2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2039

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2039

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 2039

Committee Clerk Signature	Eva Lubelt

Minutes:

Chairman Klein: The next bill we are going to hear is Senate Bill 2039

John Bjornson, Legislative Council: This bill is focusing on two things, one the ownership and two the relationship between the pharmacy board and the pharmacy association. (Discusses further the bill and the changes that would be made to sever the relationship between the Board of Pharmacy and the Pharmacy Association).

Senator Potter: The members of the board are now saying it is okay to make these changes and we don't have to be part of it?

John Bjornson: The portion that was supported was in large part was section one. I can't speak for them but I expect that might not be the case, the remainder of it.

Senator Potter: Pharmacist will no longer be forced to be part of the association or are they separately suppose to join the association as well?

John Bjornson: Pharmacist would not automatically be members it would be voluntary association.

Chairman Klein: But they need to be registered with the board as a pharmacist?

John Bjornson: That's correct.

Arnold Thomas, North Dakota Healthcare Association: Written Testimony Attached. In support of SB 2039.

Chairman Klein: What is the downside of the pharmacy having automatic members?

Arnold Thomas: Pharmacists who are employed by a hospitals and every other enterprise is strictly voluntary. We don't see any justification for this exception.

Discussion continued.

Representative Rick Berg: The committee was almost unanimous in passing this bill. The primary advisement from my perspective the board is the regulatory part of pharmacy and it needs to be a separation there to prevent a conflict of interest.

Howard Anderson, Executive Director, and Board of Pharmacy: Written Testimony Attached.

Chairman Klein: Howard do you find people where you want them to come from?

Howard Anderson: It has always been a challenge but people have always been able to serve. The people always came from the association.

Senator Horne: Is it in law that the Governor, must accept the choice offered by the association or can he decide?

Howard Anderson: As most of you probably know if the Governor wanted someone he would probably get that.

Discussion followed.

Kim Christiansen, Saint Alexis Medical Center: Written Testimony Attached. In favor.

Senator Andrist: Do you think the hospital pharmacist will tend to opt out?

Kim Christiansen: There is a portion that is available to hospital pharmacist and pursuing their own organization.

Mike Schwab, Executive Vice President of the ND Pharmacists Association: Written Testimony Attached. Neutral.

Senator Wanzek: There seems to be a riff, is that part of the problem, competing interest?

Mike Schwab: Yes. There would be a riff, my personal opinion, moving forward time will tell.

Chairman Klein: We will close the hearing on Senate Bill 2039.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2039

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 28, 2009

Recorder Job Number: 8043

Committee Clerk Signature	Eva Luckert

Minutes:

Chairman Klein: Committee let's go back to Senate Bill 2039.

Moved by Senator Andrist for a do pass. Seconded by Senator Behm.

Roll Call Vote: Yes: 7 No:0 Absent: 0

Floor Assignment: Senator Klein

FISCAL NOTE

Requested by Legislative Council
12/08/2008

Bill/Resolution No.: SB 2039

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	$0	$0	$0	($151,600)	$0	($153,600)
Expenditures	$0	$0	$0	($132,400)	$0	($133,490)
Appropriations	$0	$0	$0	$0	$0	$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
$0	$0	$0	$0	$0	$0	$0	$0	$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill seprates the membership in the ND Pharmacists Association and the Board of Pharmacy license fee. Pharmacists will no longer be association members when they pay the licensee fee. It also adds 2 members to the Board of Pharmacy

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Since the board will no longer collect the association membershiip dues along with the license fee, the collections and expenses for that portion of the bill will zero out. The balance of the costs are extimates of the cost of travel and meeting attendance for the two new members

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*
   A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The reduction in revenue will amount to 100 dollars per licensed pharmacist. There is no effect on the executive budget, except the cost of recruiting and appointing the new board members, within the governor's office.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

The reduction in expenditures will amount to 100 dollars per licensed pharmacist. The increase in expenses is an estimate of the cost of attending meetings for the two new board members. This is based on adding 2 members to the 6 people now involved, for a 33% increase in that budget item. No FTE effects are anticipated.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

There will be no changes in appropriations, unless the governor's expenses are calculated based on the number of appointments made.

Name:	Howard C Anderson Jr	**Agency:**	Board of Pharmacy
Phone Number:	3289535	**Date Prepared:**	12/09/2008

++

Date: 1/28/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2039

Senate **Industry, Business and Labor** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☑ **Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Senator Andrist Seconded By Senator Behm

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek – V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Kline

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

REPORT OF STANDING COMMITTEE

SB 2039: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2039 was placed on the Eleventh order on the calendar.

