

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1201

2005 HOUSE JUDICIARY

HB 1201

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1201

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/12/05

Tape Number	Side A	Side B	Meter #
2	xx		14.7-end
2		xx	0-12.6

Committee Clerk Signature

*Dawn Penrose*

Minutes: 14 members present.

**Chairman DeKrey:** We will open the hearing on HB 1201.

**Rep. George Kaiser:** I bring you a little bill that has in and of itself brought almost every lobbyist in the state to your door. This bill attempts to place some requirement back on those Boards, which we create statutorily in the state, to license, monitor and police professionals in our state. I can't tell you the different number of boards that we have, other than to say it would surprise you, how many boards we have. The boards do a great service for the state of ND, primarily the boards licensed those groups which are members of the board and in addition to licensing, they also represent the state and the public in terms of any complaints which might be filed against a member of a particular board. Not the board member itself, but somebody who is licensed by that board. An example, would be the Podiatry Board, and the actions taken or not taken relative to podiatrists. We also had another board which got into financial trouble, and certainly the podiatry board was in extreme financial trouble when the actions of the board were

beginning to be considered by the legislature. We had a bill last session, which provided a significant increase in the fees paid by Realtors to be licensed by the real estate board. The purpose of that increase was that they had a deficit, they weren't able to pay not only their administrative costs, but they were unable to pay their legal and investigatory costs associated with disciplining members of the real estate industry. A Realtor came to me, during the Interim, it was early last summer, can we do anything about this. I had a complaint filed against me, and whether or not the complaint is legitimate, certainly citizens have the right to file the complaint. The complaint was filed with the board on March 2003. The investigation report was submitted to the real estate board on August 14, 2003. This was a relatively minor issue. The hearing was held in March, 2004. That's not expeditious by any standard. When I called the ND State Board of Realtors and asked why did it take so long. The answer was very straightforward and honest. We didn't have the money, you increased the payments so that we would be able to generate the money, we didn't feel comfortable in asking our investigators or our attorney, who represented the board, to do their work if we couldn't pay them. That was a somewhat legitimate argument, but on the other hand, we have a professional involved here who makes their livelihood from that business. They're being held in limbo. What we did as a state, in effect, was we took our problem and transferred it to that Realtor. The matter kept coming up on the board's agenda, it would be tabled time after time. The individual went to each of those meetings and nothing was resolved. It was finally resolved and there was a stipulated agreement, so there was some merit to the claim and the Realtor can address how significant the merit was. First I went to LC to see if we had anything in our NDCC that would address this, and we didn't. Do we have any information from other states and LC did a research of states and found that most states, not all,

do have in their code something to address this issue and the bill that is being brought forward today was taken out of another state's century code. After the bill was introduced and after many discussions, I've had many individuals who represent boards and say what's the problem, what are you trying to do here. I'm really concerned about this. I understand and many of them have said, we don't oppose this concept, but we need further clarification. If you look at the bill on line 9 and 10, we took that language directly from another state's code. You can argue with the 60 days. You can extend it. What we need to further refine is "has not taken action". If we take the medical board, for example, disciplinary action there obviously requires a potential significant investigatory period. It may take 2-3 years to complete an investigation. With other groups it may take less time. We're trying to achieve, is that action was taken in a reasonable time and reasonable action was taken. What we wanted as part of the remedy was that the person against who the grievance has been filed has some rights to come back to the board and say I'd like you to take some action. I can't sleep at night, I'm losing weight, I'm having problems, it is affecting my practice. This is how people make their living. I would encourage your very sincere consideration of this issue.

**Chairman DeKrey:** What do you perceive when you state "taking action"; because arguably real estate board took action. They kept putting it on their agenda and tabling it, instead of acting.

**Rep. George Kaiser:** It is action, but it's not what we would call reasonable action. I know that's hard to find. But I think if the investigation has started in a timely fashion, that's fine and if the investigation is underway. But if the investigation is completed, and the report submitted, I

would submit that a report submitted on August 14, and acted on in March of the following year is not reasonable.

**Representative Delmore:** Why 60 days, as far as the number of days, and then it seems to be your intent that if they made an effort to look into these charges, you're not asking for another timeline after that. You're hoping that they've started on it, and they're going to have a timely finish after that 60 days.

