

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

FAMILY LAW COMMITTEE

Tuesday, July 24, 2001
Roughrider Room, State Capitol
Bismarck, North Dakota

Representative John Mahoney, Chairman, called the meeting to order at 1:00 p.m.

Members present: Representatives John Mahoney, Lois Delmore, Jim Kasper, Lawrence R. Klemm, Carol A. Niemeier, Dan Ruby, Sally M. Sandvig, Dwight Wrangham; Senators Linda Christenson, Dick Dever, Robert S. Erbele, Michael A. Every, Russell T. Thane

Members absent: Representatives Mary Ekstrom, Roxanne Jensen; Senator Darlene Watne

Others present: See attached appendix

At the request of Chairman Mahoney, Mr. Jay E. Buringrud, Assistant Director, Legislative Council, reviewed the *Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council*.

Chairman Mahoney said he is appointing Senator Christenson as vice chairman of the committee.

ADMINISTRATION OF CHILD SUPPORT STUDY

Chairman Mahoney called on committee counsel to present the memorandum *Administration of Child Support - Background Memorandum*, relating to the committee's study, as directed by Section 17 of House Bill No. 1012, to study the feasibility and desirability of state administration of child support, including the fiscal effect on counties and the state. Committee counsel reviewed recent legislation and previous studies related to the committee's study of the administration of child support.

Committee counsel said during the 1999-2000 interim, the State Auditor performed a performance audit on aspects of the North Dakota child support enforcement program of the Department of Human Services. The performance audit report dated September 14, 2000, contains results of the audit and the results of a review performed by TMR-MAXIMUS, an independent consulting firm. She said the audit included an analysis of the child support enforcement program's state-supervised and county-administered organizational structure, including an analysis of staffing levels, staff functions, and duties of the Child Support Enforcement Division and the regional units. The review performed by the consulting firm, she said, identified that the state's child support enforcement program should be state-administered instead of

county-administered. A copy of the performance audit report is on file in the Legislative Council office.

Chairman Mahoney called on Mr. Gordy Smith, Audit Manager, State Auditor's office, for comments regarding the study. Mr. Smith said in addition to the 2000 performance audit report, the State Auditor's office performed a child support enforcement program performance audit in 1995. He said the 2000 audit of the child support enforcement program was the result of a risk assessment of Department of Human Services programs, under which the child support enforcement program was determined to be of high risk.

Mr. Smith said that as part of the performance audit, the consultant performed an extensive survey of the child support enforcement programs of other states. He offered to make a detailed presentation of the performance audit report at a future meeting.

In response to a question from Representative Delmore, Mr. Smith said although the transition to a state-administered child support enforcement program may result in growing pains and hidden costs, the national trend is state administration of child support enforcement programs.

Chairman Mahoney called on Mr. Mike Schwindt, Director, Child Support Enforcement, Department of Human Services, for comments regarding the study. Mr. Schwindt provided written testimony, a copy of which is on file in the Legislative Council office.

Mr. Schwindt briefly reviewed the history of the child support enforcement program in North Dakota and summarized the performance audit report. He said as part of the performance audit, his division worked with the consultant in compiling information regarding the fiscal impact of changing the system to a state-administered system. If the committee desires additional information regarding the fiscal impact, he said, the division and the consultant may be able to assist the committee on this matter. He said he is pleased the committee is studying the issue of administration of child support enforcement and offered his assistance to the committee.

In response to a question from Representative Kasper, Mr. Schwindt said the Minnesota child support enforcement program is state-supervised and county-administered.

In response to a question from Representative Klemm, Mr. Schwindt said each county has a contract

with the state regarding administration of the child support enforcement program. He said he will provide the committee with an example of a contract.

In response to a question from Representative Delmore, Mr. Schwindt said although there are uniform state guidelines for each of the eight child support enforcement regions, each of the eight offices is independent and located in a different judicial district and is therefore unique.

In response to a question from Senator Dever, Mr. Schwindt said there are approximately 38 full-time equivalent positions in the state office and 120 full-time equivalent positions under cooperative agreement at the eight regional offices. He said he is not certain whether the differences of philosophy, staffing, salaries, and operating methods among the regional offices cited as the rationale for the 1994 performance audit still exist.