2009 SENATE APPROPRIATIONS

SB 2039

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2039

Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: February 6, 2009

Recorder Job Number: 8900

Committee Clerk Signature Rose Laning

Minutes:

Chairman Holmberg opened the hearing on SB 2039, relating to the Board of Pharmacy, the North Dakota Pharmaceutical Association, and pharmacist license fees.

All committee members were present, except **Senator Kilzer, Senator Lindaas, and Senator Fischer.**

Representative Rick Berg, District 45, introduced the bill and gave a brief recap of the bill. This bill came up in the interim committee. It separates the North Dakota Pharmaceutical Association from the Board of Pharmacy. The Board of Pharmacy is the governing board that holds the statutes and laws. The North Dakota Pharmaceutical Association is there to promote. In statute, old language says every pharmacist pays a fee of $200 per year to register, the Board of Pharmacy sends $100 to the North Dakota Pharmaceutical Association and retains $100. All the other professional boards, with the exception of attorneys, separate the two functions. The bill reduces the registration fee from $200 to $100 . There is no fiscal change to the board. The board has assets of $1 million as of August so, in the committee's opinion, there was no need to increase fees.

Senator Warner asked if he knows of any other association where membership is obligatory.

Representative Berg said no. This bill passed the interim committee unanimously. There are several other issues that become a question. When it comes through the state like this, it's

general fund dollars. When the association is taking $100, in legislative council's opinion, they would fall under open records. In the bigger sense, it's to prevent conflict of interest. In the 2007 session, there was a proposal to increase the fee to $300. The North Dakota Pharmaceutical Association needed more money but the Board of Pharmacy has $1 million and did not need money. It makes sense to have it separated. We as a state create these boards of professions and we delegate them to police themselves. It's critical not to have the appearance of conflict of interest.

Senator Seymour asked if this solution will solve all these issues.

Representative Berg said he believes it separates the two. It lets the North Dakota Pharmaceutical Association go out and raise money. The Board of Pharmacy has the money to police those with a pharmacy license.

Kim Christianson, Hospital Pharmacist in Bismarck, testified in favor of the bill. (No written testimony) The only other fiscal issue is the bill adds 2 members to the Board of Pharmacy, a consumer member and a pharmacy technician. There will be some additional expenses associated 2 extra members, but the balance would adequately cover it.

Senator Kilzer asked how the license fees compare with other states.

Kim Christianson said the current fee is $200 per year, current law says $100 goes back to the North Dakota Pharmaceutical Association. The fee in Minnesota is $105 , Wisconsin is $145 for 2 years and Arizona is in the same range. This bill would bring the license fee back to a maximum of $100 which would be in line with other states.

Senator Kilzer asked if they have continuing education requirements.

Kim Christianson said yes, they require 30 hours every two years.

Senator Christmann asked if anyone is opposing bill. Who would oppose the bill? There is some kind of lingering battle here with pharmacists. Is the point that if some people are upset

with the stand of the North Dakota Pharmaceutical Association board, they still have to be a member? He asked for some background.

Kim Christianson said 700 licenses are issued in the state each year. Of the $200 in license fees, $100 automatically went back to the North Dakota Pharmaceutical Association which created $70,000 in revenue. It also was a mandatory membership in the North Dakota Pharmaceutical Association. Over the years, North Dakota Pharmaceutical Association has developed stances that members such as himself do not agree with. As a mandatory member of the association, many members felt they were not being represented by the association on certain issues, including the issue that faces the legislature this session. They had no recourse with association. The association spoke for views that they didn't agree with. They should have the ability to join or not to join. This bill severs the relationship between the Board of Pharmacy and the North Dakota Pharmaceutical Association. In 2007, the Board of Pharmacy came to the legislature and asked to raise the top licensing fee from $200 to $400. As members, they thought it was outrageous. The request for the raise came from (Howard Anderson has testified to this) the North Dakota Pharmaceutical Association who wanted the board to raise the fee to $400, half of which would go to the association by law. He feels the relationship is completely inappropriate. It's time to separate the two..

Senator Christmann asked if Howard Anderson is face of board.

Kim Christianson said yes.

Senator Christmann said the North Dakota Pharmaceutical Association is...?

Kim Christianson said the North Dakota Pharmaceutical Association is made up of all licensed pharmacists in the state.

Senator Christmann asked if the North Dakota Pharmaceutical Association has a spokesman.

Kim Christianson said Mike Schwab is the executive director. However, in the history of the board and the association, Howard Anderson has been the face of both the board and the association and one time served on the board and was the executive director of the association at the same time. The board and the association and who is speaking for whom when has been confusing. There is a question mark, who is Howard representing, the board or the association or both. There have been some issues.

