

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2163

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2163

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2163

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 17, 2001

Tape Number	Side A	Side B	Meter #
1		x	28 to 49.6
(Feb. 13/01) 3	x		6.9 to 12.9
Committee Clerk Signature <i>Louis & Pérez</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2163 relating to references to commission on medical competency, ex parte temporary suspension orders issued by the state board of medical examiners, and investigative panels of the state board of medical examiners.

JOHN OLSON, ND Board of Medical Examiners, presenting the testimony of ROLF P. SLETTEN, Executive Secretary and Treasurer, ND Bd. of Medical Examiners. Written testimony attached. The current law separates the board into two separate panels. The temporary suspension takes place, complaint is served, physician retains counsel, administrative hearing takes place at the end administrative law judge will make recommendation to board. This temporary suspension statute is a fast track procedure required because the temporary suspension takes the license away pending the hearing. We ask for a delay in the consideration of this bill until the medical association can determine whether additions must be made to this statute.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2163

Hearing Date January 17, 2001.

BRUCE LEVI, Representative ND Medical Assn. Written testimony attached. Ask committee to hold bill until the association and the board can work out amendments.

SENATOR ESPEGARD: Are the members of the board appointed.

B LEVI: They are appointed by the governor, chosen from a list provided by the medical association.

SENATOR TOLLEFSON: What percentage of the physicians join the association?

B LEVI: About 70%.

Hearing concluded.

Feb. 13/01. Tape 3-A- 6.9 to 12.9

Committee reconvened. All members except SENATOR ESPEGARD present. Discussion held.

Written testimony presented by BRUCE LEVI and ROLF P. SLETTEN regarding the agreement reached by the medical association and the board of medical examiners regarding this bill and the amendments agreed on.

SENATOR KREBSBACH: Motion to adopt amendments. SENATOR KLEIN: Seconded

Roll call vote: 6 yes; 0 no; 1 absent not voting. Motion carried.

SENATOR D. MATHERN: Motion: do pass as amended. SENATOR TOLLEFSON: Seconded.

Roll call vote: 6 yes; 0 no; 1 absent not voting. Carrier : SENATOR KREBSBACH.

1 **PROPOSED AMENDMENTS TO SENATE BILL NO. 2163**

2
3 Page 1, line 1, after "reenact" insert "section 23-34-04,"

4 Page 1, line 2, remove the second "and" and after "43-17.1-02" insert ", subsection 1 of section
5 43-17.1-05, and subsection 3 of section 43-17-06"

6 Page 1, after line 6, insert:

7 **"SECTION 1. AMENDMENT.** Section 23-34-04 of the 1999 Supplement to the
8 North Dakota Century Code is amended and reenacted as follows:

9 **23-34-04. Peer review committee – Mandatory reports.** A peer review committee
10 shall report to ~~the commission on medical competency~~ an investigative panel of the board
11 of medical examiners any information that indicates a probable violation of subsection 4, 5,
12 16, or 17 of section 43-17-31. A health care organization is guilty of a class B
13 misdemeanor if its peer review committee fails to make any report required by this
14 section."

15 Page 1, line 17, after "including" insert "reasonable"

16 Page 1, line 20, after the period insert "A physician may challenge the reasonableness of any cost
17 item in a hearing under chapter 28-32 before an administrative law judge. The
18 administrative law judge may approve, deny, or modify any cost item, and the
19 determination of the judge is final. The hearing must occur before the physician's license
20 may be suspended for nonpayment."

21
22 Page 2, replace lines 1 through 4 with:

23 "1. When, based on verified evidence, the board ~~has probable cause to believe the~~
24 ~~suspension of a physician's license is required to reasonably protect the public from~~
25 ~~imminent or critical harm,~~ determines by a clear and convincing standard that the
26 evidence presented to the board indicates that the continued practice by the physician
27 would create a significant risk of serious and ongoing harm to the public while a
28 disciplinary proceeding is pending, and that immediate suspension of the physician's
29 license is required to reasonably protect the public from that risk of harm, the board
30 may order a temporary suspension ex parte. For purposes of this section, "verified
31 evidence" means testimony taken under oath and based on personal knowledge. The

1 board shall give prompt written notice of the suspension to the physician, which must
2 include a copy of the order and complaint, the date set for a full hearing, and a
3 specific description of the nature of the evidence, including a list of all known
4 witnesses and a description of any documents relied upon by the board in ordering
5 the temporary suspension which, upon request, must be made available to the
6 physician."

