

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2186

2005 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2186

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2186

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-07-05

Tape Number	Side A	Side B	Meter #
1	xxx		5-end
1		xxx	0-440
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: **Chairman Mutch** opened the hearing on SB 2186. All Senators were present.

**SB 2186** relates to personal insurance loss history information.

**Senator Espegard** introduced the bill.

**Senator Espegard:** I bring this bill before you on behalf of the Insurance Commissioner. He will be here to speak to you on the bill in just a minute.

**Jim Poolman**, North Dakota Insurance Commissioner, spoke in support of the bill. See attached.

**Senator Fairfield:** You talked quite a bit about the opposition to this, but yet I also heard you say that you worked with the industry on the amendments, so does the industry support the bill with the amendments?

**Poolman:** The amendments I have drafted, I think I can accurately summarize, as much of the language coming from the industry, and listening to their concerns about the bill and being open to making changes related to the bill so that they feel like they are being heard and some of their

points make sense. They are probably going to have a problem with the claims made but not paid issue. We just have a fundamental disagreement.

**Senator Klein:** This bill isn't so onerous that we are going to throw roadblocks up for companies wanting to stay and come into the state?

**Poolman:** In my opinion, no. The National Association of Insurance Commissioners examining this issue. You have the National Conference of Insurance Legislators examining the use of data bases as well. This is not an issue that is just coming into North Dakota. It's an issue that is being addressed nationally. I think insurers are going to be regulated on this all over the country. In fact, some states have done bills specific to this.

**Senator Klein:** This isn't a model of either one of those organizations?

**Poolman:** No, the National Conference of Insurance Legislators has just started work on a model at their last meeting. I spoke at this meeting last summer, specifically to this issue, and it is now on their radar screen, but they do not have a specific model, and neither does the National Assoc. of Insurance Commissioners.

**Senator Espegard:** Does the industry think these amendments are okay?

**Poolman:** It waters down the bill, so I am assuming that they will like them.

**Senator Nething:** Several years ago, I had an insurance company that canceled my personal insurance and they gave two reasons. One was an eight hundred dollar claim which they paid, and the other was because an individual had fallen on our steps, so I reported to the agent that this accident had occurred. That individual never made a claim against the policy. Needless to say, once you are canceled, you can't do anything about it. Obviously, the eight hundred dollar

claim that they paid would still be used under this bill, but this notification of a claim pending or possible claim pending, they couldn't use that.

**Poolman:** What you have described, is a closed claim without pay, which would no longer be able to be utilized under this bill.

**Senator Nething:** There wasn't even a claim made.

**Poolman:** They count it as a claim. That is the same issue that we are trying to get at with this bill.

**Senator Espegard:** A prohibited claims use that you struck out on the windshield part, although the windshield replacement may be reported. You get a quarter sized rock in your window and you just fix it for thirty-nine dollars yourself, it is going to go against you as a claim?

**Poolman:** You have reported a claim. Even if you have taken care of that yourself, as we understand it and I think I am accurate on this, is that it comes in as a claim, even though you paid it yourself.

**Senator Espegard:** Nobody in their right mind would turn a claim in for thirty-nine dollars.

**Senator Krebsbach:** The example that Senator Nething gave you in regard to the potential claim, how long does the insurance company have to leave that claim open.

**Poolman:** It varies from company to company, depending on if there is an investigation, or if there has been an agreement that it is closed, but one of the things that does happen is what happened to Senator Nething. There are many examples like that out there.

**Senator Klein:** You mentioned consumer calls. Is that happening a lot? Are people calling you constantly?

**Poolman:** We do receive calls and emails about this. But they cannot be lodged as a formal complaint because we have no authority over underwriting guidelines and so we don't log them in. We tell them we don't have authority over those issues. Many consumers don't have any idea what is included in underwriting. If you ask the average North Dakotan out there, they wouldn't know what underwriting meant, and they wouldn't know how they are priced, or why. They could also pull a CLUE report.

**Senator Espegard:** Your relationship with your insurance agent is a personal relationship. So when you call him and say "Am I covered for that?", you want his yes or no. You certainly wouldn't dare call him if you knew it was going to be treated as a claim. So now you don't dare call your agent anymore because you don't want your rate to come up. Because there wasn't a claim there.

**Poolman:** I think you are absolutely right. One of the things we don't want to do is prohibit honest claims usage. We just want common sense guidelines, in setting rates and underwriting.

**Senator Espegard:** So in working with the industry, you have amended out item 6 regarding the windshield.

**Poolman:** Yes, I gave that up to try to get this deal done.

**Claus Lemke,** North Dakota Assoc. of Realators, spoke in support of the bill. See written testimony.

There were no questions from the committee.

**Lavata Becker,** Oaktree Realators, and NDAR, spoke in support of the bill. See attached testimony.

**Senator Espegard:** That case the home owner paid the twelve hundred dollars, so it seems to me that that is the kind of customer you would want.

**Senator Klein:** On the other hand, what if the claimant didn't fix the roof, sold the house and now you start with damage on the roof that nobody knows. Isn't there a case of where we could have another disparity? How do we consider someone who isn't as good of a customer?

**Lavata:** I can't answer that because I'm not an insurance professional.

**Senator Espegard:** I believe that is covered in an inspection report when you buy the home, you pay for that report and they would look at the roof and their wasn't anything wrong.

**Vicki Roller, Logan Hill GMAC Real Estate and NDAR,** spoke in support of the bill. See attached testimony.

**Senator Klein:** If I buy a house and need insurance, but the house was insured by NoDak, I wouldn't concern myself with what NoDak said about that because I would be going to what my CLUE report was with State Farm because I am their customer. Why doesn't that close the deal?

**Vicki:** It's my understanding that the CLUE report will cover the history of the house, meaning it has a report of the prior home owner and so whether you are going from NoDak to State Farm, they would also have the claims claimed with another insurance company.

**Chairman Mutch entertained opposition to the bill.**

**Rob Hovland, Center Mutual Insurance and Chairman of ND Insurers,** spoke in opposition to the bill.

**Rob:** The amendments do not fix this bill.

**Senator Espegard:** You mean you don't agree with these amendments?

**Rob:** These amendments, we don't agree with the original or the amendments. When the Commissioner mentioned the last provision of this bill which deals with using a prior claims owner history that is a result because it says they have to litigate damages. That is meaningless. All that means is you have to minimize them. You need to first decide if there is a big enough problem to verify treatment. If you are convinced there is a problem you need to make sure that the cure isn't worse than the disease. This is going to have significant negative consequences for the rural areas of North Dakota.

**Senator Heitkamp:** Are you nervous that as you come in against this thing, that the bill could go forward as is, without the amendments? It seems to me that someone has come to the table and tried to work through this, so what my fear is is that the bill goes forward without the amendments, there is a time here where you should cut a deal.

**Rob:** I think if you are going to amend this, you ought to consider the NCOIL model because the draft that is in there addresses the balance.

**Senator Espgaard:** What do you collect from a premium on these claims that are submitted that you cancel?

**Rob:** I believe these were both new applications.

**Chairman Mutch:** How is the Insurance Commissioner going to enforce this? Say for instance, you use this criteria and are going to raise the rate because of the history, what can he do to stop you from raising it?

**Rob:** I think the idea is that they are going to check on us based on complaints. I don't know how you are going to force the first weather related claim.

**Patrick Ward, attorney representing PCI,** spoke in opposition to the bill. See attached testimony.

**Senator Espegard:** Have you talked with Commissioner Poolman on the NCOIL bill? I believe he serves as chairman on that, doesn't he?

**Ward:** No, he belongs to the NAIC, Senator Klein belongs to NCOIL.

**Senator Espegard:** Did you address it with Senator Klein?

**Ward:** I just became aware of this model this morning? This not a model bill. It is a draft.

**Senator Espegard:** Would it be advantageous of you to visit with Commissioner Poolman about this bill and see what you can come up with for amendments?

**Ward:** I have been visiting with him by email since December 10, when we first saw the bill.

Like I said the amendments that you have are a result of that. That is my point, that the bill in it's present form is awful. I think you should kill the whole thing and NCOIL can come up with something that really makes sense.

**Senator Klein:** So you have not visited with the commissioner on the NCOIL model in attempting to use those as the amendments?

**Ward:** That is correct. I would be willing to do that but I have run out of time on the Senate side.

**Senator Espegard:** You know the insurance companies that I have had contact with are okay with the amendments, the point is that you are going to hold the line on the whole works? And then let the tail go with the dog? Or are you going to have some compromise.

**Ward:** That's not right as I understand it. The company you are talking about is NoDak Mutual, and Dale Haake is here. But we didn't get everything that we asked for from the commissioner.

**Dale Haake, Nodak Mutual Insurance Company**, spoke in opposition to the bill. See attached testimony.

**Senator Klein:** On an average, would you say our rates in North Dakota are competitive as any other rate?

**Dale:** Yes, our rates are even below average.

**Senator Nething:** You are conveying to us that we've got the choice of where we want to buy our insurance, and at the same time when I visit with agents, they tell me there is an advantage, particularly as you get older, that you stay with your same company, and also that you try to carry all of your insurance with the same company, for benefit to me as being the insured and being able to place the business. But I have the feeling that you think we can go any place we want to if we are not satisfied.