Senator Christmann said he assumes if this bill passes, there are a certain number of pharmacists who will not join the North Dakota Pharmaceutical Association. Is there another organization of likeminded pharmacists?

Kim Christianson said within the North Dakota Pharmaceutical Association, there is an Association of Hospital Pharmacists. There is another group within the association, the North Dakota Service Corps, which are independent pharmacy owners. The accountability of the association will now be up to those who chose to join, not those who are forced to join.

Joan Johnson, hospital pharmacist, testified in favor of the bill. (No written testimony) It is very important to have a consumer on the board, we are only one of a few states that do not have a consumer representative. All other health care boards in the state have a consumer members. There are 500 pharmacy technicians in the state and they need to be at the table too. A diverse board serves the public very well.

Senator Krebsbach said there are 700 registered pharmacists in the state and 525 pharmacy technicians What is their license fee.

Joan Johnson said $35 . It is in statute the board can give up to half of their dollars to the North Dakota Pharmaceutical Association.

Senator Kilzer said asked if 700 is the number of licensees or pharmacists who practice in state. Several pharmacists practice outside of the state but maintain their North Dakota license.

Joan Johnson said it is 700 licensees.

Senator Kilzer asked how many are practicing in the state.

Kim Christianson said we'd be guessing, but a majority.

Senator Kilzer said with his experience with state medical association and the podiatry licensing board, if the number of licensees is too small, and you try to remove someone's license, the legal fees start adding up and it can become a major drag on board. You could probably weather one of those storms or two.

Joan Johnson said they are big enough and diverse enough, there are over 200 pure hospital pharmacists in the state.

Senator Kilzer asked if the technicians are licensed by the board, is there oversight by the board?

Joan Johnson said yes. During the interim committee work, they found there are 100 places where association is in statute and it shouldn't be at all. This bill will take care of it. The technicians are licensed fairly strictly, there are levels of certification. They have always promoted the more stringent level of certification for the technicians in the state.

V. Chair Grindberg closed the hearing on SB 2039.

V. Chair Grindberg moved a Do Pass on SB 2039, Senator Warner seconded.

Senator Christmann asked the status of the bill from IBL and was there a divided vote in committee.

Kim Christianson said it was a 7-0 Do Pass.

The motion passed on a roll call vote, 11-0-3.

Date:
Roll Call Vote #:

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2039

Senate _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Senator Wardner	✓		Senator Robinson		
Senator Fischer			Senator Lindaas		
V. Chair Bowman	✓		Senator Warner	✓	
Senator Krebsbach	✓		Senator Krauter	✓	
Senator Christmann	✓		Senator Seymour	✓	
Chairman Holmberg	✓		Senator Mathern	✓	
Senator Kilzer	✓				
V. Chair Grindberg	✓				

Total Yes 14 No 0

Absent 3

Floor Assignment 1BL

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

REPORT OF STANDING COMMITTEE

SB 2039: Appropriations Committee (Sen. Holmberg, Chairman) recommends **DO PASS** (11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2039 was placed on the Eleventh order on the calendar.

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2039

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2039

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10011

Committee Clerk Signature Ellen LeTang

Chairman Keiser: Opened the hearing on SB 2039 relating to the board of pharmacy, North Dakota pharmaceutical association, pharmacist license fees and membership in the North Dakota pharmaceutical association.

John Bjornson~Legal Counsel for the Legislative Council. The interim committee did a study of the pharmacy industry. One of the aspects was the relationship between the board of pharmacy and the North Dakota pharmaceutical association. Goes on to explain SB 2039.

Representative Thorpe: Explain to me why this bill is here in terms of what we are doing here and the reason behind it?

Bjornson: To take a comprehensive look the pharmacy industry. One part of that study was the focus on the relationship between the board of pharmacy and the North Dakota Pharmaceutical Association and there was some concern expressed during this discussion that this tie between the association and the board creates a conflict of interest in the way they do business. Also, a concern expressed that this is rather unique. The board is collecting money on behalf of the association and almost all other sections the voluntary membership in an association that voluntary with the exception of the bar. This is to separate this tie that has been in place since 1989 because it was unique and potential/perceived conflict of interest.

The discussion of the antitrust issues that was involved in the last few years and also led to somewhat of a question of conflict of interest.

Chairman Keiser: If there are antitrust questions for the bar association?

Bjornson: There was not. The issues that were discussed of the antitrust were related to the issue a few years ago during the session when a former director association made some (inaudible) a letter to pharmacy industry regarding negotiations. So it was a specific incidence but there were other issues.

