) thieves broke into an information-processing center and stole thousands of our military personnel's financial records. Last month it was revealed that thousand upon thousands of records of Russian individuals were stolen. A huge identity theft ring was recently uncovered in New York. They had insiders getting credit information and they used that information to send credit cards to themselves. This also recently happened out of the Fargo service center.

Individuals should be able to protect their information. It is they that suffer the consequences and so control over their information should be in their hands. This bill allows individuals to make the decisions about if and how their information is shared.

I do recognize that we must share information in this modern age. An individual would be hard pressed to be successful and not participate

La Costa Richard  
Operator's Signature

10/6/03  
Date

in financial transactions. The purchase of insurance or securities requires release of information that is sensitive. This bill allows individuals who purchase insurance or securities to have control over the information they must provide to engage in our society. This bill allows them to say when and to whom information can be released. It applies the same "opt-in" standard that now applies to the financial institutions in this state. Because it applies the same "opt-in" standard to securities and insurance transactions, this bill levels the playing field among various entities that gather financial information. Thus, it serves to assure a level playing field for competition among the various entities that collect our financial information when we do business with them.

**Non-public personal information-** Information that a company gets from an individual's application, as well as information it collects as a result of transactions and claims submissions and other services. It also includes information that a company gets from credit reports and by tracking people who have used their internet site. It can include things like income, credit history and premium payment history. Phone numbers and addresses can fall under this category.

**Opt-In-** The general rule is that the protected information is not shared unless the person who is the subject of the information signs an authorization or consent that expressly permits the sharing of the protected information with a third party.

La Costa Richard  
Operator's Signature

10/16/03  
Date

R

**Testimony on HB 1485  
House Industry Business & Labor Committee  
February 3, 2003**

Chairman Keiser and committee members, for the record I am Rod St. Aubyn, representing Blue Cross Blue Shield of North Dakota. There are numerous "privacy bills" this session. This committee will hear some of these bills and there are others being heard by the Human Services Committee. This bill and HB 1477 are both quite similar. The health insurance industry is subject to not only the GLB laws, but also to HIPAA regulations. The privacy section of HIPAA goes into effect in April of this year and greatly impacts both the health insurance industry and the health care providers. BCBSND will invest several millions of dollars and has over 100 staff assigned to come into compliance with HIPAA. The federal government has spent several years developing the rules for HIPAA. The state has a HIPAA coalition working to ensure that all entities come into compliance by the established deadline dates. Mike Mullin from the Attorney General's office has been working on getting ND laws into compliance with HIPAA. He testified several times before the Interim Family Law committee on his progress in writing that bill. That bill is HB 1438 and is being heard by the House Human Services Committee.

In regards to this legislation, after the last session, the Insurance Commissioner adopted the model GLB rules, which can be found in 45-14 of the ND Administrative Code. 45-14-01-20 provides that in relationship to federal rules, irrespective of whether a licensee is subject to the HIPAA privacy rule, if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall **not** be subject to the provisions of sections 45-14-01-17 through 45-14-01-21.

This bill requires opt-in procedure for consumer authorization for disclosure of "nonpublic personal information". 45-14-01-04(19) defines "nonpublic personal information" as both "nonpublic personal financial information" and "nonpublic personal health information". As a result, this bill would affect both.

Because there was the intent to have entities exempt from GLB if they were compliant with the federal HIPAA rules, this bill would change all of that. We would like to offer the attached amendment, which would basically exempt those entities that must comply with HIPAA.

Mr. Chairman, we would urge the adoption of this amendment. If the amendment is not adopted, we would strongly oppose this bill. Mr. Chairman, Mr. Greg Gullickson, one of our attorneys, is our expert in regards to GLB legislation and HIPAA, and is present today to answer any technical questions the committee may have.

*Rod St. Aubyn*  
Operator's Signature

*10/6/03*  
Date

**Proposed Amendment to HB 1485**

Page 2, line 5, after "not" insert "apply to a component of a covered entity that is subject to the standards for the protection of individually identifiable health information, title 45, Code of Federal Regulations, parts 160 and 164. This section does not"

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10/16/03  
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TESTIMONY OF THE OFFICE OF ATTORNEY GENERAL  
ON HOUSE BILL 1485, REGARDING OPT-IN RULES  
FOR THE DISCLOSURE OF PERSONAL INFORMATION

BEFORE  
HOUSE COMMITTEE ON INDUSTRY, BUSINESS, AND LABOR  
FEBRUARY 3, 2003

MICHAEL J. MULLEN  
ASSISTANT ATTORNEY GENERAL

Chairman Keiser and Members of the Committee, I am pleased to be here on behalf of Attorney General Stenehjem who asked me to present testimony on section 2 of House Bill 1485, which prohibits an insurance company from disclosing "nonpublic personal information" except in compliance with a rule of the insurance commissioner providing for an "opt-in" procedure for the disclosure of any such information for marketing or other purposes not related to the payment of premiums, the settlement of claims, and related insurance operations. In other words, under section 2 of HB 1485, disclosure of nonpublic personal information for marketing would require the prior written authorization of a policyholder or plan member.

The HIPAA Rule for the Privacy of Health Information

The federal regulation entitled *Standards for Privacy of Individually Identifiable Health Information* (known as the "HIPAA Privacy Rule"), which was promulgated by the Department of Health and Human Services (HHS), provides an opt-in rule with respect to the disclosure of "protected health information" for marketing purposes. Under the HIPAA privacy rule, a covered entity may not disclose "protected health information," except for treatment, payment, and health-care operations (or for certain other limited purposes, e.g., public health surveillance, a court order, etc.) unless a patient or a health

Richard Costa  
Operator's Signature

10/16/03  
Date

plan member has given the covered entity a valid authorization for disclosure. And, if a covered entity "obtains or receives a valid authorization for its use or disclosure of protected health information, such use or disclosure must be consistent with such authorization." 45 C.F.R. § 164.508(a)(1). This requirement applies to any disclosure for marketing, except a face-to-face communication made by a covered entity to an individual, or a promotional gift of nominal value provided by the covered entity. 45 C.F.R. § 164.508(a)(3)(i)(1) and (2). The second exception permits a dentist to give a patient a toothbrush or a doctor to give a patient notepad or a key ring. In addition, under the HIPAA privacy rule, "if the marketing involves direct or indirect remuneration to the covered entity from a third party, the authorization must state such remuneration is involved." 45 C.F.R. § 164.508(a)(3)(ii).

Under the HIPAA privacy rule, a "health insurance issuer" means "an insurance company, insurance service, or insurance organization (including an HMO) that is licensed to engage in the business of insurance in a State and is subject to State law that regulates insurance." Second, a "health plan" is defined to include a health insurance issuer, and a health plan is one of the three types of covered entities that are required to comply with the HIPAA privacy rule. 45 C.F.R. §§ 160.103 (definitions) and 164.500 (applicability). Therefore, an insurance company (including a HMO) that provides health insurance coverage will be required under the HIPAA privacy rule, to follow an opt-in procedure and obtain an authorization from a policyholder before it may disclose protected health information to a third party for marketing products or services to that policyholder.

Chairman Kelser, thank you for providing me an opportunity to discuss of HB 1485. I will be pleased to answer any questions the committee has regarding the bill.