**Rep. George Kaiser:** That they made an effort to initiate the action and then to continue the appropriate follow-through on the action. They took action, they received the complaint. They did eventually initiate an investigation and the investigation was turned in, and it's at the point when I've gone to 2 or 3 meetings and it's been tabled and moved over, I would think that I have a legitimate cause to come and say that this is a problem for me, I'm going to ask you to take action within 60 days. We're trying to give our citizens some rights in this process.

**Representative Delmore:** 60 days?

**Rep. George Kaiser:** We took that from another state. What we found was that states vary from 30-60-90 days, generally speaking. We took the middle amount.

**Representative Delmore:** Would it be your intention that if these steps aren't taken, the board doesn't care about that professional, even though they are one of yours, that a lawsuit could then be initiated against that board.

**Rep. George Kaiser:** I don't encourage a lawsuit. I just encourage to provide them with some authority in our statute, that says you have some rights and your right is to now, by written notice, request that they take action within a timely fashion.

**Chairman DeKrey:** Would their approach be just to tell these boards in administrative rule they have to lay out what their process is going to be, taking grievances or complaints against their licensees.

**Rep. George Kaiser:** That might be a much better strategy. This committee is one that really addresses these kinds of issues and based on your experience, if there is a better strategy, I would not oppose it. I think you understand what we're trying to achieve, the concept is to give the citizen some rights in this process, when things aren't occurring as they should.

**Representative Koppelman:** You talked about the person who the complaint might be filed against, and their rights and their concern because their livelihood depends on it and I think that is valid. I think equally as valid is the flip side. The fact that somebody has a complaint filed against them by the public and they are under the governance of a board, that the public has a right for that claim to be heard in a timely fashion, and whatever sanction is levied against the professional might be carried out with some dispatch. The other thing I noticed, is that it doesn't seem to put undue burden on the agency or the board involved, for two reasons. There doesn't seem to be an official sanction here, that if you don't do this here's what happens. Secondly, because all the agency or board has to do, is to give an explanation of what is happening.

**Rep. George Kaiser:** I couldn't agree more with you on both points. I didn't raise the first point, but that is even a more important issue, that the purpose of these boards reviewing complaints and taking action against those professionals that are licensed, is to protect the public when appropriate. I have questions that the Podiatry Board was acting appropriately and in a timely fashion relative to protecting the citizens of the state of ND. When we start getting into surgical issues, that they are very important areas that boards need to be operating in. It is

important to take reasonably quick action relative to that professional and removes the license, if appropriate to protect the public.

**Representative Meyer:** You mentioned the money again. If the only funds for these disciplinary actions with these boards, is the only funding mechanism the licensure fees. Is there any other money available to handle these complaints.

**Rep. George Kaiser:** That's a good question. I'm not really qualified to answer that. It is my understanding in those cases, that I've been directly involved with, that the fees generated through the licensing and re-licensing process, are to pay for the administration and to help pay for the prosecution and investigations that are involved. In the case of the Podiatry board, specifically, when they ran out of the money, the Legislature considered in the form of legislation, emergency appropriation to the board that would be in the form of a loan, that would be paid back hopefully through increased registration fees. It may be that all boards operate that way, but I can't say definitively.

**Representative Klemin:** It looks to me like there might be an internal ambiguity in this, inconsistency between line 10 and line 14. On line 10, where the agency has not taken action to resolve the matter, could be read as upon disposition, whereas on line 14 we're talking about agency initiated the action within 60 days. On line 10 are you talking about the initiation of the action.

**Rep. George Kaiser:** In line 10, I am talking about initiating and following up in an appropriate manner. Those actions as they would naturally occur. It may need to be clarified.

**Representative Klemin:** I'm familiar with some other provisions in the Century Code, where an agency or board has to do things within a certain period of time. For example, when



complaints are filed with the Insurance Commissioner, he has 30 days to disprove, or they are deemed proved. If we were to try and devise a time schedule in which you must initiate action, and must have a hearing, then you must dispose of it, would that be better than just giving 60 days to start it. This really doesn't give them any deadline to complete it.