In response to a question from Representative Ruby, Mr. Schwindt said the conversion to the state disbursement unit has included an extensive conversion process to the fully automated child support enforcement system (FACSES). He said the state disbursement unit now performs most of the services previously performed by clerks of court.

In response to a question from Representative Niemeier, Mr. Schwindt said the differences in the child support enforcement system across the state are due in part to the differing demographics across the state. He said variations in the system are not necessarily bad.

Chairman Mahoney called on Mr. Clarence Daniel, Stutsman County Social Services Board, Jamestown, for comments regarding the study. Mr. Daniel said the county social services boards are taking a tentative position in support of state administration of child support enforcement services.

Chairman Mahoney called on Mr. Terry Traynor, Assistant Director, North Dakota Association of Counties, Bismarck, for comments regarding the study. Mr. Traynor provided written testimony, a copy of which is on file in the Legislative Council office. He said a transition to a state-administered program would result in a reduction of county social services costs of approximately \$4 million per year, which would result in property tax levies for social services purposes being reduced by three to four mills in each county. He said the North Dakota Association of Counties adopted a resolution supporting state administration of child support enforcement. He said he is excited about the committee's interest in this topic and offered his assistance to the committee as it pursues the study.

In response to a question from Representative Delmore, Mr. Traynor said although the concerns of loss of service and decreased efficiency that may result from a state-administered program are ongoing concerns of the counties, the national trend has been that counties and states have less control over the

program because the federal government has been taking more control of the child support enforcement program.

In response to a request from Representative Klemin, Mr. Traynor said he would provide the committee with copies of the contractual agreements between the counties and the eight regional child support enforcement units.

In response to a question from Representative Niemeier, Mr. Traynor said prior to legislation in 1997 which realigned the fiscal responsibilities for counties, counties received federal reimbursement and incentive payments which essentially reimbursed the counties for their full costs. He said after 1997, the full cost of the regional units was placed on the counties, less the incentive payments. He said a state-administered child support enforcement program would reduce county costs; however, it may increase state costs.

Chairman Mahoney called on Mr. Allen Hoberg, Director, Office of Administrative Hearings, for comments regarding the study. Mr. Hoberg said he is following the study and any possible impact state administration may have on the Office of Administrative Hearings. He offered the assistance of his office as the committee pursues this study.

Representative Mahoney said the two primary issues under the study are collection of child support and the fiscal impact of changing to a state-administered system.

Representative Delmore suggested the committee consider how state administration would impact the efficiency of child support enforcement services and how it would financially impact the counties and the state. She suggested the committee receive a report at a future meeting summarizing the performance audit report.

Senator Thane suggested the committee receive testimony at a future meeting from payers of child support regarding impact of state administration of the child support enforcement program.

Representative Ruby suggested the committee consider the relationship between payment of child support and enforcement of child visitation.

ADOPTION LAW STUDY

Chairman Mahoney called on committee counsel to present the memorandum *Adoption Law - Background Memorandum*, relating to the committee's study, as directed by Senate Resolution No. 4014, to study the adoption laws of this state and other states. Committee counsel said the study resolution makes reference to the fact that North Dakota adoption law provides for notice requirements, waiting periods, and residence requirements that are different from the provisions of adoption laws in neighboring states.

Committee counsel said generally adoption is a creature of state law, and although all 50 states have different ways of dealing with the issue of adoption, the overall adoption scheme is similar in most states.

She said North Dakota is one of three states that has adopted the National Conference of Commissioners on Uniform State Laws 1969 Uniform Adoption Act. Additionally, she said, Vermont is the only state that has adopted the conference's 1994 version of the Uniform Adoption Act. She reviewed national and North Dakota statistics relating to adoption, areas of similarity between state adoption laws, and areas of difference in state adoption laws. Additionally, she distributed to the committee written testimony in support of the study from Ms. Stacey Pflieger, Executive Director, North Dakota Right to Life Association, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Erbele, committee counsel said statistics compiled by the Evan B. Donaldson Adoption Institute indicate 14 private adoption agencies were licensed in the state in 1998.