Rick Berg~Representative from District 45. The essence here is the problem Representative Thorpe, as you know we have a lot of boards that we set up by statue and we tell that board go on forth and police your industry and give them tremendous authority. The challenge is we have to make sure that there is no conflict of interest. In this particular situation we had our regulatory board also collecting money that was passed on to the association. I think there became an appearance of a conflict of interest, certainly last session a bill came in to increase the fee because the association needed revenue but our board had a million dollars worth of assets. There is a number of things why it makes sense to do. The other issue of course becomes state money when it goes through fees collected and that subjects I believe open records laws for a state. As we talk through issues and really understood the purpose of the board and the association which is to promote the industry, this came out of the interim committee unanimous vote for a do pass.

Vice Chairman Kasper: Wasn't there another issue that was pharmacists working for larger hospitals compared to the independent pharmacists and their concern that some of these pharmacists do not want their dollars to be funding certain issues?

Berg: During the interim I had an interesting quote and the quote was whenever you are making a lot of exceptions to a law, maybe you shouldn't have the law. That hearing what was

most disconcerting to pharmacists is that they were by law required to pay a fee and become a member of the association and pay the licensing fee. I personally you will see a mass exodus of member of the association; I think it's more of just a feeling of being forced to join the association. I think with this bill that will relieve that. I do have an amendment to deal with an ownership issue but I will get those to you later.

Arnold Thomas~President of the North Dakota Healthcare Association. See testimony attachment.

Chairman Keiser: Do you have an amendment or idea of what you like to see relative to geographic?

Thomas: When we went to the interim committee, we thought about it and refrained from offering an amendment particularly about the geography.

Howard Anderson, Jr~Executive Director of the North Dakota State Board of Pharmacy. See testimony attachment.

Representative Thorpe: I have one person from Minot who would like to be on the board.

Anderson: I'm on the lowest roll on the board. Typically board member appointments come through the association. Once this bill is passed, people will be able to nominate themselves.

Kim Christiansen~Self, Hospital Pharmacist in Bismarck. I'm here to support SB 2039. I providing for you summary of what this bill will do.

Representative Amerman: Now what could happen that the fees of the association no longer in statue, so at a convention the association, by the vote of the members, they could raise the fees, they wouldn't have to come to legislation?

Christiansen: That's exactly correct.

Representative Boe: When I was involved in the Ag Industry, we taxed ourselves a wheat tax to support our Industry. It's voluntary in the fact you can ask for a refund, it's mandatory that

you forward the money into the fund. You can use that as a gauge to whether everybody is satisfied or just cheap, the situation where you pay the two hundred dollars but if there is dissatisfaction the membership would pay $100 back.

Christiansen: The (?) means this, the association does have an opt out where you can request $100 back. We just don't think it's appropriate that the state should collect that fee and pass it on to the association, it's much more appropriate to have the association to obtain the membership fees.

Representative Boe: This membership is voluntary?

Charistiansen: It is not. The membership is part of the statue; the only thing we can do is request $100 back.

Representative Nottestad: I have a concern naming members to the board if you are not able to hold your membership. If you are able to hold your membership, you are certainly you represent the entire group but my concern is you aren't able to hold you membership, will your recommendations to the governor come those you are holding or will you be able to look state wide even at those who aren't members not using that as a whip to get them in line?

Christiansen: I'm not sure that I understand the question.

Representative Nottestad: Right now the association makes the recommendations to the governor, if you are able to hold this new law, my concern is will the recommendations represent all the pharmacists or only those you are able to hold in line?

Christiansen: I would think that would the assumption that the recommendations coming from the association would represent members of the association and that any other group that would be outside that membership would also be able to provide a recommendation to the governor. The governor makes the decision whether the recommendation come from the association or not.

Representative Nottestad: There would be no protection or guarantee that those who choose not to be with you would have a voice. There probably wouldn't be anyone else representing, that's my concern.

Christiansen: There are other organizations that exist, the North Dakota Hospital Pharmacy Association. You are correct, if you are not a member of the association, the recommendations of the association wouldn't apply to you, but I don't feel there is an issue that those that are outside the association wouldn't be represented in board appointment.

Vice Chairman Kasper: Representative Boe asked you about the "opt out", are you aware of the number of pharmacist in the last couple of years who asked for their money back?

Christiansen: I don't know the number but I do know that Mike Schwab that indicated at that point there were 26. I know there have been additional opt out since then, but I do not know the number.

Vice Chairman Kasper: There are about 700 licensed pharmacists in North Dakota?

Christiansen: Close to 800.

Vice Chairman Kasper: So roughly 4%.