**Rep. George Kaiser:** I think that would be an ideal solution, but as all ideal solutions, it tends to be fraught with problems in individual cases. There are people in the audience which could more appropriately answer that. I don't know how you put specific dates, as we have done, some cases require more investigative work due to lack of experts, and some cases take very little to investigate and resolve. Ultimately, Rep. Klemin's comments are right, we need to protect the public. We don't want to have bad operators getting off, because of some arbitrary date that we might set. If you can discover a formula, I think that would be terrific.

**Representative Galvin:** I did serve on one of these boards, and within 60 days, if you find a violation, the first step is to write that up (say at a barber's shop). The next time you might see that person it's going to be a year from then. So would writing up the person be sufficient to be action having been taken.

**Rep. George Kaiser:** I think this committee has the expertise to develop appropriate language. Really the intent is that if you accept a complaint, that is the first step. Many complaints which boards look at, and say, we're not even going to accept this complaint. It's not a proper complaint, it doesn't belong with us, there are a variety of reasons why they may not accept the complaint. But once they accept a complaint, I think it is reasonable to expect that the investigation would begin in a timely fashion. I think it is reasonable to expect that the investigation report be completed within a certain time frame. I think it is reasonable to expect

that having received the report, that if there should be censure brought against the professional, that action be taken expeditiously. If action should not be taken, that if there was no merit to the complaint, that the professional should be notified expeditiously and released of the complaint. That's the concept that we are trying to achieve here.

**Representative Galvin:** Just to give a little insight. A lot of these cases are tied up with a whole bunch of other things, like turf protection and I wonder if this bill was initiated on behalf some particular individual.

**Rep. George Kaiser:** A particular individual did speak with me and he will be testifying after me.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1201.

**John Sauter, former Real Estate agent:** When I received the complaint, March 2003, I filed a response within 30 days as required by the Real Estate Commission. I wasn't worried, I hadn't done anything wrong, but I was concerned about my professional reputation about the fact that a complaint had been filed against me, as any good professional would be. Every month from April 2003 to February 2004, I contacted the Real Estate Commission's attorney, to see what was happening with the complaint. I did not attend the monthly meetings, I simply contacted the attorney because there was no need for me to be there; and was told month after month it had been tabled, etc. What I found out later in my investigation, the reason it had been tabled was that there was no money in the Real Estate Commission. As a professional, I really didn't care if there wasn't money, they were holding my license in their hands. In July or August of 2003, I wrote and received my broker's license from the Real Estate Commission. I figured the Real Estate Commission wasn't going to give me a broker's license if they found any merit at all in

the complaint that had been filed against me. However, I still wanted resolution. It was like a cloud hanging over my head. Finally, in February, 2004, I was notified that the Real Estate Commission, the complaint had been set for hearing. I met with the Commission's attorney, and we agreed on a stipulated settlement. I saw how they operated and didn't feel I had a lot of choice. I made an offer to take a reprimand, they told me that it would be a reprimand and take a fine. I wrote the check. I just wanted this to end. I am asking that you pass this legislation that would guarantee that every commission the legislature oversees, handles complaints in a fair and timely manner. My decision to leave the real estate business was based in part upon this whole fiasco. A timely resolution to every complaint that is filed with a professional board needs to be accomplished.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1201.

**Glenn Elliott:** I am testifying on my own behalf. I support HB 1201. The public wants to have some confidence that when these complaints are brought, they are actually addressed in a reasonable time. I encourage this committee to pass the bill.

**Chairman DeKrey:** Thank you. Further testimony in support of HB 1201. Testimony in opposition to HB 1201.

**Tom Tupa:** I am here representing several regulatory boards. We don't have a particular feeling one way or the other (neutral) about the bill; however, if it does approve the bill, we would offer one suggestion, on line 10 that the 60 days be changed to 90 work days. We do have instances where complaints are filed, the boards need responses, those responses are sent out to the licensee or the request for response is sent to the licensee, the licensee is generally given from two weeks to 30 days to respond. On occasions, they will ask for a delay and they will take a

little more time to respond. We can see where that 60 days might be a little tough for some of the boards. The other thing is that boards don't always meet at that 60 day notice, depending on how you define certain things like action, and resolution and good cause and initiate, etc. Some of the boards that don't meet quite as often as this bill may address, there could be a problem for some of those.

