

**2017 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2267**

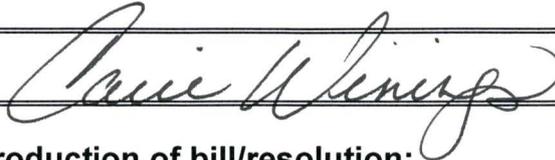
# 2017 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee  
Sheyenne River Room, State Capitol

SB 2267  
1/26/2017  
Job Number 27451

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A BILL for an Act to amend and reenact section 26.1-36-41 of the North Dakota Century Code, relating to the authority of the insurance commissioner to investigate health insurers.

## Minutes:

Attachments: 1

**Chairman Poolman:** Opened the hearing on SB 2267.

**Senator Casper, District 27:** Testified to introduce the bill as the prime sponsor. This bill was brought to me by a leader in our insurance industry in the state of North Dakota and the department. The insurers in the state will investigate insurance fraud. The insurance department needs access to that information and it is not easy for them to get access to that information without going through legal proceedings. It is information that we want our regulators to have access to so they can help make sure that our insurers are operating the way they should in the state of North Dakota. They will explain in further detail. To me it makes a lot of sense that we should not have that layer in between the people that are collecting the information and the people that need the information to do their job.

**(1:30) Jeff Ubben, Deputy Insurance Commissioner:** See Attachment #1 for testimony in support of and to explain the bill.

**(5:30) Senator Bekkedahl:** This section does not limit the authority of the commissioner; is there any reason you did not say that this section specifically grants the authority of the commissioner? One is a negative do not but the other one we are giving this authority. Maybe that fits into the context better.

**Jeff Ubben:** The reason I wrote it that way is because in my opinion the insurance commissioner has the authority to obtain the information under this section but I can understand how an insurance company would read it the other way. I wrote it to not be limited by the language of this section to obtain the information. I personally felt like we had the authority but I can understand how an insurance company could read it the other way and say that we don't.

**Senator Bekkedahl:** I accept that because you are going to be the authority on this not me. So, understanding that, referencing this section, not limiting the authority of the commissioner, is there another section in code that grants the authority?

**Jeff Ubben:** There is a general statute in the insurance code, 26.1-02-03, that gives the insurance commissioner the general authority to enquire into the activities of all of the insurance companies. This is a very specific statute, however, that says that it is confidential information in the hands of the insurer. The general rule of statutory construction is that the specific statute, which is what the bill is, trumps the general statute. They can make the argument that they don't because of the specific nature of this statute in SB 2267. It is kind of a lawyer's world and it is meant to clarify that nothing in this section limits our ability to obtain the information that we need to obtain.

**(8:20) Megan Houn, Blue Cross Blue Shield of North Dakota:** Testified in support of the bill. We are the entity that was involved in the situation. We wholeheartedly support this change in language. I am not an attorney but Jeff has gone multiple rounds with our attorneys over this issue. We will all be happy and confident in the language that was presented.

**(8:50) Chairman Poolman:** No further testimony. Closed the hearing on SB 2267.

**Senator Bekkedahl:** Moved a Do Pass.

**Senator Vedaa:** Seconded.

**Chairman Poolman:** It seems pretty common sense to me that if an insurance company wants to report a fraudulent healthcare provider they should be able to turn over the evidence they have to prove that fraud has occurred.

**A Roll Call Vote Was Taken: 5 yeas, 0 nays, 1 absent.**

**Motion Carried.**

**Senator Vedaa will carry the bill.**

1/26

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2267**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Bekkedahl Seconded By Vedaa

Senators	Yes	No	Senators	Yes	No
Chairman Poolman	✓		Senator Marcellais	✓	
Vice Chairman Davison	Ab				
Senator Bekkedahl	✓				
Senator Meyer	✓				
Senator Vedaa	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment Vedaa

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

**REPORT OF STANDING COMMITTEE**

**SB 2267: Government and Veterans Affairs Committee (Sen. Poolman, Chairman)**  
recommends **DO PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
SB 2267 was placed on the Eleventh order on the calendar.

**2017 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2267**

# 2017 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2267  
3/7/2017  
28789

- Subcommittee  
 Conference Committee



**Explanation or reason for introduction of bill/resolution:**

Authority of the insurance commissioner to investigate health insurers.