Chairman Keiser: Do you potentially see the developing two pharmacy associations, one the hospital and other private associations.

Christiansen: What we currently have the North Dakota Pharmacist Association is an umbrella group that includes several entities that exist under the umbrella. The Independent Pharmacist, North Dakota Pharmaceutical Association, and also independent and operation under the umbrella of the North Dakota Pharmaceutical Association which is currently inclusive of every member that is licensed is a North Dakota Hospital Pharmacist Association. So we do currently have an active association in the state which deals with that specifically particular group of practitioners.

Chairman Keiser: Does it exist already but with the passage of this bill, do you see the emergence of that just as not under the umbrella anymore, but as a real separate division within the group?

Christiansen: There will be a group that will belong and a group that belong to the association and there will be a group that will be a cross over that will belong to both.

Mike Schwab~Executive Vice President of North Dakota Pharmacists Association. See testimony attachment. To Vice Chairman Kasper's question of the "opt out", as of yesterday, we had 62 or 63 opt out with just under 800 in the association.

Representative Nottestad: On your 800 memberships, how many of those are instate memberships?

Schwab: I believe Howard would have a better accurate number for that.

Howard Anderson: The associations memberships are almost all instate active pharmacists, there probably only a dozen who actively live out of state and buy an active license. We have a licensure of about 1300 out of state pharmacist who are licensed with the board and they pay a $35 fee and the association does not collect anything for them. Goes on to explain pharmacist licensing.

Chairman Keiser: What are you charging now for licensure?

Anderson: We charge the $200 which is statutory cap right now, which we raised that $50 about three years ago.

Chairman Keiser: With the passage of this, you are going by rule leave it at $100.

Anderson: That true.

Chairman Keiser: What are your current reserves?

Anderson: We have right now in reserves, we set our reserves at one year's annual budget, so the official reserve is like $370,000. We actually have money in addition to that, so we have

just about a million dollars in assets. That money hasn't come from just pharmacist's licenses fees; it mostly comes from out of state pharmacist and out of state wholesalers.

Chairman Keiser: The reserve is high, spent it or by rule, reduces fees.

Joan Johnson~Self, Pharmacist from a hospital in Bismarck. I just wanted to say that this is a very good thing for consumer to have this bill go through. Opening up for names being on the board, there are lots of excellent people out there who are excellent consumer advocates who are not an association member. I think this is very good for a public advocate.

Representative Thorpe: I thought you said some affiliated association could submit membership, is I read it then this one added member must represent the public and may not be affiliated with any group or profession.

Joan Johnson: Yes, that would be so public has a voice on the board that regulates the profession for the benefit of the public. As far as picking pharmacist members, this will open it up more.

Chairman Keiser: Anyone here is to testify in opposition, neutral? Closes the hearing on SB 2039, what are the wishes of the committee?

Vice Chairman Kasper: Moves a Do Pass.

Representative Clark: Second.

Representative Boe: I understand to increase the amount and with the fees you have the "opt out" provision. I thinks that's a great deal.

Vice Chairman Kasper: One the things that Representative Berg talked about is the antitrust and the opening of the records and there is the possibility where the board situated now where state money comes to a private organization, you open records problem potentially. Separating it you accomplish the same things but you take the public funds out, probably better public policy to do that.

Representative Nottestad: I will support the bill, I will look ahead and I will see the Pharmacy Association will no longer be in the future what it is today. They are in financial trouble, they aren't able to get enough money to operate and you will see a fractionalized association of many organizations, because it will not be in the future what it is today. I will still support this, if they want this, give them the opportunity to have.

Voting roll call was taken on SB 2039 for a Do Pass with 12 yeas, 1 nay, 0 absent with Representative N Johnson the carrier.

Date: Mar 3 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2039

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ As Amended

Motion Made By Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Johnson

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

REPORT OF STANDING COMMITTEE

SB 2039: Industry, Business and Labor Committee (Rep. Kelser, Chairman) recommends **DO PASS** (12 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2039 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2039

BOARD OF PHARMACY
State of North Dakota

John Hoeven, Governor

OFFICE OF THE EXECUTIVE DIRECTOR
P O Box 1354 (1906 E Broadway)
Bismarck ND 58502-1354 (58501)
Telephone (701) 328-9535
Fax (701) 328-9536

www.nodakpharmacy.com
E-mail= ndboph@btinet.net
Howard C. Anderson, Jr, R.Ph.
Executive Director

Gary W. Dewhirst, R.Ph.
Hettinger, President
Rick L. Detwiller, R.Ph.
Bismarck
Laurel Haroldson, R.Ph.
Jamestown
Bonnie J. Thom, R.Ph.
Granville
Gayle D. Ziegler, R.Ph.
Fargo
William J. Grosz, Sc.D., R.Ph.
Wahpeton, Treasurer

Same given to House.