**Representative Koppelman:** On line 10, if the word "taken" could be removed and put in "initiated". Would that suffice for the 60 day window then. If they have to send something out and have to wait for response, if they sent it out, they've met the standard for initiating action. Would that suffice.

**Tom Tupa:** Perhaps that would help it. Depending on how some of those words would be defined would make a difference to some of the boards.

**Representative Delmore:** Do you know how many boards would be affected by this bill.

**Tom Tupa:** I have no idea.

**Representative Delmore:** How many of the boards that you represent here, are paid and how many of them meet on a regular basis, say once a month, so the 60 days is a little more palatable for them.

**Tom Tupa:** The boards that I indicated generally meet quarterly. On occasion, if there is no full agenda, they'll not have a particular meeting. One of the boards, has in the statute, the fact that they are only obligated to one board meeting per year.

**Representative Klemin:** I notice the language in this bill talks about agencies, but I think we've been talking about boards also, which they aren't actually agencies. Are the boards that you represent, are they subject to administrative agency practices act in this regard.

**Tom Tupa:** Yes they are. The reason we are concerned is that on line 9, where it says occupational, professional licensee. The brought it to our attention.

**Representative Koppelman:** You talked about groups that may only meet once a year, quarterly, etc. If this bill were to become law, the group had already met, and wouldn't be meeting again for say 6 months and a complaint comes in, could the standard be accomplished simply by a conference call saying we got a complaint and we need to send out X to person Y and that could suffice as initiating action.

**Tom Tupa:** I think in some instances that might work. In other instances, where a licensee may have retained legal counsel, and the issue is more complicated, they may request or want a face-to-face meeting.

**Representative Koppelman:** In which case, they would respond anyway, with or without this statute they'd want to meet.

**Tom Tupa:** Yes.

**Chairman DeKrey:** Thank you. Further testimony in opposition.

**Rolf Sletten, Director of the State Medical Licensing Board:** I have indicated here that we are appearing in opposition to the bill. We don't disagree with what Rep. Kaiser said that standards of some kind. The question is what they should be. Our basic objection is that one size doesn't fit all. This bill would affect all the licensing boards, imposing the same standard on all of them, even though some issues are much complex than others. We have just three regular meetings per year, so we meet about every 120 days. The language in line 10 talks about action to resolve the matter. It almost sounds like it is supposed to be completed within that time period. It seems to conflict with line 14, which talks about initiating action. We initiate action

immediately upon getting a complaint. We get the complaint in, the first thing we do is write to the doctor and say what's your side of the story. We do that within 3 days. But if we are talking about resolving the case, some of these are very complex. I talked to the state court administrator and he said the standard the Supreme Court has imposed for medical malpractice cases, is that the case should be tried within two years of the time when it is filed. They aren't even talking about the discovery period, the investigation period that goes on before that case is filed. That might be a long time. Two years after it is filed, they want the case to go to trial in malpractice case. Some of our cases, amount to the same things as trying several malpractice cases at once, because the standard that says that one of the grounds for taking disciplinary action against a doctor, is a continued pattern of inappropriate care; not just one bad result in one horrible case; but a pattern of inappropriate care. We're talking about more than one instance. So the practical problem with the scheduling, with meeting three times a year, is with the average case, we get the complaint, we send out the letter to the doctor, we do what investigation is appropriate, we show it to one of the board's investigative panels at the next meeting, and a lot of these cases are dismissed at that point, so within 120 days it's done. If we get a complaint just before one of our meetings, there isn't time to investigate it before that meeting, you can see even if we bring it on as quickly as we can, it's going to take longer than that. The real problem is in the cases where a formal disciplinary proceedings are brought against the doctor. Therefore you probably used up more than 120 days, before they make the decision to file a formal action against the doctor. Then you may have the problem of trying several malpractice cases at one time. Some of the cases are much more simple than that and are disposed of much quicker. We haven't had really any complaints from doctors that the process is too slow. It is much more common for us to get

requests for continuances. A third concern, we are sometimes accused of being too aggressive.

