

2011 SENATE AGRICULTURE

SB 2088

2011 SENATE STANDING COMMITTEE MINUTES

Senate Agriculture Committee
Roosevelt Park Room, State Capitol

SB 2088
January 13, 2011
12850

Conference Committee

Committee Clerk Signature *Greta Nelson*

Explanation or reason for introduction of bill/resolution:

Relating to dispensing of veterinary drugs.

Minutes:

Attachment #1 and # 2, #3

Chairman Flakoll called the meeting to order on this 13th day of January, 2011.
Roll call was taken by the clerk.

Senator Flakoll: All present and open hearing SB 2088.

Dr John Boyce: (Attachment #1) Executive Secretary, North Dakota Board of Veterinary medical Examiners.

Senator Flakoll: Questions?

Senator Klein: Clarification, affect the customer relationship with local feed dealer where he been buying things for years ...what we're doing here is strictly allowing a veterinary to write a prescription that another veterinary has written and getting this dispensation to do that? Concern there is not any among the producers out there ...this is not going to produce any "rub".

Dr Boyce: That is correct....these are separate but related issues both deal with prescription drugs. Nothing to do with buying drugs in feed stores. Feed stores are not allowed to sell prescription drugs. This is vets selling or dispensing drug to someone who is not their client. Based upon a relationship between that person and another licensed veterinarian who has that relationship with the client.

Senator Flakoll: Why shouldn't we just amend that into the bill?

Dr Boyce: That was discussed by the board at a meeting in November and then conference call in December and on advice of our legal counsel, Assistant Attorney General who advises the board. He felt it was simpler and better to change the practice act to make the simple change to the practice act and implement the rule as a rule. Rather than putting the rule into the practice act. It is a different approach to accomplishing the change,

but his recommendation was to do it the way we are doing it. That's how the board voted to do it.

Senator Flakoll: Worry about making rules any way. If we leave the door open for rule making this is something they want, but could be a number of things that could be put in place, too, that we may not be in support of.

Dr. Boyce: Concern understood. Any agency has the ability to propose a rule change as long as it is supported by the practice act and goes through public comment and hearing. This rule change I gave you in testimony has been approved by the boardthis is what they intend to submit once the practice act is changed. Just a different approach to doing it. They thought it was cleaner to change the practice act by simply and propose a rule is a rule.

Senator Klein: Rules cost somebody a couple thousand dollars to go through the process to the publication, the hearing, administrative rule process to get to what we could have done today and had it in affect by July 1. If you are being counseled, I want to hear that. Never heard before that "We have been counseled to do that".

Dr Boyce: Our Assistant Attorney General advises our board on legal mattersthis is how he said to do it. We followed his advice and voted to do it that way.

Senator Flakoll: We don't have people testify in the neutral position.

Nancy Kopp: Executive Secretary for ND Veterinarian Medical Association. We did meet with State Board of Veterinarian Medical Examiners on couple occasion on drafting SB 2088. While we are in support of the language that they had provided for you, they say they will introduce administrative rules to augment the passage of 2088. We have concern with the last part of line 8 and beginning line 9 as it states except as provided by board rule. Our association has some of the same concerns as Senator Flakoll and Senator Klein have stated as giving state boards open ended authority and promulgating rules. We respect State Board of Veterinary Medical Ex and what they say they are going to do....we believe they will do that. We feel that perhaps this language should be in statuesque. Defer further testimony on behave to Del Rae Martin.

Del Rae Martin: President of ND Veterinary Medical Association (Attachment # 2)

Senator Larsen: Give example of what prescription medication an animal would need that someone is coming from Fargo to Mandan and they run out....what would be the scenario?

Del Rae Martin: Common one is heart medications, we have several veterinarians labeled heart medications that we use.....example....forgot their medications or didn't have med available .Need for life or death, therefore they need the medication to maintain life. Antibiotics are another that have been done, shortages supplier run out of critical medications. Send them to another clinic in town and are willing to sell it to our client, but that is in violation.

Senator Klein: Some rules do get changed, (not quite the way we like them) but I am drafting some bills to fix things in the interim and I understand your voice here. Certainly, I am not sure as to how much concern it is to change, giving you peace of mind that your voice will always be heard somewhere along the line.