Chairman Mahoney called on Ms. Julie Hoffman, Administrator, Adoption Services, Department of Human Services, for comments regarding the study. Ms. Hoffman said openness in adoption and the desire of adult adoptees to open previously sealed records has been the focus of statutory change in many states. Additional areas of legislative activity, she said, include:

- Passive adoption search registries;
- Legal risk adoption practices;
- Adoption facilitation;
- Statutory limitations of fees;
- Putative father registries;
- Limitations on advertising; and
- Criminal background history investigations.

Ms. Hoffman said North Dakota is very conservative in how it treats the placement of a child with an adoptive family before the termination of the biological parents' rights.

In response to a question from Senator Christenson, Ms. Hoffman said there are benefits to states enacting their own adoption laws, and there would be benefits to having a federal law. She said historically, federal adoption law has tended to address special needs children and has not addressed nonspecial needs adoptions.

In response to a question from Senator Dever, Ms. Hoffman said there are six licensed adoption agencies in the state. She said there have never been 14 separate licensed agencies; however, some of the licensed agencies have multiple locations within the state.

In response to a question from Representative Delmore, Ms. Hoffman said in fiscal year 2001, of the 145 agency adoptions in the state, 86 were special needs adoptions; 7 were identified adoptions, which means the birth parent chose the adoptive parent; and 18 were foreign-born adoptions. She said there were 130 stepparent adoptions. Possible problem areas relating to adoption, she said, may include the

sealed record issue and the ability of an adult adoptee to access information, and the issue of infant adoptions and what constitutes an adoptive placement.

In response to a question from Senator Christenson, Ms. Hoffman said in determining issues of jurisdiction and which state law to apply, the Interstate Compact on the Placement of Children applies. She said the compact has been adopted by all 50 states.

In response to a question from Representative Niemeier, Ms. Hoffman said although implementation of the Federal Adoption and Safe Families Act of 1997 has been a large burden on the state because it is an unfunded mandate, the Act has been very successful.

In response to a question from Representative Mahoney, Ms. Hoffman said criminal history investigations can be very time consuming, especially if the information is sought from a national organization such as the FBI. She said one reason for the long wait is that the information is being sought by a non-law enforcement agency.

In response to a question from Representative Erbele, Ms. Hoffman said in North Dakota the cost to be licensed as a foster care provider is minimal, about \$100 to \$200.

Chairman Mahoney called on Ms. Michele Vietz, Bismarck, an adoptee, for comments regarding the study. Ms. Vietz said as an adopted individual she strongly supports the opening of adoption records. She said in North Dakota adoptees do not have access to their original birth certificate, and this inability to access this information as well as the adoption records is a violation of adoptees' human and civil rights. Although privacy issues exist, she said, the right to privacy does not justify preventing access to adoption records. She said opening adoption records would not negatively affect adoption rates and it would not increase abortion, citing statistics from Alaska and Kansas. As an adoptee, she said, her birth certificate is an "alternative birth certificate," which was created at the time of the adoption.

In response to a question from Representative Klemin, Ms. Vietz said for a fee she is able to obtain nonidentifying medical information. She said this information is limited to the information that was available at the time of the adoption. For another fee, she said, she is able to apply for identifying information; however, there is no guarantee that this identifying information will be available. In seeking identifying information, she said, the way the law is set up there are benefits to limiting the search to information regarding the biological mother.

Chairman Mahoney called on Ms. Sandy Trader, Carrington, a birth mother, for comments regarding the study. Ms. Trader said she supports opening adoption records. She said the laws regulating access to adoption records are outdated and need to be addressed by the Legislative Assembly.

In response to a question from Representative Kasper, Ms. Trader said at this time she has only

sought nonidentifying information. She said the money required to search for identifying information has hindered her search.

In response to a question from Representative Klemin, Ms. Trader said the fees charged by each entity for seeking adoption information differ.