If this bill is passed, it will force the board to take an even more aggressive stance in the cases that are going to go on for more formal proceedings. We will always have to be pushing to meet the timelines. That's not going to be very well received. We're told that this bill is prompted by the inactivity of one or two other boards. If that's the case, please consider legislation that is directed specifically to them. Put it in their medical practice act, not in the administrative agencies practice act where it affects every licensing board, whatever profession or business they are regulating. There are a number of technical questions about the bill. In line 8, it talks about complaint, grievance or request for disciplinary action. What does complaint mean. The word complaint is used routinely in two very different ways. It can be used to refer to the letter that comes in from the citizen that says I am complaining about this doctor and want you to do something about him. And it is the name for a legal document that sets out the allegations against someone who is accused. It depends on what we're talking about there. That makes a very big difference in all of this. Then there is the dilemma between the conflict between line 10 and line 14. It's not clear what it means. In line 13, what is the standard for determining whether the explanation of good cause is adequate. Who decides that, the courts. What is the consequence if the 120 days run out, or the 60 day period, without adequate explanation of good cause, is the case dismissed. If you do file a statement or explanation of good cause, then how much more time does the agency get. If it is necessary to do something like this, then we hope you direct it at the boards whose inactivity has raised a concern; or in the alternative, we hope you would exempt the Board of Medical Examiners.

**Representative Koppelman:** If line 10 said initiate instead of taken, would you say never mind.

**Rolf Sletten:** It wouldn't be quite that simple. If it were made clear that what we are talking about here is that you have started this on its way, and you are working on it.

**Representative Koppelman:** If it is clear in line 13, that there is some reason that this can't be initiated that quickly, you would simply explain that. You keep the people posted. Do you have an objection to that standard if it is understood.

**Rolf Sletten:** They might not like our explanation, of course. Do they have recourse, an appeal? It is very vague.

**Representative Klemin:** The Administrative Agencies Practices Act right now contains a number of time frames within it, under which one party or another has to do something. It also contains a provision here that these adjudicative proceedings and the rules of procedure that this applies, but that boards have the right to adopt their own rules as long as they are not inconsistent with the act here. Has your board adopted any separate rules of procedure itself that might define this situation.

**Rolf Sletten:** Not administrative rules. We have a policy manual about keeping in touch with complainants. Not specifically on that point. We've had very few complaints from the licensee's where this is taking too long.

**Representative Klemin:** It seems like the only thing that the act doesn't address is the time within which you must complete the process, it's got all the other times in there.

**Rolf Sletten:** It doesn't talk how long you can spend investigating before you decide to file a complaint.



**Representative Klemin:** It's going to be different in every case.

**Rolf Sletten:** Yes.

**Chairman DeKrey:** Thank you. Further testimony in opposition of HB 1201.

**Pat Jergenson, Secretary/Treasurer for the ND Real Estate Commission:** Our board is not really in opposition to this bill, except for the same reasons that have been mentioned; explanation of the word "take action" and items like that. We do have our procedure for filing complaints and how they're handled set up in our rules and regulations. Once the complaint is filed, the notice is sent to the respondent, they have 20 days to respond. When that is returned to us, we send a copy to the complainant, and a copy to our attorney. We have an attorney appointed to us by the Attorney General's office, he conducts the investigation. We don't have a lot of control over how long that investigation takes. Depending on the complexity of the issue, the number of people named in the complaint, sometimes there was more than one. Our board or commission meets four or five times a year. We are funded solely by licensees, we have no funding coming from any other place, other than that. I just wanted to let you know that information and let you know that if the verbiage, "take action" if we can get a clear understanding of that, we have no problem with the bill.

**Representative Meyer:** How many complaints has your commission received and how many of them resolved in disciplinary action for Realtors.

**Pat Jergenson:** We have brought about 15 a year and not all of them go to hearings. They are all investigated by our attorney, who then puts together a compilation of what he finds. At the next commission meeting, that is then discussed and the commissioner then vote to either dismiss it or to move it on to hearings. If they move to have it set for hearing, we are required by

our rules to give each party 20 days notice as to the hearing date, and then the hearing is conducted.