**Minutes:**

Attachment 1

**Chairman Keiser:** Opens the hearing of SB 2267.

**Senator Casper ~ District 27-Fargo:** This bill is the result of the insurance department investigating a large insurance fraud case. The department made a request to a domestic health insurance company for supporting information in regards to the investigation. Some of the information requested fell under section 26.1 – 36 – 41 of ND century code which makes information confidential in the hand of an insurance company. The department & this company agreed that there should be exceptions to law for the department to receive this information when they are investigating insurance fraud. That's what this bill does.

**Rep Ruby:** I understand if there was a question about it but if it's state law, we don't put it at the end of all our laws that gives such department to investigate whether or not they are following the law. Why is this extra enforcement authority?

**Sen Casper:** The instance with insurance fraud in regards to health care, we have the sensitivity. I defer that question.

**Chairman Keiser:** I suspect HIPAA will come into play.

**Sen Casper:** Yes.

**Jeff Uban ~ Deputy Insurance Commissioner & General Counsel for the ND Insurance Dept:** Attachment 1.

**6:15**

**Rep Ruby:** If the information fell under section 26.1 – 36 – 41 & is not subject to be disclosed, how did get the information though the subpoena?

**Uban:** We got it through a search warrant, which is different than a subpoena.

**Rep Ruby:** Did they initially wish to be cooperative but felt the law would not allow it?

**Uban:** They was exactly their concern. They were worried about the potential liability that could come to them from disclosing it to us & wanted in there they were protected as well.

**Rep Becker:** Do the HIPAA requirement now apply to you & to your office. Once you have this information, who does see this beyond your office?

**Uban:** We generally follow HIPAA, I don't know if we can be held to it but it's our policy to follow the provisions of HIPAA & also the state open records law. We would not be disclosing that information under the state's open records laws.

**Rep Dobervich:** You cited one situation in which you had to obtain a search warrant. You talked about how insurance is the 2<sup>nd</sup> most common crime. Are there other incidences where you were doing investigation & hasn't been able to obtain the information or a onetime situation?

**Uban:** This is a specific instance of it. We have other issues but we were able to work it out satisfactorily. This case, they steadfastly refused to provided. In my opinion, this is one case too many because if the insurance commissioner can't investigate one case of insurance fraud, that a big deal. Yes, it's one case but I don't want it to snowball.

**Chairman Keiser:** This deals with investigations of fraud, why isn't there a general section dealing with fraud for all lines of insurance? Why is it not general?

**Uban:** In the insurance code I found a unique document & it doesn't always say what we think it should say. We do have a general statue that says if we ask for something or information, they have to provide it to us. However, when you read that in conjunction with a more specific statue, the supreme court has said that the specific statue trumps a general. Now I'm powerless to get that information.

**Chairman Keiser:** You would think that in general it would make reference to health, life reinsurance, whatever you wanted to do in all other lines.

**Uban:** Agreed, thankfully the provision of this law are unique on how they make it confidential. I don't envision this occurring in another section of the code.

**Rep Boschee:** Earlier this session we defeated a bill for MEDICAID fraud. Why is our insurance department not able to regulate MEDICAID or MEDCARE fraud & we put that in the department whose responsible for the allocation of those funds?

**Uban:** I don't know if I have the answer on top of my head other than traditionally the Insurance Department hasn't regulated MEDICAID & the powers that come with regulating insurance fraud is not our area. I don't know the answer.

**Chairman Keiser:** Anyone else here to testify to support of SB2267, opposition, neutral position, closes the hearing. What are the wishes of the committee?

**Rep Ruby:** Moves a Do Pass.

**Rep Dobervich:** Second.

**Chairman Keiser:** Further discussion?

**Roll call was taken on SB 2267 for a Do Pass with 13 yes, 0 no, 1 absent & Vice Chairman Sukut is the carrier.**

Date: Mar 7, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2267

House \_\_\_\_\_ Industry, Business and Labor \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation

- Adopt Amendment
- Do Pass     Do Not Pass     Without Committee Recommendation
- As Amended     Rerefer to Appropriations
- Place on Consent Calendar
- Other Actions     Reconsider     \_\_\_\_\_

Motion Made By Rep Ruby    Seconded By Rep Dobervich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep Laning	x	
Vice Chairman Sukut	x		Rep Lefor	x	
Rep Beadle	x		Rep Louser	Ab	
Rep R Becker	x		Rep O'Brien	x	
Rep Bosch	x		Rep Ruby	x	
Rep C Johnson	x		Rep Boschee	x	
Rep Kasper	x		Rep Dobervich	x	

Total (Yes) 13    No 0

Absent 1

Floor Assignment Rep Sukut

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

**REPORT OF STANDING COMMITTEE**

**SB 2267: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
SB 2267 was placed on the Fourteenth order on the calendar.