**Dale:** I believe that there are a great many carriers out there that are willing and able to write a very big slice of the populous of North Dakota and to do so at reasonable rates. Now, most carriers will give preferred rates to any customer who brings multiple lines of business to them.

**Senator Nething:** I gather that the agents that are into this are the ones who are supposed to do the "preliminary underwriting"?

**Dave:** We certainly hope so. That is the intention.

**Senator Krebsbach:** Do you think this will enhance or hinder competition?

**Dave:** I believe that this bill would hinder competition and would not fix problems.

**Joel Gilbertson, Vogel Law Firm, American Insurance Assoc.**, introduced Steve Schneider, who also spoke in opposition to the bill.

**Steve Schneider, American Insurance Assoc.**, spoke in opposition. See attached testimony.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2186

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**Senator Nething:** Did you have an opportunity to be with the group that has been meeting with the Insurance Commissioner?

**Steve:** Mr. Gilbertson has been a part of that.

**Senator Heitkamp:** Is there a problem? If there isn't a problem, why are you anxious to work with the commissioner to fix it?

**Steve:** We are not sure that there is a problem.

**The hearing was closed. No action was taken at this time.**

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2186

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-08-05

Tape Number	Side A	Side B	Meter #
1		xx	4200-4815
Committee Clerk Signature <i>Lisa Van Berkorn</i>			

Minutes: **Chairman Mutch allowed committee discussion on SB 2186. All Senators were present.**

**Senator Klein:** The Commissioner brought forward the number of amendments yesterday and there was discussion about them. I sense we aren't going to get to the very end.

**Senator Heitkamp:** Even the industry said the amendments make it better.

**Senator Krebsbach moved to adopt amendments.**

**Senator Epegard seconded.**

**Roll Call Vote: 6 yes. 0 no. 1 absent.**

**Senator Klein moved a DO PASS AS AMENDED.**

**Senator Heitkamp seconded.**

**Roll Call Vote: 6 yes. 0 no. 1 absent.**

**Carrier: Senator Epegard.**

Commissioner Poolman

February 7, 2005

PROPOSED AMENDMENTS TO SENATE BILL NO. 2186

Page 1, after line 12, insert:

- “2. “Deceptive practices” means any misstatement or omission of any material fact, or submission of a false statement, in light of the circumstances under which it was made, by a person acting with the intent to defraud in filing an insurance claim.”

Page 1, line 13, replace “2” with “3”

Page 2, remove lines 9 through 11

Page 2, line 12, replace “4” with “3”

Page 2, line 13, replace “noncommercial” with “owner occupied”

Page 2, line 14, remove “A personal insurance policy must be individually underwritten for”

Page 2, remove line 15

Page 2, after line 15, insert:

- “4. “Weather-related event” means wind or hail.”

Page 2, line 18, remove “The insurer or its agent may”

Page 2, line 19, remove “not report these events to a consumer reporting agency or insurance support organization.”

Page 2, line 25, after “activity” and before the semicolon insert “and the claim does not involve deceptive practices on the part of the insured”

Page 2, line 26, after “insured” and before the semicolon insert “and the claim does not involve deceptive practices on the part of the insured”

Page 2, remove lines 27 through 29

Page 2, line 30, replace “7” with “5”, after “A” insert “first party property”, and replace “natural” with “weather”

Page 2, line 31, remove "phenomena"

Page 3, line 3, replace "8" with "6" and replace "five" with "seven"

Page 3, line 8, after "property" and before the period insert ", unless the insurer can provide evidence that the previous owner did not mitigate the damage"

Page 3, remove lines 9 through 13

Page 3, replace "26.1-25.2-06" with "26.1-25.2-05"

Renumber accordingly

Date: 2-08-05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2186

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Adopt Amendments - (Commissioner's) + Sen. Klein

Motion Made By Krebsbach Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	A	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 6 No 0

Absent 1

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

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

Date: 2-08-05  
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2186

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

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

Action Taken ~~Adopt Amen~~ - Do Pass As Amended

Motion Made By Klein Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield	A	
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Heitkamp Espegard

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

**REPORT OF STANDING COMMITTEE**

**SB 2186: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2186 was placed on the Sixth order on the calendar.**

Page 1, after line 12, insert:

- "2. "Deceptive practices" means any misstatement or omission of any material fact, or submission of a false statement, in light of the circumstances under which it was made, by a person acting with the intent to defraud in filing an insurance claim."

Page 1, line 13, replace "2." with "3."

Page 2, remove lines 9 through 11

Page 2, line 13, replace "noncommercial" with "owner-occupied"

Page 2, line 14, replace "A personal insurance policy must be individually underwritten for" with:

- "5. "Weather-related event" means wind or hail."

Page 2, remove line 15

Page 2, line 18, remove "The insurer or its agent may"

Page 2, line 19, remove "not report these events to a consumer reporting agency or insurance support organization."

Page 2, line 25, after "activity" insert "and the claim does not involve deceptive practices on the part of the insured"

Page 2, line 26, after "insured" insert "and the claim does not involve deceptive practices on the part of the insured"

Page 2, remove lines 27 through 29

Page 2, line 30, replace "7." with "5.", after "A" insert "first-party property", and replace "natural" with "weather-related"

Page 2, line 31, remove "phenomena-related"

Page 3, line 3, replace "8." with "6." and replace "five" with "ten"

Page 3, line 8, after "property" insert ", unless the insurer can provide evidence that the previous owner did not mitigate the damage"

Page 3, remove lines 9 through 13

Page 3, line 14, replace "26.1-25.2-06" with "26.1-25.2-05"

Renumber accordingly

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

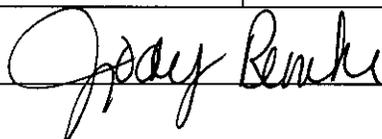
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2186

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-8-05

Tape Number	Side A	Side B	Meter #
1	x		45.6-end
1		x	0-end
2	x		0-end
Committee Clerk Signature 			

Minutes:

**Chairman Keiser:** Opened the hearing on SB 2186.

**Senator Espgaard:** Appeared in support of the bill and also was a sponsor. This bill deals with your personal information that can be collected by an insurance company, a little bit of background to the bill, is that back in the 80's insurance companies begin to gather information for obvious reasons, to underwrite the insurance and properly rate the insurance, while over the years they have added to it and this bill tends to say that maybe they have gone a little bit to far in collecting information and I will give you an example if you call in and you had a claim on your roof lets say it is \$1,300.00 and you say do you have coverage for it and they say you do and you have \$1000.00 deductible and you say I guess I won't turn that claim in because it is not very good, they can use that because you called, as a detour ant to your rating, and some would think that is not proper. This bill tends to restrict some of the areas which they can use.

**Jim Poolman, Commissioner, Insurance Department:** Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Claus Lemke, Executive VP, ND Association of REALTORS:** Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Mary Splichal, Logan Hill GMAC Real Estate, Bismarck, ND:** Appeared in support of the bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Lavata Becker, Broker Associate Oaktree Realtors, Bismarck, ND:** Appeared in support of the bill and provided a written statement (SEE ATTACHED TESTIMONY).

**Kent Olson, ND Professional Insurance Agents Association:** Appeared in support of the bill as amended. the independent agent is an advisor he works between the company and the consumer, he is the front line problem solver, the trend is we are moving towards higher deductibles, which you pay the loss out of your own pocket the first \$1,000.00 and why should this be used against you. Repetitive losses can get to be a problem for the agents and the consumer where you have loss after loss, as the bill is amended, we support the bill, as an association and would be glad to answer any questions.

## **OPPOSITION**

**Rob Huglund, Chairman Association of ND Insurers, & President of Center Mutual**

**Insurance Company, Rugby:** Appeared in opposition on SB 2186. This is a classical example that the cure is worse than the disease.

**Representative Keiser:** You mentioned on page 2 line 22 if you can't use it, when can you use prior history, and it says in effect that if you are doing an inspection, and you mentioned in your testimony, that one of the effects this bill could have is, but if you can't know what the prior

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House Industry, Business and Labor Committee

Bill/Resolution Number SB 2186

Hearing Date 3-8-05

claims history was it is much likely for companies to allow agents to write the binder on real estate transactions until the inspection is done, isn't that true?

**Rob Huglund:** Mr. Chairman you are absolutely right, and the unfortunate part about this is that it essentially means that some companies are going to be chased out of some markets.

**Brian Bowker, Dakota Fire Insurance Company:** Appeared in opposition of SB 2186 and provided a written statement on behalf of Dennis Prindeville (**SEE ATTACHED TESTIMONY**).

**Pat Ward, Attorney, State Farm Insurance Company:** Appeared in opposition of SB 2186 and provided a written statement (**SEE ATTACHED TESTIMONY**).

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2186

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-22-05

Tape Number	Side A	Side B	Meter #
1	x		0-19.7
Committee Clerk Signature <i>Jody Benke</i>			

Minutes:

**Chairman Keiser:** Reconvened on SB 2186.

**Representative Kasper:** You are saying then with this amendment added, any inquiry regardless if it results in claim or not could be used by the insurance company, to increase rates?