**Representative Meyer:** How many have gone to hearings.

**Pat Jergenson:** Actually probably 13 of them.

**Representative Klemin:** You said that you have a lack of control over how long the investigation takes.

**Pat Jergenson:** He's a practicing attorney. We pay him to do the investigation. It's not like he is just on our payroll. He doesn't just work for us, we don't get top priority.

**Representative Klemin:** It looks like in this case it took five months from the time the complaint was filed to the time the investigation was completed.

**Pat Jergenson:** The response was sent to our attorney on April 3 and on August 20th, the Commissioners at their meeting reviewed the attorney's findings. The meeting that was held in between April and August, the report was not available by our attorney at that meeting. So at the next scheduled meeting was when it came on the agenda. At the August meeting, the Commissioner's asked the attorney to investigate some other issues involved with that complaint, and as I mentioned there were two people involved. It wasn't just investigating one person. Then at the November meeting it was moved to a hearing.

**Representative Klemin:** In this particular case, focusing on when the commission initiating the action when the complaint was filed, when was the next thing that the commission did to initiate action on it.

**Pat Jergenson:** The complaint was filed on March 27 and that went out right away then, a letter goes out with a copy of the complaint to the respondent. The complaint doesn't just sit on my desk. I send a letter out, we take action and start.

**Representative Klemin:** I'm trying to see if harmonizing these inconsistencies in the bill, it would seem that most agencies are probably going to initiate action pretty timely, but the complaint the gentleman had was how long it took to resolve it after that initiation.

**Chairman DeKrev:** Thank you. Further testimony in opposition. We will close the hearing.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1201

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/17/05

Tape Number	Side A	Side B	Meter #
2		XX	14.5-16

Committee Clerk Signature



Minutes: 14 members present.

**Chairman DeKrey:** What are the committee wishes in regard to HB 1201.

**Representative Meyer:** I had a question about that, when I had asked how they paid for these hearings. There has to be a different way under those medical examiners boards. There is no way there fees could cover that. Do they fall into a different category.

**Chairman DeKrey:** I think that's the major problem with the bill. That all these boards and commissions are all working on a different set of guidelines, depending on what they do. I think Rep. Keiser has made his point in this bill. I don't know how we fix it.

**Representative Klemin:** Is there a subcommittee.

**Chairman DeKrey:** I appointed one, with Rep. Koppelman, Rep. Boehning, Rep. Delmore. They haven't met yet, so we will take this up later. We will close the meeting.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1201

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/18/05

Tape Number

1

Side A

Side B

xx

Meter #

6.1-9

Committee Clerk Signature



Minutes: 12 members present, 2 members absent (Rep. Charging & Kingsbury).

**Chairman DeKrey:** We will take up HB 1201. What are the committee's wishes in regard to HB 1201. I talked with Rep. Keiser last night and talked to him about the problems with this bill dealing with so many different boards. He made his point.

**Representative Delmore:** I think his idea has merit, but when we have the number of boards and commissions, etc. I don't know how you could do a one-size fits all for the whole thing. I think his point is well taken.

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1201.

**Representative Kretschmar:** I move a Do Not Pass.

**Representative Bernstein:** Seconded.

**Chairman DeKrey:** Call the vote on HB 1201.

12 YES 0 NO 2 ABSENT

DO NOT PASS

CARRIER: Rep. DeKrey

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1201

House Judiciary Committee

☐ Conference Committee

Hearing Date 1/25/05

Tape Number

2

Side A

xx

Side B

Meter #

8.4-17.8

Committee Clerk Signature



Minutes: 14 members present.

**Chairman DeKrey:** What are the committee's wishes in regard to HB 1201.

**Representative Koppelman:** I move the reconsideration of HB 1201.

**Representative Maragos:** Second.

**Chairman DeKrey:** Motion carried. We now have HB 1201 before us.

**Representative Koppelman:** Your subcommittee on HB 1201 consisting of Rep. Delmore, Rep. Boehning and myself, and the amendment before you is our recommendation. What it would do is after line 10, after the word "not", it would insert "acknowledge receipt of the complaint, grievance, or request and". It simply forces agencies that receive a complaint about somebody, it forces them to acknowledge that complaint was received and also take action to resolve the matter, to begin the process. It doesn't necessarily have to be completed. One of the objections we received was from the medical licensure board, and basically we feel that they would be covered because they are one of the quickest to begin the process with acting, and they

may not be completed, and on line 12, it says unless the agency provides the licensee and other interested parties an explanation of good cause why more time is required, the agency must initiate adjudicative proceedings,... within 60 days after receiving the demand. So "initiated" is in there and if they can't initiate, all they have to do is explain why. The teeth in the bill are limited, but if nothing else the agencies need to do their job in responding to complaints.