Del Rae Martin: I appreciate that.

Senator Flakoll: Anyone to speak in opposition of the bill 2088?

Julie Ellingson: Represent North Dakota Stockmen's Association. (Attachment #3)

Senator Heckaman: Do you have suggested language you would like to see instead?

Julie Ellingson: Very comfortable with the language the board has been looking at.

Senator Flakoll: Any other opposition?

Senator Flakoll: Closing hearing of SB 2088 Reminder, we are still in session.

Senator Flakoll: Do you wish to start working on this? Is there interest in amending it with language provided to us by Dr Boyce?

Senator Miller: I'd like to see it amended or at least an amendment to look at ...ask Anita if needs to be inserted anywhere else in the code?

Senator Flakoll: Checked with intern...we can adopt it, if you are comfortable with the language provided we could be willing to entertain that motion to adopt the amendment as presented for 87040101 if that is the wish of the committee. If you feel more comfortable at this early point in having it drafted by Anita or Eric to come back at a later date. (When an amendment goes to the floor, I have to sign off on it that it hits the calendar. I have to have the clerk show it to the carrier to make sure it is the correct wording so nothing is mixed up Something got lost along the way and amendment was not exactly what we wanted. So always have it checked with carrier before it goes to the floor.)

Senator Flakoll: That would be in the handout John handed out.

Senator Miller: Are we confident this is where it needs to go?

Senator Flakoll: Drafted by Assistant Attorney General

Senator Miller: Code rules vs. veterinary law

Senator Flakoll: We can hold off if you want.

Senator Heckaman: If we are confused, maybe we should wait. Are we in a rush?

Senator Flakoll: Not yet I will be leaving this afternoon, Sen. Larsen will be presiding. Let Sen. Larsen know if you intend to present tomorrow.

Senator Flakoll: Ready for a motion?

Senator Heckaman: I so move the proposed amendments on SB 2088 to overstrike the underlined portions on the sections 8 and 9 and the current bill into insert the language as provided to us by the ND Board of Veteran Medical Examiners.

Senator Flakoll: On lines 8 and 9

Senator Heckaman: Yes on lines 8 and 9

Senator Larsen: Second

Senator Flakoll: Clear on motion? Discussion?

Senator Flakoll: Roll call of amendment 2088, new language on lines 8 and 9 and insert the information that follows under the Executive Secretary following the section in its presentation of 87040101. Questions?

Clerk: Roll vote: 7 yea/ 0 no /0 absent

Senator Flakoll: Motion carries

Senator Heckaman: Move a Do Pass

Senator Larsen: Second

Senator Flakoll: Discussion? Senator Klein had to step out.....can vote if returns soon.

Clerk: Roll vote SB 2088 7 yea 0 no 0 absent

Senator Flakoll: Motion carries

Senator Flakoll: Carrier Senator Heckaman

Senator Flakoll: Announcement of meeting across hall

Senator Flakoll: Meeting adjourned

REPORT OF STANDING COMMITTEE

SB 2088: Agriculture Committee (Sen. Flakoll, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2088 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-29 of the North Dakota Century Code, relating to dispensing of veterinary prescription drugs; and to"

Page 1, line 9, replace "the board by rule" with "section 2 of this Act"

Page 1, after line 9, insert:

"**SECTION 2.** A new section to chapter 43-29 of the North Dakota Century Code is created and enacted as follows:

Veterinary prescription drugs.

1. Except as provided under subsection 2, a veterinary prescription drug must be dispensed, used, or prescribed within the context of a veterinarian-client-patient relationship.
2. Other than a controlled substance, a licensed veterinarian may dispense a veterinary prescription drug without establishing a veterinarian-client-patient relationship if:
 - a. The drug is prescribed by a licensed veterinarian or by a veterinarian licensed in another jurisdiction who has established a veterinarian-client-patient relationship;
 - b. The prescribing veterinarian has an inadequate supply of the drug, failure to dispense the drug would interrupt a therapeutic regimen, or failure to dispense the drug would cause an animal to suffer; and
 - c. The dispensing veterinarian verifies the prescription with the prescribing veterinarian."