Chairman Mahoney requested the Legislative Council staff provide an example copy of an alternative birth certificate for the committee to review at a future meeting.

Representative Klemin suggested representatives of licensed adoption agencies be requested to present information at a future meeting regarding fees charged to search for identifying information.

Representative Sandvig said there is an attorney in her legislative district who would be available to testify regarding fees associated with adoption. She said she would contact committee counsel with the name of this individual.

Senator Thane suggested the committee consider the issue of adoption laws pertaining to special needs children.

Senator Christenson said the issue of the openness of adoption records is very important and suggested the committee receive information on how other states address the issue of access to adoption records.

Representative Klemin requested updated statistics regarding North Dakota adoptions.

Senator Dever requested information regarding whether any federal laws address the issue of adoption.

Representative Mahoney suggested the committee receive additional information regarding the Interstate Compact on the Placement of Children at a future meeting.

PRIVACY LAW STUDY

Chairman Mahoney called on committee counsel to present the memorandum *Medical and Financial Privacy Laws - Background Memorandum*, relating to the committee's study, as directed by Senate Concurrent Resolution No. 4019, to study medical and financial privacy laws in this state.

Committee counsel reviewed legislation enacted in the 2001 legislative session regarding financial and medical privacy. She said the three primary bills enacted in the 2001 legislative session are:

1. House Bill No. 1234 providing that a medical release is valid for three years or the time specified in the release, whichever is less. The bill also allows for termination of the release at any time and allows the provider to share medical information with another provider during the time necessary to complete a course of treatment.
2. Senate Bill No. 2127 providing that insurance companies, nonprofit health service corporations, and health maintenance organizations

are required to comply with privacy provisions of Title V of the Gramm-Leach-Bliley Act. Additionally, the bill allows the Insurance Commissioner to adopt rules to implement the Gramm-Leach-Bliley Act if the rules are consistent with and not more restrictive than the model regulation adopted by the National Association of Insurance Commissioners.

3. Senate Bill No. 2191 providing that the state's statutory provisions relating to the disclosure by financial institutions of customer information are not applicable if the disclosure is subject to federal law and the financial institution complies with the federal law. The bill also provides temporary disclosure requirements applicable to agricultural and commercial customers of financial institutions, effective through July 31, 2003.

Committee counsel said North Dakota state law does not specifically address the regulation of insurance business privacy and securities business privacy. North Dakota Century Code (NDCC) Chapter 6-08.1, which was enacted in 1985, addresses disclosure of customer information by financial institutions. The effect of Senate Bill No. 2191 was to defer to federal privacy law if the law applies and to rely on state privacy law only to the extent the disclosure is not addressed in federal law.

Committee counsel said the three primary federal laws addressing financial and medical privacy are the 1996 Health Insurance Portability and Accountability Act (HIPAA); Financial Services Modernization Act of 1999, also known as the Gramm-Leach-Bliley Act; and the Federal Fair Credit Reporting Act. She reviewed the basic elements of each of these federal laws.

Chairman Mahoney called on Ms. Marilyn Foss, North Dakota Bankers Association, Bismarck, for comments regarding the study. Ms. Foss provided written testimony and a copy of the letter dated June 28, 2001, from the Federal Trade Commission to the commissioner of the Department of Banking and Financial Institutions, copies of which are on file in the Legislative Council office. Ms. Foss said the North Dakota Bankers Association supports the study and will work with this committee in the coming months.

Ms. Foss said as a result of Senate Bill Nos. 2127 and 2191, North Dakota insurance companies, securities firms, banks, and credit unions operate under the same system of information sharing rules as those rules apply to North Dakota companies operating inside North Dakota and as the federal rules apply to companies from outside North Dakota which do business in North Dakota.

In response to a question from Representative Kasper, Ms. Foss said the Gramm-Leach-Bliley Act does not address agricultural and commercial accounts, and in that respect, North Dakota's law is

broader than Gramm-Leach-Bliley. Before enactment of Senate Bill No. 2191, she said, NDCC Chapter 6-08.1 covered all accounts.

