

2019 HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1139

2019 HOUSE STANDING COMMITTEE MINUTES

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

HB 1139
1/14/2019
30756

- Subcommittee
 Conference Committee

Committee Clerk: Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Confidentiality of consumer assistance records.

Minutes:

Attachment 1, 2, 3

Chairman Keiser: Opens the hearing on HB 1139.

Pat Ward~Representing the Association of ND Insurers. Attachment 1.

4:30

Chairman Keiser: Has there been a problem with this?

Pat Ward: (Mike not turned on, hard to hear). Yes, there was, especially with 3rd party claims & open records. We're hoping for an easier process.

Rep Laning: Can you explain confidential is so much better than that the word exempt?

Pat Ward: You would have to look at the ND open records law, exempt means some discretion as to whether something is protected. Confidential means it can't be disclosed.

Rep Schauer: Who decides whether it's confidential or not?

Pat Ward: In a consumer complaint, the 1st gate keeper is the company & then the department will look at it.

10:40

Chris Oen~No Dak Insurance Company: One of the things that the commissioner's office does is they have a consumer complaint division where they take complaints from consumer groups in ND that might have a disagreement or misunderstanding on an insurance claims. NoDak encourages this process. What this bill is for is that we still want the cooperation with the commissioner's office on these complaint processes. We don't have a problem giving

our claim files to the commissioner's office for review & help facilitate some of these more difficult claims.

We are looking at is when it's at the commissioner's office, that it is not disseminated out to anybody else & stay confidential. We don't want it to have a back door way in when it comes to the court system to get things. We want to cooperate with the commissioner's office but we want the protection when it leaves our desk.

Kristi Schlosser Carlson~Chief Legal Office for Farmers Union: Attachment 2.

18:10

Jeff Ubben~Deputy Insurance Commissioner & General Council of the Insurance: I agree with the industry. This helps clarify what is open & what is not open. This does fix the end around process. We support the bill.

20:50

Rep Schauer: This end around & protecting the discovery process, has this been an issue?

Jeff Ubben: I don't know, but I have given information out that the insurance company didn't want out from the back end.

Steve Schneider~Representing the American Property Casualty Insurance Association: Attachment 3-submitted testimony but did not attend.

Chairman Keiser: Anyone here to testify in support, opposition, neutral of HB 1139. Closes the hearing. What are the wishes of the committee?

Rep Laning: Moves a Do Pass.

Rep D Ruby: Second.

Chairman Keiser: Further questions?

Roll call was taken on HB 1139 for a Do Pass with 11 yes, 0 no, 3 absent & Rep Richter is the carrier.

Date: Jan 14, 2019

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1139

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 Laning Seconded By Rep Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Rep O'Brien	x	
Vice Chairman Lefor	Ab		Rep Richter	x	
Rep Bosch	x		Rep Ruby	x	
Rep C Johnson	x		Rep Schauer	x	
Rep Kasper	Ab		Rep Adams	x	
Rep Laning	x		Rep P Anderson	Ab	
Rep Louser	x		Rep M Nelson	x	

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep Richter

REPORT OF STANDING COMMITTEE

HB 1139: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING).
HB 1139 was placed on the Eleventh order on the calendar.

2019 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1139

2019 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee Roosevelt Park Room, State Capitol

HB 1139
3/11/2019
Job #33481

- Subcommittee
 Conference Committee

Committee Clerk: Amy Crane

Explanation or reason for introduction of bill/resolution:

relating to confidentiality of insurance department records; relating to confidentiality of consumer assistance records.

Minutes:

Att. #1-3

Chairman Klein: Opened the hearing on SB. All members were present.

Pat Ward, Association of North Dakota Insurers: see attachment #1 for testimony in support of the bill.

Chairman Klein: We're just suggesting that these records remain confidential?

Pat: That's correct. The companies have found that we can share information with the department and they can help us resolve certain claim issues and we're grateful for that. But we're reluctant to do that if we're gonna give up the confidentiality that would otherwise be there if it goes to litigation.

Chairman Klein: So you can share it with the department of insurance but that where it stays?

Pat: Absolutely.

Kristi Schlosser Carlson, Farmers Union Mutual Insurance Company: see attachment #2 for testimony in support of the bill.

