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ROLL NUMBER

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21527

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2127

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 30, 2001.

Tape Number	Side A	Side B	Meter #
1		x	15.8 to end
2	x		6.5 to 31.2
Committee Clerk Signature <i>Doris Perez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2127 relating to the insurance commissioner sharing confidential information with other state agencies.

**Jim Poolman**, Insurance Commissioner, in favor of the bill. Written testimony attached, including copy of Privacy of Consumer Financial and Health Information Regulation and of PCFHIR Frequently Asked Questions. I firmly believe consumers need protection of their financial and medical information and from marketing to third party affiliates. Present laws do not address the regulation of insurance companies privacy activities. This bill gives the insurance commissioner that authority. We will address opt-in/opt-out rights of consumers regarding medical and financial information. Medical information should have more restrictive standards (opt-in to allow disclosure), that is why I favor this bill.

**Senator Tollefson** : Page 3 of the rules prohibit disclosure of "nonpublic" information, what

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would be "public information"?

**J Poolman:** Public: anything you put in an application, like phone number in insurance policy app.. Nonpublic: medical diagnosis.

**Senator Klein** NCOIL Model Act is less restrictive than NAIC's?

**J Poolman:** Yes, especially the opt-out standard for medical information is less restrictive than the opt-in we support here today.

**Leah Cogland, AIA:** Submitted proposed amendment.

**Senator Tollefson:** Your amendment would propose opt-out.

**J Poolman:** This amendment would allow us to not become more restrictive than the NAIC Model Act: opt-out for financial information and opt-in for medical information. NCOIL : opt-out for both financial and medical information.

**Senator Mathern:** What is the meaning of the last sentence in the proposed amendment?

**Leah Cogland:** No one can come against the department for not enacting those regulations.

**Chuck Johnson, Chief Legal Counsel ND Ins Dept. :** Public in general does not have private cause of action to sue because of violation of privacy law. Under this law a private citizen cannot sue for money, the department can take administrative action.

**Marilyn Foss, NDBA, :** We support this bill as collorary to SB2191. Adopting GLB approach regarding private information makes things uniform at the national level for financial institutions.

**Dan Ulmer, Blue Cross/ Blue Shield:** Background information: HIPA allowed portability, creating the issue of how to measure outcome/quality, have to look at data, how do we unify data and privacy? From the insurers perspective it makes more sense to institute things at the federal level, easier because most of us are doing business in other states. Since the HIPA bill, Congress was supposed to act on what these rules were going to look like; they demurred on HHS which

promulgated rules last December. Now we are basically trying to comply; first to put together data for uniformity, and with the privacy rules on how can we share information electronically and on paper. We have to be compliant with HIPA by 7/01/02. We are trying to be compliant with HIPA and GLB. We have a problem with which one to comply, we think we are HIPA so I am offering an amendment to exempt us from GLB until 8/01/03.

**Rod St Aubyn, BC/BS, Regulations** say if you are HIPA compliant you are exempt from GLB.

**Senator Espegard:** Is HIPA more stringent than GLB?

**J Poolman:** Yes, our goal is not to provide more regulations, we believe HIPA probably is more stringent than our particular privacy rules.

**Chuck Johnson:** If you are not planning to market information, you don't have to worry about compliance. We disagree with the blues on the implementation date.

**J Poolman:** I don't think they should be exempted, if you comply with HIPA, you comply with us, so I don't think they should be exempted.

Recess. Committee reconvened. All members present.

**J Poolman:** We reached an agreement, scrap the Blues amendment exempting them from regulations. We think we can address their concerns with the HIPA regulations vs. GLB regulations, and who would be deemed in compliance with those particular regulations, in the rule making process. If Blues were working towards compliance with HIPA privacy rules we can potentially deem them in compliance or exempt based on our discussions during the rulemaking process, if you folks see that as fair. I want this as part of the record in legislative intent so we can make clear with the Blues that the conversation has taken place and we can go forward in the rulemaking process, provided the bill passes, and we can address that at that point in time. By then we will have a clear picture, hopefully, of what is going to actually happen with HIPA rules,

considering we have a new President and new Secretary of HHS. By then we can have a better grasp of where we are all going to be towards the end of the year when we get into the rules making process that the insurance department will have to get through to promulgate the rules with this particular bill.