Chairman Mahoney called on Mr. Robert Hale, Protect Our Privacy legal counsel, for comments regarding the study. Mr. Hale provided the committee with written testimony; a document of questions and answers regarding Senate Bill No. 2191; and a document entitled *Deceit and Deception? Twisted Logic and Half-Truths*, copies of which are on file in the Legislative Council office.

Mr. Hale said he testified in opposition to Senate Bill No. 2191. He said Protect Our Privacy is an organization that is working on the referral of Senate Bill No. 2191. The Committee to Protect Our Privacy, he said, is available to assist the committee in its study.

Senator Every said he does not agree with Mr. Hale's characterization of passage of Senate Bill No. 2191 as being ramrodded through the process by special interest groups.

In response to a question from Senator Every, Mr. Hale said the referral petitions filed in the Secretary of State's office include signatures from across the state.

In response to a question from Representative Kasper, Mr. Hale said the Gramm-Leach-Bliley Act was intended to set a minimum floor of privacy protection, and each state is allowed to enhance consumer protection. He said although he has not seen the letter from the Federal Trade Commission to the Department of Banking and Financial Institutions regarding approval of the state's banking laws, he believes NDCC Chapter 6-08.1 as it existed before the 2001 legislative session would have met federal privacy requirements.

In response to a question from Representative Ruby, Mr. Hale said North Dakota voters want to have control of their private information. He said he supports an opt-in provision under the Gramm-Leach-Bliley Act, and statistics indicate approximately 99 percent of Americans have not exercised their opt-out authority under Gramm-Leach-Bliley.

Representative Ruby said the committee's study was provided for before the filing of the referral for Senate Bill No. 2191; therefore, the referral might make the study moot.

In response to a question from Representative Delmore, Mr. Hale said the opt-out provision under the Gramm-Leach-Bliley Act and North Dakota state law only prevents sharing of information with nonaffiliated third parties. He said if a consumer opts out, this does not prevent financial institutions from sharing information with affiliated parties. He said under the old law, banks would have been prevented from sharing information with affiliates and nonaffiliates.

Chairman Mahoney called on Ms. Jennifer Ring, American Civil Liberties Union of the Dakotas, Fargo, for comments regarding the study. Ms. Ring said

when the Gramm-Leach-Bliley Act was enacted, it was intended to set a floor for minimum consumer privacy protection, and it was expected that states would be allowed to provide for more consumer protection. She said the reality is that when consumers receive the required notices under the Gramm-Leach-Bliley Act, the consumers are likely to disregard this literature without even looking at it.

Ms. Ring said that a recent class action lawsuit against a Minnesota-based financial institution resulted in money damages being awarded to customers as a result of financial institutions improperly sharing customer information. She said customer information is very valuable to businesses and is a moneymaking endeavor. For example, she said, medical information such as genetic profiling impacts all sectors of life.

In response to a question from Representative Klemin, Ms. Ring said under the Gramm-Leach-Bliley Act, if a consumer expands or changes the consumer's relationship with a financial institution, the consumer will likely be in a position to have to reassert the opt-out request.

Chairman Mahoney called on Mr. Tim Karsky, Commissioner, Department of Banking and Financial Institutions, for comments regarding the study. Mr. Karsky said as a point of correction, under the old law, NDCC Chapter 6-08.1 allowed banks to share customer information with affiliates.

In response to a question from Representative Kasper, Mr. Karsky said although he is not certain the exact reason why the Federal Trade Commission took as long as it did to respond to the department's request for approval of state banking consumer privacy law, he speculates that the Federal Trade Commission spent a large amount of time doing background information gathering. He said the Federal Trade Commission would likely consider the consumer privacy protection under the old law moot given the passage of Senate Bill No. 2191.

In response to a question from Representative Mahoney, Ms. Foss said a survey performed by the North Dakota Bankers Association indicates banks in this state are complying with the Gramm-Leach-Bliley Act requirements. She said it is important to remember that North Dakota benefits as a result of its law being uniform with the financial privacy laws in the rest of the country.

