

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2092

2001 SENATE HUMAN SERVICES

SB 2092

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2092

Senate Human Services Committee

Conference Committee

Hearing Date January 15, 2001

Tape Number	Side A	Side B	Meter #
1	X		
Committee Clerk Signature <i>Paul Kelodychuk</i>			

Minutes: The Human Services Committee was called to order by Senator Lee with all members present. The hearing was opened on SB 2092.

LINDA WRIGHT, Director, Aging Services Division, Department of Human Services, introduced the bill and supports it. See written testimony. SENATOR MATHERN asked if they had ever gone to court and the Court said you have no authority. MS WRIGHT answered and gave an example that they had. There is no provision for injunctions. SENATOR MATHERN though there should be an overriding authority and maybe we should look for a broader authority.

JOHN GRAHAM, County Director, Burleigh County Social Services, supports the bill. Written testimony. Senator Mathern asked a question about why am I not seeking a general provision allowing the Dept having an injunction for any one of its statutory provisions. We tried to do that in 1999 by amending Section 32-05-02 and for reasons beyond our comprehension that bill

was failed in the House, so we are coming back trying to do it in a more limited way and approach it just with respect to adult foster care.

SENATOR MATHERN asked if this would apply to only adult foster care or both adult and child.

MR. GRAHAM responded that it would apply to both because it was an amendment to the child foster care bill and this would now apply to both to get an injunction if necessary in a violation. This amends a chapter that covers both those processes. SENATOR MATHERN asked if there were other types of foster care? No.

No neutral testimony; no opposition. The hearing was closed.

Senator Mathern explained that the House objected to giving the Department two ways of addressing the issue - the criminal and the junction route or maybe because it was so broad. We should make sure what they thought.

SENATOR LEE asked MS. WRIGHT if there have been areas other than the foster care settings that you have not been able to adequately address the citizens needs. MS. WRIGHT : We have noticed that foster care is the area we have the greatest concerns.

After discussion SENATOR MATHERN moved a DO PASS. SENATOR FISCHER seconded it. Roll call vote carried 6-0. SENATOR FISCHER will carry the bill.

Date: 4/15/01

Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2092

Senate HUMAN SERVICES Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen Mathem Seconded By Sen Fischer

Senators	Yes	No	Senators	Yes	No
Senator Lee, Chairperson	✓		Senator Polovitz	✓	
Senator Kilzer, Vice-Chairperson	✓		Senator Mathem	✓	
Senator Erbele	✓				
Senator Fischer	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Fischer

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

REPORT OF STANDING COMMITTEE (410)
January 15, 2001 3:06 p.m.

Module No: SR-05-1005
Carrier: Fischer
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2092: Human Services Committee (Sen. Lee, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2092 was placed on the
Eleventh order on the calendar.

2001 HOUSE HUMAN SERVICES

SB 2092

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2092

House Human Services Committee

Conference Committee

Hearing Date February 14, 2001

Tape Number	Side A	Side B	Meter #
Tape 1	X		1860 to 2570
Committee Clerk Signature <i>Cornie Easton</i>			

Minutes:

Chairman Price, Vice Chairman Devlin, Rep. Dosch, Rep. Galvin, Rep. Klein, Rep. Pollert, Rep. Porter, Rep. Tieman, Rep. Weiler, Rep. Weisz, Rep. Cleary, Rep. Metcalf, Rep. Niemeier, Rep. Sandvig.

Chairman Price: Open the hearing on SB 2092.

Linda Wright: Director, Aging Services Division, Department of Human Services. (See support of SB 2092 in written testimony.) The content of this bill will assist us in administration of adult foster care, and most importantly in assuring the safety and quality of care of clients. The Department of Human Services currently does not have the authority to seek an injunction if an adult family foster care provider is in violation of licensure requirements. Section 50-11-09.1 would provide the authority.

Chairman Price: So you're telling us that even though we require a license to operate an adult family foster care facility that you had no legal recourse for someone who operates without a license?

Linda Wright: Madam Chair, Mr. Graham can provide more information about that, but legal recourse was sought through the state's Attorney Office and it was found that we could not proceed because of this loop hole.

