

2017 HOUSE JUDICIARY

HB 1235

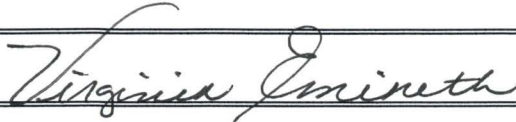
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1235
1/24/2017
27296

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to access to confidential records by the commission on legal counsel for indigents.

Minutes:

Attachments 1 - 3

Chairman K. Koppelman: Opened the hearing on HB 1235. I am sponsoring this bill. It has access to information by the North Dakota Commission on Legal Defense for Indigents. Explained the need for the bill. (2:00-8:00) We had complete support for providing attorneys for indigents that really can't afford them. We worked with other agencies to try to get this done. When we attempted to check various information to see if someone was indigent or not we tried to get information from other agencies and we found that some public defenders say they are tired of defending people who have better cars than we do. There is a concern on how we verify that. We asked Legislative Counsel to give us a bill that would allow us excess to the commission in order to double check this information.

Travis Finck: Deputy Director of the ND Commission on Legal Counsel for Indigents: Shared a task force that looked at this. (Attachment 1) Went over the handout. (stopped 15:30) In North Dakota, the defendants fare the burden of establishing that they are in fact indigent. They do that by filling out the application (Exhibit A). Our agency does not determine illegibility; that is the province of the court. We ask for the authority to have access to some of these documents and I believe that HB 1235 does in fact achieve that. So we are respectfully requesting on behalf of the commission and all of our employees a do pass recommendation from this committee.

Rep. Hanson: Have you discovered problems with people committing fraud in this area?

Travis Finck: I don't have statistics on that. We do have people that have heard of those. The court and prosecutors makes the determination of illegibility. The application is an affidavit. So it would be committing fraud upon the court. It is my understanding that there have been cases of fraud committed but I do not have the numbers.

Rep. Klemin: One of the problems with have list is you might miss something. How would you get that information? Through a subpoena?

Travis Finck: This list is better than we have now. This bill is similar to other agencies so it is the best practices. When we get the applications for review, we call previous or current employees. The information we are limited to as for now is checking work behavior, how many hours does he work in a week, how much pay. It is my understanding that this bill is drafted to be similar to other agencies that do have spot checking or illegibility so I think it is a best practices model if anything. But it is better than what we have if anything.

Rep. Klemin: What if you did miss something and it is not on the list?

Travis Finck: We could attempt to subpoena that information; it would depend on where that information came from. If it is private sector question like a new job or employer listed, we could look into that information. Information agreements are often available and used.

Rep. Jones: On page 2, DOT were you involved in this? In checking, the timeframe, Section 391613. It was repealed in back in 1967.

Travis Finck: I was not involved in the drafting of this legislation; it is my understanding that this references toward a fee that is accessed for everyone with the exception of law enforcement or other exempted persons or agencies.

Rep. Jones: I would like a list. It appears that these persons are asking for free services from the court. So I think it is appropriate what you have done here.

Vice Chairman Karls: We heard a comment that some of these people seeking a public defender is driving a nicer car than yours? Do they need to list that? Is that one of the criteria?

Travis Finck: The income guidelines are based on the property guidelines. We consider assets over \$20,000. Exhibit A – on page 2 of the application does list the type of vehicle you have and we consider the incumbency of that vehicle. Exhibit B is our income and access guidelines.

Vice Chairman Karls: Is this totally on their word? Do you have a way of checking out the information they give you?

Travis Finck: In respect to the vehicles, we are limited to what is in the application. We do random spot checks; these are the ones who are brought to our attention by attorneys; they will often time screen the applications to verify information. We will pull 10 in a county and try to address that with letters to the court and updated training.

Rep. Klemin: What about the spouse of the person claiming to be indigent. Some put everything in the name of the wife. To what extend are you able to use the income and assets of a spouse to determine the indecency of the criminal defendant?

Travis Finck: We do consider the spouse's income and it will be revised on the new form. Most property records would at least show those types of liens.

Rep. Magrum: Can you request a lawyer for civil issues?

Travis Finck: The commission provides attorneys where it is constitutionally guaranteed by statute or by rule. We do most of the juvenile court's proceedings

Rep. K. Koppelman: Is there testimony in support of HB1235? Any testimony in opposition to HB 1235?

Ann Schaibley: Staff Counsel with WSI (Attachment #2) Attached is proposed amendment on this bill. (27:00- 30:32 Ann S) WSI Board of Directors opposes HB 1235 as it applies to WSI and offers an amendment. I do want to point out a couple of high points; I do want to point out and clarify the board only opposes the bill as it applies to WSI because there are to other ways within WSI Statute that the council can obtain information they are requesting in the bill. Under 65-05-32, if the commission were to have a signed release than the defendant, they would have access to the entire defendant file including all the information listed in the proposed bill. Additionally, under sub 9. of 65-05-32, WSI is able to provide other state agencies with claim information as long as that information is being used to conduct the duties of the agency receiving the information. We take our obligation to protect the information that we collect under Title 65 very seriously. That information technically belongs to the injured workers. If they were to sign a release giving us authorization. The more information is shared, the greater the likelihood that the information might be breached. We have a committee at WSI that reviews any requests for information from other agencies. We try to give them information that they are requesting in the most restrictive way while still giving what they need. We ask will and how it will be secured. Once when done with the information, what will happen with that information; will it be destroyed?

Rep. Vetter: Basically you are OK with the bill. You just want to eliminate this 2224 where it talks about WSI because you already have a system.

Ann Schaibley: That is correct.

Rep. Jones: In your handout you say that you would like to have a release from the person, you said that you had an amendment to that effect. Or do just want us to accomplish that.

Ann Schaibley: It is already in our statues 65-05-32 already for the release of information from the claimant. So we are asking for removal of any reference to WSI be removed from this bill.

Chairman K. Koppelman: There is a proposed amendment attached to Ms. Schaibley's written testimony.

Rep. Satrom: It says there are already two other avenues for the commission and legal counsel. Do you know what these avenues are?

Ann Schaibley: Yes, they can get a release from the defendant to give us authorization to give the commission any information they request. Or another is through a broader authorization in our own statute. We can release information to other state agencies upon their request. We do have agreements with other state agencies already. But to solidify the

release of that information, we enter into a data sharing agreement with those other agencies to make sure that information in their will be protected.

Rep. Roers Jones: Is the new application form going to act as a release of information for these agencies.

Chairman K. Koppelman: You talked about those two other avenues where information is available. Is there any other entity that has access to your information in the methods you prefer?

Ann Schaibley: I don't believe so. Our sharing authority is laid out in 0532. Now we are taking a more organized approach to how the information flows in and out of our agency.

Chairman K. Koppelman: Do people in child support situations have access to your information?

Ann Schaibley: Yes, that is the other agency. We have in 05329 separate subsections that discuss how WSI might share information of claimants and when laws outside of 10065 that deal with information that we hold.

Rep. Klemin: One of the ways you can provide information is on the request of another agency. This bill gives this commission for legal counsel for indigents to make a request. Why doesn't that square with your own statues?

Ann Schaibley: I think it achieves the same goal. The main difference between them is that the bill as drafted gives them the absolute right to that information. 65-05 gives authority to give information to state and federal agencies as permissive which gives us a bit more control about how that information is shared and what happens to it when it leaves our building. The more information is shared, the more likely it would be misused. We had about 14,000 applications; in their spot checking, they had about 10 in a given county. If access to all claims, they would be getting hundreds of thousands of claims.

Rep. Klemin: So instead of taking this language out of here couldn't we make it subject to 65-05-32? Yes, we do have an issue here.

Ann Schaibley: I think that would be appropriate.

Rep. K. Koppelman: Is there any further in opposition to HB 1235? Or neutral to HB 1235?

Shane Kettle: MDU Resources: We are neutral on the bill but I want to draw the committee's attention to page 2, lines 9-16. The intake sheet is not just a wavier when it comes to getting information from private entities. There is an administrative subpoena referenced on line15 there on page 2.

Chairman K. Koppelman: The bill was drafted with that in mind.

Jim Flemming: Child Support Director: With these confidentiality laws we hope you will adopt a friendly amendment - Proposed Amendment (attachment #3) placing them in the position to violate state and/or federal law. We understand the benefit of the bill. This is copies from the child support law. We interface with the IRS. We can find ourselves in violation with either state or federal agencies and will lose access to those data bases. They can share data with anyone they nominate. If we do not follow the federal statues, we will lose access to their databases. We do encourage you to adopt this amendment. we support this bill. 391603 is the site that the committee would make the correction.

Rep. Klemin: Why do they have to request it? If you are going to deny it? why don't you just say we can't provide this because of this federal law? The way this reads now, you can deny it and not give a reason why.

Jim Flemming: That is so we wouldn't give them an explanation for the same request that was denied before.

Rep. Klemin: It creates an additional step.

Rep. Jones: It's not burdensome to you.

Jim Flemming: It follows the bill drafting thing. As you draft those amendments when you add to the end of the bill you describe it as appearing after line 18 rather than on line 19 and then on line 5 is meant to follow the number in pattern page 1 line 7 which is the number4.

Travis Finck: The release that is in the amended application was intended for tax information. I would assume the commission will take those comments to heart so make it sure would comply with the requests.

Chairman K. Koppelman: The commission including those of you in office are very serious about keeping information confidential but that would be the intent with any information shared under this statue shared should it become law.

Travis Finck: That is correct. Those are kept completely confidential. We have our own HR requirements and we are very aware of the confidentiality requirements.

Chairman K. Koppelman: What would happen to the information after the fact?

Travis Finck: It would depend on respective agencies and honor their requests. We do have retention records schedules that are necessary.

Rep. Klemin: Now let's say you have accepted that person as an indigent and you have provided legal services about the public offender and sometime later he becomes wealthy. Can you get that money back?

Travis Finck: There is a provision for recoupment in the code. There is a process for that.

Chairman K. Koppelman: Is it only available if the person was indigent at the time they were provided services.

Travis Finck: The court can order reimbursement at the time of judgement being entered.

Chairman K. Koppelman: Meeting was adjourned.

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1235
1/24/2017
27334

- Subcommittee
 Conference Committee

Committee Clerk Signature

Virginia Emineth

Explanation or reason for introduction of bill/resolution:

Relating to access to confidential records by the commission on legal counsel for indigents.

Minutes:

1

Chairman K. Koppelman: (#1) Handed out proposed amendment change. This is a corrective amendment. This is the one that Kelly has prepared for us.

Rep. Maragos: I make a motion to adopt the corrective amendment.