Renumber accordingly

2011 HOUSE AGRICULTURE

SB 2088

2011 HOUSE STANDING COMMITTEE MINUTES

House Agriculture Committee
Peace Garden Room, State Capitol

SB 2088
March 11, 2011
Job #15289

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to dispensing of veterinary prescription drugs.

Minutes:

Dr. Tom Bettenhausen, Secretary of ND Board of Veterinary Medical Examiners:
(See attached #1)

Howard Anderson, Executive Director of ND Board of Pharmacy: (See attached #2)

Representative Boe: This is the 200 series of the bill that was amended. What was amended?

Howard Anderson: The Assistant Attorney General, Bill Peterson, advised the Veterinary Medical Board that they should just have the first section that says Section 1 and put the rest in the rule. But when they were in the Senate committee, the legislature likes to have everything in the statute. So they just put the proposed rule in the statute.

Nancy Kopp, ND Veterinary Medical Assn. : We are in support of SB 2088.

The original bill did have some language that would allow the State Board of Veterinary Medical Examiners to promulgate rules for the amendments that were included in the Senate, Line 14-and on to the second page, lines 1 & 2.

We felt it was being more transparent putting the proposed rules into statute rather than going through the rule-making process.

Dr. Del Rae Martin, President of ND Veterinary Medical Assn.: (See attached #3)

Sheyna Strommen, ND Stockmen's Assn.: (See attached #4)

Opposition: None

Vice Chair Kingsbury: Closed the hearing.

Representative Boe: Moved Do Pass

Representative Schmidt: Seconded the motion

A Roll Call vote was taken. **Yes: 10, No: 0, Absent: 4,**
(Representatives Johnson, Headland, Trottier, Mueller)

DO PASS carries.

Representative Rust will carry the bill.

Date: 3/11/11

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2088

House **Agriculture** Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended

Rerefer to Appropriations

Motion Made By Representative Boe Seconded By Representative Schmidt

Representatives	Yes	No	Representatives	Yes	No
Dennis Johnson, Chair	AB		Tracy Boe	X	
Joyce Kingsbury, Vice Chair	X		Tom Conklin	X	
Wesley Belter	X		Richard Holman	X	
Craig Headland	AB		Phillip Mueller	AB	
David Rust	X				
Mike Schatz	X				
Jim Schmidt	X				
Wayne Trotter	AB				
John Wall	X				
Dwight Wrangham	X				

Total Yes 10 No 0

Absent 4

Bill Carrier Representative Rust

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

REPORT OF STANDING COMMITTEE

SB 2088, as engrossed: Agriculture Committee (Rep. D. Johnson, Chairman)
recommends **DO PASS** (10 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING).
Engrossed SB 2088 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2088



North Dakota Board of Veterinary Medical Examiners

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New Rockford, ND
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Thomas Bettenhausen, DVM
Bismarck, ND
Secretary

Richard Odegard, DVM
Grand Forks, ND

John R. Boyce, DVM, PhD
Executive Secretary

Senate Bill No. 2088

Senate Agriculture Committee, January 13, 2011

John R. Boyce, Executive Secretary, North Dakota Board of Veterinary Medical Examiners

Thank you for the opportunity to offer testimony regarding SB 2088. According to the North Dakota veterinary medical practice act and board rules, veterinary prescription drugs may be used or prescribed only within the context of a valid veterinarian-client-patient relationship. North Dakota pharmacy law allows veterinarians to dispense prescription drugs to their own clients, but does not allow veterinarians to fill prescriptions written by other veterinarians. That can occasionally cause problems for veterinarians and animal owners. At its meeting on November 19, the board approved the following change to its rules to address this problem:

87-04-01-01. Veterinary prescription drugs. *Veterinary prescription drugs are to be dispensed, used, or prescribed only within the context of a ~~valid~~ veterinarian-client-patient relationship. A licensed veterinarian may dispense a veterinary prescription drug, other than a controlled substance, without establishing a veterinarian-client-patient relationship, if all of the following requirements are met:*

- 1. The drug is prescribed by a licensed veterinarian, or a veterinarian licensed in another jurisdiction, who has established the veterinarian-client-patient relationship.*
- 2. The prescribing veterinarian has an inadequate supply of the drug, or failure to dispense the drug would interrupt a therapeutic regimen or cause an animal to suffer.*
- 3. The dispensing veterinarian verifies the prescription with the prescribing veterinarian.*

Veterinary prescription drugs are those drugs restricted by federal law to use by or on the order of a licensed veterinarian.