**Representative Keiser:** You can define it that way but I don't think that is what I said at all.

**Representative Kasper:** Let me give you an example, I call the insurance company, and I say, does my policy cover pit bulls, I don't go beyond anything besides the question being pit bulls are dangerous the assumption could be that this guy is going to buy some pit bulls so we better increase the premium. Where my inquiry only was because I was thinking about buying a dog, and I wanted to be sure if I had any problems with pit bulls or any other dogs I wasn't going to buy those dogs, so there for if I don't go beyond the question does my policy cover pit bulls, that in essence could be a red flag which could increase rates, even though I never bought a pit bull?

**Representative Keiser:** I would say that is not a substantial inquiry, you didn't state that you had a pit bull, that your friend gave you. If you have information in the inquiry that specifically affects risk, not a clarification statement, not informational statement, but a clear statement that changes the risk exposure. The 2 issues are, as I see it, it really boils down to how to handle inquiries, and how to handle claims made and not paid, those are the two issues before us.

**Representative Kasper:** I move to **ADOPT** the Poolman Amendments

**Representative Nottestad:** I **SECOND** the motion of **ADOPTION**.

Motion carried voice vote.

**Representative Kasper:** I **MOVE A DO PASS** as **AMENDED**.

**Representative Ekstrom:** I **SECOND THE** motion for a **DO PASS** as **AMENDED**.

Motion carried **VOTE: 10-YES 3-NO 1-Absent (BOE)**

**Representative Ekstrom:** I move to **RECONSIDER** our **ACTIONS** on SB 2186

**Represent Nottestad:** I **SECOND** the motion to **RECONSIDER**.

Motion carried voice vote.

**Representative Ekstrom:** I move **TO FURTHER AMEND SB 2186**.

**Representative Dietrich:** I **SECOND** the motion to further amend.

Motion carried voice vote

**Representative Kasper:** I move a **DO PASS AS AMENDED** on SB 2186

**Representative Thorpe:** I **SECOND** the **DO PASS** as **AMENDED** on SB 2186.

Motion carried **VOTE: 11-YES 2-NO 1-Absent (BOE)**

**Representative Dosch will carry the bill on the floor.**

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2186

Page 1, line 2, replace "personal" with "homeowner's"

Page 1, line 6, replace "applies to only personal" with "is limited in scope to homeowner's"

Page 1, line 7, replace "As used in" with "In" and after "chapter" insert ", unless the context otherwise requires"

Page 1, replace lines 8 through 12 with:

1. "Adverse action" means a denial, nonrenewal, or cancellation of; an increase in any charge for; or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any contract, existing or applied for, in connection with the underwriting of a contract.
2. "Claim" means a contract with an insurer by an insured or third party for the purpose of seeking payment.
3. "Claims history report" means information provided in conjunction with the underwriting or rating of a contract by a claims history report provider to an insurer, an insurance producer, or other authorized party regarding the claims history or loss experience of a consumer or property. The term includes a consumer report generated from a third-party vendor.
4. "Claims history report provider" means a person that regularly engages in the practice of assembling, collecting, or disseminating information regarding the individual claims history of a consumer or property for the primary purpose of providing such information to an insurer, an insurance producer, or other authorized party for underwriting or rating. The term does not include a government institution, an insurer, or an insurance producer or any employee or agent of any of these entities.
5. "Consumer" means an insured or an applicant for coverage under a contract, the claims history report or loss experience of which is used in the underwriting or rating of the contract.
6. "Contract" means a policy of homeowner's insurance."

Page 1, line 13, replace "2." with "7."

Page 1, after line 15, insert:

8. "Homeowner's insurance" has the same meaning as under section 26.1-52-02. For purposes of this definition, a dwelling includes a mobile home.
9. "Inquiry" means a request for information regarding the terms, conditions, or coverage afforded under a contract which does not result in a claim. An inquiry under this chapter may not be considered a claim under chapter 26.1-04."

Page 1, line 16, replace "3." with "10." and remove the colon

Page 1, line 17, replace "a. (1) A" with "a" and replace "who" with "that"

Page 1, line 21, replace "(2)" with "a."

Page 2, line 1, replace "(3)" with "b." and remove "also"

Page 2, line 6, replace "b." with "c."

Page 2, replace lines 12 through 15 with:

"11. "Insurer" means an insurance company authorized to do business in this state which offers coverage under a contract."

Page 2, line 16, after the second boldfaced period insert:

"1."

Page 2, line 17, replace "either personal" with "a contract:"

Page 2, remove line 18

Page 2, line 19, replace "1." with "a.", replace the first "into" with "regarding", and replace the second "into" with "regarding"

Page 2, line 20, after "loss" insert ", unless the inquiry indicates a change in the risk assumed which results in a substantial increase in hazard"

Page 2, line 21, replace "2." with "b.", replace "if" with "for which", replace "files no" with "does not", and after "claim" insert ", unless the inquiry indicates a change in the risk assumed which results in a substantial increase in hazard"

Page 2, line 22, replace "3." with "c.", after the first "claim" insert a comma, replace "conducts no" with "does not conduct an", replace "a" with "the", and replace "or initiates no other" with ", the insurer does not initiate any"

Page 2, line 23, after "activity" insert a comma

Page 2, line 24, after the semicolon insert "and"

Page 2, remove lines 25 and 26

Page 2, line 27, replace "5." with "d." and replace the first "a" with "the"

Page 2, line 28, replace "weather-related" with "hail-related or wind-related" and after "event" insert a comma

Page 2, line 29, after the first "maintain" insert "or repair" and after the second "maintain" insert "or repair"

Page 2, line 30, replace "; or" with a period

Page 3, replace lines 1 through 7 with:

"2. An insurer may not refuse to write and may not cancel a contract based on the occurrence of a single claim that has been closed without payment if there has not been consideration of any other applicable underwriting

factor, unless the claim indicates a change in the risk which results in a substantial increase in hazard. However, a single claim that has been closed without payment may be considered in a decision to refuse to write or a decision to cancel a contract if considered in combination with other claims, regardless of whether the other claims resulted in a payment.

3. Notwithstanding subsections 1 and 2, an insurer may refuse to write and may cancel a contract based on deceptive practices of the consumer or based on a known condition or use of the premises.

**26.1-25.2-04. Dispute resolution and error correction.** If it is determined through the dispute resolution process set forth under the federal Fair Credit Reporting Act [Pub. L. 90-321; 15 U.S.C. 1681i(a)(5)] that the claims history report used in connection with the underwriting or rating of a contract was incorrect or incomplete, and if the insurer received notice of such determination from the consumer reporting agency or from the consumer, within thirty days of receiving the notice the insurer shall reunderwrite and rerate the consumer. After reunderwriting and rerating the consumer under this section, the insurer shall make any necessary adjustments, consistent with the insurer's underwriting and rating guidelines pertaining to the contract. If an insurer determines the insured has overpaid premium, the insurer shall refund to the insured the amount of the overpayment calculated back to the shorter of either the last twelve months of coverage or the actual policy period."

Page 3, line 8, replace "personal" with "homeowner's" and replace "must" with "shall"

Page 3, line 9, replace "personal" with "homeowner's"

Page 3, line 10, replace "decline, cancel," with "take an adverse action"

Page 3, line 11, remove "nonrenew, or surcharge a policy"

Page 3, after line 12, insert:

**"26.1-25.2-06. Disclosure in home sale or exchange.**

1. When a sale or an exchange of a single-family dwelling occurs, the selling or exchanging owner shall disclose in writing to the buyer, and the buyer shall disclose to the buyer's homeowner's insurer, all homeowner's insurance claims:
  - a. That have occurred within the previous seven years; and
  - b. For which payment was made by an insurer to or on behalf of the insured.
2. The owner selling or exchanging a single-family dwelling is deemed in compliance with the disclosure requirements of subsection 1 if the owner or the owner's agent provides a claims history report to the buyer.

**26.1-25.2-07. Treatment of certain information.**

1. An insurer may not disclose or submit to any claims history report provider, that an inquiry regarding a contract was made to the insurer by a consumer.
2. A claims history report provider may not provide an insurer, an insurance producer, or any other person with a claims history report that discloses that an inquiry was made to an insurer by a consumer."

Renumber accordingly

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2186

Page 1, line 2, replace "personal" with "homeowner's"

Page 1, line 6, replace "applies to only personal" with "is limited in scope to homeowner's"

Page 1, line 7, replace "As used in" with "In" and after "chapter" insert ", unless the context otherwise requires"

Page 1, replace lines 8 through 12 with:

- "1. "Adverse action" means a denial, nonrenewal, or cancellation of; an increase in any charge for; or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any contract, existing or applied for, in connection with the underwriting of a contract.
2. "Claim" means a contract with an insurer by an insured or third party for the purpose of seeking payment.
3. "Claims history report" means information provided in conjunction with the underwriting or rating of a contract by a claims history report provider to an insurer, an insurance producer, or other authorized party regarding the claims history or loss experience of a consumer or property. The term includes a consumer report generated from a third-party vendor.
4. "Claims history report provider" means a person that regularly engages in the practice of assembling, collecting, or disseminating information regarding the individual claims history of a consumer or property for the primary purpose of providing such information to an insurer, an insurance producer, or other authorized party for underwriting or rating. The term does not include a government institution, an insurer, or an insurance producer or any employee or agent of any of these entities.
5. "Consumer" means an insured or an applicant for coverage under a contract, the claims history report or loss experience of which is used in the underwriting or rating of the contract.
6. "Contract" means a policy of homeowner's insurance."