Rep. Satrom: Second the motion.

Chairman K. Koppelman: Voice vote motion passed amendment is adopted. There were 2 other amendments that were adopted one of them had to do with Workforce Safety and that was the desire to be removed from the bill and allowed to instead enter into agreements with other agencies as they in some cases. The other one was from the department of Human Services and that one deals with federal law.

Rep. Klemin: Upon request of the commission he said could be deleted and he said they could because the way it reads now they can say no we can't tell you and then the commission says why not and then they will tell you.

Chairman K. Koppelman: The amendment would read then on page 2 line 18 "if the commission access to records under subsection 4 is denied under bases of federal law the government agency or private entity denying the access must describe the legal authority for the denial.

Rep. Klemin: I would agree to leaving this WSI in there. I move that amendment as revised.

Rep. Vetter: I second the motion.

Chairman K. Koppelman: The voice vote passed the motion carries. we have that amendment on the bill. The WSI may also enter into an agreement with the commission.

Rep. Klemin: When you are asking WSI for records on a particular individual, why would they have to give so many records?

Rep. Roers Jones: They wouldn't.

Chairman K. Koppelman: WSI has records on employment and job etc.

Rep. Paur: Did you consider on this form you put where you are authorizing excess to your private records. I think that would have a chilling on some people making false statements.

Chairman K. Koppelman: The court already has the authority to double check their assets if you do it fraudulently.

Rep. Roers Jones: As I was looking at the original bill I see what the problem is on the bill. If you look at section 1 number 4. We changed all of that so I don't know if the request is really being made for one single record is that an issue?

Chairman K. Koppelman: This is modeled after child support enforcement The purpose of child support enforcement is that somebody has been ordered to pay child support and there a dead beat dad and they have to pay.
It is really impossible to know what kind of records they might need to determine indigents.

Vice Chairman Karls: WSI will not show you anything until there is a waiver. In my case she signed the waiver and I was given the records and I have never told anyone what was in them.

Rep. Klemin: WSI has the position that their statute is permissive not mandatory but they will give you the information if there is a release signed by the individual. The commission is saying we are going to modify our form here so that in every case there is going to be a release signed by the individual. I suggest that we amend page 1 line 20 "the workforce safety and insurance records pursuant to a release signed by an individual identifying the last address of the individual and the rest the same. That is a motion.

Rep. Maragos: Second:

Rep. K. Koppelman: We have a motion and a second.

Rep. Hanson: On page 1, line 7; I want clarity. If more information is received by the commission would this additional information be confidential.

Chairman K. Koppelman: I think we could do something to ensure that the information that is obtained would be confidential.

Rep. T. Jones: On line 9 it reads that it is including automated access in the case of records maintained in automated data bases. If we strike out the word "automated access" and put

in its place “permissible information”. Then they would have to sign on the slip I agree to let me records be accessed.

Chairman K. Koppelman: That gets back to what that release will look like.

Rep. T. Jones: I referring to the application.

Chairman K Koppelman: If a court rules “that you have a constitutional right to a public offender” and you can’t release all the information then you are back to the information that may not exist.

Rep. Paur: As far as exceeding their own data base number 6 has something to do with WSI doesn’t “individual on line 21-24” limit?

Chairman K. Koppelman: That speaks directly to What Rep. Roers Jones is talking about.

Rep. Klemin: We can easily resolve this by this amendment. If the individual is not willing to give a release and disclose his assets he is not going to be approved. Make a motion

Rep. Maragos: second, Line 20 workforce safety and insurance records pursuant to a release signed by the individual identifying the last known address of the individual etc.

Chairman K. Koppelman: We will try a voice vote passed amendment bill.

Rep. Maragos: I make a motion for a do pass on HB 1235 as 3 times amended.

Rep. Vetter: Second.

Chairman K. Koppelman: Any discussion **Roll Call** Yes 11 No 1 ABSENT 3

FLOOR ASSIGNMENT; Rep. Klemin

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 11, replace "Records" with "All records"

Page 2, line 3, replace "39-16-13" with "39-16-03"

Renumber accordingly

PROPOSED AMENDMENT TO HOUSE Bill NO. 1235

Page 1, line 7, after "of" insert "state"

Page 1, line 7, after the underscored comma insert "but subject to any prohibitions in federal law,"

Page 2, after line 18, insert:

"5. If the commission's access to records under subsection 4 is denied on the basis of federal law, the government agency or private entity denying the access must, upon request of the commission, describe the legal authority for the denial."

Renumber accordingly

1/28/17 DCS
January 24, 2017

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "4" insert "and 5"

Page 1, line 7, after "of" insert "state"

Page 1, line 7, after the underscored comma insert "but subject to any prohibitions in federal law."

Page 1, line 11, replace "Records" with "All records"

Page 1, line 20, after "records" insert "pursuant to a release signed by an individual"

Page 1, line 21, replace "an" with "the"

Page 2, line 3, replace "39-16-13" with "39-16-03"

Page 2, after line 18, insert:

"**SECTION 2.** Subsection 5 to section 51-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

Renumber accordingly

Date: 1-24-17
 Roll Call Vote: 1

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1235**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Page 1 line 11 replace "records" with "all records"

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Maragos Seconded By Rep Satrom

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |

Total (Yes) _____ No _____
 Absent _____
 Floor Assignment _____

*Some
 votes
 carried*

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

Date: 12-4-17
Roll Call Vote: 2

2017 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1235

House Judiciary Committee

Subcommittee

Amendment LC# or Description: pg 2, line 18

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep Klemin Seconded By Rep Vetter

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |

Handwritten notes:
Voted
Voted
Voted

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 1-24-17
 Roll Call Vote: 3

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1235**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Amend page line 20, pursuant to a release signed by an individual

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep Klemin Seconded By Rep. Maragos

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | | | Rep. Hanson | | |
| Vice Chairman Karls | | | Rep. Nelson | | |
| Rep. Blum | | | | | |
| Rep. Johnston | | | | | |
| Rep. Jones | | | | | |
| Rep. Klemin | | | | | |
| Rep. Magrum | | | | | |
| Rep. Maragos | | | | | |
| Rep. Paur | | | | | |
| Rep. Roers-Jones | | | | | |
| Rep. Satrom | | | | | |
| Rep. Simons | | | | | |
| Rep. Vetter | | | | | |

Vote carried

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 1-24-17
 Roll Call Vote: 4

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO.**

House Judiciary HB1235 Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Maragos Seconded By Rep. Vetter

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman K. Koppelman | ✓ | | Rep. Hanson | | ✓ |
| Vice Chairman Karls | ✓ | | Rep. Nelson | — | |
| Rep. Blum | ✓ | | | | |
| Rep. Johnston | — | | | | |
| Rep. Jones | ✓ | | | | |
| Rep. Klemin | ✓ | | | | |
| Rep. Magrum | — | | | | |
| Rep. Maragos | ✓ | | | | |
| Rep. Paur | ✓ | | | | |
| Rep. Roers-Jones | ✓ | | | | |
| Rep. Satrom | ✓ | | | | |
| Rep. Simons | ✓ | | | | |
| Rep. Vetter | ✓ | | | | |

Total (Yes) 11 No 1

Absent 3

Floor Assignment : Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1235: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 3 ABSENT AND NOT VOTING). HB 1235 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "subsection" with "subsections"

Page 1, line 1, after "4" insert "and 5"

Page 1, line 7, after "of" insert "state"

Page 1, line 7, after the underscored comma insert "but subject to any prohibitions in federal law."

Page 1, line 11, replace "Records" with "All records"

Page 1, line 20, after "records" insert "pursuant to a release signed by an individual"

Page 1, line 21, replace "an" with "the"

Page 2, line 3, replace "39-16-13" with "39-16-03"

Page 2, after line 18, insert:

"SECTION 2. Subsection 5 to section 51-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

Renumber accordingly

2017 SENATE JUDICIARY

HB 1235

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1235
3/20/2017
29424

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to access to confidential records by the commission on legal counsel for indigents.

Minutes:

Testimony attached #

1,2,3,4,5

Chairman Armstrong called the committee to order on HB 1235. All committee members were present.

Kim Koppelman, North Dakota State Representative District 16 (:25 – 3:40), introduced and testified in support of the bill.

“The bill in a nutshell is to open communication between agencies and lawyers to make sure the people they are representing are actually indigent.”

Travis Finck, Deputy Director North Dakota Commission on Legal Counsel for Indigents (3:45– 8:00), testified in support of the bill. (see attachment 1,2,3)

Chairman Armstrong: “You run into situations where defendants can afford to hire lawyers but only with a payment plan. A lot of times lawyers are too busy to take a case unless they get a down payment right away. So people who aren’t poor still get indigent defense due to other factors. What are your thoughts on that?”

Travis Finck: “There are exemptions that we can do in certain situations.”

Chairman Armstrong (10:20): “If the money just goes back to the general fund, who’s motivated to ensure it gets paid?”

Travis Finck: “I can’t speak to individual motivations.”

Chairman Armstrong: “Well, they may have assets to give to them but they can’t dissolve them because they are sitting in jail. Why does it go to the general fund and not you guys?”

Travis Finck: “I can’t answer that. I’m not aware of the history behind that.”

Chairman Armstrong (11:35): “Would you feel there’s a conflict if you are legal representative and debt collector?”

Travis Finck: “I think it would be difficult being the attorney representing that individual knowing their financial circumstances and things of that nature, when they already assessed fees and fines, etc. It puts the attorney in a precarious situation of who they are representing.”

Chairman Armstrong (12:55): “Almost always in those situations they are always denied public defender first than they reapply and then try to get through with some of the exemptions.”

Travis Finck: “Yeah, and different jurisdictions handle that differently.”

Senator Nelson (13:45): “You brought up Marsy’s Law and you brought up fund 282, that 35-dollar fee, didn’t we have a discussion over that before and whether your agency even gets the 35 dollars?”

Chairman Armstrong: “Depends when they pay it I think is the answer.”

Travis Finck: “I’m not sure yet. There haven’t been enough payment cycles to see what effect that may or may not have.”

Chairman Armstrong (14:45): “Typically, isn’t the 35-dollar application fee paid way ahead of the case?”

Travis Finck: “Typically, application fee is paid with the application. However, most of these people filling out the applications are in custody.”

Chairman Armstrong (15:45): “You’re still red lined at 35 dollars?”

Travis Finck: “Yes. I also brought an amendment here that repairs a drafting error.” (see attachment 3)

Senator Larson (16:25): “There are lots of records that are authorized in this bill, are you thinking that you would ask each one of those questions or that you can request information from any of those? Or would you be looking for people to fill out on each one?”