**Senator Every:** What we are doing is what they asked but not putting it in the bill?

**J Poolman:** No, by addressing it in the rulemaking process we still keep them as part of privacy rule, but by then we would have a clear idea of how GLB privacy rules and HIPA rules actually coordinate. We don't know that now but we don't want to give up the potential consumer protections for the people of ND by putting that in state law. We don't want duplication that would confuse the consumer either. We will address the effective date in the rulemaking process. We struck a deal that allows department to protect consumer and satisfy the Blues so they don't have to incur extra expenses. We want to adopt the NAIC standard of opt-in for medical information and opt-out for financial information, this will provide us with uniformity around the country.

**Dan Ulmer, BC/BS:** this is what we really wanted to establish. So many questions are unanswered as this unfurls.

**Brenda Blazer, IAA:** To clarify: exception with GLB as long as comply with HIPA applies to all insurance companies.

**Senator Klein:** What is the status now? Banks have opt out standard and insurance companies require written authorization?

**D Ulmer:** The industry practice is that when you sign up for insurance you sign release for exchange of information for claims processing, not for information to be sold.

**Senator Klein:** Motion to adopt AIA amendment **Senator Espegard:** Second.

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Roll call vote: 6 yes; 1 no. Motion carried.

**Senator Espegard:** Motion: do pass as amended. **Senator Krebsbach:** Seconded.

Roll call vote: 6 yes; 1 no. Motion carried. Floor assignment: **Senator Klein.**

Date: 1/30/01  
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2127

Senate Senate Industry, Business and Labor Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken AIA amendments adoption

Motion Made By Sen Klein Seconded By S Espesard

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

Total (Yes) 6 No 6/1

Absent \_\_\_\_\_

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

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





**REPORT OF STANDING COMMITTEE**

**SB 2127: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2127 was placed on the Sixth order on the calendar.

Page 1, line 12, after the underscored period insert "The rules must be consistent with and not more restrictive than the model regulation adopted by the national association of insurance commissioners entitled "Privacy of Consumer Financial and Health Information Regulation". This section does not create a private right of action."

Renumber accordingly

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2127

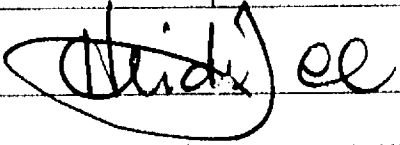
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 7, 2001

Tape Number	Side A	Side B	Meter #
1		X	15.5-41.3
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Jim Poolman: *ND Insurance Commissioner* Written testimony.

Rep Froseth: What is "right of action"?

Poolman: That is an AIA amendment dealing with privacy.

Vice-Chairman Keiser: Could an insuring bank review check stubs?

Poolman: That could still happen now.

Dan Ulmer: *BC/BS* HIPA makes insurance portable. From job to job and tries to uniform and privatize nationally. Everyone needs to be compliant by 7/1/02. GLB is the other regulator and the two clash. We would like to exempt companies that have to be HIPA compliant. HIPA is opt-in.

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House Industry, Business and Labor Committee  
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Pat Ward: *ND Domestic Insurance Co.'s* We support this bill.

Gary Thune: We also support this bill.

Jack McDonald: *Individual Community Banks of ND* We support this bill.

Marilyn Foss: *NDBA* We support this bill as well.

Poolman: If a company is in compliance with us, you are in compliance with HIPA.

Chairman Berg: We'll close the hearing on SB 2127.

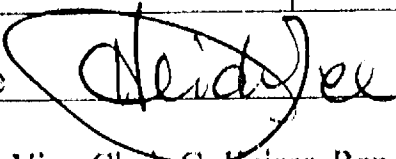
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2127

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 7, 2001

Tape Number	Side A	Side B	Meter #
3	X		17.1-21.0
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Jim Poolman: *ND Insurance Commissioner* If you are in compliance with HIPA you will be in compliance with our rules, working to become in compliance is the same. GLB sets the minimum standards for finance, HIPA is for medical.

Vice-Chairman Keiser: I move a do pass.

Rep M. Klein: I second.

**15 yea, 0 nay, 0 absent Carrier Rep Froseth**