**Representative Onstad:** In previous testimony, the agencies were opposed to the whole thing. Are they in favor of these changes.

**Representative Koppelman:** We did not discuss this with all the agencies involved. The only agency that actually came in opposed to the bill requesting an exemption if we did it, was the medical board, and I really think that changing the bill helps. Now they have to acknowledge receipt of the complaint and start doing something; whatever their internal procedures are to act. If they can't do it within 60 days, they have to tell them we can't complete this in 60 days and this is why. There's no penalty if they don't. All we're telling them is to do your job, and giving them notice that they need to communicate with somebody that made a complaint and move forward in a reasonable period of time.

**Representative Klemin:** To me, on line 10 the clause "has not taken action to resolve the matter" implies that something has been completed. Down in line 14, it seems inconsistent with the "initiate adjudicative proceedings". It seems to me that the word taken should be removed and insert "initiated". Then I think line 10 would be consistent with line 14, "if they have not initiated action to resolve the matter". I think "taken" should be removed.

**Representative Koppelman:** We did discuss that and I think that we had decided to put that in, but it didn't get into these amendments. That was the intent, that they initiate action. If we

change the word in line 10 from "taken" to "initiated" with the addition of the rest of the amendment as we have it.

**Representative Koppelman:** I move the Koppelman amendment, .0101 dated January 20, 2005, with the additional change.

**Representative Zaiser:** Second.

**Representative Meyer:** Please read what the bill will say with the amendment.

**Representative Koppelman:** (read the amended bill).

**Representative Kretschmar:** When I read that now, it says "not acknowledged", but does that "not" also apply to initiated. If so, I would put a "not" in front of "initiated" too. I move to amend the amendment.

**Representative Koppelman:** Second.

**Chairman DeKrey:** Motion carried.

**Representative Koppelman:** I move a Do Pass as amended.

**Representative Meyer:** Second.

**13 YES 1 NO 0 ABSENT      DO PASS AS AMENDED      CARRIER: Rep. Zaiser**



Date: 1/18/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1201

## HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By *Rep. Kretschmar* Seconded By *Rep. Bernstein*

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Representative Delmore	✓	
Representative Maragos	/		Representative Meyer	✓	
Representative Bernstein	/		Representative Onstad	✓	
Representative Boehning	/		Representative Zaiser	✓	
Representative Charging	A				
Representative Galvin	-				
Representative Kingsbury	A				
Representative Klemin	-				
Representative Koppelman	-				
Representative Kretschmar	-				

Total (Yes) 12 No 0

Absent 2

Floor Assignment *Rep. DeKrey*

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

**REPORT OF STANDING COMMITTEE (410)**  
January 18, 2005 10:39 a.m.

**Module No: HR-11-0610**  
**Carrier: DeKrey**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1201: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS**  
**(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1201 was placed on the**  
**Eleventh order on the calendar.**

VJR  
1/25/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1201 JUD 1/26/05

Page 1, line 10, after "agency" insert "has not acknowledged receipt of the complaint, grievance, or request and" and replace "taken" with "initiated"

Renumber accordingly

Date: 4/25/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1201

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass as Amended

Motion Made By Rep. Koppelman Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey		✓	Representative Delmore	✓	
Representative Maragos	✓		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 1

Absent 0

Floor Assignment Rep. Zaiser

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

**REPORT OF STANDING COMMITTEE**

**HB 1201: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1201 was placed on the Sixth order on the calendar.

Page 1, line 10, after "agency" insert "has not acknowledged receipt of the complaint, grievance, or request and" and replace "taken" with "initiated"

Renumber accordingly

2005 SENATE JUDICIARY

HB 1201

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1201

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 21, 2005

Tape Number	Side A	Side B	Meter #
1		X	3560 - End
2			0.0 - 1490

Committee Clerk Signature *Maria L Solberg*

Minutes: Relating to the right to demand resolution of a complaint, grievance, or request for disciplinary action filed with licensing authority.