Travis Finck: “We wouldn’t necessary consult all of those resources on each application we’re spot checking.”

Ann Schaibley, Staff Counsel with Workforce Safety and Insurance (18:15 – 2:20), testified in opposition of the bill. (see attachment 4)

Chairman Armstrong (22:15): “Do you charge fees? What happens if a guy is charged with a Class A Felony and he’s requesting a court appointed lawyer and he says he’s been through WSI, and we need to know what’s going on. What happens next?”

Ann Schaibley: “Under subparagraph 5, any member of the public can contact WSI and get any of the information there.”

Ann Schaibley: “I have an alternative amendment for your review.” (see attachment 5)

Ann Schaibley briefly went over the amendment.

Travis Finck, called back to the podium 28:00:

Chairman Armstrong: “Do we need WSI in?”

Travis Finck: “We will follow the will of the committee and legislature.”

Senator Osland (29:05): “Are there a lot of indigent people?”

Travis Fink: “There isn’t that many.”

Chairman Armstrong (30:10): “My concern is once one agency asks for exemptions, many will follow.”

Travis Finck: “With limited resources that we have, it’s important only true indigents receive services.”

Chairman Armstrong closed the hearing on HB 1235.

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1235 Committee Work
3/20/2017
29427

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

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Minutes:

Attachments

1

Chairman Armstrong called the committee to order on HB 1235. All committee members were present.

The Committee reviewed the proposed Amendment. (see attachment 1)

Senator Nelson motioned to Adopt the Amendment. **Senator Myrdal** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Myrdal motioned for Do Pass as Amended. **Senator Osland** seconded.

A Roll Call Vote was taken. Yea: 6 Nay: 0 Absent: 0.
The motion carried.

Senator Nelson carried the bill.

Chairman Armstrong ended the discussion on HB 1235.

March 20, 2017

CJ
3/20-2017
1/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1235

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after the first "5" insert ", and 6"

Page 1, line 20, remove "Workforce safety and insurance records pursuant to a release signed by an"

Page 1, remove lines 21 through 24

Page 2, line 1, remove "(7)"

Page 2, line 2, replace "(8)" with "(7)"

Page 2, line 4, replace "(9)" with "(8)"

Page 2, line 5, replace "(10)" with "(9)"

Page 2, line 6, replace "(11)" with "(10)"

Page 2, replace lines 19 through 23 with:

"SECTION 2. Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

SECTION 3. Subsection 6 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

6. In determining eligibility for public defender services the commission may obtain access to workforce safety and insurance records pursuant to section 65-05-32."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1235**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0360.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Nelson Seconded By Senator Myrdal

| Senators | Yes | No | Senators | Yes | No |
|--------------------|-----|----|----------------|-----|----|
| Chairman Armstrong | X | | Senator Nelson | X | |
| Vice-Chair Larson | X | | | | |
| Senator Luick | X | | | | |
| Senator Myrdal | X | | | | |
| Senator Osland | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

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

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1235**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0360.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Myrdal Seconded By Senator Osland

| Senators | Yes | No | Senators | Yes | No |
|--------------------|-----|----|----------------|-----|----|
| Chairman Armstrong | X | | Senator Nelson | X | |
| Vice-Chair Larson | X | | | | |
| Senator Luick | X | | | | |
| Senator Myrdal | X | | | | |
| Senator Osland | X | | | | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Nelson

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

REPORT OF STANDING COMMITTEE

HB 1235, as engrossed: Judiciary Committee (Sen. Armstrong, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1235 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after the first "5" insert ", and 6"

Page 1, line 20, remove "Workforce safety and insurance records pursuant to a release signed by an"

Page 1, remove lines 21 through 24

Page 2, line 1, remove "{7}"

Page 2, line 2, replace "{8}" with "{7}"

Page 2, line 4, replace "{9}" with "{8}"

Page 2, line 5, replace "{10}" with "{9}"

Page 2, line 6, replace "{11}" with "{10}"

Page 2, replace lines 19 through 23 with:

"SECTION 2. Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

SECTION 3. Subsection 6 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

6. In determining eligibility for public defender services the commission may obtain access to workforce safety and insurance records pursuant to section 65-05-32."

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1235

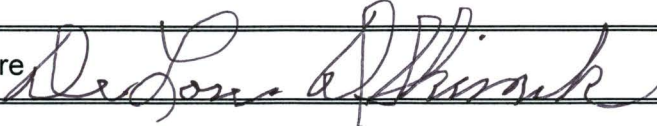
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1235
4/7/2017
29994

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to access to confidential records by the commission on legal counsel for indigents.

Minutes:

1

Chairman K. Koppelman: Opened the conference committee on HB 1235.

**Attendance: Chairman K. Koppelman; Rep. Johnston; Rep. Nelson;
Senator D. Larson; Senator Luick; Senator Osland**

Senator Larson: I would like to have Travis Fink explain the amendments since they proposed them on the Senate side.

Travis Fink, Deputy Director with ND Commission on Legal Counsel for Indigents: We did not propose this amendment; that was WSI.

Ann Schaibley, Workers Safety and Insurance; The proposed amendment was an effort to remove us from certain language at the beginning of the proposed bill that refers to excess to automated data bases. Our concern was we have significant information in the automotive data basis that would not be necessary for the spot checking that the commission would like to do for various application. We would be happy to share their information and under 65.05-32 there are several ways the commission can already excess claimant information to do their spot checking. As an authorization from the claimant they can secure and excess any claimant file information that WSI holds. WSI has been working with Mr. Fink and the commission since the bill was proposed to include an authorization on the application they use that defendants sign when they request indigent services. That revised authorization is in the process of being added to their application so when they sign the application for indigent services that would serve also as an authorization that WSI could release the claimant information if it was needed by the counsel for the commission. Under paragraph 9 of our statute there is provision that to share claimant information with other state agencies and that does include language that it is at WSI's discursion whether we share that information. Under Sub paragraph 9 we have proposed and provided to indigent commission a draft of a data sharing agreement that we would like to see if they chose to access

information under that paragraph of our statute. We feel there are ways that the counsel can get the information without excess out automated data basis.

Senator Larson: When we heard from both of these parties in the Senate committee meeting; we felt that if both were in agreement that this was going to be a better fix for protecting confidentiality from WSI plus providing the information that they needed for the indigent defense then there was no reason not to adopt the amendments.

Chairman K. Koppelman: I am unclear why you requested the language of the bill. I understood that was language you had worked with on including and now it is stricken from the Senate version of the bill.

Ann Schaibley: We would like to be out of the bill altogether. 65-05-32 already provides this information in current statute along with the policies that we have developed around that statute to provide information to the counsel and we have taken steps to make for sure that information is available.

Travis Fink: The direction I have been given by the commission is we want to try and work with state agencies. The problem we had when this started is we didn't really have any of this information sharing in place. Since this bill has been filed we have been having those people come forward and we have established a good working relationship with WSI.

Chairman K. Koppelman: The refusal to share information certainly occurs as well based upon our open records open meetings laws and the exceptions. Why should you be treated differently than any other agency? I have no objection on adding the language you talked about, but in the same language you are telling us if they sign a release we will release the information yet that is taken out of the bill. I don't mind having both in.

Ann Schaibley: The change on the Senate side was to try again to manage how the information how we can best serve our roll on protecting that information. Taking us out of the paragraph out of the automotive data basis helped us to do that. We do not know how we will be able to do this sharing on our data basis. WSI is in the process of trying to recover from a failed attempt to redo our computer system and we are in the process of doing that. We did together Mr. Frink and I put together some draft language. (#1) Proposal passed out.

Representative Nelson: When we are looking at data and automated data bases. Which agencies are you actually needing to excess?

Travis Fink: I don't know which of those have the automated data basis. I have received contact from the tax commissioner's office and I have received contact from the DHS and they have essentially said once this piece of legislation is finalized then we would go into the process of establishing those relationships, but they want to see the final wording before we really get into that.

Representative Nelson: What do you do today?

Travis Fink: We have to use face value on the applications. We are doing spot checks.

Chairman K. Koppelman: I serve on the commission and one of the things we recognized is they fill out these forms; and we started hearing there are even some jails in ND where they pass these forms out and say fill these out; you might get a free lawyer. How do we verify indigence?

Senator Larson; I think this is an excellent idea. We are just trying to make things work with the amendment with the agencies.

Chairman K. Koppelman: There was something in their budget bill last session to find out what is going on here. I do understand the concerns of WSI. I think other agencies have the same concern. Would it make sense to have a line in statute when you receive the information it is only for your purposes and it is exempt information after that.

Travis Frink: We had anticipated we would still file these letters to court, based upon the information and access to information that we have been given we do not feel this person qualifies for indigent services. The court will make the determination of eligibility.

Chairman K. Koppelman: If you give the court that information; that indicates this person does not qualify for indigence; does the court get that information. If so can we seal it there?

Travis Frink: We would just send a letter to the court. If the court, then requests the information we would send it.

Chairman K. Koppelman: That information would remain confidential with you. Then you would not have any objection to some language in the bill that says that you intend to keep it confidential once you receive it.

Travis Frink: What we would do at that point is Ms. Delany or I would ask that the records remain confidential upon disclosure to the court. We will do whatever you request.

Chairman K. Koppelman: I think it makes sense to keep this version in the bill. If we only include this language, then we are saying for every other agency we would have to release this information; and then with WSI you would have to fill out a form in order to get it from them. It should not be limited to that.

Senator Larson: I admit I am not an expert on this. I am a little reluctant to make changes since we have the experts in the room. They would know the risks of getting the information out; then somehow some of their information gets out. I want to respect the input from the people in the room.

Chairman K. Koppelman: What we heard from WSI there are two ways to do it. The form they are filling out now will have that release in it. Our job is to make public policy and when you look at the law; then we are back to not being able to avail themselves of what we all want to give them.

Senator Larson: But on the additional suggestion they made if they get the request that WSI shall provide the claimant information.

Chairman K. Koppelman: Our job is to tell state government what they should release and not. Why exempt them from the other standard.

Senator Luick: That is my concern of this whole thing. It should be a broad acceptance or rejection across the board. It should be certain agencies shouldn't have different requirements for this information.

Representative Nelson: I think the secret will be number 4 where we say the commission may obtain excess. Maybe we can word smith the language into this.

Chairman K. Koppelman: If the agency doesn't want to allow excess to automatize information they can do it that way, but if they would rather print something out they could.