7 Page 2, line 5, overstrike "for not more than sixty days,"

8 Page 2, line 6, overstrike "unless" and insert immediately thereafter "until a final order is issued
9 after a full hearing or appeal under this section or until the suspension is" and remove "or
10 extended by agreement of the parties"

11 Page 2, line 11, replace "fifty" with "thirty"

12 Page 2, line 12, remove "unless an extension of time has been agreed to by the parties to the
13 action", overstrike "Within", and insert immediately thereafter "The physician is entitled to a
14 continuance of the thirty-day period upon request for a period determined by the hearing
15 officer."

16 Page 2, overstrike lines 13 through 15

17 Page 2, after line 28, insert:

18 **"SECTION 5. AMENDMENT.** Subsection 1 of section 43-17.1-05 of the 1999
19 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 20 1. Any person may make or refer written complaints to the investigative panels with
21 reference to the acts, activities, or qualifications of any physician, physician
22 assistant, or fluoroscopy technologist licensed to practice in this state, or to
23 request that an investigative panel review the qualifications of any physician,
24 physician assistant, or fluoroscopy technologist to continue to practice in this
25 state. Any person who, in good faith, makes a report to the investigative panels
26 under this section is not subject to civil liability for making the report. For
27 purposes of any civil proceeding, the good faith of any person who makes a
28 report pursuant to this section is presumed. Upon receipt of any complaint or
29 request, the investigative panel shall conduct the investigation as it deems
30 necessary to ~~resolve the matter as it deems appropriate. The investigative panel~~
31 ~~shall determine whether a formal hearing should be held to determine whether~~

1 any physician, physician assistant, or fluoroscopy technologist has committed
2 any of the grounds for disciplinary action provided for by law. Upon completion
3 of its investigation, the investigation panel shall make a finding that the
4 investigation discloses that:

- 5 a. There is insufficient evidence to warrant further action;
6 b. The conduct of the physician, physician assistant, or fluoroscopy technologist
7 does not warrant further proceedings but the investigative panel determines
8 that possible errant conduct occurred that could lead to significant
9 consequences if not corrected. In such a case, a confidential letter of concern
10 may be sent to the physician, physician assistant, or fluoroscopy technologist;
11 or
12 c. The conduct of the physician, physician assistant, or fluoroscopy technologist
13 indicates that the physician, physician assistant, or fluoroscopy technologist
14 may have committed any of the grounds for disciplinary action provided for
15 by law and which warrants further proceedings.

16 **SECTION 6. AMENDMENT.** Subsection 3 of section 43-17.1-06 of the North
17 Dakota Century Code is amended and reenacted as follows:

- 18 3. ~~Require~~ Upon probable cause, require any physician, physician assistant, or
19 fluoroscopy technologist under investigation to submit to a physical, psychiatric,
20 or competency examination, or chemical dependency evaluation."

21
22 Renumber accordingly

Date: 2/13/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2163

Senate Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt amendments

Motion Made By Sen Krebsbach Seconded By Sen Olson

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espegard	A				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

Date: 2/13/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2163

Senate Industry, Business and Labor Committee

- Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By Sen Mathern Seconded By Sen Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espegard	A				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Sen Krebsbach

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

REPORT OF STANDING COMMITTEE

SB 2163: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2163 was placed on the Sixth order on the calendar.

Page 1, line 1, after "reenact" insert "section 23-34-04,"

Page 1, line 2, replace the first "and" with a comma, remove the second "and", and after "43-17.1-02" insert ", subsection 1 of section 43-17.1-05, and subsection 3 of section 43-17.1-06"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Section 23-34-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

23-34-04. Peer review committee - Mandatory reports. A peer review committee shall report to ~~the commission on an~~ an investigative panel of the board of medical competency examiners any information that indicates a probable violation of subsection 4, 5, 16, or 17 of section 43-17-31. A health care organization is guilty of a class B misdemeanor if its peer review committee fails to make any report required by this section."

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Page 1, line 20, after the period insert "A physician may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the judge is final. The hearing must occur before the physician's license may be suspended for nonpayment."

Page 2, replace lines 1 through 4 with:

"1. When, based on verified evidence, the board ~~has probable cause to believe that the suspension of a physician's license is required to reasonably protect the public from imminent or critical harm~~ determines by a clear and convincing standard that the evidence presented to the board indicates that the continued practice by the physician would create a significant risk of serious and ongoing harm to the public while a disciplinary proceeding is pending, and that immediate suspension of the physician's license is required to reasonably protect the public from that risk of harm, the board may order a temporary suspension ex parte. For purposes of this section, "verified evidence" means testimony taken under oath and based on personal knowledge. The board shall give prompt written notice of the suspension to the physician, which must include a copy of the order and complaint, the date set for a full hearing, and a specific description of the nature of the evidence, including a list of all known witnesses and a description of any documents relied upon by the board in ordering the temporary suspension which, upon request, must be made available to the physician."

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