History: Effective January 1, 1999; amended effective _____, 2011.

General Authority: NDCC 43-29-03

Law Implemented: NDCC 43-29-03; 43-29-14

When considering the above rule change, the board realized that there could be a potential conflict with the wording in section 43-29-14 of the veterinary medical practice act. SB 2088 was introduced to address this potential conflict.

It is the board's intent to proceed with the above rule change once the practice act is amended by SB 2088.

Nancy Kopp

From: "Dr. Del Rae Martin" <drmartin.hrah@midconetwork.com>
"Tracy Thomas" <ndvma@btinet.net>; "Nancy Kopp" <nkopp@btinet.net>
Date: Wednesday, January 12, 2011 10:51 AM
Subject: SENATE BILL 2088.doc

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SENATE BILL NO. 2088

Chairman Flakoll and members of the Senate Agriculture Committee, my name is Dr. Del Rae Martin. I currently serve as President of the North Dakota Veterinary Medical Association and own a small animal practice in Mandan, ND. The North Dakota Veterinary Medical Association is in support of the North Dakota Board of Veterinary Medical Examiners opening the Practice Act to allow for an expansion of the prescription drug dispensing provisions to enable our members to remain compliant. The Executive Board did send a letter to the North Dakota Board of Veterinary Medical Examiners expressing our concern with the language "except as provided by Board rule." The Executive Board believes that the statute revisions should be as transparent as possible. Regardless, the North Dakota Veterinary Medical Association is in support of the proposed amendments to the North Dakota Veterinary Practice Act and Board Rules, if promulgated, in that the revisions will give practicing veterinarians and their client's better access to prescriptions in the healthcare of their animals.

Thank you for your time and I will be happy to try and answer your questions.

SB 2088

Good morning, Chairman Flakoll and members of the Senate Agriculture Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The Stockmen's Association opposes SB 2088 as it is written, because it is unclear what exceptions would be included through this amendment and how broad this list may become. We believe the veterinary profession and the general public with interest in this matter would be better served by having those exceptions explicitly listed in this statute.

With that being said, we understand that the rule change the State Board of Veterinary Medical Examiners intends is one that would allow licensed veterinarians to dispense veterinary prescription drugs other than a controlled substance without establishing a vet-client-patient relationship if 1) the drug is prescribed by a licensed vet or a vet licensed in another jurisdiction who has established the veterinarian-client-patient relationship; 2) the prescribing vet has an inadequate supply of the drug or failure to dispense the drug would interrupt a therapeutic regimen or cause an animal to suffer; and 3) the dispensing vet verifies the prescription with the prescribing vet.

The Stockmen's Association would support this change, as it could assist livestock producers in providing timely treatment for their animals when the necessary medicine is not available from their regular local veterinarian.

The high cost of some common prescription drugs may make it impractical for all veterinarians to keep fully stocked with all medicines at all times, and this is a way for livestock owners to utilize the best pharmaceuticals for the situation if another veterinarian has it on hand, even if their regular vet does not. To put this in perspective, one popular, effective livestock injectable antibiotic costs an average of \$725.89 for a 250-mL vial – so costly, in fact, that it comes with a little protective sleeve so the glass bottles don't break while in transit. It may be cost-prohibitive for clinics to keep a large inventory of this medicine on hand, especially considering the product has a limited shelf-life. Therefore, allowing producers to have their prescriptions filled by another vet under the circumstances described is the best for all those involved, especially the animals who need treatment.

Therefore, if this more specific language was included in the bill instead of the vague rule clause, we'd readily change our stance on this issue.



