

2019 HOUSE JUDICIARY

HB 1275

2019 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1275
1/22/2019
31211

- Subcommittee
 Conference Committee

Committee Clerk: DeLores D. Shimek

Explanation or reason for introduction of bill/resolution:

Relating to limitations on the adoption of administrative rules.

Minutes:

1, 2

Vice Chairman Karls: Opened the hearing on HB 1275.

Rep. K. Koppelman: Introduced the bill. This is a simple bill. This has been the practice, but not in the rule of law. Went over the change; an administrative agency may not adopt a rule that prescribes a criminal penalty.

Rep. Hanson: Are there examples of civil penalties in the administrative code if someone should violate a rule?

Rep. K. Koppelman: Fines are the first thing that comes to my mind. I can't give you a specific example.

Rep. McWilliams: Does this have any retroactive affect?

Rep. K. Koppelman: No; nothing in the bill would prescribe retroactivity.

Opposition: None

Neutral:

Mark Hardee, Executive Director of the ND State Board of Pharmacy: (Attachment #1 & #2) Went over his testimony. (4:26-6:22)

Rep. K. Koppelman: I would have no objection to the amendment. In other areas of the Century Code we may authorize something like he has described and then the legislature is clearly weighing on this.

Rep. Vetter: With this authority can you just go ahead and CBD type these drugs in there and make them illegal under administration code?

Mark Hardee: Yes we could bring forth the rules that would schedule certain substances; but it still needs to go through the administrative rules committee process. That process we don't like to extend out that authority unless it is absolutely necessary.

Representative Jones: If you have an emergency where there was danger to teenagers and law enforcement decides this needs to be the penalty and you go and implement it during the interim when we are not in session; when we come back and meet in session do we review that and do something more permanent through the legislature.

Mark Hardee: Yes we come back to the legislature to codify this as there and be some legal arguments in the adoption of administrative rules.

Rep. K. Koppelman: I don't believe the board has ever used this to classify a known substance that was not previously classified.

Mark Hardee: Yes that is right. Now we are striking out what we put in the administrative code that is now in the law just to clean up our section of the law.

Opposition: None

Hearing closed.

Motion Made to adopt the proposed amendment to add at the end of Page 1, Line 13, add: unless authorized by another chapter by Rep. Roers Jones; Seconded by Rep. Hanson

Voice vote carried.

Discussion:

Rep. Paur: What about the retroactive; are we going to act on that?

**Motion Made to further amend this bill to make it retroactive by Rep. Paur
Seconded by Rep. McWilliams**

Voice vote carried

Do Pass as Amended Motion Made by Rep. Roers Jones; Seconded by Rep. McWilliams

Discussion:

Roll Call Vote: 13 Yes 0 No 1 Absent Carrier: Rep. McWilliams

19.0794.01001
Title.02000

Adopted by the Judiciary Committee

January 22, 2019

OK
1/22/19
1 of 1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1275

Page 1, line 13, after "penalty" insert "unless authorized by another chapter"

Renumber accordingly

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1275**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: At the end of Page 1, line 13, add: unless authorized by another chapter.

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. Roers Jones Seconded By Rep. Hanson

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE CARRIED.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1275**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: Make it retroactive.

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. Paur Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman			Rep. Buffalo		
Vice Chairman Karls			Rep. Karla Rose Hanson		
Rep. Becker					
Rep. Terry Jones					
Rep. Magrum					
Rep. McWilliams					
Rep. B. Paulson					
Rep. Paur					
Rep. Roers Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

VOICE VOTE CARRIED.

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1275**

House Judiciary 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. Roers Jones Seconded By Rep. McWilliams

Representatives	Yes	No	Representatives	Yes	No
Chairman Koppelman	X		Rep. Buffalo	X	
Vice Chairman Karls	X		Rep. Karla Rose Hanson	X	
Rep. Becker	X				
Rep. Terry Jones	X				
Rep. Magrum	----	-----			
Rep. McWilliams	X				
Rep. B. Paulson	X				
Rep. Paur	X				
Rep. Roers Jones	X				
Rep. Satrom	X				
Rep. Simons	X				
Rep. Vetter	X				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. McWilliams

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

REPORT OF STANDING COMMITTEE

HB 1275: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1275 was placed on the Sixth order on the calendar.

Page 1, line 13, after "penalty" insert "unless authorized by another chapter"

Renumber accordingly

2019 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1275

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

HB1275
3/14/2019
#33700

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to limitations on the adoption of administrative rules.

Minutes:

Chairman Davison: Let's open the hearing for HB1275.

Rep. Kim Koppelman, Dist. 13, W. Fargo: (.40-9.50). This bill deals with administrative rules. I served on the rules committee in the past. Administrative rules are nothing more than the authority that the legislature delegates to the executive branch of government to craft rules. Those rules carry the force and effect of law. When they are enforced, it is as if we had passed a law in the legislature. Our constitution says that the legislative branch of government is the branch that makes law. Most legislators feel we must over see this process and supervise it so that it is done appropriately and in compliance with legislative intent. We should not be able to impose a criminal penalty in rules. This is a cleanup bill mainly lines 12-13. The only thing a legislator could do once a legislative rules went into effect was to come back in the next session to undo the rule. Rules can't say 30 days in jail. That is too far a reach, we feel. It has been done in the past and we caught it.

