

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2123

2001 SENATE JUDICIARY

SB 2123

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2123

Senate Judiciary Committee

Conference Committee

Hearing Date January 10th, 2001

Tape Number	Side A	Side B	Meter #
1		X	16.2-22.2
January 16 th , 2001 (2)		X	6 - 0.2
Committee Clerk Signature			

Minutes:

SENATOR TRAYNOR opened the hearing on SB 2123: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 32-03.1-05 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO LIABILITY FOR PROVIDING EMERGENCY MEDICAL AID.

MICHAEL MULLEN, representing the Department of Health, testified in support of SB 2123.

(Written testimony attached)

SENATOR TRAYNOR line 10 says persons and their employers are liable for their acts. Does that infer negligent acts?

MICHAEL MULLIN yes.

SENATOR TRAYNOR there are acts of treatment that are not? Would you think it would be better to have negligent acts?

MICHAEL MULLIN That's a good point and I would be happy to get back to you on that.

SENATOR TRAYNOR closed the hearing on SB 2123 with further discussion at a future date.

Page 2
Bill/Resolution Number SB 2123
Hearing Date January 10th, 2001

January 16th, 2001 tape 2, meter # 0.3

MICHAEL MULLEN reported back to SENATOR TRAYNOR that the language inferred
Negligence.

SENATOR WATNE moved to DO PASS. Seconded by SENATOR TRENBEATH. Vote
Indicated 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING. SENATOR DEVER
volunteered to carry the bill.

REPORT OF STANDING COMMITTEE (410)
January 16, 2001 4:51 p.m.

Module No: SR-06-1099
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2123: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2123 was placed on the
Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2123

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2123

House Judiciary Committee

Conference Committee

Hearing Date 03-05-01

Tape Number	Side A	Side B	Meter #
TAPE II	x		4103 to 4705
Committee Clerk Signature <i>Joan Diers</i>			

Minutes: Chairman DeKrey opened the hearing on SB 2123. Relating to liability for providing emergency medical aid.

Mike Mullen: senior Advisor for Health Policy, Department of Health. (see attached testimony).

Chairman DeKrey: If there are no questions, thank you for appearing, anyone wishing to testify if not, we will close the hearing on SB 2123.

COMMITTEE ACTION

Chairman DeKrey: Does someone want to make a motion? Rep Klemin moved a DO PASS and seconded by Rep Kingsbury.

DISCUSSION

Chairman DeKrey: IF there is no further discussion, the clerk will call the roll on a DO PASS motion on SB 2123. The motion passes with 13 YES, 0 NO and 2 ABSENT. Carrier Rep Onstad.

Date: 03-05-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2123

House JUDICIARY Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Klemin Seconded By Rep Kingsbury

Representatives	Yes	No	Representatives	Yes	No
CHR - Duane DeKrey	✓				
VICE CHR --Wm E Kretschmar	✓				
Rep Curtis E Brekke	✓				
Rep Lois Delmore	✓				
Rep Rachael Disrud	✓				
Rep Bruce Eckre	✓				
Rep April Fairfield					
Rep Bette Grande					
Rep G. Jane Gunter	✓				
Rep Joyce Kingsbury	✓				
Rep Lawrence R. Klemin	✓				
Rep John Mahoney	✓				
Rep Andrew G Maragos	✓				
Rep Kenton Onstad	✓				
Rep Dwight Wrangham	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Onstad

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

REPORT OF STANDING COMMITTEE (410)
March 5, 2001 4:32 p.m.

Module No: HR-37-4861
Carrier: Onstad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2123: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2123 was placed on the
Fourteenth order on the calendar.



2001 TESTIMONY

SB 2123

Testimony on SB 2123
Clarification of the Time-reference in the Good Samaritan Act
before the
Senate Judiciary Committee
by
Michael J. Mullen, Department of Health
January 10, 2001

Good Morning Mr. Chairman and members of the Committee, I am Michael J. Mullen, Senior Advisor for Health Policy, Department of Health. I am pleased to present this testimony in support of SB 2123, which is a technical clarification of the Good Samaritan Act. All that this bill does is to clarify that the "standard" for measuring a Good Samaritan's conduct is the legal standard applicable to their conduct at the time they provide assistance to an accident victim. (Not the law as it may have existed on July 1, 1987, the date the Good Samaritan Act became effective, as provided in current law). Let me present a brief background regarding Good Samaritan laws.

"Forty-nine states [including North Dakota] and the District of Columbia have adopted Good Samaritan legislation to protect health care professionals who render emergency aid from civil liability for damages for any injury they cause or enhance." Health Law at p. 207.¹ An application of a Good Samaritan statute is found in "McCain v. Batson, 233 Mont. 288, 760 P.2d 725 (1988), [in which] a physician on vacation sutured a hiker's wound at his condominium, using limited medical supplies on hand. The [Montana Supreme] court held that this was an 'emergency' within the meaning of the [Montana] statute." Health Law at 209-210.

"The majority of state statutes [including the North Dakota Act] exclude ... emergency services provided in the ordinary course of work..." Health Law at 210. "Some statutes protect health care professionals while others [including the North Dakota Act] protect all Good Samaritans without regard to their profession." Health Law at 210.

The only change made under SB 2123 is this: If a claim is brought against health care professional or an ordinary citizen (under an exception to immunity from liability provided under the good Samaritan Act) for injuries caused or aggravated by aid they have given to an accident victim, the good Samaritan's conduct is measured by the legal standard applicable to their conduct at the time they provided the assistance (not the law as it may have existed on July 1, 1987, the date the Act became effective). That is the way most laws are written -- they refer to the *present*.² For example, in measuring the care that must be exercised by the operator of a motor vehicle, we look to the speed limit and rules of the road in existence at the time of an accident causing a victim's injury.

¹ "Health Law" refers to the casebook: Health Law: Cases, Materials and Problems (3rd ed. West Pub. Co. 1997) by Barry R. Furrow, Thomas L. Greaney, Sandra H. Johnson, Timothy S. Jost, and Robert L. Schwartz

² See Robert J. Martineau, Drafting Legislation and Rules in Plain English at 78 (West Pub. Co. 1991) ("[l]egislation or a rule always speaks at the time it is applied to specific facts").

Similarly, in measuring the standard of care must be exercised by a health care professional, we look to the professional norms as they existed at the time the aid or treatment is provided.

It should also be noted that there are several other "Good Samaritan-type" laws that provide qualified immunity to: emergency medical service personnel who are volunteers; fireman, policeman, and peace officers; health care providers who provide services without compensation for amateur athletes; and, other unpaid volunteers. None of these laws reference any "date" for determining the immunity granted for the care provided in a particular emergency. See sections 23-27-04.1; 32-03-40; 32-03-42; and 39-08-04.1.

For these reasons, we urge support for SB 2123.

Mr. Chairman this completes my testimony. I would be pleased to answer any questions you or your Committee members have regarding this legislation.

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