Page 1, line 13, replace "2." with "7."

Page 1, after line 15, insert:

- "8. "Homeowner's insurance" has the same meaning as under section 26.1-52-02. For purposes of this definition, a dwelling includes a mobile home.
9. "Inquiry" means a written or an oral communication by an insured seeking information regarding coverage or policy provisions which does not notify the insurer of a loss, incident, or accident and which does not provide information indicating a substantial increase in the hazard insured against. An inquiry under this chapter may not be considered a claim under chapter 26.1-04."

Page 1, line 16, replace "3." with "10." and remove the colon

Page 1, line 17, replace "a. (1) A" with "a" and replace "who" with "that"

Page 1, line 21, replace "(2)" with "a."

Page 2, line 1, replace "(3)" with "b." and remove "also"

Page 2, line 6, replace "b." with "c."

Page 2, replace lines 12 through 15 with:

"11. "Insurer" means an insurance company authorized to do business in this state which offers coverage under a contract."

Page 2, line 16, after the second boldfaced period insert:

"1."

Page 2, line 17, replace "either personal" with "a contract:"

Page 2, remove line 18

Page 2, line 19, replace "1." with "a.", replace the first "into" with "regarding", and replace the second "into" with "regarding"

Page 2, line 21, replace "2." with "b.", replace "if" with "for which", and replace "files no" with "does not"

Page 2, line 22, replace "3." with "c.", after the first "claim" insert a comma, replace "conducts no" with "does not conduct an", replace "a" with "the", and replace "or initiates no other" with ", the insurer does not initiate any"

Page 2, line 23, after "activity" insert a comma

Page 2, line 24, after the semicolon insert "and"

Page 2, remove lines 25 and 26

Page 2, line 27, replace "5." with "d." and replace the first "a" with "the"

Page 2, line 28, replace "weather-related" with "hail-related or wind-related" and after "event" insert a comma

Page 2, line 29, after the first "maintain" insert "or repair" and after the second "maintain" insert "or repair"

Page 2, line 30, replace "; or" with a period

Page 3, replace lines 1 through 7 with:

"2. An insurer may not refuse to write and may not cancel a contract based on the occurrence of a single claim that has been closed without payment if there has not been consideration of any other applicable underwriting factor, unless the claim indicates a change in the risk which results in a substantial increase in hazard. However, a single claim that has been

closed without payment may be considered in a decision to refuse to write or a decision to cancel a contract if considered in combination with other claims, regardless of whether the other claims resulted in a payment.

3. Notwithstanding subsections 1 and 2, an insurer may refuse to write and may cancel a contract based on deceptive practices of the consumer or based on a known condition or use of the premises.

**26.1-25.2-04. Dispute resolution and error correction.** If it is determined through the dispute resolution process set forth under the federal Fair Credit Reporting Act [Pub. L. 90-321; 15 U.S.C. 1681i(a)(5)] that the claims history report used in connection with the underwriting or rating of a contract was incorrect or incomplete, and if the insurer received notice of such determination from the consumer reporting agency or from the consumer, within thirty days of receiving the notice the insurer shall reunderwrite and rerate the consumer. After reunderwriting and rerating the consumer under this section, the insurer shall make any necessary adjustments, consistent with the insurer's underwriting and rating guidelines pertaining to the contract. If an insurer determines the insured has overpaid premium, the insurer shall refund to the insured the amount of the overpayment calculated back to the shorter of either the last twelve months of coverage or the actual policy period."

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**"26.1-25.2-06. Disclosure in home sale or exchange.**

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  - a. That have occurred within the previous seven years; and
  - b. For which payment was made by an insurer to or on behalf of the insured.
2. The owner selling or exchanging a single-family dwelling is deemed in compliance with the disclosure requirements of subsection 1 if the owner or the owner's agent provides a claims history report to the buyer.

**26.1-25.2-07. Treatment of certain information.**

1. An insurer may not disclose or submit to any claims history report provider, that an inquiry regarding a contract was made to the insurer by a consumer.
2. A claims history report provider may not provide an insurer, an insurance producer, or any other person with a claims history report that discloses that an inquiry was made to an insurer by a consumer."

Renumber accordingly

*Podman provided*  
March 8, 2005

**PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2186**

Page 1, remove lines 8 through 12

Page 1, line 13, replace "2" with "1"

Page 1, line 16, replace "3" with "2"

Page 2, line 12, replace "4" with "3"

Page 2, remove line 15

Page 2, line 27, replace "if a claim is the insured's first claim resulting from a" with "resulting from wind or hail if the insured had no previous wind or hail claim on that property within the previous five years regardless of the insurer"

Page 2, line 28, remove "weather-related event"

Page 3, line 7, replace "mitigate" with "repair"

Renumber accordingly

Date: 3-22-05

Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2186

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

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

Action Taken Adopt Poolman Amendments

Motion Made By Rep. Kasper Seconded By Rep. Nottestad

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) 13 No 0

Absent (1) Rep. Boe voice vote

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

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

Date: 3-22-05  
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2186

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

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

Action Taken Do Pass As Amended

Motion Made By Rep. Kasper Seconded By Rep. Ekstrom

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman		X	Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	A	
Rep. D. Clark		X	Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth		X			
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 10 No 3

Absent (1) Rep. Boe

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

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

Date: 3-22-05  
Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2186

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

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

Action Taken Reconsider Actions

Motion Made By Rep. Ekstrom Seconded By Rep. Nottestad

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigasaa					

Total (Yes) 12 No 1

Absent (1) Rep. Boe

Floor Assignment Voice vote

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

March 22, 2005

VR  
3/22/05

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2186

Page 1, remove lines 8 through 12

Page 1, line 13, replace "2." with "1."

Page 1, line 16, replace "3." with "2."

Page 2, line 12, replace "4." with "3."

Page 2, remove line 15

Page 2, line 27, replace "if a claim is the insured's first claim resulting from a" with "resulting from wind or hail if the insured had no previous wind or hail claim on that property within the previous five years regardless of the insurer"

Page 2, line 28, remove "weather-related event"

Page 3, line 7, replace "mitigate" with "repair"

Page 3, line 9, after "writing" insert "or in the same medium as the application"

Renumber accordingly

Date: 3-22-06  
Roll Call Vote #: 4

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2186

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

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

Action Taken further amend

Motion Made By Rep. Ekstrom Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigesaa					

Total (Yes) 12 No 1

Absent (1) Rep. Boe

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

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

Date: 3-22-05  
 Roll Call Vote #: 5

**2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2186**

House INDUSTRY, BUSINESS AND LABOR Committee

Check here for Conference Committee

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

Action Taken Do Pass As Amended

Motion Made By Rep. Kasper Seconded By Rep. Thorpe

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman		X	Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	A	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth		X			
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 11 No 2

Absent (1) Rep. Boe

Floor Assignment Rep. Dosch

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

**REPORT OF STANDING COMMITTEE**

**SB 2186, as engrossed: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2186 was placed on the Sixth order on the calendar.**

Page 1, remove lines 8 through 12

Page 1, line 13, replace "2." with "1."

Page 1, line 16, replace "3." with "2."

Page 2, line 12, replace "4." with "3."

Page 2, remove line 15

Page 2, line 27, replace "if a claim is the insured's first claim resulting from a" with "resulting from wind or hail if the insured had no previous wind or hail claim on that property within the previous five years regardless of the insurer"

Page 2, line 28, remove "weather-related event"

Page 3, line 7, replace "mitigate" with "repair"

Page 3, line 9, after "writing" insert "or in the same medium as the application"

Renumber accordingly

2005 TESTIMONY

SB 2186

SENATE BILL NO. 2186

**Presented by:** Jim Poolman  
Commissioner  
North Dakota Insurance Department

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

**Date:** February 7, 2005

TESTIMONY

Mr. Chairman and members of the committee:

My name is Jim Poolman. I am the Commissioner of the North Dakota Insurance Department.

Several years ago an issue came to my attention as a result of consumer calls to our Department. The issue is the use of personal loss history information by the insurance industry in the underwriting and rating of insurance policies.

In the fall of 2003 we held a public hearing to gather more information on the issue.

Senate Bill No. 2186 creates a new chapter to address the use of personal loss history information in the underwriting and rating of insurance policies.

By way of background, beginning sometime in the early 1980s, the insurance industry created a way to gather claims information on individuals, vehicles and properties. Databases were established to collect this claims information. The two more common ones are CLUE (Comprehensive Loss Underwriting Examination) owned by Choicepoint and A Plus owned by ISO (Insurance Services Office).

Generally each company submits claims information on individuals, vehicles and properties to a central database. If a person applies for auto or homeowner coverage, the new insurance company can get a report from the database of all past claims by individual, vehicle or property.

This process in and of itself is not of concern to me, as I respect the insurance companies' right to evaluate risk. However, in the course of my research into this issue, I have discovered more than one instance of what I consider to be unfair and illogical treatment.