Representative Nelson: I don't know how many agencies are actually involved in this? Maybe it is not just WSI who has medical information there. In those cases, it wouldn't be acceptable to just let them have excess to the data base. If there is some agency like DOT with child support and runs it back and forth, if it is acceptable I have no problem with doing it that way because it would be more efficient. I don't want to spend \$300,000 programing things either.

Chairman K. Koppelman: We are dealing with attorney's here who are representing clients; so I am not worried whatever the source; when they get the information it will not be for public excess. That is not how they do business. The commission is in a unique situation here. Maybe we should try to do an amendment and work on it. I can visit with our intern here and craft something to look at here. We probably are not going to end up with the House or Senate version here.

Senator Larson: I think it is an important thing to find out what a person's resources are when they are looking at public assistance from an attorney. We have a lot of agencies for various levels of security put up barriers for releasing any information that is confidential based on federal and state laws. We need to be cautious here on doing the right thing here.

Chairman K. Koppelman: Section 2 of the bill does a good job in this. If there is a federal law that you cannot share this information. In this language in the law it says you can withhold it. When you get into open meeting and open records of the law in ND there are a couple of different designations. One is confidential which means you may not release it for any reason or purpose unless there is something else in law saying you shall. Another designation is exempt; which means it is exempt from the open records law, but it is within the discretion of the agency that it may release the information as it sees fit. We do often times do this with agencies and I think we can come up with a good solution.

Closed.

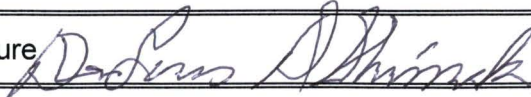
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1235
4/12/2017
30086

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to access to confidential records by the commission on legal counsel for indigents.

Minutes:

1

Chairman K. Koppelman: Opened the conference committee on HB 1235.

Attendance: Chairman K. Koppelman; Rep Johnston; Rep. Nelson, absent; Senator D. Larson, absent; Senator Luick; Senator Osland

Chairman K. Koppelman: WSI sent an email from WSI. We are missing a couple of members here. (#1) Proposed amendment. Went over the amendment. Let's look at the markup which is the .2001. Section 2 which is an issue where it says if a government agency denies the commission excess to records under subsection 4 the denial must include a statement of the legal authority for the denial. That pertains to the Dept. of Human Services where there might be federal law that makes something confidential that they can't release. What that says that if they make a request like that and the agency says we can't do this; because federal law says we can't; but they simply have to cite the law the prohibits them from doing that. I think that is reasonable. The Senate amended and deleted subsection 6 of subsection 1; which originally was presented as language that WSI was supportive of; which said as long as the individual whose information it is, signed a release; then you added Section 3 to the bill at their request which deals with section 65-05-32 of the century code which is their section that allows them to enter into contractual agreements for the release of information to someone else. I don't have an objection of that reference being there, but I think we should have both. The amendment I just passed out that WSI prepared; I don't mind page 1, line 11 amendment. I don't like the idea of removing the section that says if they signed a release they can release the information because that seems pretty basic as well. If we are telling all the other agencies; why would we want to take one agency and say you are special; you are different and we are going to treat you differently. I do object to page 1, line 10 of the language because that narrows the bill further. It deals with any agency. Maybe we need to get a clean amendment. I would be happy to do that.

Senator Luick: On Section 2 of the 2001 version are you OK with that being in?

Chairman K. Koppelman: I am OK with it being in. I don't have an object to Section 3 either as long as we restore subsection 6, page 1 or something like it.

Recess

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1235
4/13/2017
30108

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to access to confidential records by the commission on legal counsel for indigents.

Minutes:

1,2

Chairman K. Koppelman: Opened the conference committee on HB 1235.

Attendance: Chairman K. Koppelman; Rep Johnston; Rep. Nelson, Senator D. Larson, Senator Luick; Senator Osland

Chairman K. Koppelman: (#1) Handed out. Went over the amendment. Using the .01000 version to go over the amendment. Some of the phrasing with WSI was objectionable. The indigent folks had some minor changes so they requested that as well so some of that is reflected in here. I just visited with Ms. Schalbley so she is looking through this as we speak. Went through the proposal.

Senator Larson: (#2) I made a copy of the section of law that WSI referred to in their records; if you look at #9 it says information contained in the claim files that they have for injured employees confidential and not open to the public inspection or than to organization employees or agents in the performance of official duties providing further that the organization may provide any state or federal agency any information obtained pursuant to the administration of this file. So it does allow for them to give that information out.

Chairman K. Koppelman: Yes, they can do it under current law. That is why it says may. But they are not doing it under current law. Section 3 restates this. Continues going through the amendment. Had a problem with the versions we were using. If you are looking at the overstrikes on version .2001. This replaces line 20-24 with subsection 2. That is the area that deals with federal law with indigent information. The bill narrows the scope; it says it says that a federal law prohibits it and they have to state why; and three with respect to WSI it can happen in one of two ways: At some point down the road we are making public policy for down the road; we have this fall back to a signed release by the subject of the issue to use in determining eligibility. Section 3 restores the same language that was in the Senate version of the bill; which says that WSI can release the information pursuant to the Section

you just passed out. The bill does three things; narrows the scope of what kind of information we are talking about; it says that a federal law prohibits it they have to state why; and then with respect to WSI it is saying it can happen in one of two ways; 1. Signed release from the person who is requesting the indigent defense 2. By using their statute. I think they will use their statute.

Senator Larson: There is still a big concern with #6. That is what directs them to release things without it being pursuant to 65-05. We need to allow WSI to work within their regulations. We want to make sure indigent defense isn't providing lawyers at tax payers expense. My concern is pushing WSI in a situation with their going to have to be in conflict with their standards they must meet while doing this.

Chairman K. Koppelman: This has been an ongoing discussion since the bill was introduced. WSI has already had input into the bill. Then the Senate took that out and inserted Section 3. Then after our earlier meeting where we kind of opened the hearing again; they came back with additional language, which is essentially represented in the amendment as well on lines 10 & 11 of page 1. The bottom line here is do we allow an agency to have a unique status with one agency is not making good law for everyone. We are not saying this is good for everyone.

Senator Larson: I don't think anyone is trying to cow towel to anyone. I think we should have people with the experience to explain the problems with number 6; but I don't know why somebody needs information regarding permanent partial impairment benefits? Some of these things, if there is no income going to that person and that are things covered that are protected by HIPA and other things in the release of that information then there is no need for an agency to violate their own regulation that are handed down to them by the federal government in order to accomplish something. That is the way I see it. They are trying to protect those types of HIPA records without giving the information that is needed; the financial information that is needed without giving any of the information they are restricted in giving. That is my understanding for the problems with some of the information contained in number 6.

Chairman K. Koppelman: That is why I put the language in lines 10 & 11 in the suggested amendment from WSI and coming from indigent defense folks; because it does narrow it. Seconded I think that is why section 2 of the bill exists. This language came from WSI originally. All I am accomplishing in Section 6 is that is a way the information can be released.

Senator Larson: I would like to propose on this 2000 version, line 21 after the coma after the word individual, delete the rest of that and insert the same above language and insert the eligibility for indigent services.

Chairman K. Koppelman: I agree with that. The whole idea here is let's make some good law that will work for all the agencies involved.

Representative Nelson: On the first page on 6 that they can sign the release to give away the relative information; but Section 3; the 6 there; I don't see that doing anything because WSI's current section already says they may do this etc. basically the working is going to

become is the commission will say that in order to get indigent services you have to sign a release.

Chairman K. Koppelman: I think what is going to happen after talking to both of the parties; if we leave section 3 in the bill; if the commission did not want to go there they could say here is a signed release and do it. The point is they have a good working relationship right now. WSI will say they will mostly all sign the agreement and use that. They still have the subsection 3 wording too.

Representative Nelson: My concern on this wording for the relative information are all in subsection 4; but there is not reference in subsection 6 to relative information so we are back to?

Chairman K. Koppelman: I think because Section 6 refers back to the agreement under which the agency can release the information it can craft the agreement that way.

Motion Made for the Senate recede from Senate amendments and amend with proposed amendment .2002 and the amendment as proposed by Senator Larson to Subsection 6 on Section 1, page 1 of bill 2000 as follows by Rep. Nelson; Seconded by Rep. Johnson

Discussion:

Senator Luick: How is this going to affect other agencies?

Chairman K. Koppelman: Indigent defense identified the agencies that they thought had information that was useful to making these determinations. I think we have listened to other agency concerns.

Roll Call Vote: 6 Yes 0 No 0 Absent Carried

Closed.


2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1235
4/14/2017
30143

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to access to confidential records by the commission on legal counsel for indigents.

Minutes:

1

Chairman K. Koppelman: Opened the conference committee on HB 1235.

Attendance: Chairman K. Koppelman; Rep Johnston; Rep. Nelson, Senator D. Larson, Senator Luick; Senator Osland

Chairman K. Koppelman: (#1) The original bill was patterns after our current statute with respect to child support enforcement. They are the one agency that has authority in law to get a lot of this information from a lot of different agencies. If we pass this, we will have one code dealing with this agency's excess versus another version of code dealing with the other agencies excess. If it works for everybody it is OK. This proposal came from WSI after our last meeting. Automated excess was one of the issues was of particular concern to WSI.

Senator Larson: What version?

Chairman K. Koppelman: The proposal is .02005 amendments? We are working with the Senate version of the bill .2001. Right now WSI has concern about the automated excess to their information. The amendment essential removed the automated language from the bill. Went over the amendment.

Senator Larson: My understanding was they wanted to put in the .2001 they wanted to reinsert #6 that we took out on page 3.

Chairman K. Koppelman: That is essentially the same as the language on page 1, line 24. The original version of this amendment has both in. It makes the choice clearer.

Senator Larson: That is right. There was a problem with having three different methods. It is a choice.

Chairman K. Koppelman: When you have options in code; go to the least restrictive.

House Judiciary Committee

HB 1235

April 14, 2017

Page 2

Motion made to reconsider its action by which it amended the bill; and replace it with the amendment .2005 by Rep. Larson; Seconded by Senator Luick

Roll Call Vote: 6 Yes 0 No 0 Absent

Closed.

April 13, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1235

That the Senate recede from its amendments as printed on page 1103 of the House Journal and pages 833 and 834 of the Senate Journal and that Engrossed House Bill No. 1235 be amended as follows:

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "5" insert ", and 6"

Page 1, line 10, after "records" insert "relevant to making an eligibility determination for indigent defense services"

Page 1, line 11, after "agencies" insert "relevant to determination of eligibility for indigent defense services"

Page 1, line 21, remove "wage-loss"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "organization, and whether and where that individual is employed" with "relevant to making an eligibility determination for indigent defense services"

Page 2, replace lines 19 through 23 with:

SECTION 2. Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

SECTION 3. Subsection 6 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

6. In determining eligibility for public defender services, the commission may obtain access to workforce safety and insurance records pursuant to section 65-05-32.