Jeff Ubben, Deputy Insurance Commissioner: testified in support of the bill. Went through the process of how the Insurance Department handles complaints. This bill would allow us to keep information private. This bill will stop that so called end the round. The second sentence on page 2 lines 14-18, I did feel it was appropriate to allow some general information to be disclosed to a party when they are inquiring about cases this insurance department has had. So I did request that they add that and they did. The reason being, the state agency we're funded by public moneys and if the public has a question about how many of a certain type of insurance claims have been submitted in a certain period of time, there's

really nowhere else they are gonna get that information. This would allow us to say how many claims there have been but not allow more specific proprietary information about insurance cases.

Senator Piepkorn: In general, this is a tightening of open records policies, protecting the insurance companies?

Jeff: Yes.

Senator Piepkorn: So how will this affect the average North Dakotan?

Jeff: They can ask if something that happened to them has happened to someone else. It would allow the consumer to work with the insurance company to get a resolution, or the courts if they can't agree. But it won't allow them to get any information that they couldn't already get from the insurance company itself.

Chairman Klein: The complainant still has the ability to go get all of that information if they go through with criminal actions. But not as easily as going through you?

Jeff: That's correct.

See attachment #3 for additional testimony submitted to the committee.

Chairman Klein: closed the hearing.

Senator Kreun: Moved a Do Pass.

Senator Roers: Seconded.

Chairman Klein: Any discussion? I think we're just clarifying here and for good reason.

Senator Piepkorn: The only difference that I can see is that now, if the consumer wants that information they're gonna have to hire an attorney and its gonna cost them to find out. They can find out eventually but it will be costly and a process?

Chairman Klein: At that point they are going to be hiring an attorney anyway, because just because they have the information doesn't mean the company will do anything without a court proceeding anyway.

Senator Kreun: In my opinion, the tool is used to obtain that information that wouldn't regularly be obtained because it's an open meeting. Our open meetings laws supersede actual law in my opinion because you're giving out information that shouldn't be given out in a lawsuit. So this is against the constitution, in my opinion. This information is very confidential between the two companies.

Chairman Klein: I would suggest that the litigation should come about and it's the insurer suing the insurance department providing some prior language or information that they shouldn't allow.

Senator Piepkorn: This is typical of actions in the legislature, there are lots of proponents for the bill but not many against.

Chairman Klein: Our job is just to provide clarity. The lines get blurred from time to time we want to be clear about what's available and what's not. What puts agencies in a position that they shouldn't be and they know they shouldn't be.

Senator Piepkorn: Just making a general point.

A Roll Call Vote Was Taken: 6 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Kreun will carry the bill.

REPORT OF STANDING COMMITTEE

HB 1139: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1139 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1139

Testimony of Pat Ward in SUPPORT of HB 1139

House IBL Jan. 14, 2019, 2PM

Good afternoon Chairman Keiser and Committee. My name is Pat Ward. I am an attorney with Zuger Kirmis and Smith law firm here in Bismarck. We represent the Association of ND Insurers, many of whom are here today, in support of HB 1139.

HB 1139 relates to confidentiality of insurer claim files which may be produced to the Department of Insurance in response to a consumer complaint. We did ask Chairman Keiser to submit this bill for your consideration.

We met with the Insurance Commissioner before this session to explain what we hope to accomplish with this bill. We did work with the department and general counsel to get a compromise solution to an issue of great importance to insurers. The ND DOI is very proactive in helping consumers try to resolve issues that arise on a claim. Other states' DOI often feel this process is better left to private attorneys to negotiate and possibly litigate to resolve.

In any event, sometimes the ND DOI will ask a company to produce information from a claim file, including the activity log. Often these claims arise out of first party or third-party claims where litigation is likely, or even imminent. The ND Supreme Court, and all state and federal courts, have made very clear that attorney work product and attorney client material is privileged and confidential, and does not even have to be disclosed in litigation absent a court order, after an *in camera* review by the judge. Other materials in the log may contain trade secret or proprietary practices and procedures of the company, which are also protected under law.

Sometimes companies are willing to share pertinent claim info with the DOI if it can help resolve a claim early and without litigation. This bill is designed to make sure that the voluntarily shared information does not thereby become a public record under ND open records laws. This has become more of a concern in these days of electronic trolling and forwarding of emails and documents.

Section 1 makes sure that personal, financial or health information is confidential which is a stronger protection than exempt, for the insured.

HB 1139

Attachment 1
Page 2
Jan 14, 2019

Section 2 would allow a company sharing with the Commissioner (who can collect and use such information for its internal purposes) but would not permit general public disclosure as a result. It would also allow DOI to provide aggregate, nonspecific information as to consumer complaints in response to an open records request. Finally, the second paragraph of Section 2 provides that the disclosure by an insurer to DOI does not constitute a waiver of any protected privilege.

