2011 SENATE JUDICIARY

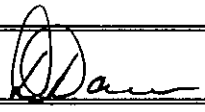
SB 2106

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2106
2/9/11
Job #14272

☐ Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to immunity for guardians ad litem in juvenile court proceedings.

Minutes: There is written testimony

Senator Nething – Chairman

The committee discusses this bill is a duplicate bill and they will deal with another bill that is in the Senate's possession at this time. There was no hearing for this bill but testimony was handed in.

Senator Olafson motions for a do not pass
Senator Nelson seconds

Roll call vote – 5 yes, 0, 1 absent

Senator Nething will carry

Date: 2/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2166

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S Olafson Seconded By S. Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson – V. Chairman	X				
Stanley Lyson	A				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No 0

Absent 1

Floor Assignment S. Nething

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

REPORT OF STANDING COMMITTEE

SB 2106: Judiciary Committee (Sen. Nething, Chairman) recommends **DO NOT PASS** (5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2106 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

SB 2106

2106 ①

SHERRY MILLS MOORE
Attorney At Law
P.O. Box 4144
Bismarck, ND 58502-4144
701-222-4777
701-222-8502 (fax)

DATE: January 11, 2011

TO: Chairman DeKrey, Representative Shirley Meyer, Representative Lois Delmore

RE: **HB 1078 and SB 2106**

Currently there are two bills which seek to give a guardian ad litem immunity in juvenile court proceedings. This is a good thing but from my perspective both of them are too narrow and here is why.

SB 2106 gives immunity only for the GAL's **report**. The guardian ad litem should also be protected from liability for work done in investigating and testifying.

HB 1078 only protects **lay** guardian ad litems. While nearly all GAL's in juvenile court proceedings are lay persons, there is no reason not to extend the protection to professionals who serve in that capacity. (social worker, psychologist, mental health professional, lawyer).

This is best accomplished by amending HB 1078 and there is then no need for SB 2106.

27-20-48. Guardian ad litem - Immunity.
The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a lay guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed. A ~~lay~~ guardian ad litem appointed under this section is immune from civil liability for damages for any acts or omissions ~~of ordinary negligence~~ arising out of that individual's duties and responsibilities as a ~~lay~~ guardian ad litem, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

AMENDMENT TO HOUSE BILL1078

Line 11: Delete "lay"

Line 12: Insert "any" before "acts", delete "s" from "acts;

Line 13: Delete "s" from omission; delete "of ordinary negligence"

Line 14: Delete "lay", replace the period with a comma; insert "unless the act or omission constitutes gross or willful negligence or gross or willful misconduct."

With these changes it would read:

A BILL for an Act to amend and reenact section 27-20-48 of the North Dakota Century Code, relating to the immunity of a lay guardian ad litem

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA

SECTION 1. AMENDMENT. Section 27-20-48 of the North Dakota Century Code is amended and reenacted as follows:

27-20-48 Guardian ad litem – Immunity.

The court at any stage of a proceeding under this chapter, on application of a party or on its own motion, shall appoint a lay guardian ad litem for a child who is a party to the proceeding if the child has no parent, guardian, or custodian appearing on the child's behalf or their interests conflict with the child's or in any other case in which the interests of the child require a guardian. A party to the proceeding or that party's employee or representative may not be appointed. A ~~lay~~ guardian ad litem appointed under this section is immune from civil liability for damages for any acts or omissions ~~of ordinary negligence~~ arising out of that individual's duties and responsibilities as a ~~lay~~ guardian ad litem~~.~~, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.