This bill provides some limitations on the insurance industry when using this information.

Let me give you a couple of examples of complaints that we have heard.

First, a policyholder calls their insurance company to inquire about the coverage or the deductible on their homeowners policy. In some cases the insurance companies have reported this inquiry as a claim to the database. Some companies have counted this inquiry as a claim when underwriting a new applicant.

Second, an individual purchases a new home and goes to the agent to purchase insurance prior to the closing. The agent binds coverage. However, within a short time after the closing the insurance company notifies the buyer that during the 60-day period allowed for underwriting, the company discovered unfavorable claims information and will not continue coverage. The individual then has a difficult time locating another company to write the property coverage.

Third, a policyholder calls his agent to report that there has been a hail storm but that he does not know for sure whether there is damage or not. An adjustor inspects the property but does not find any significant damage. This is reported to the database as a claim.

This bill attempts to address the problems caused by company practices described above and others.

Attached you will find a section-by-section detailed description of the bill.

I will be happy to answer any questions you might have.

**SENATE BILL NO. 2186**  
**SECTION-BY-SECTION DETAILED DESCRIPTION**

Section 1, page 1, line 6 – Notes that this bill only pertains to personal insurance.

Section 1, page 1, lines 7-25 and page 2, lines 1-13 – Defines terms used in this chapter.

Section 1, page 2, lines 14-31 and page 3, lines 1-3 – Prohibits certain insurance company activities when surcharging, declining to write, nonrenewing or canceling a policy or binder. The prohibition extends to the reporting of the activity to an insurance support organization or consumer reporting agency for other companies to use. The items listed are:

1. A call to your company to inquire about coverage or deductible.
2. A call to your company or agent regarding coverage for a potential loss but no claim is made.
3. A claim in which the company does not investigate or does nothing further.
4. A claim in which the company makes no payment.
5. A claim that is pending (has not yet been resolved).
6. A claim for the repair of a rock chip to the windshield (window replacements can be reported).
7. The first weather claim you make unless your failure to maintain property contributed to the loss.
8. A claim over five years old unless your failure to maintain the property contributed to the loss.

Section 1, page 3, lines 4-6 – Prohibits a company from refusing to insure a property (homeowners) if the refusal is based solely on the loss history of the previous owner of the property.

Section 1, page 3, lines 7-11 – Requires insurance companies to file their underwriting eligibility guidelines for personal insurance with the Commissioner and treats underwriting guidelines as trade secrets.

Section 1, page 3, lines 12-16 – Requires insurance companies to inform an applicant in writing at the time of application that the company will consider the insured's claim history in determining whether to decline, cancel, nonrenew or surcharge and that the company will report claims to an insurance support organization.

SENATE BILL NO. 2186

A BILL for an Act to create and enact chapter 26.1-25.2 of the North Dakota Century Code, relating to personal insurance loss history information.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 26.1-25.2 of the North Dakota Century Code is created and enacted as follows:

26.1-25.2-01. Scope. This chapter applies to only personal insurance.

26.1-25.2-02. Definitions. As used in this chapter:

1. "Consumer reporting agency" means any person who for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling from institutions, other than insurance institutions, information on consumers for the purpose of furnishing a consumer report to a third party.
2. "Deceptive practices" means any misstatement or omission of any material fact, or submission of a false statement, in light of the circumstances under which it was made, by a person acting with the intent to defraud in filing an insurance claim.
2. 3. "Insurance support organization" means:
  - a. (1) A person who regularly engages, in whole or in part, in the practice of assembling or collecting information about an individual for the primary purpose of providing the

information to an insurance institution or insurance producer for an insurance transaction.

(2) The term includes the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction.

(3) The term also includes the collection of personal information from an insurance institution, insurance producer, or insurance support organization for the purpose of detecting or preventing fraud, material misrepresentation, or material nondisclosure in connection with insurance underwriting or insurance claim activity.

b. The following persons are not insurance support organizations:

- (1) Insurance producers.
- (2) Government institutions.
- (3) Insurance institutions.
- (4) Medical care institutions.
- (5) Medical professionals.

~~3. "Natural phenomena-related event" means a weather or natural event, commonly referred to as "an act of God", whether classified as an emergency by a federal or state authority.~~

4. 3. "Personal insurance" means private passenger automobile, homeowner, motorcycle, mobile homeowner, and ~~noneommercial~~ owner occupied

dwelling fire insurance policies. ~~A personal insurance policy must be individually underwritten for personal, family, or household use.~~

4. "Weather-related event" means wind or hail.

**26.1-25.2-03. Prohibited claims usage.** An insurer may not consider the following events for purposes of surcharging, declining, nonrenewing, or canceling either personal insurance coverage or a binder for personal insurance coverage. ~~The insurer or its agent may not report these events to a consumer reporting agency or insurance support organization.~~ The events include:

1. An insured's inquiry into the type or level of coverage or an inquiry into whether a policy will cover a loss;
2. An insured's inquiry regarding coverage for a loss if the insured files no claim;
3. A claim if the insurer conducts no investigation of a claim or initiates no other claim activity and the claim does not involve deceptive practices on the part of the insured;
4. A claim if the insurer makes no payment to or on behalf of the insured and the claim does not involve deceptive practices on the part of the insured;
- ~~5. A claim if a claim is pending;~~
- ~~6. A claim if a claim is for the repair of a windshield, although a claim for windshield replacement may be reported;~~
7. 5. A first party property claim if a claim is the insured's first claim resulting from a ~~natural phenomena~~ weather-related event unless the insurer can

- provide evidence that the insured unreasonably failed to maintain the property and the failure to maintain the property contributed to the loss; or
8. 6. A claim if the claim is over five seven years old, unless the insurer can provide evidence that the insured unreasonably failed to maintain the property and the failure to maintain the property contributed to the loss.

**26.1-25.2-04. Prohibited use of prior owner's history.** An insurer may not decline to insure a property not previously owned by an applicant based solely upon the loss history of a previous owner of the property, unless the insurer can provide evidence that the previous owner did not mitigate the damage.

~~**26.1-25.2-05. Eligibility guidelines to be filed.**~~

- ~~1. An insurer must file its underwriting eligibility guidelines for writing personal insurance with the commissioner.~~
- ~~2. A filing relating to underwriting eligibility guidelines for writing personal insurance is considered a trade secret under chapter 47-25.1.~~

~~**26.1-25.2-06—26.1-25.2-05. Disclosure requirements.**~~ An insurer writing personal insurance must inform the applicant in writing at the time of an application for personal insurance that the insurer will consider the insured's claims history in determining whether to decline, cancel, nonrenew, or surcharge a policy and that a claim incurred by the insured will be reported to an insurance support organization.

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February 7, 2005

Testimony on SB 2186

*Same given to House*

To: Senate Industry, Business and Labor Committee

From: Lavata Becker, Broker Associate  
Oaktree REALTORS®, Bismarck, ND

Chairman Mutch and members of the Senate IBL Committee:

My name is Lavata Becker and I am a licensed Broker Associate with Oaktree REALTORS® in Bismarck. I am also a member of the ND Association of REALTORS® Political Affairs committee.

We support this legislation as we feel this bill including the proposed amendment will serve the consumer well.

Here is an example of problems that our homebuyers have encountered.

A homeowner had some hail damage after a storm. An adjuster estimated the repairs to be \$1,200. Since the homeowner had a \$1,000 deductible, he paid for all the repair and fixed the problem himself. The insurance company in this case reported this loss history to the central data bank. A short while later, the homeowner finds his insurance rate is increased or canceled and he didn't even file a claim! Plus, after the house is sold and the new owner's insurance company noticed the so-called loss in the CLUE report and the history was used as part of the insurance company's underwriting policy. Remember, in this example, no claim was ever filed and the homeowner only asked for information.

We and our clients feel it is not fair to increase insurance rates based on a loss history when no claim was ever filed or paid by the insurance company.

The bill, as we understand, fixes the problem and that is why we are asking for your support on SB 2186.



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Shelly Zach, GRI

#### Fargo/Moorhead:

Dave Lanpher, ABR, CRS, GRI, RMM, QSC

Steve Lunde, CRS, GRI

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Randy Schwartz

#### Grand Forks:

Skip Greenberg, ABR, CRB, CRS, GRI

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#### Jamestown:

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#### Minot:

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#### Williston:

Arlene Hickel, CRS, GRI

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Jill Beck

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Moni Krantz

February 7, 2005

Testimony on SB 2186

To: Senate Industry, Business and Labor Committee

From: Vicki Roller  
Logan Hill GMAC Real Estate, Bismarck, ND

Chairman Mutch and members of the Senate IBL Committee:

My name is Vicki Roller associated with Logan Hill GMAC Real Estate in Bismarck. I am a Past President of the Bismarck Mandan Board of REALTORS® and the Vice Chair of the North Dakota Association of REALTORS® Political Affairs committee.

We support this legislation as it solves some issues that many of our clients have encountered.

An example is this situation: A purchase of a home applies for homeowners insurance and receives what is called a binder. This binder is used as evidence of insurance at the closing of the sale. Three weeks later the new homeowner is notified that the policy will be canceled (or the rate increased in some cases) due to the high claim record from the previous owner.