Renumber accordingly

9/14/17 DO

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1235

That the Senate recede from its amendments as printed on page 1103 of the House Journal and pages 833 and 834 of the Senate Journal and that Engrossed House Bill No. 1235 be amended as follows:

Page 1, line 9, remove "including"

Page 1, line 10, replace "automated access in the case of records maintained in automated databases." with "relevant to making an eligibility determination for indigent defense services."

Page 1, line 11, after "agencies" insert "relevant to determination of eligibility for indigent defense services"

Page 1, line 21, remove "identifying the last-known address of the individual, wage-loss"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "organization, and whether and where that individual is employed" with "or as otherwise provided in section 65-05-32"

Page 2, replace lines 19 through 23 with:

"**SECTION 2.** Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

Renumber accordingly

2017 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1235 as (re) engrossed

House Judiciary Committee

- Action Taken HOUSE accede to Senate Amendments
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows

 Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Rep. Nelson Seconded by: Rep. Johnston

| Representatives | 4/6 | 4/12 | 4/13 | Yes | No | Senators | 4/6 | 4/12 | 4/13 | Yes | No |
|------------------------|-----|------|------|-----|----|-------------------|-----|------|------|-----|----|
| Chairman K. Koppelman: | X | X | X | X | | Senator D. Larson | X | AB | X | X | |
| Rep. Johnston | X | X | X | X | | Senator Luick | X | X | X | X | |
| Rep. M. Nelson | X | AB | X | X | | Senator Osland | X | X | X | X | |
| | | | | | | | | | | | |
| | | | | | | | | | | | |
| Total Rep. Vote | | | | 3 | | Total Senate Vote | | | | 3 | |

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Koppelman Senate Carrier Senator Larson

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

the amendment .02002 as proposed by Rep. Koppelman and Senator Larson amendment to Subsection 6 on Section 1, page 1 of bill 2000 as follows

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

HB 1235 as (re) engrossed

House Judiciary Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree**, recommends that the committee be discharged and a new committee be appointed

Reconsider

Motion Made by: Senator Larson Seconded by: Senator Luick

| Representatives | 4/14 | | Yes | No | Senators | 4/14 | | Yes | No |
|-------------------|------|--|-----|----|-------------------|------|--|-----|----|
| Rep. K. Koppelman | X | | X | | Senator D. Larson | X | | X | |
| Rep. Johnston | X | | X | | Senator Luick | X | | X | |
| Rep. M. Nelson | X | | X | | Senator Osland | X | | X | |
| | | | | | | | | | |
| | | | | | | | | | |
| Total Rep. Vote | | | 3 | | Total Senate Vote | | | 3 | |

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES

HB 1235 as (re) engrossed

House Judiciary Committee

- Action Taken
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Senator D. Larson Seconded by: Senator Luick

| Representatives | | | | Yes | No | Senators | | | | Yes | No |
|------------------------|--|--|--|-----|----|-------------------|--|--|--|-----|----|
| Chairman K. Koppelman: | | | | X | | Senator D. Larson | | | | X | |
| Rep. Johnston | | | | X | | Senator Luick | | | | X | |
| Rep. M. Nelson | | | | X | | Senator Osland | | | | X | |
| | | | | | | | | | | | |
| Total Rep. Vote | | | | 3 | | Total Senate Vote | | | | 3 | |

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier Koppelman Senate Carrier Senator Larson

LC Number 17.0360 . .02005 of amendment

LC Number 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment
Replace it with the amendment .02005

Insert LC: 17.0360.02005
House Carrier: K. Koppelman
Senate Carrier: Larson

REPORT OF CONFERENCE COMMITTEE

HB 1235, as engrossed: Your conference committee (Sens. D. Larson, Luick, Osland and Reps. K. Koppelman, D. Johnson, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 833-834, adopt amendments as follows, and place HB 1235 on the Seventh order:

That the Senate recede from its amendments as printed on page 1103 of the House Journal and pages 833 and 834 of the Senate Journal and that Engrossed House Bill No. 1235 be amended as follows:

Page 1, line 9, remove "including"

Page 1, line 10, replace "automated access in the case of records maintained in automated databases." with "relevant to making an eligibility determination for indigent defense services."

Page 1, line 11, after "agencies" insert "relevant to determination of eligibility for indigent defense services"

Page 1, line 21, remove "identifying the last-known address of the individual, wage-loss"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "organization, and whether and where that individual is employed" with "or as otherwise provided in section 65-05-32"

Page 2, replace lines 19 through 23 with:

"SECTION 2. Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial."

Renumber accordingly

Engrossed HB 1235 was placed on the Seventh order of business on the calendar.

3. If necessary to protect a confidential informant or the integrity of an ongoing investigation, a court may direct submission of sentencing memoranda in writing under seal when sentencing or deferring imposition of sentence of a confidential informant.
4. If necessary to protect a confidential informant or the integrity of an investigation, a court may dispense with reporting departure from a mandatory sentence under subsection 3 of section 12.1-32-03.
5. This section does not prohibit disposition of cases by deferral of prosecution with or without court approval."

Renumber accordingly

Engrossed HB 1221 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

HB 1235, as engrossed: Your conference committee (Sens. D. Larson, Luick, Osland and Reps. K. Koppelman, D. Johnson, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 833-834, adopt amendments as follows, and place HB 1235 on the Seventh order:

That the Senate recede from its amendments as printed on page 1103 of the House Journal and pages 833 and 834 of the Senate Journal and that Engrossed House Bill No. 1235 be amended as follows:

Page 1, line 9, remove "including"

Page 1, line 10, replace "automated access in the case of records maintained in automated databases," with "relevant to making an eligibility determination for indigent defense services."

Page 1, line 11, after "agencies" insert "relevant to determination of eligibility for indigent defense services"

Page 1, line 21, remove "identifying the last-known address of the individual, wage-loss"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "organization, and whether and where that individual is employed" with "or as otherwise provided in section 65-05-32"

Page 2, replace lines 19 through 23 with:

"SECTION 2. Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial."

Renumber accordingly

Engrossed HB 1235 was placed on the Seventh order of business on the calendar.

REPORT OF CONFERENCE COMMITTEE

HB 1269, as engrossed: Your conference committee (Sens. Armstrong, D. Larson, Nelson and Reps. K. Koppelman, Satrom, M. Nelson) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1003-1008, adopt amendments as follows, and place HB 1269 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1284-1289 of the House Journal and pages 1003-1008 of the Senate Journal and that Engrossed House Bill No. 1269 be amended as follows:

Johnson; Guggisberg"

Page 1154, line 53, replace "Bosch; Devlin; Marschall" with "Devlin; Marschall; Bosch"

Page 1154, line 54, replace "Hanson; Jones; Roers Jones" with "Jones; Roers Jones; Hanson"

Page 1155, line 2, replace "Roers Jones; Seibel" with "Seibel; Roers Jones"

Page 1292, line 19, replace "Brandenburg" with "Brabandt"

Page 1402, line 8, replace "Senatem" with "Senate"

Page 1413, line 9, replace "Boehning, Brabandt" with "Brabandt, Boehning"

Page 1444, line 42, remove "amended"

Page 1445, line 4, remove ", as amended,"

Page 1473, line 42, replace "Armstrong, Luick, Myrdal" with "Myrdal, Luick, Armstrong"

Page 1495, line 31, replace "17" with "16"

Page 1495, line 31, replace "18" with "17"

Page 1495, line 35, replace "18" with "17"

Page 1495, line 35, replace "22" with "21"

Page 1495, line 41, replace "M. Nelson" with "Magrum"

Page 1500, line 15, replace "D. Johnson" with "Johnston"

Page 1506, line 46, before "SB" insert "Engrossed"

Page 1542, line 30, replace "Monson, Schreiber-Beck" with "Schreiber-Beck, Monson"

SEN. ANDERSON MOVED that the report be adopted, which motion prevailed.

CONSIDERATION OF CONFERENCE COMMITTEE REPORT

SEN. WANZEK MOVED that the conference committee report on Engrossed HB 1006 be adopted, which motion prevailed on a voice vote.

SECOND READING OF HOUSE BILL

HB 1006: A BILL for an Act to provide an appropriation for defraying the expenses of the office of the tax commissioner and for payment of state reimbursement under the homestead tax credit and disabled veterans' credit; to provide for a continuing appropriation; to provide for transfers; to provide an exemption; to create and enact a new section to chapter 57-01 of the North Dakota Century Code, relating to a multistate tax audit fund; and to declare an emergency.

ROLL CALL

The question being on the final passage of the amended bill, which has been read, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 1 ABSENT AND NOT VOTING.

YEAS: Anderson; Armstrong; Bekkedahl; Burckhard; Campbell; Casper; Clemens; Cook; Davison; Dever; Dotzenrod; Erbele; Grabinger; Heckaman; Hogue; Holmberg; Kannianen; Kilzer; Klein; Krebsbach; Kreun; Laffen; Larsen, O.; Larson, D.; Lee, G.; Lee, J.; Luick; Marcellais; Mathern; Meyer; Myrdal; Nelson; Oban; Oehlke; Osland; Piepkorn; Poolman; Robinson; Roers; Rust; Schaible; Sorvaag; Unruh; Vedaa; Wanzek; Wardner

ABSENT AND NOT VOTING: Bowman

Engrossed HB 1006, as amended, passed and the emergency clause was declared carried.

2017 TESTIMONY

HB 1235

House Bill 1235
House Judiciary Committee

1
HB 1235
1-24-17

Testimony of Travis W. Finck
Deputy Director N. D. Comm. On Legal Counsel for Indigents
January 24, 2017

Good Morning, Chairman Koppelman, and members of the Committee. For the record, my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents. I offer this testimony in support of HB 1235.

The North Dakota Commission on Legal Counsel for Indigents (hereinafter "Commission"), is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. The Commission's "mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota Statutes and Rules, at reasonable cost to the community." The legislation before you this morning seeks to shore up a major tenet of our agency's mission, that being providing services to those persons who are indigent at reasonable cost. To determine whether a client is indigent, the Commission has adopted Guidelines for Determining Eligibility for Indigent Defense Services (hereinafter "Guidelines"). The Guidelines establish that a defendant who has a right to counsel, as laid out above, must fill out an application and bears the responsibility of proving they are indigent. The application in its current form is attached as exhibit A. Currently, the Defendant must establish their income is within 125% of the federal poverty guidelines and they do not have assets that exceed \$20,000 dollars. Exhibit B.