North Dakota Board of Veterinary Medical Examiners

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Senate Bill No. 2088

House Agriculture Committee, March 11, 2011

Dr. Tom Bettenhausen, Secretary

North Dakota Board of Veterinary Medical Examiners

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Following the hearing before the Senate Agriculture Committee on January 13, SB2088 was amended to include the language from the proposed rule change into the practice act change. Because the amendments are substantially equivalent to the wording of the proposed rule change, the board supports SB2088 as amended.



BOARD OF PHARMACY
State of North Dakota

Jack Dalrymple, Governor

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#2

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Senate Bill No 2088
House Agriculture Committee
Peace Garden Room – State Capitol Bldg
9:00 AM – Friday - March 11th, 2011

Chairman Johnson and members of the House Agriculture Committee, thank you for the opportunity to speak with you today.

This Bill is a result of conversations between the Board of Pharmacy, the Board of Veterinary Medical Examiners, some of our veterinarians and some businesses that I will refer to as suppliers to stockmen. During those discussions it was discovered that it was difficult under current veterinarian laws and rules to serve some animals in need, as described on page 1, line 22 through 24 of Senate Bill 2088.

The Board of Pharmacy agreed that this is a good accommodation in the law and we do support this legislation.

Thank you.

Howard C. Anderson, Jr. R.Ph.
Executive Director

#3

SENATE BILL NO. 2088

Chairman Johnson and members of the House Agriculture Committee, my name is Dr. Del Rae Martin. I currently serve as President of the North Dakota Veterinary Medical Association and own a small animal practice in Mandan, ND. The North Dakota Veterinary Medical Association is in support of the North Dakota Board of Veterinary Medical Examiners opening the Practice Act to allow for an expansion of the prescription drug dispensing provisions to enable our members to remain compliant. For example, if an owner is from out of town and either forgot or ran out of their animals' medication, it has been the practice of most veterinarians to contact the owner's veterinarian for authorization to fill a prescription to enable the owner to maintain the health of their animal until they are able to return to their regular veterinarian. Another example is if the veterinary hospital either runs short of a veterinary prescription drug either due to difficulty obtaining the medication from the distributors or the hospital temporarily selling out of the medication, we contact another hospital in our area and ask if we can either obtain the medication from them or send our client over to their hospital to purchase the medication. The North Dakota Veterinary Medical Association is in support of the bill with the amendments to change the North Dakota Veterinary Practice Act. Senate Bill No. 2088 will give practicing veterinarians and our client's better access to prescriptions in the healthcare of their animals.

Thank you for your time and I will answer any questions.

#4

SB 2088

Good morning, Vice Chairman Kingsbury and members of the House Agriculture Committee. For the record, my name is Julie Ellingson and I represent the North Dakota Stockmen's Association.

The Stockmen's Association supports SB 2088, which would allow licensed veterinarians to dispense veterinary prescription drugs without establishing a vet-client-patient relationship if 1) the drug is prescribed by a licensed vet or a vet licensed in another jurisdiction who has established the veterinarian-client-patient relationship; 2) the prescribing vet has an inadequate supply of the drug, and failure to dispense the drug would interrupt a therapeutic regimen or cause an animal to suffer; and 3) the dispensing vet verifies the prescription with the prescribing vet.

The high cost of some common prescription drugs can make it impractical for all veterinarians to keep fully stocked with all medicines at all times, and this is a way for livestock owners to utilize the best pharmaceuticals for the situation if another veterinarian has it on hand, even if their regular vet does not. To put this in perspective, one popular, effective livestock injectable antibiotic costs an average of \$725.89 for a 250-mL vial – so costly, in fact, that it comes with a little protective jacket so the glass bottle doesn't break while it is in transit. It may be cost-prohibitive for clinics to keep a large inventory of this medicine on hand, especially considering the product has a limited shelf-life. Therefore, allowing producers to

have their prescriptions filled by another vet under the circumstances described is the best for all those involved, especially the animals who need treatment.

This bill will assist livestock producers in providing timely treatment for their animals when the necessary medicine is not available from their regular local veterinarian and, therefore, we ask for your favorable consideration of the bill.