Senate Bill # 2039
Senate Industry, Business and Labor Committee
10:30 AM - Tuesday – January 20, 2009
Roosevelt Park Room

Chairman Klein, Members of the Senate Industry, Business and Labor Committee, for the record I am Howard C Anderson, Jr, R.Ph, Executive Director of the North Dakota State Board of Pharmacy. Thank you for the opportunity to speak to you today.

We held several discussions with the Interim Committee leading up the draft of Senate Bill #2039 Section 1. The transition to bringing us to the point of asking for a Pharmacy Technician and a public member on the Board of Pharmacy is one that has encompassed several years.

As you may know, North Dakota has been registering Pharmacy Technicians since 1994. We currently require the completion of an American Society of Health Systems Pharmacists Accredited Program [ASHP] for registration as a Pharmacy Technician in North Dakota. This is the highest standard in the nation and North Dakota makes more use of our Registered Pharmacy Technicians than any other state. Most of you are familiar with out Tele-pharmacy Project, where we allow our Registered Pharmacy Technicians to be in control in of a Pharmacy at a location separate, and sometimes remote from the central pharmacist. The communication tools of the computer, audio and video links allow the pharmacist to approve the work of the Registered Pharmacy Technician and to council the patient, or in a hospital situation to speak with the nurse or the prescriber of the medication prior to administration.

Our Registered Pharmacy Technicians have asked for representation on the Board of Pharmacy. During discussions at the January 2008 Technician Advisory Committee Meeting and at the North Dakota Pharmacists and Technicians April Convention a decision was made to advance legislation in this regard. Also, we have never had a public member on the Board of Pharmacy and consistent with many of the Boards across the country, we thought it was time to add one of these individuals, who we anticipate will provide a different perspective on issues facing the Board.

We suggested to the Interim Committee that they include these two additions to the Board of Pharmacy in the draft that they were working on with the Legislative Council.

Section 5 of the bill is the repeal of the integration between the Board of Pharmacy license fee and the Association membership which was created in 1989. It is the Board of Pharmacy's opinion that this has served the profession and the public of North Dakota over the last 20 years by keeping all active pharmacists in an Association, which has worked hard to foster better patient care by the pharmacists.

However, the Board has decided not to oppose this change in the law, as recent disagreements among some members of the Association and the majority of the Association has served as a significant distraction from the intended mission and intended purpose of the law, that of getting all the active pharmacists practicing within the state of North Dakota to support the goals of the Association, while it worked to foster better pharmacist care for patients.

NDHA
North Dakota Healthcare Association

Vision
The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.

Mission
The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

Testimony in Support of SB 2039
Board of Pharmacy
January 20, 2009

Senator Klein, Members of the Senate Industry, Business and Labor Committee, I am Arnold Thomas, President of the North Dakota Healthcare Association. I am here in support of SB 2039.

SB 2039 will clarify the financial relationship between the Board of Pharmacy and the Pharmacy Association and revise the makeup of the Board of Pharmacy.

Currently the Board of Pharmacy charges an annual licensure fee. A portion of these fees are transferred by the Board of Pharmacy, a State entity, to the pharmacist's professional association, a private professional organization. During the interim we asked why a state agency, whose responsibility is preserving the public's welfare through the regulation of the professional practice of pharmacy, collects and transfers monies to a private professional organization.

We know of no other ND health association, profession or trade, whose members are regulated by the State, having this type of financial arrangement with their respective state regulatory agency. We have no evidence or indication that voluntary association membership, professional or trade, is a risk to professional integrity. And, we are unaware of any other ND health regulating entity which sets fees to support both its own functions and those of a private entity whose members it regulates.

SB 2039 eliminates this financial arrangement between a professional association and the agency responsible for its regulation.

During the interim hearing process we also asked why, unlike other health regulatory boards, the Board of Pharmacy did not have a consumer

PO Box 7340 Bismarck, ND 58507-7340 Phone 701-224-9732 Fax 701-224-9529

representative. Others asked why pharmacy technicians, regulated by the board, had no voice at the board level. We think adding a consumer and a pharmacy technician to the board brings important perspectives at the board level and will enhance the board's exercise of its public welfare responsibilities.

SB 2039 does not address our recommendation for a geographical and constituency balanced board makeup. We again express our opinion that the membership composition of a regulatory health board should be geographically balanced as well as reflect the range of venues regulated by the agency. We think an amendment requiring geographical and constituency balance would further strengthen the regulatory role and functions of the Board of Pharmacy.