The insured ought to have a better guarantee of insurance coverage. SB 2186 fixes the problem in my example under 26.1-25.2-04 where an insurance agency cannot hold insurance claims filed by the previous owner against the new buyer.

We urge your favorable consideration on SB 2186.



SOLD on North Dakota



# North Dakota Association of REALTORS®

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Moni Krantz

February 7, 2005  
Testimony on SB 2186

*Same  
given to  
House*

To: Senate Industry, Business and Labor Committee

From: Claus Lembke, Executive Vice President  
North Dakota Association of REALTORS®

Chairman Mutch and members of the Senate IBL Committee:

My name is Claus Lembke. I represent the North Dakota Association of REALTORS® (NDAR). We are a state-wide Trade Association with over 1200 members represented by eight local boards of REALTORS®.

We are supporting SB 2186 and we applaud Commissioner Poolman and the Insurance industry for working together with us to better serve the consumers.

Many of our members' clients and customers experience some problems with homeowners insurance and many of the problems were caused by irregular reporting of loss records to a central depository that we refer to as CLUE reports.

With me today are two REALTORS® who would like to share with your committee some of the insurance issues that we have encountered due to inconsistent CLUE reports. They are Lavata Becker and Vicki Roller.



February 7, 2005

**TESTIMONY OF PATRICK WARD IN OPPOSITION OF SB 2186**

My name is Patrick Ward. I am a partner in the law firm of Zuger Kirmis & Smith here in Bismarck. I represent PCI. I am here to testify in opposition to SB 2186.

SB 2186 is an attempt to regulate the use of information from loss history reports, which are reports obtained by insurance companies before writing a home owners risk. The bill addresses problems not really existing in North Dakota, it is not necessary for North Dakota at this time, and the bill itself is over broad, overreaching, and misguided. You have heard from a number of individuals in the insurance industry in opposition to the bill with their specific problems with this bill. The bill in its present condition should be killed. If you are considering amendments, I would offer substantial amendments.

However, you should also be advised that there is presently an NCOIL or National Conference of Insurance Legislators model bill on claims history reports which is much more clearly drafted and much more well thought out. Significant differences between SB 2186 and the NCOIL model are that the NCOIL bill is strictly limited to homeowners insurance, which our bill should also be. It contains a definition of an inquiry and provides that an inquiry, as defined, shall not be considered a claim. It provides that a claim is contact with an insurer by an insured or third party for the purpose of seeking payment.

It provides the insurer a limited time period in which to use claims history information in underwriting. It provides that nothing in the act shall be construed to prohibit an insurer from declining, canceling, or otherwise terminating a contract due to fraudulent acts of the consumer.

Another important provision of this bill is it addresses directly the real estate transaction. It provides that in a sale or exchange of a single family dwelling, the seller shall disclose in writing to the buyer, and the buyer shall disclose to the buyer's homeowners insurer, all homeowners insurance claims that have occurred within the previous five years, and for which payment was made by an insurer to or on behalf of the insured. A built in way to achieve this requirement is for the seller to simply provide a disclosure report on the property from the seller to the buyer.

With respect to inquiries, it provides that an insurer cannot use an inquiry unless such inquiry indicates "a change in the risk assumed which results in a substantial increase in the hazard."

Likewise, it provides an insurer may not refuse to write or shall not cancel a contract based on the occurrence of a single claim that has been closed without payment without consideration of any other applicable underwriting factor, unless

a claim that has been closed without payment indicates "a change in the risk assumed which results in a substantial increase in hazard."

I am attaching a copy of the NCOIL model bill to my testimony as something you might want to consider as an alternative.

**NATIONAL CONFERENCE OF INSURANCE LEGISLATORS**  
**Proposed Model Act Regarding the Use of**  
**Insurance Claims History Information for Homeowners Insurance**

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**Section 1. Short Title**

This Act may be called the *Model Act Regarding the Use of Insurance Claims History Information for Homeowners Insurance*.

**Section 2. Purpose**

The purpose of this Act is to regulate the use of claims history information for homeowners insurance and provide certain consumer protections with respect to the use of such claims histories.

**Section 3. Definitions**

- A. "Adverse Action" means a denial, nonrenewal, or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any contract, existing or applied for, in connection with the underwriting of a contract.
- B. "Claim" means contact with an insurer by an insured or third-party for the purpose of seeking payment.
- C. "Claims History Report" means information provided in conjunction to the underwriting or rating of a contract by a claims history report provider to an insurer, insurance producer, or other authorized party regarding the claims history or loss experience of natural persons or properties, including consumer reports generated from third party vendors.
- D. "Claims History Report Provider" means any person that regularly engages in the practice of assembling, collecting, or disseminating information regarding the individual claims history

of natural persons or properties for the primary purpose of providing such information to insurers, insurance producers, or other authorized parties for underwriting or rating. Government institutions, insurers, and insurance producers, and their employees or agents, shall not be considered "claims history report providers."

- E. "Consumer" means an insured or an applicant for homeowners insurance coverage whose claims history report or loss experience is used in the underwriting or rating of such contract .
- F. "Contract" means a policy of homeowners insurance written to cover residential homeowners, mobile homeowners, manufactured homeowners, condominium owners or renters coverage.
- G. "Inquiry" means a request for information regarding the terms, conditions, or coverages afforded under a homeowners insurance contract that does not result in a claim. An inquiry under the Act shall not be considered a "Claim" under [cite to state Unfair Claims Practices statute].
- H. "Insurer" means an insurance company, authorized to do business in this state that offers a contract of homeowners insurance.

#### **Section 4. Use of Claims History Reports**

- A. Failure of an insurer within [applicable state statutory underwriting period] days of issuing a contract to act upon the information contained in a claims history report, shall preclude the insurer from canceling a contract based on such information.
- B. Notwithstanding subsection A., an insurer may decline or cancel a contract based on the known condition or use of the premises.

Nothing in this Section shall be construed to prohibit an insurer from declining, canceling or otherwise terminating a contract due to fraudulent acts of the consumer.

#### **Section 5. Use of Inquiries and Claims Closed Without Payment**

- A. An insurer shall not refuse to write, cancel or nonrenew a contract based in whole or in part on inquiries made by any consumer to an insurer, unless such inquiry or inquiries indicates a change in the risk assumed which results in a substantial increase in hazard.
- B. An insurer may not refuse to write or shall not cancel a contract, based on the occurrence of a single claim that has been closed without payment without consideration of any other applicable underwriting factor, unless a claim that has been closed without payment indicates a change in the risk assumed which results in a substantial increase in hazard. A single claim that has been closed but not paid may be considered in a decision to refuse to write or cancel a contract when combined with other claims, whether or not such other claims resulted in a payment.

- C. Notwithstanding subsections A. and B., an insurer may refuse to write, or may cancel contract based on the known condition or use of the premises or based on fraudulent acts of the consumer.

#### **Section 6. Dispute Resolution and Error Correction**

If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the claims history report of a consumer or property, used in connection with the underwriting or rating of a contract, was incorrect or incomplete and if the insurer receives notice of such determination from either the consumer reporting agency or from the consumer, the insurer shall re-underwrite and re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the consumer, the insurer shall make any adjustments necessary, consistent with its underwriting and rating guidelines pertaining to such contract. If an insurer determines that the consumer has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

#### **Section 7. Disclosure to Insurance Consumers**

- A. If an insurer uses claims history in underwriting or rating, the insurer shall disclose that it may obtain claims history in connection with the contract. An insurer shall be deemed to have complied with this section if it informs consumers that it considers claims histories for underwriting or rating or both, whether or not it reviews the claims history of the applicant or property or both, and whether it reports claims to claims history report providers. Such notices may be oral, written, or electronic. The insurer need not provide the disclosure notice or notices required under this section to any insured upon renewal.
- B. If an insurer takes an adverse action on a contract based upon information obtained from a claims history report provider, the insurer must meet the notice requirements of this subsection. Such insurer shall provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act.

#### **Section 8. Disclosure to Homebuyers**

- A. Whenever a sale or exchange of a single family dwelling occurs, the seller shall disclose in writing to the buyer, and the buyer shall disclose to the buyer's homeowners insurer, all homeowners insurance claims:
1. That have occurred within the previous five (5) years; and
  2. For which payment was made by an insurer to or on behalf of the insured.
- B. A seller of a single family dwelling shall be deemed in compliance with the disclosure requirements of subsection (A) if the seller or its agent provides a claims history report to the buyer.

C. The following transfers are exempt from the disclosure requirements of subsection (A):

1. Foreclosure sales;
2. Court-ordered transfers;
3. Transfers by a fiduciary in the administration of a probate estate or a testamentary trust;
4. Transfers to a spouse or to a person or persons in the lineal line of consanguinity;
5. Transfers resulting from a judgment of dissolution of marriage or of legal separation or from a property settlement agreement incidental to such a judgment;
6. Transfers from one co-owner to another; and
7. Transfers to or from any governmental entity.

D. This section does not impose any additional requirements upon the insurer.

#### **Section 9. Treatment of Certain Information**

- A. An insurer shall not disclose or submit to any claims history report provider or any other consumer reporting agency that an inquiry regarding a contract was made to the insurer by a consumer.
- B. A claims history report provider shall not provide an insurer, insurance producer, or any other person with a claims history report that discloses that an inquiry was made to an insurer by a consumer.