The Guidelines provide "it is in the interest of all parties, the court, and the public, to insure indigent defense services are provided in appropriate cases. However, there are abuses to the system, both intentional and unintentional. Applicants are not always forthcoming with their income information, and do not always inform the court of changes that could affect their eligibility. Additional screening is necessary to curb abuses, and to insure that services are available for those who are truly

indigent.” It has been the policy of the Commission to seek additional screening and review of application by the Court in questionable cases asking them to reassess eligibility. Additionally, the Commission created an indigent defense task force to investigate the system for application and approval of an indigent attorney. The task force consists of a member of the legislative assembly, two judges, public defenders and contract attorneys, a court clerk and a director of juvenile court services.

The Task Force established by the Commission developed findings and recommendations to the Commission going forward to insure only those persons who are truly indigent receive services. The task force recommended the Commission continue to spot check applications for services to insure only those who are eligible are given an attorney. Further, the Task Force recommended the Commission ascertain whether statutory revision was necessary to ensure compliance with the guidelines. HB 1235 provides the Commission with the tools necessary to spot check applications. Therefore, the Commission requests this committee issue a do pass recommendation on HB1235.

Respectfully Submitted:



Travis W. Finck, Deputy Director
N.D. Comm. On Legal Counsel
tfinck@nd.gov
(701) 845-8632



APPLICATION FOR INDIGENT DEFENSE SERVICES

CRIMINAL CASES

ND COMMISSION ON LEGAL COUNSEL FOR INDIGENTS

SFN 59348 (8/13/2013)

REQUIRED FEE: You must pay a \$35 fee when submitting this application. The Court may waive or reduce the fee if you cannot pay the entire fee. If the fee is not waived and you do not pay the fee, the amount will be added to any costs you are ordered to reimburse at the conclusion of your case.

NOTICE: You may be required to submit verification of your Gross Income. Verification of Gross Income includes one of the following: 1) most recent pay stub reflecting current wages, or 2) most recent W-2, or 3) most recent Tax Return, or 4) Written Statement from Employer.

Please Print All Information

| |
|---|
| Defendant's name: |
| Criminal charge(s): |
| District Court case number(s): |
| If for a criminal appeal, Supreme Court appellate case number(s): |
| Amount paid for bond: |

Part A - Client Information

| | | |
|---|-------|----------------|
| What is your full name (include any aliases)? | | |
| Full mailing address: | | |
| Home phone number: | Work: | Cell: |
| Alternate contact phone number(s): | | Year of birth: |
| Email address: | | |
| Have you ever had an appointed lawyer? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| If yes, who was your attorney? | | |
| If yes, when and what county/state? | | |

Part B

| |
|--|
| Do you personally receive any of the following governmental benefits: |
| TANF: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Medical Assistance for the Elderly: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Supplemental Security Income: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If you answered yes to receiving TANF, Supplemental Security Income, OR Medical Assistance for the Elderly, and have attached documentation that you personally receive such benefits, skip parts C, D, E, and F and go to Part G. If you have not attached documentation showing that you personally receive such benefits, or if you answered no to receiving TANF, Supplemental Security Income, AND Medical Assistance for the Elderly, complete the entire application in order for your eligibility for indigent defense services to be determined. |

Part C - Income

| | |
|--|----------------------------------|
| What type of work do you do? | |
| Current employer's name: | Current employer's phone number: |
| Current employer's address: | |
| Supervisor's name: | Supervisor's phone number: |
| Dates of employment with current employer: | Hours worked per week: |
| Rate of pay (dollars paid per hour): | Monthly income (before taxes): |

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS DURING PAST TWO YEARS)

| Employer | Dates of Employment | Monthly Income Before Taxes |
|----------|---------------------|-----------------------------|
| | | |
| | | |
| | | |
| | | |

If currently unemployed or laid off, when were you separated from employment: _____
 When was your last day of work? _____
 What is the reason for your separation from employment? _____
 Please indicate the date you expect to return to work: _____

Is your spouse employed: Yes No Not Married | Spouse's monthly income (before taxes): _____
 Unemployment received by self and/or spouse (per month): _____
 Spousal or child support received by self and/or spouse (per month): _____
 Amount of any other governmental assistance received by self and/or spouse (per month): _____
 Amount of any pension received by self and/or spouse (per month): _____
 Amount of any VA military allotment, VA disability and any other income received by self and/or spouse (per month): _____
 Do you own mineral rights? Yes No Have you received any royalty payments within the previous 12 months? Yes No
 Amount: _____ Do you expect to receive any royalty payments in the next 12 months? Yes No

Part D – Assets

Please indicate the dollar value of the assets below.

| | | |
|------------------|----------------|--------------------|
| Cash on hand: | Bank accounts: | Tax refund coming: |
| Household goods: | Livestock: | Other assets: |

If you own or are buying property listed below, circle the item and then fill in the information about the property.

| Property: | What is the make/ model & year | Cost when you bought it | Present Value | How much do you still owe on it |
|---|--------------------------------|-------------------------|---------------|---------------------------------|
| Car or Truck | | | | |
| Second Car or Truck | | | | |
| Other vehicle(s), motorcycle(s), camper(s), boat(s), snow mobile(s), ATV(s), etc. | | | | |
| House/Mobile Home | | | | |
| Other Real Estate | | | | |
| Other Property | | | | |
| Other Property | | | | |

Part E – Household Members

Names of other people living in your household (do not provide full name of minors, use only initials).

| Name | Age | Relationship |
|------|-----|--------------|
| | | |
| | | |
| | | |
| | | |

Names of others you support financially (do not provide full name of minors, use only initials).

| Name | Age | Relationship | Type and amount of support actually provided |
|------|-----|--------------|--|
| | | | |
| | | | |
| | | | |
| | | | |

If you pay child support, provide proof of amount paid during most recent two month period. (Receipts or bank statements)

Part F – Extraordinary Financial Considerations

Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?

Yes No If you answered yes, please explain:

Part G

I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent me. I understand that the information supplied on this form is not confidential. I also understand that if I have supplied false information in the application, **it may lead to criminal prosecution and conviction.** If counsel is appointed for me, I understand that I have a continuing responsibility to inform the court of any changes in my financial condition, employment status, or household size. I understand that even if I am found eligible to have the costs of an attorney and related expenses paid for me at this time, I may be required to pay back the attorney fees and related expenses to the State at a later time.

Date: _____

Signature: _____

The following questions are optional (you do not have to answer them if you do not want to do so).

Please indicate your race/ethnicity:

Did you/do you serve in the armed forces? Yes No

FOR COURT USE ONLY

Application Fee: Paid Reduced to \$ _____ Waived Due

Applicant is found to be:

- Not eligible for indigent defense services, because
 - no period of incarceration, actual or suspended, will be imposed by the Court in this case
 - this is not a type of matter for which services are authorized (such as when the case is closed and nothing is currently pending before the Court)
 - Other _____
- Not indigent. The application for appointed defense services is denied.
- Indigent. Counsel is to be provided by the ND Commission on Legal Counsel for Indigents. The Court hereby advises the defendant of the defendant’s potential obligation to reimburse the Commission the amounts expended on behalf of the defendant.

Date: _____

Judge of District Court or Designee

Income Guidelines 2016

These guidelines for gross income levels indicate income levels at or below which eligibility for indigent defense services should be considered.

| Household Size | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Annual Gross Income | 14,850 | 20,025 | 25,200 | 30,375 | 35,550 | 40,725 | 45,913 | 51,113 |
| Monthly Gross Income | 1,238 | 1,669 | 2,100 | 2,531 | 2,963 | 3,394 | 3,826 | 4,259 |
| Weekly Gross Income | 286 | 385 | 485 | 584 | 684 | 783 | 883 | 983 |

(Add \$5,200 to annual gross income for each additional member in households of more than eight.)

These income levels reflect 125% of the official poverty level threshold as defined by the Department of Health and Human Services.

Asset Guideline 2016

This guideline indicates the level at or below which eligibility for indigent defense services should be considered.

Absent exceptional circumstances, an applicant with equity in real and/or personal property in excess of \$20,000 will not be considered indigent.

#2
HB 1235
1-24-17

2017 House Bill 1235
Testimony before the House Judiciary Committee
Presented by Ann Schaibley
Workforce Safety and Insurance
January 24, 2017

Mr. Chairman, Members of the Committee:

My name is Ann Schaibley, Staff Counsel with Workforce Safety and Insurance (WSI). I am here today to testify on HB 1235. The WSI Board of Directors opposes this bill as it applies to WSI and offers an amendment.

The bill proposes to require WSI to provide access to the Commission on Legal Counsel for Indigents of injured worker file information as well as automated access to records contained in automated databases. Specifically, the Commission would like access to last-known addresses, wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that an individual has received or is entitled to receive from the organization, and whether and where that individual is employed. It should be noted that under Title 65, the Workforce Safety and Insurance title of the Century Code, all of the information listed in paragraph 6 of the bill is confidential.

WSI takes its obligation to protect the information it obtains in the administration of Title 65 very seriously. The information WSI obtains belongs to the injured employees. As a result, WSI's preference is to have a release signed by an individual injured employee before sharing confidential claim information. That release is available on our website and is used frequently by injured employees to allow WSI to share their information. If, as part of their intake process, the Commission on Legal Counsel for Indigents were to have the defendant sign a release, WSI would be happy to answer any questions and provide any information requested about the WSI claim.

While protecting the information we obtain in the administration of claims is our duty, WSI also understands that some of the information may be useful and at times necessary to other agencies. N.D.C.C. 65-05-32(9) provides that WSI has the authority to release confidential information to state and federal agencies as long as that

/

information is used for the purpose of administering the duties of that agency. The committee will note that the law under 65-05-32(9) is permissive, but not mandatory.

An internal WSI committee regarding data security and data sharing meets periodically. The committee reviews data sharing requests received by WSI to determine the best way to protect the information, while meeting the needs of the requesting entity.

In practice, the permissive nature of 65-05-32(9) gives WSI the ability to control what information is released and under what terms it is released. It is the policy of WSI to assist other agencies by providing the requested information as long as the other agency is willing to enter into a data sharing agreement with WSI. The negotiation of the data sharing agreement allows for a clear understanding by both WSI and the requesting entity of how the information will be used, that the information remains confidential even after it is transferred to another agency, how the information will be secured in the hands of the other entity, and how it will be destroyed or returned once it is no longer needed by the other entity. WSI has data sharing agreements with other state entities including the Department of Human Services, North Dakota State University, and Job Service.

