

**2023 SENATE STATE AND LOCAL GOVERNMENT**

**SB 2109**

# 2023 SENATE STANDING COMMITTEE MINUTES

State and Local Government Committee  
Room JW216, State Capitol

SB 2109  
1/12/2023

Relating to limitation of liability provisions contained within packaging or click-through agreements for certain products.
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9:37 AM Chair K Roers opened the hearing. Present: Chair Roers, Vice Chair Barta, Sen Cleary, Sen Estenson, Sen J Lee, and Sen Braunberger.

### Discussion Topics:

- Proper terms
- Third party systems
- Unique products

9:37 AM Tag Anderson, OMB, Dir Risk Management Division, testified in support #13022

9:39 AM Greg Hoffman, ND Information Technology, testified in support. No written testimony.

Sen Lee moved a DO PASS.

Sen Braunberger seconded the motion.

Senators	Vote
Senator Kristin Roers	Y
Senator Jeff Barta	Y
Senator Ryan Braunberger	Y
Senator Sean Cleary	Y
Senator Judy Estenson	Y
Senator Judy Lee	Y

VOTE: YES 6 NO 0 Absent 0 Motion PASSED

Sen Braunberger will carry the bill.

9:50 AM Chair Roers closed the hearing.

*Pam Dever, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**SB 2109: State and Local Government Committee (Sen. K. Roers, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2109 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

**2023 HOUSE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2109**

# 2023 HOUSE STANDING COMMITTEE MINUTES

## Government and Veterans Affairs Committee Pioneer Room, State Capitol

SB 2109  
3/2/2023

Relating to limitation of liability provisions contained within packaging or click-through agreements for certain products.
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Meeting called to order by Chairmen Schauer at 10:06 AM.

Chairman Austen Schauer, Reps. Landon Bahl, Claire Cory, Jeff A. Hoverson, Karen Karls, Carrie McLeod, Karen M. Rohr, Vicky Steiner, Steve Vetter, and Mary Schneider present. Vice Chairman Bernie Satrom, Reps. Jorin Johnson, and Scott Louser not present.

### Discussion Topics:

- Independent contracts
- IT perspective

Tag Anderson, Director of the Risk Management Division in the Office of Management and Budget, supportive testimony (#21560).

Chairman Schauer closed the hearing on SB 2109 at 10:13 AM.

Representative Vetter moved a DO PASS on SB 2109.

Seconded by Representative Bahl.

### Roll Call Vote:

Representatives	Vote
Representative Austen Schauer	Y
Representative Bernie Satrom	AB
Representative Landon Bahl	Y
Representative Claire Cory	Y
Representative Jeff A. Hoverson	Y
Representative Jorin Johnson	AB
Representative Karen Karls	Y
Representative Scott Louser	AB
Representative Carrie McLeod	Y
Representative Karen M. Rohr	Y
Representative Mary Schneider	Y
Representative Vicky Steiner	Y
Representative Steve Vetter	Y

Motion carries: 10-0-3

Bill carrier: Representative Vetter

House Government and Veterans Affairs Committee

SB 2109

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Chairman Schauer adjourned the meeting at 10:15 AM.

*Phillip Jacobs, Committee Clerk By: Leah Kuball*

**REPORT OF STANDING COMMITTEE**

**SB 2109: Government and Veterans Affairs Committee (Rep. Schauer, Chairman)**  
recommends **DO PASS** (10 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB  
2109 was placed on the Fourteenth order on the calendar.

**TESTIMONY**

**SB 2109**





Testimony in Support of  
**Senate Bill No. 2109**  
**Senate State and Local Government**  
January 12, 2023

TESTIMONY OF

**Tag Anderson, Director Risk Management Division**

Chairman Roers and members of the committee, my name is Tag Anderson. I am the Director of the Risk Management Division of the Office of Management and Budget (OMB). I appear today in support of SB 2109.

State agencies typically purchase routine electronic equipment and software that is used by most state team members' computers using statewide contracts. These contracts are available to all state agencies. Some of these contracts originate as multi-state cooperative contracts where state government-appropriate terms are negotiated.

This legislation is not designed to bypass that process and the need for the State Procurement Office, with assistance from North Dakota Information Technology (NDIT), to have appropriate terms, including the issue of limitation of liability provisions. However, many software or electronic products use, or are embedded with, commercially available systems or platforms that are owned by third parties.

This legislation would allow an agency, in consultation with the Attorney General's Office, OMB and NDIT to agree to limitation of liability provisions in third-party, click-through agreements or shrink wrap terms that would otherwise violate N.D.C.C. § 32-12.2-15. This will allow agencies to properly negotiate appropriate terms consistent with state law with the vendor the agency is directly contracting with, while recognizing there may be third-party systems that are used in the product the agency is purchasing that contains click-through or shrink wrap terms that are contrary to N.D.C.C. § 32-12.2-15. In some cases, the vendor we are directly contracting with does not even have the ability to contact the maker of the third-party product and obtain a side agreement just for the state. In addition, this legislation will allow for the purchase of routine commercially available products from third-party sellers where there is no need for, or even option to have, an independently negotiated contract addressing limitation of liability provisions.

Chairman Roers and committee members, this concludes my testimony. I ask your support for SB 2109. I would be happy to answer any questions.

Thank you.

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Chairman Shauer and committee members, this concludes my testimony. I ask your support for SB 2109. I would be happy to answer any questions.

Thank you.