2017 TESTIMONY

SB 2267

**SENATE BILL NO. 2267**

**Presented by:** Jeff Ubben  
Deputy Commissioner/General Counsel  
North Dakota Insurance Department

**Before:** Senate Government and Veterans Affairs Committee  
Senator Nicole Poolman, Chairman

**Date:** January 26, 2017

**TESTIMONY**

Good Morning Chairman Poolman and members of the committee. My name is Jeff Ubben and I am Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department.

Senate Bill No. 2267 was introduced to clarify that the Insurance Commissioner can access certain information in the possession of insurance companies that is made confidential by the provisions of Section 26.1-36-41 of the Century Code when the Commissioner is conducting an insurance fraud investigation. The need for this bill arose when one of the Insurance Department's investigators was investigating a large case of health care provider insurance fraud. The documents necessary to conduct this investigation were in the possession of Blue Cross Blue Shield of North Dakota ("BCBSND") and these documents fell under Section 26.1-36-41 of state law, which made most of the information sought in this case confidential and not subject to be disclosed or subject to subpoena. Without this information, as is the case with most cases of insurance fraud, the Insurance Department would not be able to proceed in conducting an investigation.

The Insurance Department does not believe this section of the law was intended to limit or completely take away the authority of the Insurance Commissioner to investigate and prosecute acts of insurance fraud. Rather, we believe the lack of clarification was a

drafting oversight when the bill was originally written in 1999. I have reviewed the legislative history and there is no reason in the legislative history or otherwise to believe that this law was drafted with the intent to limit or completely take away the Insurance Commissioner's ability to investigate and prosecute insurance fraud. Reading the law in this manner simply does not make sense. The Legislative Assembly would not have intended to provide a safe haven for criminals who commit insurance fraud by leaving the Commissioner powerless to investigate.

We believe the simple clarification as drafted at the end of this bill in the newly created subsection 3 on page 3 is an appropriate way to clarify that the Insurance Commissioner has the authority to obtain information falling under this section of the law when the Commissioner is conducting an insurance fraud investigation.

When this issue arose, I drafted the new language in this bill and consulted with attorneys from BCBSND and we are all in agreement that this addition to the law makes sense and is good public policy. Insurance fraud is a rapidly growing crime in America. It costs U.S. consumers between \$80 and \$120 billion per year, which equates to \$950 per family per year. Insurance fraud is now the second most profitable crime in the U.S. behind only illegal drug sales.

In conclusion, passing this bill would clarify that the Insurance Commissioner has the authority to obtain information falling under this section of the law when the Commissioner is investigating cases of insurance fraud. We believe it is a common sense exemption to the provisions of Section 26.1-36-41 and that the law never intended to limit or take away the Commissioner's authority in this area. Therefore, I respectfully request a "do pass" recommendation from this committee on Senate Bill No. 2267 and am happy to take any questions the committee may have.

**SENATE BILL NO. 2267**

**Presented by:** Jeff Ubben  
Deputy Commissioner/General Counsel  
North Dakota Insurance Department

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

**Date:** March 7, 2017

**TESTIMONY**

Good morning Chairman Keiser and members of the committee. My name is Jeff Ubben and I am Deputy Insurance Commissioner and General Counsel for the North Dakota Insurance Department.

Senate Bill No. 2267 was introduced to clarify that the Insurance Commissioner can access certain information in the possession of insurance companies that is made confidential by the provisions of Section 26.1-36-41 of the Century Code when the Commissioner is conducting an insurance fraud investigation. The need for this bill arose when one of the Insurance Department's investigators was investigating a large case of health care provider insurance fraud. The documents necessary to conduct this investigation were in the possession of Blue Cross Blue Shield of North Dakota ("BCBSND") and these documents fell under Section 26.1-36-41 of state law, which made most of the information sought in this case confidential and not subject to be disclosed or subject to subpoena. Without this information, as is the case with most cases of insurance fraud, the Insurance Department would not be able to proceed in conducting an investigation.

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