#### **Section 10. Severability**

If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid, the remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected and shall remain in full force and effect.

#### **Section 11. Effective Date**

This Act shall take effect on *[insert date]*, applying to any contract either written to be effective or renewed on or after 12 months from the effective date of the bill.

## TESTIMONY OF DALE HAAKE IN OPPOSITION TO SB 2186

I represent Nodak Mutual Insurance Company.

It is our opinion that, not only is SB 2186 an unnecessary bill, but that it is actually counterproductive to the actuarial work of insurance companies, causing a degrading of the ability of a company to reduce or hold firm the rates of those customers with the least number of claims, and apply the proper rate to those customers who are actually having the losses.

26.1-25.2-03 Prohibited claims usage, found on page 3.

Item 1. I know of know carrier who punishes a customer for inquiring about the coverages their policy provides. This is part of the education of the customer and goes to customer service. I believe a problem is perceived to exist where there is no problem.

Item 2. If a claim is not set up, upon what basis can a carrier charge the customer more? This is the customer that did NOT file a claim. This is the customer the carrier wishes to retain, and does so with preferred rates.

Item 3. As a 22 year claims professional, I find it hard to believe that the frequency of a situation such as this is sufficient enough to warrant legislation. The likelihood of a claim being set up and NO CLAIMS ACTIVITY taking place is very low. Again, I believe a problem is perceived where there is no problem.

Item 4. This item clearly is not written with an understanding of all the work which can go into the investigation and handling of a claim, yet results in no payment being made. I believe the authors of this bill were focused on First Party Property losses, yet, with this wording, they have included every conceivable type of claim which can arise under personal lines insurance, including all forms of liability claims. It is not at all uncommon for a carrier to expend huge amounts of effort and money in the investigation, evaluation, and often times the defense of a claim, to have it end with no payment being made. However, to ignore the fact that the carrier expended these resources is not reasonable, nor does it provide any where near a clear picture of the claim history of the insured. While I feel the authors of this bill had in mind a simple claim of minor damage to a few shingles, they have inadvertently created a major hole in the proper usage of claims history for proper underwriting and rating.

Item 5. The exclusion of the first claim is nothing more then legislating poor

underwriting and rating practices. This first claim is every bit as much a part of the claims history of an insured as is the 3rd or 4th claim. To disallow the usage means that those insured's who had no loss and filed no claims will see the same rate adjustments as do those who sustained loss and received compensation for their damages. To be able to make the distinction between these two groups is exactly what underwriting and rating is all about.

There is a further weakness in the wording of this item. Exactly what is a "first claim"? Is it the first claim as owner of the property? Or is it the first claim the owner filed with this particular carrier? If it is as owner, what if the property has been owned by the same person for forty years? If it is the first with this carrier, does this not allow a person to switch carriers following each weather related loss, perhaps having a new loss each year, yet never being surcharged by any carrier for the loss history? I believe that each loss is part of the loss history of the insured, and must be viewed as such.

Item 6. Very few carriers use loss history that goes this far back. Further more, the older the loss, the less value it has in the prediction of future losses. I see this regulation as of little value and little consequence, and therefore not needed.

We feel that the insurance market in North Dakota is a healthy and competitive market, not in need of excessive controls on rating and surcharges. There is ample opportunity for a consumer to find alternate insurance, should they feel they are not being treated fairly by their existing carrier. Further more, should a prospective customer feel the rates offered them are not appropriate, there are many alternate companies available from whom they can receive competitive quotes.

It is our feelings that this bill is not warranted, and would actually work adverse effects upon those North Dakota consumers who have good loss histories by forcing the combining of the histories of those who have losses with those who do not.

We urge the committee to recommend that this bill not pass.

North Dakota State Senate  
Bismarck, North Dakota  
Monday, February 7, 2005  
SB 2186, The Use of Loss History Information  
Committee Testimony

Thank You Mr. Chairman and members of the Committee for the opportunity to provide comments on SB 2186. And let me also express appreciation for the work Commissioner Poolman has done in trying to address this issue. While we may disagree on this legislation, we look forward to trying to resolve the problem with him.

My name is Steve Schneider and I work for the American Insurance Association. We represent over 425 property and casualty insurance companies doing business throughout the country with many of them selling insurance here in North Dakota.

I'm here today to explain the problems we have with SB 2186 and ask that the bill be substantially changed and, if passed over to the House, that the possibility of further change on that side be left open pending the upcoming early March meeting of the National Conference of Insurance Legislators. We are hoping they will develop and adopt model legislation that will address the problem and most importantly provide a model bill that can be used throughout all of the states in an effort to preserve uniformity.

Loss information is absolutely critical and fundamental to being able to underwrite the insurance on property. Without that information, insurance isn't insurance and it becomes very difficult, if not impossible, to provide insurance coverage at a fair price for consumers.

This legislation poses several very difficult challenges for any insurer who wishes to insure property in North Dakota:

1. The bill applies to auto insurance as well as homeowners insurance, no other law that we know of does this and we are unclear just how this would ever work. This needs to be clarified. (Sec. 26.1-25.2-02 3)
2. The bill prevents any loss related information from being used to "surcharge" coverage, and it implies that a loss history report must be reviewed before "binding" coverage. These combined provisions are very onerous. No other states prohibit "surcharges" for losses, and only one state, Arizona, has enacted a similar "binding" provision, with the result that one major carrier withdrew from the market, thus depriving customers of an additional choice of insurance. (Sec. 26.1-25.2-03)
3. We have no objections whatsoever to answering customers' questions about their coverage, what is covered, what is the deductible, what will the cost be if I make a change etc. But when a loss has occurred, it is important that this information be

known and not hidden. Knowing about losses is the basis of insurance, without that information, the policy cannot be priced according to the risk it presents and future property owners may be deprived of legitimate information about the property they would like to purchase. (Sec. 26.1-25.2-03)

4. It is particularly important that weather related claims not be hidden. And section (5) is very confusing about just what is an "insured's first claim"? Does this mean the first claim ever filed on the property, the first filed by this person, the first ever received by the insurer....and how would anyone ever know that it is a "first claim" if it is never reported? This is a serious flaw and demonstrates the kind of problems that are caused by hiding this kind of important information. (Sec. 26.1-25.2-03)
5. The legislation does include disclosure requirements which are important and will be beneficial to the customer. We support this section and ask that the Department of Insurance be given the authority to decide what should be in that notice. (Sec. 26.1-25.2-05)

Thank you.

I would be glad to try and answer any questions you may have.

**SENATE BILL NO. 2186**

**Presented by:** Jim Poolman  
Commissioner  
North Dakota Insurance Department

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

**Date:** March 8, 2005

**TESTIMONY**

Mr. Chairman and members of the committee:

My name is Jim Poolman. I am the Commissioner of the North Dakota Insurance Department.

Several years ago an issue came to my attention as a result of consumer calls to our Department. The issue concerns the use of personal loss history information by the insurance industry in the underwriting and rating of insurance policies.

In the fall of 2003, the Department held a public hearing to gather more information on the issue.

Engrossed Senate Bill No. 2186 would create a new chapter designed to address the use of personal loss history information in the underwriting and rating of insurance policies.

By way of background, beginning sometime in the early 1980s the insurance industry created a way to gather claims information on individuals, vehicles and properties. Databases were established to collect and store this claims information. The two more

common ones are CLUE (Comprehensive Loss Underwriting Examination) owned by Choicepoint and A Plus owned by ISO (Insurance Services Office).

Generally each company submits claims information on individual insureds, vehicles and properties to a central database. If that person applies for auto or homeowner coverage with any company, the new insurance company can get a report from the database of all past claims made by the individual and made on a vehicle or property.

This process in and of itself is not of concern to me, as I respect the insurance company's right to evaluate risk. However, in the course of my research into this issue, I have discovered more than one instance of what I consider to be unfair and illogical treatment.

This bill provides some limitations on the insurance industry when using this information.

Let me give you a couple of examples of complaints that we have heard.

First, a policyholder calls their insurance company to inquire about the coverage or the deductible on their homeowners policy. In some cases the insurance companies have reported this inquiry as a claim to the database. Some companies have counted this inquiry as a claim when underwriting a new applicant.

Second, an individual purchases a new home, goes to the agent to purchase insurance prior to the closing. The agent binds coverage. However, within a short time after the closing the insurance company notifies the buyer that during the 60-day period allowed for underwriting, the company discovered unfavorable claims information and will not continue coverage. The individual then has a difficult time locating another company to write the property coverage.

Third, a policyholder calls his agent to report that there has been a hail storm but that he does not know for sure whether there is damage or not. An adjustor inspects the property but does not find any significant damage. This is reported to the database as a claim.

This bill attempts to address the problems caused by company practices described above, and others.

The Senate passed the bill with amendments. The amendments were those the Department introduced following discussions with industry prior to the Senate hearing. A good faith effort was made to respond to the concerns raised by the industry. We did not, however, agree on all points.

The bill before you represents our best effort to address the need for consumer protections and the concerns addressed by the industry.

Attached you will find a section-by-section detailed description of the bill.

I will be happy to answer any questions you might have.