John Graham: Director of Burleigh County Social Services. (See support of SB 2092 in written testimony.) This bill creates a new section to the chapter of the Century Code which provides that Adult Family Care facilities must be licensed. That section would authorize the Department of Human Services to seek an injunction "to stop or prevent" a violation of the licensing statute. Our staff does the licensing studies and the follow-up to the licensing process.

Vice Chairman Devlin: Does the department petition the district court for violation of administrative rules?

John Graham: If they can't enforce it through their own provisions, they could do that.

Chairman Price: Close the hearing on SB 2092.

COMMITTEE WORK:

REP. CLEARY: Move a DO PASS.

REP. WEILER: Second.

12 YES 1 NO 1 ABSENT CARRIED BY REP. METCALF

Date: 2-14-01
 Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2092

House Human Services Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Cleary Seconded By Weiler

Representatives	Yes	No	Representatives	Yes	No
Rep. Clara Sue Price, Chairman	✓		Rep. Audrey Cleary	✓	
Rep. William Devlin, V, Chairman	✓		Rep. Ralph Metcalf	✓	
Rep. Mark Dosch			Rep. Carol Niemeier	✓	
Rep. Pat Galvin	✓		Rep. Sally Sandvig	✓	
Rep. Frank Klein	✓				
Rep. Chet Pollert	✓				
Rep. Todd Porter	✓				
Rep. Wayne Tieman	✓				
Rep. Dave Weiler	✓				
Rep. Robin Weisz		✓			

Total (Yes) 12 No 1

Absent 1

Floor Assignment Rep. Metcalf

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

REPORT OF STANDING COMMITTEE (410)
February 14, 2001 10:52 a.m.

Module No: HR-27-3296
Carrier: Metcalf
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2092: Human Services Committee (Rep. Price, Chairman) recommends DO PASS
(12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2092 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

SB 2092

Senate Committee on Human Services

Testimony on Senate Bill No. 2092

January 15, 2001

Chairman Lee and members of the Senate Human Services Committee; my name is Linda Wright, Director, Aging Services Division, Department of Human Services. On behalf of the Department of Human Services, I am testifying in support of Senate Bill 2092.

The Aging Services Division is responsible for the program administration of adult family foster care, in cooperation with the Regional Human Service Centers and County Social Service offices.

The content of this bill will assist us in administration of adult foster care, and most importantly in assuring the safety and quality of care of clients. The Department of Human Services currently does not have the authority to seek an injunction if an adult family foster care provider is in violation of licensure requirements. Section 50-11-09.1 would provide the authority.

John Graham, Director of Burleigh County Social Services, will provide more detailed background information regarding the need for this legislation.

If you have any questions, I would be happy to answer them at this time.

Testimony on Senate Bill No. 2092

Presented by John A. Graham
County Director
Burleigh County Social Services

Presented to the Senate Committee on Human Services
Monday, January 15, 2001

Chairperson Lee, members of the Senate Human Services Committee, my name is John Graham, the Director of Burleigh County Social Services. I am testifying in support of Senate Bill No. 2092.

In a nutshell, the bill creates a new section to the chapter of the Century Code which provides that Adult Family Foster Care facilities must be licensed. That section [which is Section 1 of this bill] would authorize the Department of Human Services to seek an injunction "to stop or prevent" a violation of the licensing statute.

County social service agencies are interested in this bill because our staffs actually do the licensing studies, and the follow-up to the licensing process. Burleigh County Social Services is particularly interested because we have had experience trying to get an injunction against an unlicensed provider who was providing care to unrelated adults in violation of the licensing statute. The District Court ruled against us on the basis of Section 32-05-02 of the Century Code which prohibits the granting of an injunction "to enforce a penal law." The District Court reasoned that because Chapter 50-11 provides a criminal penalty (see Section 50-11-10) and does not specifically provide for injunctive relief, the Court was prohibited by Section 32-05-02 from granting an injunction. [As an aside, we proceeded against that unlicensed provider on a criminal charge and found that a most unsatisfactory and cumbersome to deal with such situations.]

The addition of this section to the chapter would ensure that the Department could proceed to get injunctive relief in similar and other kinds of cases where the provider was violating provisions of the licensing law. I request that you give this bill a "do pass" recommendation. I would be happy to answer the Committee's questions.

Text of Section 32-05-20, North Dakota Century Code:

32-05-02. Preventive relief not given to enforce penal law. Preventive relief cannot be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