Representative Kasper said if an out-of-state bank opened a business in North Dakota, it is likely the business would not be providing banking services but instead would be an information gathering system and therefore would not be subject to the Gramm-Leach-Bliley Act provisions.

Representative Ruby said North Dakotans have individual expectations of privacy as well as economic development expectations.

In response to a question from Representative Sandvig, Ms. Foss said she does not have statistics

regarding the number of opt-out notices received by financial institutions in North Dakota because the law requiring notices went into effect July 1, 2001. She said she would share this information with the committee as soon as it becomes available.

Representative Kasper said although it would be a good idea to poll the citizens of the state to determine what their privacy expectations are, if a poll is not performed, the committee will still find out the wishes of the citizens as a result of the referral vote. He said in addition to financial privacy, the issue of medical privacy is a very important topic. He said the opt-out provision under the Gramm-Leach-Bliley Act was a compromise. Prior to the Gramm-Leach-Bliley Act, he said, there were no federal laws specifically providing for consumer privacy of customer information. He said consumer groups testified as part of the Gramm-Leach-Bliley Act that they were in support of an opt-in provision.

Representative Mahoney said there is a possibility of introducing legislation regarding the financial privacy law during the upcoming special session for redistricting.

Representative Kasper said he recently called the toll-free number under the Federal Fair Credit Reporting Act in order to remove his name from lists of consumers. He said it is a very easy process.

Representative Klemin said the Federal Trade Commission has reported that the Gramm-Leach-Bliley Act applies to attorneys. He requested additional information on this matter at a future meeting.

Representative Delmore suggested the Insurance Commissioner be requested to provide information regarding the adoption of insurance privacy regulations based on the National Association of Insurance Commissioners model privacy regulations.

Senator Thane said personal experience indicates that businesses are requesting very personal information from consumers.

Representative Ruby said the committee should consider all areas of privacy and consider the issue of whether the federal government is infringing on states' rights.

Representative Klemin said states across the country are enacting privacy laws. For example, he said, some states have enacted legislation that would require that a sales receipt be limited to showing only the last four digits of a customer's credit card number and prohibited from showing the credit card expiration date. He requested copies of these laws be provided at a future meeting.

In response to a question from Representative Kasper regarding whether the committee could hire a consultant, the assistant director said there is funding available for interim committees to work with consultants; however, committees need to receive

prior approval from the chairman of the Legislative Council.

Representative Kasper said Ms. Twila Brase is an individual in Minnesota who is an expert in the areas of medical privacy, and he thinks it would be helpful for the committee to invite her to testify at a future meeting. Chairman Mahoney requested that Representative Kasper provide to the chairman and committee counsel information regarding Ms. Brase.

Senator Dever noted that legislative history indicates there was limited opposition to Senate Bill No. 2191 in committee and asked that the committee be respectful of the legislative process. He requested additional information at a future meeting regarding whether the performance of banking services require that the banks share information and whether the legislative changes to Senate Bill No. 2191 could be addressed during the special session, thereby making the referral moot.

Representative Mahoney requested a one-page summary of the Gramm-Leach-Bliley Act.

Representative Kasper requested committee members be provided with a copy of the June 2, 2000, memorandum of Covington & Burling entitled *Analysis of Final Regulations Implementing the Financial Privacy Provisions of the Gramm-Leach-Bliley Act*, a copy of which can be found at <http://www.covingtonandburling.com/publications/>.

Representative Mahoney requested the committee receive information regarding medical privacy at future meetings. He said he has heard rumors of Governor Hoeven considering holding a special election to vote on the referral of Senate Bill No. 2191.

Representative Kasper suggested that Mr. Karsky be requested to provide an analysis of Senate Bill No. 2191 and NDCC Chapter 6-08.1 regarding the substantive effect of the bill and the law and the sunset provisions.

It was moved by Senator Thane, seconded by Representative Delmore, and carried on a voice vote that the meeting adjourn. No further business appearing, Chairman Mahoney adjourned the meeting at 4:30 p.m.

Jennifer S. N. Clark
Counsel

Jay E. Buringrud
Assistant Director

ATTACH:1