**ENGROSSED SENATE BILL NO. 2186**  
**SECTION-BY-SECTION DETAILED DESCRIPTION**

Section 1, page 1 line 6 – Notes that this bill only pertains to personal insurance.

Section 1, page 1, lines 7-23 and page 2, lines 1-15 – Defines terms used in this chapter.

Section 1, page 2, lines 16-30 and page 3, lines 1-3 – Prohibits certain activities from being used by an insurance company to surcharge, decline to write, nonrenew or cancel a policy or binder. The items listed are:

1. A call to your company to inquire about coverage or deductible.
2. A call to your company or agent regarding coverage for a potential loss but no claim is made.
3. A claim in which the company does not investigate or does nothing further with the claim unless deceptive practices were involved.
4. A claim in which the company makes no payment unless deceptive practices were involved.
5. The first weather claim you make unless your failure to maintain property contributed to the loss.
6. A claim over 10 years old unless your failure to maintain the property contributed to the loss.

Section 1, page 3, lines 4-7 – Prohibits a company from refusing to insure a property (homeowners) if the refusal is based solely on the loss history of the previous owner of the property unless the company can show the previous owner did not fix the damage.

Section 1, page 3, lines 8-12 – Requires insurance companies to inform an applicant in writing at the time of application that the company will consider the insured's claim history in determining whether to decline, cancel, nonrenew or surcharge, and that the company will report claims to an insurance support organization (claims database).

March 8, 2005  
House IBL Committee

**TESTIMONY OF PATRICK WARD IN OPPOSITION OF SB 2186**

Chairman Keiser and Members of the Committee.

My name is Patrick Ward. I am a partner in the law firm of Zuger Kirmis & Smith here in Bismarck. I represent State Farm Insurance Company. I am here to testify in opposition to Engrossed SB 2186.

SB 2186 is an attempt to regulate the use of information from loss history reports, which are reports obtained by insurance companies before writing a home owners risk. The bill addresses problems not really existing in North Dakota, it is not necessary for North Dakota at this time, and the bill itself is over broad, overreaching, and misguided. You have heard from a number of individuals in the insurance industry in opposition to the bill with their specific problems with this bill. The bill in its present condition should be killed. If you are considering amendments, I would offer substantial amendments.

There is presently an NCOIL, or National Conference of Insurance Legislators, proposed model bill on claims history reports which is already much more clearly drafted and well thought out. Significant differences between SB 2186 and the NCOIL model are that the NCOIL bill is strictly limited to homeowners insurance, which our bill should also be. It contains a clear definition of an inquiry and

provides that an inquiry, as defined, shall not be considered a claim. It provides that a claim is contact with an insurer by an insured or third party for the purpose of seeking payment.

It provides the insurer a limited time period in which to use claims history information in underwriting. It provides that nothing in the act shall be construed to prohibit an insurer from declining, canceling, or otherwise terminating a contract due to fraudulent acts of the consumer.

Another important advantage of this NCOIL bill is that it addresses directly the real estate transaction at Section 8 on page 3. It provides that in a sale or exchange of a single family dwelling, the seller shall disclose in writing to the buyer, and the buyer shall disclose to the buyer's homeowners insurer, all homeowners insurance claims that have occurred within the previous five years, and for which payment was made by an insurer to or on behalf of the insured. A built in way to achieve this requirement is for the seller to simply provide a disclosure report on the property from the seller to the buyer. Maybe this disclosure is the only provision you should enact at this time.

With respect to inquiries, the NCOIL bill provides that an insurer cannot use an inquiry unless such inquiry indicates "a change in the risk assumed which results in a substantial increase in the hazard."

Likewise, it provides an insurer may not refuse to write or shall not cancel a contract based on the occurrence of a single claim that has been closed without payment without consideration of any other applicable underwriting factor, unless a claim that has been closed without payment indicates "a change in the risk assumed which results in a substantial increase in hazard."

I am attaching a copy of the NCOIL proposed model bill to my testimony as something you might want to consider as an alternative.

We urge a Do Not Pass on Engrossed SB 2186 or if you prefer, you can fix it by a Hog House to the NCOIL model, or some part thereof.

**TESTIMONY OF DENNIS PRINDIVILLE**  
**IN OPPOSITION TO SENATE BILL 2186**

My name is Dennis Prindiville, and I am the President of Dakota Fire Insurance Company here in Bismarck. We are a domestic property/casualty company that is owned by EMC Insurance Companies. We write a total of \$27 million in premium in North Dakota, and an additional \$41 million in premium in South Dakota, Montana and Idaho. Of this volume, \$17 million is in personal lines in North Dakota, so any change in the regulation of this line is concerning to us.

I oppose this bill, as it erodes our underwriting ability. Loss history is the most useful data in estimating future loss frequency. It is the most basic and valuable tool an underwriter has when considering a new account. Insurance Departments have historically shied away from interfering with our underwriting process, as they realize the importance it plays in our account evaluation. None of the states we operate in have anything as restrictive as this bill. As a matter of fact, in California, the Insurance Commissioner had attempted to implement limitations through regulation that were less restrictive than this bill. On February 28<sup>th</sup> of this year an Appeals Court invalidated the regulations. The Court found that the legislature gave the Insurance Commissioner only limited authority to regulate underwriting practices and that authority does not extend to claim history.

I believe this bill will have more impact on our company and all companies domiciled in the state. We are the companies that stayed in the state and, more importantly, in the rural areas when a number of other companies left a few years ago. You have to realize that North Dakota represents less than .3 of 1% of all written premium in the United States. This small market share will not lure companies back into our state. Even if they do return, they would restrict themselves to our larger metropolitan areas. These same companies can write more volume in the Minneapolis/St. Paul metropolitan area than they could write in the entire state of North Dakota and at a cost that would be substantially less.

The Insurance Department cannot produce any statistically significant documentation that there is a problem. I reviewed our complaint log for the past 4 years and was unable to find a single complaint in regards to our use of loss histories in any of our states. I have never had as much as a phone call from an insured or applicant questioning our use of loss history.

Finally, if this bill passes, we will be forced to take away binding authority from all 380 of our agents who we have licensed in the state. This means they cannot bind coverage on an account until we have had time to review it. Currently they can bind coverage and submit the application to our office. Will this cause a major disruption in the market? I don't know. But it will create less competition which ultimately hurts the consumer. Our rural agents would be the most impacted, as they already have limited markets.

I urge a do not pass vote on Senate Bill 2186.

*Testimony in Opposition to Senate Bill No. 2186*  
*Joel Gilbertson, Vogel Law Firm*  
*On Behalf of the American Insurance Association*

I am Joel Gilbertson, with the Bismarck office of the Vogel Law Firm. I appear this morning on behalf of the American Insurance Association. AIA is a national trade association of over 435 property and casualty insurance companies doing business throughout the country.

AIA opposes the bill in its present form.

Loss information is absolutely critical and fundamental to being able to underwrite the insurance on property. Without that information, insurance isn't insurance and it becomes very difficult, if not impossible, to provide insurance coverage at a fair price for consumers.

This legislation poses several very difficult challenges for any insurer who wishes to insure property in North Dakota:

1. The bill applies to auto insurance as well as homeowners insurance. No other law that we know of does this and we are unclear just how this would ever work.
2. The bill prevents any loss relation information from being used to "surcharge" coverage, and implies that a loss history report must be reviewed before "binding" coverage. These combined provisions are very onerous. No other states prohibit "surcharges" for losses, and only one state, Arizona, has enacted a similar "binding" provision. The result of that provision has been that one major carrier withdrew from the market, thus depriving customers of an additional choice of insurance.
3. We have no objection whatsoever to answering customers' questions about their coverage, what is covered, what is the deductible and other similar questions. But when a loss has occurred, it is important that this information be known and not hidden. Knowing about losses is the basis of insurance. Without that information, the policy cannot be priced according to the risk it presents and future property owners may be deprived of legitimate information about the property they would like to purchase.

For these and other reasons, we support and request a DO NOT PASS recommendation on Senate Bill 2186.

*Joel Gilbertson*  
*March 8, 2005*  
*Before the House Industry, Business & Labor Committee*

SOLD on North Dakota



## North Dakota Association of REALTORS®

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March 8, 2005

Testimony on SB 2186

To: House Industry, Business and Labor Committee

From: Mary Splichal  
Logan Hill GMAC Real Estate, Bismarck, ND

Chairman Keiser and members of the House IBL Committee:

My name is Mary Splichal associated with Logan Hill GMAC Real Estate in Bismarck. I am a current committee member and Immediate Past Chair of the North Dakota Association of REALTORS® Political Affairs committee.

We support this legislation as it solves some issues that many of our clients have encountered.

An example is this situation: A purchase of a home applies for homeowners insurance and receives what is called a binder. This binder is used as evidence of insurance at the closing of the sale. Three weeks later the new homeowner is notified that the policy will be canceled (or the rate increased in some cases) due to the high claim record from the previous owner.

The insured ought to have a better guarantee of insurance coverage. SB 2186 fixes the problem in my example under 26.1-25.2-04 where an insurance agency cannot hold insurance claims filed by the previous owner against the new buyer.

We urge your favorable consideration on SB 2186.