Thank you, Mr. Chairman. I would be happy to entertain questions you or members of the committee may have.

01-20-09

Committee Members,

First of all, thank you for taking the time to address the important issues facing pharmacy practice in North Dakota.

So that you might appreciate the comments that follow, let me provide full disclosure. I am a native North Dakotan, graduate of NDSU, employed by St. Alexius Medical Center, Bismarck, ND for the last 25 years. I am a member of the ND Pharmacist Association and the ND Health Systems Pharmacy organization. I support elimination of the Board of Pharmacy funding of the ND Pharmacist Association and the elimination of mandatory membership in the North Dakota Pharmacist Association as a result of pharmacist licensure by the Board of Pharmacy. I believe there is a significant inappropriate funding relationship between these two entities. My comments in no way should be interpreted to represent the position of St. Alexius Medical Center or the St. Alexius Medical Center Department of Pharmacy.

My first concern with the inappropriate funding relationship between the Board of Pharmacy , is with the Pharmacy Board collecting the membership fee of the ND Pharmacist Association. The Board of Pharmacy collects a $200/year license fee from the approximately 700 pharmacists seeking a license to practice in North Dakota. As a result of previous legislation, every pharmacist license holder automatically becomes a member of the North Dakota Pharmacist Association and half of this license fee($100), is then passed on to the North Dakota Pharmacist Association to fund association activity. This provides approximately $70,000 to the ND Pharmacist Association. I believe that the North Dakota Pharmacist Association should exist as any other public association, with its membership voluntarily supporting the association by choosing to join through voluntary payment of association fees. Without this option, members of the association, who might not agree with association activities, have no way of keeping the association accountable to its members. This also represents an inappropriate transfer of state funds, collected as license fees, to a public association.

Significant discussion of this mandatory membership issue surfaced during the last legislative session, resulting in the ND Pharmacist Association allowing members to "opt out" and receive reimbursement of the $100 portion of the license fee that was forwarded from the pharmacy board to the association.

While this may seem a reasonable solution, a member still must take an action to "opt out" and unless the current law is changed, any licensee still remains a member of the ND Pharmacist Association even if the $100 is refunded. Since all pharmacists must have a license to practice, and the association membership fee is included in the license fee, those pharmacists wishing not to join the association must then request a refund. This is completely backwards and unacceptable.

During discussion of this issue at last years legislative hearings, a ND Pharmaceutical Association spokesman indicated that without the current mandatory membership/fee collection process, there was a concern that the viability of the association could be jeopardized. If each pharmacist would voluntarily choose to join the association by paying $100 directly to the association, there would be no financial impact on the association. Association membership would be compromised only if pharmacists would determine that the $100 membership fee did not provide value and chose not to join. By

eliminating the current unusual funding mechanism, the association becomes accountable to its membership, by asking each member to write a check. Every organization, including the ND Pharmacist Association, should stand on its own merit, without funding intervention from a state board.

Another concern became reality when, in the last legislative session, the board asked for an increase in the maximum it could charge for a pharmacist license to $400, which could have resulted in doubling the licensing fees, half of the increase intended for the association. These regulations were removed from proposed legislation, but it could have effectively raised more income for the association and added to extensive Board of Pharmacy reserves.

My third concern about the association funding process lies in a question about the board's influence over activities of the association. The board and the association have a close working relationship and have had many worthy collaborations. However, in my opinion, the joint effort to aggressively oppose any attempt to repeal the ownership law is one example of inappropriate collaboration. Following this issue for over 20 years, I have often heard the argument from the board and the association in testimony to legislative committees, "those that control the purse strings control the policy". They use this argument to argue that if non- pharmacist owners were to own pharmacies, it would inevitably lead to inappropriate pharmaceutical care, since "those that control the purse strings, control the policy". If you accept this argument, I think it could be equally applied to the board and the association. It has been clear that the board and the association have consistently, for over 45 years, opposed the ownership law. Perhaps if the board had not controlled the purse strings of the association, might the association leadership have been willing to challenge the wishes of the board?

My resolution to this problem is to eliminate these potential conflicts of interest, by prohibiting the Board of Pharmacy's collection of ND Pharmacist Association membership fees collection through the licensing process and reduce the license fee to $100/yr, which adequately supports the pharmacy board activities. The law needs to be clarified so licensure does not automatically make you a member of the North Dakota Pharmacist Association. The qualification for membership to the Board of Pharmacy needs to eliminate the requirement that the board member be a member of the North Dakota Pharmacist Association. Pharmacists that choose not to be a member of the association should not be excluded from consideration for the board. SB2039 bill accomplishes all of these objectives.