Sen. Erin Oban: (5.59) Can you recall an agency adopting a rule that contains a criminal penalty?

Rep. Koppelman: I think a Game & Fish regulation. They have some authority to do criminal things but they need to bring it before the legislature for us to pass a bill. We ask that you change the bill by adding the retroactive. We had a verbal amendment in the House that did not get on to the written amendment and Sen. Heckaman said they would fix this in the Senate. Questions?

Chairman Davison: Any more in support? Agency? Against? Hearing is closed. (10.18)

2019 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Sheyenne River Room, State Capitol

HB1275
3/15/2019
33782

- Subcommittee
 Conference Committee

Committee Clerk: Pam Dever

Explanation or reason for introduction of bill/resolution:

Relating to limitations on the adoption of administrative rules.

Minutes:

Att #1- Sen. Roers

Chairman Davison: Let's do committee work for HB1275.

Sen. Kristin Roers: (see att #1) I have an amendment 19.0794.02003 to add the retroactive application that was discussed by the bill sponsor and Sen. Heckaman's e-mail.

Sen. Erin Oban: I move the amendment.

Sen. Kristin Roers: I second.

Chairman Davison: Discussion. Take the roll: **YES -- 6 NO -- 0 -1-absent**
Amendment passed.

Chairman Davison: What are the committee wishes?

Sen. Kristin Roers: I move a DO PASS as amended.

Sen. Erin Oban: I second.

Chairman Davison: Discussion? Take roll: **YES -- 7 NO -- 0 -0-absent**
The DO PASS as amended, passed. Sen. Kristin Roers will carry the bill.

(Sen. Marcellais entered the room as we were voting)

Done (3.28)

19.0794.02003
Title.03000

Prepared by the Legislative Council staff for
Senator K. Roers

March 14, 2019

SK
3/15
1001

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1275

Page 1, line 2, after "rules" insert "; and to provide for retroactive application"

Page 1, after line 18, insert:

"SECTION 2. RETROACTIVE APPLICATION. This Act is retroactive in application and any rule adopted before the effective date of this Act which prescribes a penalty in violation of this Act is void."

Renumber accordingly

3-15-19

Date:
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate Government and Veterans Affairs HB 1275 Committee

Subcommittee

Amendment LC# or Description: 19,0794,02003

- 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 Sen Oban Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Chair Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	ab	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 6 No 0

Absent -1-

Floor Assignment _____

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

3-15-19
 Date:
 Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HP 1275

Senate Government and Veterans Affairs 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 Sen Roers Seconded By Sen. Oban

Senators	Yes	No	Senators	Yes	No
Chair Davison	/		Sen. Oban	/	
Vice Chair Meyer	/		Sen. Marcellais	/	
Sen. Elkin	/				
Sen. K. Roers	/				
Sen. Vedaa	/				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen. Roers

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

REPORT OF STANDING COMMITTEE

HB 1275, as engrossed: Government and Veterans Affairs Committee (Sen. Davison, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1275 was placed on the Sixth order on the calendar.

Page 1, line 2, after "rules" insert "; and to provide for retroactive application"

Page 1, after line 18, insert:

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Renumber accordingly

2019 TESTIMONY

HB 1275



State of North Dakota
Doug Burgum, Governor

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#1
HB1275
1-22-19
mg1

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Mark J. Hardy, PharmD, R.Ph.
Executive Director

House Bill No 1275 – Limitations on Rules with Criminal Penalty
House Judiciary Committee – Prairie Room
9:35 AM - Tuesday – January 22, 2019

Chairman Koppelman, members of the House Judiciary Committee, for the record I am Mark J. Hardy, PharmD, Executive Director of the North Dakota State Board of Pharmacy.

I appreciate the opportunity to comment on House Bill 1275 today relative to the potential concerns this bill could cause.

The Board of Pharmacy certainly understands and appreciates the intent of the rule to limit the power of the agency to adopt rules carrying criminal charges. For us, it appears to potentially create a consequence that we want to ensure the committee is aware of.

The Board may adopt rules under the authority granted by the Legislature in the Controlled Substances Act 19-03.1-02 for scheduling new drugs.

The Board has had to utilize the power in this section only a few times to emergency schedule new illicit controlled substances that were being sold in North Dakota causing immediate and emanate danger to the citizens. This was used last in 2012 with the epidemic of synthetic designer drugs often marketed as bath salts. They caused extreme harm and even death to our youth experimenting with these dangerous substances. Law Enforcement was able to intervene after our action taken under the advisement of the Attorney General's Office.

A recommended amendment to this legislation would be to allow an exception when the Century Code clearly gives the power to the administrative agency for developing rules where the violations are criminal offences.

We hope this change will be amenable to the committee.

Thank you for listening to my testimony and I will be happy to answer any questions.

#2
HB1275
1-22-19
Pg 1

Proposed Amendment to HB 1275

At the end of Page 1 line 13, add: unless authorized by another chapter.

19.0794.02003
Title.

Prepared by the Legislative Council staff for
Senator K. Roers

March 14, 2019

HB 1275
3-15-19
Att #1
pg 1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1275

Page 1, line 2, after "rules" insert "; and to provide for retroactive application"

Page 1, after line 18, insert:

"SECTION 2. RETROACTIVE APPLICATION. This Act is retroactive in application and any rule adopted before the effective date of this Act which prescribes a penalty in violation of this Act is void."

Renumber accordingly

original