Because there are at least two other avenues for the Commission on Legal Counsel for Indigents to obtain the information they are seeking, WSI's Board of Directors does not support the bill as it applies to WSI. The amendment attached to my testimony would remove the paragraph related to WSI.

This concludes my testimony and I would be happy to answer any questions you may have.

Proposed Amendment to House Bill No. 1235

Page 1, remove lines 20 – 24

Page 2, line 1 replace "(7)" with "(6)"

Page 2, line 2 replace "(8)" with "(7)"

Page 2, line 4 replace "(9)" with "(8)"

Page 2, line 5 replace "(10)" with "(9)"

Page 2, line 6 replace "(11)" with "(10)"

Renumber accordingly

3

HB 1235-
1-24-17

Prepared by the North Dakota
Department of Human Services
01/24/2017

PROPOSED AMENDMENT TO HOUSE Bill NO. 1235

Page 1, line 7, after "of" insert "state"

Page 1, line 7, after the underscored comma insert "but subject to any prohibitions in federal law,"

Page 2, after line 18, insert:

"5. If the commission's access to records under subsection 4 is denied on the basis of federal law, the government agency or private entity denying the access must, upon request of the commission, describe the legal authority for the denial."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1235

#1
HB 1235
1-24-2017

Page 1, line 11, replace "Records" with "All records"

Page 2, line 3, replace "39-16-13" with "39-16-03"

Renumber accordingly

PROPOSED AMENDMENT TO HOUSE Bill NO. 1235

Page 1, line 7, after "of" insert "state"

Page 1, line 7, after the underscored comma insert "but subject to any prohibitions in federal law,"

Page 2, after line 18, insert:

"5. If the commission's access to records under subsection 4 is denied on the basis of federal law, the government agency or private entity denying the access must, upon request of the commission, describe the legal authority for the denial."

Renumber accordingly

1

House Bill 1235
Senate Judiciary Committee

Testimony of Travis W. Finck
Deputy Director N. D. Comm. On Legal Counsel for Indigents
March 20, 2017

Good Morning, Chairman Armstrong, and members of the Committee. For the record, my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents. I offer this testimony in support of HB 1235.

The North Dakota Commission on Legal Counsel for Indigents (hereinafter "Commission"), is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. The Commission's "mission is to provide high quality, professional, and effective legal representation to eligible clients, consistent with the guarantees of the constitutions of the United States and North Dakota, and applicable North Dakota Statutes and Rules, at reasonable cost to the community." The legislation before you this morning seeks to ensure a major tenet of our agency's mission, that being providing services to those persons who are indigent at reasonable cost. To determine whether a client is indigent, the Commission has adopted Guidelines for Determining Eligibility for Indigent Defense Services (hereinafter "Guidelines"). The Guidelines establish that a defendant who has a right to counsel, as laid out above, must fill out an application and bears the responsibility of proving they are indigent. The application in its current form is attached as exhibit A. Currently, the Defendant must establish their income is within 125% of the federal poverty guidelines and they do not have assets that exceed \$20,000 dollars. Exhibit B.

The Guidelines provide "it is in the interest of all parties, the court, and the public, to insure indigent defense services are provided in appropriate cases. However, there are abuses to the system, both intentional and unintentional. Applicants are not always forthcoming with their income information, and do not always inform the court of changes that could affect their eligibility. Additional screening is necessary to curb abuses, and to insure that services are available for those who are truly

indigent.” It has been the policy of the Commission to seek additional screening and review of application by the Court in questionable cases asking them to reassess eligibility. Additionally, the Commission created an Indigent Defense Task Force to investigate the system for application and approval of an indigent attorney. The Task Force consists of a member of the legislative assembly, two judges, public defenders and contract attorneys, a court clerk and a director of juvenile court services.

The Task Force established by the Commission developed findings and recommendations to the Commission going forward to insure only those persons who are truly indigent receive services. The task force recommended the Commission continue to spot check applications for services to insure only those who are eligible are given an attorney at public expense. Further, the Task Force recommended the Commission ascertain whether statutory revision was necessary to ensure compliance with the guidelines. HB 1235 provides the Commission with the tools necessary to spot check applications. Therefore, the Commission requests this committee issue a do pass recommendation on HB1235. I would stand for any questions.

Respectfully Submitted:



Travis W. Finck, Deputy Director
N.D. Comm. On Legal Counsel
tfinck@nd.gov
(701) 845-8632

2

HB 1235

3/20/17



APPLICATION FOR INDIGENT DEFENSE SERVICES
CRIMINAL CASES
 ND COMMISSION ON LEGAL COUNSEL FOR INDIGENTS
 SFN 59348 (8/13/2013)

REQUIRED FEE: You must pay a \$35 fee when submitting this application. The Court may waive or reduce the fee if you cannot pay the entire fee. If the fee is not waived and you do not pay the fee, the amount will be added to any costs you are ordered to reimburse at the conclusion of your case.

NOTICE: You may be required to submit verification of your Gross Income. Verification of Gross Income includes one of the following: 1) most recent pay stub reflecting current wages, or 2) most recent W-2, or 3) most recent Tax Return, or 4) Written Statement from Employer.

Please Print All Information

| |
|---|
| Defendant's name: |
| Criminal charge(s): |
| District Court case number(s): |
| If for a criminal appeal, Supreme Court appellate case number(s): |
| Amount paid for bond: |

Part A – Client Information

| | | |
|---|-------|----------------|
| What is your full name (include any aliases)? | | |
| Full mailing address: | | |
| Home phone number: | Work: | Cell: |
| Alternate contact phone number(s): | | Year of birth: |
| Email address: | | |
| Have you ever had an appointed lawyer? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| If yes, who was your attorney? | | |
| If yes, when and what county/state? | | |

Part B

| |
|--|
| Do you personally receive any of the following governmental benefits: |
| TANF: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Medical Assistance for the Elderly: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| Supplemental Security Income: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| If you answered yes to receiving TANF, Supplemental Security Income, OR Medical Assistance for the Elderly, and have attached documentation that you personally receive such benefits, skip parts C, D, E, and F and go to Part G. If you have not attached documentation showing that you personally receive such benefits, or if you answered no to receiving TANF, Supplemental Security Income, AND Medical Assistance for the Elderly, complete the entire application in order for your eligibility for indigent defense services to be determined. |

Part C - Income

| | |
|--|----------------------------------|
| What type of work do you do? | |
| Current employer's name: | Current employer's phone number: |
| Current employer's address: | |
| Supervisor's name: | Supervisor's phone number: |
| Dates of employment with current employer: | Hours worked per week: |
| Rate of pay (dollars paid per hour): | Monthly income (before taxes): |

1

Exhibit A

MOST RECENT PAST EMPLOYMENT (LIST ALL EMPLOYERS DURING PAST TWO YEARS)

| Employer | Dates of Employment | Monthly Income Before Taxes |
|----------|---------------------|-----------------------------|
| | | |
| | | |
| | | |
| | | |

If currently unemployed or laid off, when were you separated from employment: _____
 When was your last day of work? _____
 What is the reason for your separation from employment? _____
 Please indicate the date you expect to return to work: _____

Is your spouse employed: Yes No Not Married | Spouse's monthly income (before taxes): _____

Unemployment received by self and/or spouse (per month): _____

Spousal or child support received by self and/or spouse (per month): _____

Amount of any other governmental assistance received by self and/or spouse (per month): _____

Amount of any pension received by self and/or spouse (per month): _____

Amount of any VA military allotment, VA disability and any other income received by self and/or spouse (per month): _____

Do you own mineral rights? Yes No Have you received any royalty payments within the previous 12 months Yes No
 Amount: _____ Do you expect to receive any royalty payments in the next 12 months? Yes No

Part D – Assets

Please indicate the dollar value of the assets below.

| | | |
|------------------|----------------|--------------------|
| Cash on hand: | Bank accounts: | Tax refund coming: |
| Household goods: | Livestock: | Other assets: |

If you own or are buying property listed below, circle the item and then fill in the information about the property.

| Property: | What is the make/ model & year | Cost when you bought it | Present Value | How much do you still owe on it |
|---|--------------------------------|-------------------------|---------------|---------------------------------|
| Car or Truck | | | | |
| Second Car or Truck | | | | |
| Other vehicle(s), motorcycle(s), camper(s), boat(s), snow mobile(s), ATV(s), etc. | | | | |
| House/Mobile Home | | | | |
| Other Real Estate | | | | |
| Other Property | | | | |
| Other Property | | | | |

Part E – Household Members

Names of other people living in your household (do not provide full name of minors, use only initials).

| Name | Age | Relationship |
|------|-----|--------------|
| | | |
| | | |
| | | |
| | | |
| | | |

| Names of others you support financially (do not provide full name of minors, use only initials). | | | |
|--|-----|--------------|--|
| Name | Age | Relationship | Type and amount of support actually provided |
| | | | |
| | | | |
| | | | |
| | | | |

If you pay child support, provide proof of amount paid during most recent two month period. (Receipts or bank statements)

Part F – Extraordinary Financial Considerations
 Are there any extraordinary financial conditions that would prevent you from hiring a private lawyer?
 Yes No If you answered yes, please explain:

Part G
 I have answered all questions honestly and truthfully to the best of my knowledge and I am requesting that a lawyer be appointed to represent me. I understand that the information supplied on this form is not confidential. I also understand that if I have supplied false information in the application, **it may lead to criminal prosecution and conviction.** If counsel is appointed for me, I understand that I have a continuing responsibility to inform the court of any changes in my financial condition, employment status, or household size. I understand that even if I am found eligible to have the costs of an attorney and related expenses paid for me at this time, I may be required to pay back the attorney fees and related expenses to the State at a later time.

Date: _____ Signature: _____

The following questions are optional (you do not have to answer them if you do not want to do so).
 Please indicate your race/ethnicity:
 Did you/do you serve in the armed forces? Yes No

FOR COURT USE ONLY

Application Fee: Paid Reduced to \$ _____ Waived Due

Applicant is found to be:

- Not eligible for indigent defense services, because
 - no period of incarceration, actual or suspended, will be imposed by the Court in this case
 - this is not a type of matter for which services are authorized (such as when the case is closed and nothing is currently pending before the Court)
 - Other _____
- Not indigent. The application for appointed defense services is denied.
- Indigent. Counsel is to be provided by the ND Commission on Legal Counsel for Indigents. The Court hereby advises the defendant of the defendant’s potential obligation to reimburse the Commission the amounts expended on behalf of the defendant.