An indirect result of making the board and association financially independent, would provide the North Dakota Pharmacist Association a chance to become a stronger organization. The association membership would consist of those members who have chosen to join. The association could continue to collaborate with the board, but would have the freedom to oppose those board policies that would be objectionable to its members. Please support SB2039 which will remove the Board of Pharmacy's collection of membership fees for the North Dakota Pharmacist Association, as well as eliminate mandatory membership in the association as a result of pharmacist licensure.
Respectfully,

Kim Christiansen, R.Ph.
1707 Valle Moor Place

Bismarck, ND 58501

Kim Same handout given to House.

SB 2039 What does it do?

1. Adds a consumer member and a pharmacy technician as voting members of the Board of Pharmacy.
2. Removes from law, potential conflicts of interest resulting from the current relationship between the Board of Pharmacy and the ND Pharmacist Association.
3. Eliminates the current practice of the Board of Pharmacy collecting association membership fees for the ND Pharmacist Association.
4. Eliminates the transfer of state funds, collected as professional license fees, to a private professional association.
5. Eliminates mandatory membership in the ND Pharmacist Association as a result of pharmacist licensure.
6. Pharmacists who choose not to be members of the Association cannot be excluded from consideration for the Board of Pharmacy.
7. Reduces the maximum pharmacy license fee to $100.00.
8. Makes the ND Pharmacist Association accountable to its members.

NDPhA
NORTH DAKOTA PHARMACISTS ASSOCIATION

Same given to House.

Senate Industry, Business and Labor Committee
SB 2039 – 10:30 am
Chairman – Senator Klein

Chairman Klein and members of the committee, my name is Mike Schwab, Executive Vice President of the ND Pharmacists Association. I am here today to present comments in reference to SB 2039.

During this past Interim, the ND Pharmacists Association provided testimony that supported the addition of a consumer and pharmacy technician to the ND State Board of Pharmacy. Our Association's position on adding a consumer and pharmacy technician to the ND State Board of Pharmacy has not changed and we support those additions.

The ND Pharmacists Association does not have an official position on the remaining changes included in this piece of legislation. We will support and implement whichever changes this committee feels necessary for the benefit of the profession of pharmacy and its Association.

We would like to thank you for your time and attention today. I would be happy to try and answer any questions this committee may have.

Respectfully,

Mike

Mike Schwab – EVP
ND Pharmacists Association
1641 Capitol Way
Bismarck, ND 58501
701-258-4968
mschwab@nodakpharmacy.net

NDHA
North Dakota Healthcare Association

Vision
The North Dakota Healthcare Association will take an active leadership role in major healthcare issues.

Mission
The North Dakota Healthcare Association exists to advance the health status of persons served by the membership.

Testimony in Support of SB 2039
House Industry, Business and Labor Committee
March 3, 2009

Chairman Keiser, Members of the House Industry, Business and Labor Committee, I am Arnold Thomas, President of the North Dakota Healthcare Association. I am here in support of SB 2039.

SB 2039 will clarify the financial relationship between the Board of Pharmacy and the Pharmacy Association and revise the makeup of the Board of Pharmacy.

Currently the Board of Pharmacy charges an annual licensure fee. A portion of these fees are transferred by the Board of Pharmacy, a State entity, to the pharmacist's professional association, a private entity.

During the interim we asked why a State agency, whose responsibility is preserving the public's welfare through the regulation of the professional practice of pharmacy, collects and transfers monies to a private professional organization.

We know of no other ND health care association--professional or trade--whose members, regulated by the State, have this type of financial arrangement with their respective State regulatory agency. We have no evidence or indication that voluntary association membership—professional or trade--is a risk to professional integrity. And, we are unaware of any other ND health care regulating Agency which sets fees to support its own functions and those of a private entity whose members it regulates.

SB 2039 eliminates this financial arrangement between a professional association and the regulating State agency.

PO Box 7340 Bismarck, ND 58507-7340 Phone 701-224-9732 Fax 701-224-9529

During the interim hearings we also asked why, unlike other health regulatory boards, the Board of Pharmacy did not have a consumer representative. Others asked why pharmacy technicians, regulated by the board, had no voice at the board level. We support the provisions in this bill expanding the constituency composition of the Board.

At this time SB 2039 does not address our recommendation for a geographical and constituency balanced board makeup. We again express our opinion that the board constituency composition should be geographically balanced and reflective of the venues regulated by the agency. We think requiring geographical and constituency balance would further strengthen the regulatory role and functions of the Board of Pharmacy.

Thank you, Mr. Chairman. I would be happy to entertain questions you or members of the committee may have.