We urge a do pass on HB 1139 and I will try to answer your questions.



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HB 1139

Testimony before the House Industry, Business, and Labor Committee

I am Kristi Schlosser Carlson, and I represent Farmers Union Insurance, which includes Farmers Union Mutual Insurance Company, a domestic mutual insurer, and Farmers Union Service Association, a general agency that is contracted with over 100 agents in North Dakota and is licensed in over 30 other states as well.

We urge a "do pass" on HB 1139. This bill clarifies the protection of customer information and the information an insurer provides the Insurance Department ("Department") following a consumer inquiry.

We treat much of the information in our claims files as confidential, including settlement negotiations notes, adjusters' observations, and the like. We share information with the insured, except for attorney client privileged information. If the insured is adverse to us, we may withhold additional items like cause and origin reports, notes or documents with strategic content, or attorney work product. We only disclose this information to third parties under subpoena or other court order, and only after redacting any information subject to attorney client privilege and/or attorney work product.

However, how the information should be treated once disclosed to the Department is murky.

When a consumer has questions or disagrees with an insurer or agent, the consumer can file a complaint with the Department. In the situation where the complaint regards an insurer's claim, the Department commonly contacts the insurer and requests the insurer's claims file. At that point, it appears the information in the claims file could become subject to open records laws, and thus potentially disclosed when *anyone* makes a request of the Department. This bill clarifies that the information should properly be treated as "confidential" under the open records laws, akin to its treatment before getting to the Department's hands.

We worked with the Department on this bill, and at its request added in a provision allowing the Department to provide the subject matter and general description of the matter to someone making an open records request.

We want to preserve the opportunity for consumers to access the Department, but without exposing information publicly that in any other situation would have additional protections. We believe HB 1139 provides this balance.

APCI/American Property and Casualty Insurance Association

January 14, 2019

House Industry, Business, and Labor Committee

Support HB 1139

Chairman Keiser and Members of the Committee,

Representing nearly 60 percent of the U.S. property casualty insurance market, the American Property Casualty Insurance Association (APCI) promotes and protects the viability of private competition for the benefit of consumers and insurers. APCI represents the broadest cross-section of home, auto, and business insurers of any national trade association. APCI members represent all sizes, structures, and regions, which protect families, communities, and businesses in the U.S. and across the globe.

ND HB 1139 is important because it permits insurers to share or communicate important confidential information, including the details of claims files, with the insurance commissioner on a confidential basis. This protects the basic personal information in the claim file or communication while still extending to the commissioner the authority to use the information generally and in accord with his or her regulatory duties and responsibilities. This will be a positive change that collectively protects the insurance consumer, the insurer and the commissioner. We urge you to support HB 1139.

Please don't hesitate to reach out with any questions. Thank you.

Steve Schneider

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312.782.7720

Testimony of Pat Ward in SUPPORT of HB 1139

Senate IBL, March 11, 2019, 2PM

Good afternoon Chairman Klein and Committee. My name is Pat Ward. I am an attorney with Zuger Kirmis and Smith law firm here in Bismarck. We represent the Association of ND Insurers, some of whom are here today, in support of HB 1139.

HB 1139 relates to confidentiality of insurer claim files which may be produced to the Department of Insurance in response to a consumer complaint. We did ask Chairman Keiser to submit this bill for your consideration.

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In any event, sometimes the ND DOI will ask a company to produce information from a claim file, including the activity log. Often these claims arise out of first party or third-party claims where litigation is likely, or even imminent. The ND Supreme Court, and all state and federal courts, have made very clear that attorney work product and attorney client material is privileged and confidential, and does not even have to be disclosed in litigation absent a court order, after an *in camera* review by the judge. Other materials in the log may contain trade secret or proprietary practices and procedures of the company, which are also protected under law.

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Section 1 makes sure that personal, financial or health information is confidential which is a stronger protection than exempt, for the insured.

Section 2 would allow a company sharing with the Commissioner (who can collect and use such information for its internal purposes) but would not permit general public disclosure as a result. It would also allow DOI to provide aggregate, nonspecific information as to consumer complaints in response to an open records request. Finally, the second paragraph of Section 2 provides that the disclosure by an insurer to DOI does not constitute a waiver of any protected privilege. We urge a do pass on HB 1139 and I will try to answer your questions.



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March 11, 2019

Senate Industry, Business, and Labor Committee

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