Date: _____

 Judge of District Court or Designee

Income Guidelines 2017

These guidelines for gross income levels indicate income levels at or below which eligibility for indigent defense services should be considered.

| Household Size | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|----------------------|--------|--------|--------|--------|--------|--------|--------|--------|
| Annual Gross Income | 15,075 | 20,300 | 25,525 | 30,750 | 35,975 | 41,200 | 46,425 | 51,650 |
| Monthly Gross Income | 1,256 | 1,692 | 2,127 | 2,563 | 2,998 | 3,433 | 3,869 | 4,304 |
| Weekly Gross Income | 290 | 390 | 491 | 591 | 692 | 792 | 893 | 993 |

(Add \$5,225 to annual gross income for each additional member in households of more than eight.)

These income levels reflect 125% of the official poverty level threshold as defined by the Department of Health and Human Services.

Asset Guideline 2017

This guideline indicates the level at or below which eligibility for indigent defense services should be considered. Absent exceptional circumstances, an applicant with equity in real and/or personal property in excess of \$20,000 will not be considered indigent.

4

EXHIBIT B

12

3

HB

1235

3/20/17

Prepared by the North Dakota
Commission on Legal Counsel for Indigents
03/2017

PROPOSED AMENDMENT TO ENGROSSED HOUSE BILL NO. 1235

Page 2, line 19, replace "51-61-02" with "54-61-02"

**2017 Engrossed House Bill 1235
Testimony before the Senate Judiciary Committee
Presented by Ann Schaibley
Workforce Safety and Insurance
March 20, 2017**

Mr. Chairman, Members of the Committee:

My name is Ann Schaibley, Staff Counsel with Workforce Safety and Insurance (WSI). I am here today to testify on Engrossed House Bill 1235. The WSI Board of Directors opposes this bill as it applies to WSI and offers an amendment.

The bill proposes to require WSI to provide access to the Commission on Legal Counsel for Indigents to claimant file information as well as automated access to records contained in automated databases. Specifically, the Commission would have access to last-known addresses, wage-loss benefits, permanent partial impairment benefits, death benefits, or additional benefits that an individual has received or is entitled to receive from the organization, and whether and where that individual is employed.

I have attached Century Code section 65-05-32 to my testimony for your review and consideration. You will see that most of the information collected by WSI in the administration of Title 65 is confidential. Section 65-05-32 allows for the sharing of confidential information in a number of ways. Subsection 1 allows WSI to share the information if an authorization is signed. Subsection 9 allows WSI to share the information with other state agencies. Under subsection 9, our practice is to enter into a data sharing agreement with the other agency. Once that agreement is signed, WSI is able to share whatever information is needed by the other agency to perform their duties.

The way the bill is currently drafted would actually restrict the information WSI would be able to provide to the Commission because the bill is more specific than 65-05-32, WSI would be bound to the more specific list in the bill.

WSI is offering an amendment for consideration of the Committee. That amendment is also attached to my testimony. The amendment removes WSI from the bill. Our reasoning is twofold. First, as I just discussed, the Commission on Legal Counsel for Indigents is able to obtain the information sought through the bill through current law under 65-05-32. Second, access to the specified items listed in the engrossed bill that are contained in WSI's automated databases would require technology changes to create such access. We are uncertain if these changes are feasible, or what the cost might be to create this access. Because a workable solution already exists that does not require additional time and resources to implement, we respectfully request your favorable consideration of the attached amendment.

I am happy to answer any questions.

Proposed Amendment to Engrossed House Bill No. 1235

Page 1, remove lines 20 – 24

Page 2, line 1 replace "(7)" with "(6)"

Page 2, line 2 replace "(8)" with "(7)"

Page 2, line 4 replace "(9)" with "(8)"

Page 2, line 5 replace "(10)" with "(9)"

Page 2, line 6 replace "(11)" with "(10)"

Renumber accordingly

65-05-32. Privacy of records and hearings - Penalty.

Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to organization employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the organization.
2. Employers or their duly authorized representatives who are required to have access to an injured employee's claim file for the performance of their duties may review and have access to any files of their own injured employees. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.
3. Physicians or health care providers treating or examining employees claiming benefits under this title, or physicians giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured employees.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the organization at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.
6. At the request of a claimant, the organization may close the medical portion of a hearing to the public.
7. The organization may release the social security number of an individual claiming entitlement to benefits under this title to health care providers or health care facilities for the purpose of adjudicating a claim for benefits.
8. The organization may provide an injured employee's insurer information regarding the injured employee's claim.
9. The organization may provide any state or federal agency any information obtained pursuant to the administration of this title. Any information so provided must be used for the purpose of administering the duties of that state or federal agency.

Proposed Amendment to Engrossed House Bill No. 1235

Page 1, line 1, remove the second "and"

Page 1, line 1, after "5" insert ", and 6"

Page 1, remove lines 20 – 24

Page 2, line 1 replace "(7)" with "(6)"

Page 2, line 2 replace "(8)" with "(7)"

Page 2, line 4 replace "(9)" with "(8)"

Page 2, line 5 replace "(10)" with "(9)"

Page 2, line 6 replace "(11)" with "(10)"

Page 2, after line 23 insert:

"SECTION 3. Subsection 6 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

6. In determining eligibility for public defender services the commission may obtain access to workforce safety and insurance records pursuant to section 65-05-32."

Renumber accordingly

3/20/17

1

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Proposed Amendment to Engrossed House Bill No. 1235

Page 1, line 1, remove the second "and"

Page 1, line 1, after "5" insert ",and 6"

Page 1, remove lines 20 – 24

Page 2, line 1 replace "(7)" with "(6)"

Page 2, line 2 replace "(8)" with "(7)"

Page 2, line 4 replace "(9)" with "(8)"

Page 2, line 5 replace "(10)" with "(9)"

Page 2, line 6 replace "(11)" with "(10)"

Page 2, after line 23 insert:

"SECTION 3. Subsection 6 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

6. In determining eligibility for public defender services the commission may obtain access to workforce safety and insurance records pursuant to section 65-05-32.

Re-number accordingly



Page 2 line 19 change
"51" to "54"

#1
1235
4-7-17

In reviewing eligibility for public defender services the commission may request and WSI shall provide WSI claimant information pursuant to section 65-05-32.

Proposed Amendments to FIRST ENGROSSMENT with Senate Amendments
ENGROSSED HOUSE BILL NO. 1235

#1
1235
4-12-17

Page 1, line 1, after "4" remove the comma and insert "and"

Page 1, line 1, after "5" remove the comma and remove "and 6"

Page 1, line 10, after "databases" insert "to the extent agreed upon between the commission and the agency providing the information"

* Page 1, line 11, after "agencies" insert "relevant to making an eligibility determination for public defender services"

Page 1, line 19, after the semi-colon insert "(6) Workforce safety and insurance records pursuant to section 65-05-32;"

Page 1, line 20, replace "(6)" with "(7)"

Page 1, line 21, replace "(7)" with "(8)"

Page 1, line 23, replace "(8)" with "(9)"

Page 1, line 24, replace "(9)" with "(10)"

Page 2, line 1, replace "(10)" with "(11)"

Page 2, remove lines 19-22

Renumber accordingly

#1
1235
4-13-17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1235

That the Senate recede from its amendments as printed on pages 1103 and 1104 of the House Journal and pages 833 and 834 of the Senate Journal and that Engrossed House Bill No. 1235 be amended as follows:

Page 1, line 1, replace the second "and" with a comma

Page 1, line 1, after "5" insert ", and 6"

Page 1, line 10, after "records" insert "relevant to making an eligibility determination for indigent defense services"

Page 1, line 11, after "agencies" insert "relevant to determination of eligibility for indigent defense services"

Page ~~1~~, replace lines ²⁰~~19~~ through ²⁴~~23~~ with:

"**SECTION 2.** Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

SECTION 3. Subsection 6 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

6. In determining eligibility for public defender services, the commission may obtain access to workforce safety and insurance records pursuant to section 65-05-32."

Renumber accordingly

#2
1235
4-13-17

65-05-32. Privacy of records and hearings - Penalty.

Information contained in the claim files and records of injured employees is confidential and is not open to public inspection, other than to organization employees or agents in the performance of their official duties. Providing further that:

1. Representatives of a claimant, whether an individual or an organization, may review a claim file or receive specific information from the file upon the presentation of the signed authorization of the claimant. However, reserve information may not be made available to the claimant or the claimant's representatives. Availability of this information to employers is subject to the sole discretion of the organization.
2. Employers or their duly authorized representatives who are required to have access to an injured employee's claim file for the performance of their duties may review and have access to any files of their own injured employees. An employer or an employer's duly authorized representative who willfully communicates information contained in an employee's claim file to any person who does not need the information in the performance of that person's duties is guilty of a class B misdemeanor.
3. Physicians or health care providers treating or examining employees claiming benefits under this title, or physicians giving medical advice to the organization regarding any claim may, at the discretion of the organization, inspect the claim files and records of injured employees.
4. Other persons may have access to and make inspections of the files, if such persons are rendering assistance to the organization at any stage of the proceedings on any matter pertaining to the administration of this title.
5. The claimant's name; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the organization for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose.
6. At the request of a claimant, the organization may close the medical portion of a hearing to the public.
7. The organization may release the social security number of an individual claiming entitlement to benefits under this title to health care providers or health care facilities for the purpose of adjudicating a claim for benefits.
8. The organization may provide an injured employee's insurer information regarding the injured employee's claim.
9. The organization may provide any state or federal agency any information obtained pursuant to the administration of this title. Any information so provided must be used for the purpose of administering the duties of that state or federal agency.

#1
1235
4-14-17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1235

That the Senate recede from its amendments as printed on page 1103 of the House Journal and pages 833 and 834 of the Senate Journal and that Engrossed House Bill No. 1235 be amended as follows:

Page 1, line 9, remove "including"

Page 1, line 10, replace "automated access in the case of records maintained in automated databases." with "relevant to making an eligibility determination for indigent defense services."

Page 1, line 11, after "agencies" insert "relevant to determination of eligibility for indigent defense services"

Page 1, line 21, remove "identifying the last-known address of the individual, wage-loss"

Page 1, remove lines 22 and 23

Page 1, line 24, replace "organization, and whether and where that individual is employed" with "or as otherwise provided in section 65-05-32"

Page 2, replace lines 19 through 23 with:

"**SECTION 2.** Subsection 5 to section 54-61-02 of the North Dakota Century Code is created and enacted as follows:

5. If a government agency or private entity denies the commission access to records under subsection 4, the denial must include a statement of the legal authority for the denial.

Renumber accordingly