

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2156

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2156

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2156

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 29, 2001

Tape Number	Side A	Side B	Meter #
2	x		45 to end
2		x	0 to 7.4
(1/31) 3		x	0 to 5.5
Committee Clerk Signature <i>Doris P. Perez</i>			

Minutes:

The committee was called to order. All members present. The hearing was opened on SB 2156, a bill for an act to provide for privacy of an individual's financial information; and to provide a penalty.

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

JACK MCDONALD, ND Newspaper Assn. Opposing this bill. Written testimony attached.

MARILYN FOSS, ND Bankers Assn. Opposing this bill. We favor the study of the privacy issue by the legislators. This bill does not follow any model. There are two views to be considered: the owner and the custodian and how this information is shared. There is misleading language in this bill. If the consent requirement expires, what happens? Sections 6 and 8 regarding the right of access and restriction on obtaining information, adverse action notice requirement? If this bill passes, call centers will go out of business, they won't be able to do business with people without

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Senate Industry, Business and Labor Committee  
Bill/Resolution Number SB 2156  
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their consent. This bill is a visceral reaction reaction to protect privacy, it attempts to stop free flow of information without consideration of impact on consumer, commerce, safety. Urge do not pass.

GARY THUNE, American Insurance Assn. Urge do not pass, there should be a study so there is uniformity.

GREG TSCHIDER, ND Credit Union League, Against this bill, credit unions support privacy question is how we regulate that. Who will define what is reasonably necessary. This needs evaluation, study idea is a great approach.

PAT WARD, ND Domestic Insurance Co, submitted written testimony in opposition.

SENATOR D. MATHERN: Keep hearing open until written testimony from sponsor.

January 31, 2001. (Tape 3-B-0 to 3-B-5.5) Committee reconvened. Discussion held. Hearing concluded. SENATOR KLEIN: move do not pass. SENATOR ESPEGARD: second.

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

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

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2156

Senate Industry, Business and Labor Committee

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

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

Action Taken DNP

Motion Made By S Klein Seconded By S Espgaard

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

Total (Yes) 6 No 1

Absent 0

Floor Assignment S. Tollefson

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

**REPORT OF STANDING COMMITTEE (410)**  
February 1, 2001 8:28 a.m.

**Module No: SR-19-2060**  
**Carrier: Tollefson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2156: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2156 was placed on the Eleventh order on the calendar.**

2001 TESTIMONY

SB 2156



**OFFICE OF ATTORNEY GENERAL**  
STATE OF NORTH DAKOTA

Wayne Stenehjem  
ATTORNEY GENERAL

January 29, 2001

**CAPITOL TOWER**  
State Capitol  
600 E. Boulevard Ave.  
Dept. 126  
Bismarck, ND 58505-0040  
701-328-2210  
800-366-8888 (TTY)  
FAX 701-328-2226

Senator Duane Mutch  
Chairman  
Industry, Business & Labor Committee

Dear Senator Mutch:

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

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

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

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

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

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

**Civil Litigation**  
701-328-3640

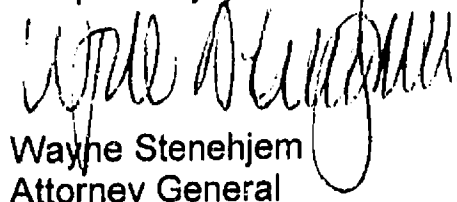
**Natural Resources**  
701-328-3640

**Racing Commission**  
701-328-4290

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

**Bureau of Criminal  
Investigation**  
P.O. Box 1054  
Bismarck, ND 58502-1054  
701-328-5500  
800-472-2185  
Toll Free in North Dakota  
FAX 701-328-5510

Respectfully submitted,

  
Wayne Stenehjem  
Attorney General

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

**Fargo Office**  
P.O. Box 2685  
Fargo, ND 58108-2685  
701-239-7126  
FAX 701-239-7129



## Summary of SB 2155 and SB 2156

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

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

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

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

January 29, 2001

SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE  
SB 2156

SENATOR MUTCH AND COMMITTEE MEMBERS:

My name is Jack McDonald. I am appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters Association. As you know, we track legislation that involves open meetings and open records. We oppose SB 2156 because we believe it will lead to the closure of records and information that have traditionally been open simply because they are now available via a computer.

SB 2156, while well intentioned, creates in Section 2 a vague and ambiguous new right under state law about which only one thing is certain: it will take a lot of lawsuits, and a lot of lawyers, to determine exactly what this right is, how it is defined and how it is to be interpreted.

Under the definitions, for example, financial information includes a person's address, telephone number, e-mail address and e-signature. Under Section 2, we are giving everybody a right to privacy to this information. Does this mean a person can sue everytime they receive an unwanted mail solicitation or telemarketing phone call? How do businesses protect all of this information. Can they be sued if they don't protect it well enough? Who knows?

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

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

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

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

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

Pat Ward

Brenda L. Blazer  
Health Insurance Association of America

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

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

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

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

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

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