**Senator John (Jack) T. Traynor**, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

**Testimony In Support of the Bill:**

**Rep. George Keiser**, Dist. #47 Introduced the bill (meter 3560) A Realtor constituent in my district had a complaint filed against him in March 2003 with an investigation report was submitted to the real-estate commission August 2003 and the actual hearing was conducted in March of 2004. This person in his concern appeared at every monthly meeting and the committee tabled it for the entire time. **Rep. Keiser** stated that the legislator creates it to regulate an industry and why. Cited process of this case. (meter 3700).. Discussed Podiatry Boards history. When I personally called the Board of Realtors I was reminded that we (the legislation)

did not give them the increase of fees. This was not an appropriate answer. Other states have similar language.

Discussed the 60 day process (meter 4070)

**Senator Hacker** questioned how a board who only meets two times a year could accomplish this process. **Rep. Keiser** stated that perhaps they could hold a special meeting to address this. Who will cover this increase cost of meeting. If a complaint is filed a hearing needs to be arranged and investigated followed in a timely fashion to protect the citizens of our state. It is a standard cost for a board and some boards can do it via a teleconference. If you have a board it is there job to regulate the industry then they should be doing it.

**Senator Triplett** did not like the "one size fits all" vs. the boards having initiated rules throughout the Administrative Practices Act. Do they not have timelines within there guidelines. The legislation is the wrong venue to resolve this issue. It would make more sense for the person to go before the board with these issues to have a time line made. Discussed several board that she had been on. **Rep. Keiser** stated that this only gives the person a "tool" to come to the board with. It does not require them to do anything. Stated how the Realtors organization met there rules by having it at every meeting but tabling it with no action. **Senator Triplett** replied that this bill would not change anything already being done because it lacked a penalty. **Rep. Keiser** did not agree with her perspective thinking that this would give a history of action.

**Sen. Trenbeath** stated that unfortunately this legislation is ignore able and secondly all they have to do is acknowledge the complaint. **Rep. Keiser** replied that his original bill had more "teeth" to it and the house softened it. Discussed the tree steps of a complaint. **Sen. Trenbeath**



sited that unless "good cause" is proven how could anything be done? What is "good cause" and on who's eyes is the "good cause" created.

**Glenn Elliott**, private citizen (meter 5700) Gave Testimony - Att. #1 Discussion of the hiring of attorneys as a middle man. Sen. Trenbeath stated that the compliance and penalty is no better than the current system. **Mr. Elliott** sees this as a confidence builder.

#### **Testimony in Opposition or Neutral to the Bill**

**Tom Tupa**, Board of Social Work Examiners, (meter 200) We would like the time limit on line 11 and 16 change to at least 90 days.

**Edward Erickson**, Assistant to the Attorney General's Office (meter 340) Gave testimony and submitted an amendment - Att. 2

**Sen. Nelson** discussed SB 2329 in GVA in regards to the advertising of services. **Sen.**

**Trenbeath** questioned the causes of this in response to a 30 year old Supreme Court case and a 13 year old CA case. Questioned how or who would prosecute? **Senator Triplett** stated that does not the Attorney General provide attorney services to all or most of the boards that do regulation of professions? Most all state agencies that have offices in the capital and a good number of the licensing boards. We do not provide services to the Real-estate Board. They have a private attorney that has been appointed by the A.G. Discussed the funding of the attorneys on the boards. Questioned the time-line process and why it is hard for boards to have one and the AG's offices opinion of it. **Sen. Traynor** stated that perhaps we should hold the meeting off and call in the members from the different boards to comment.

**Senator John (Jack) T. Traynor**, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1201

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 22, 2005

Tape Number

1

Side A

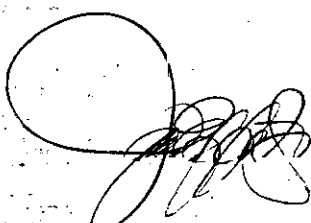
x

Side B

Meter #

256 - 570

Committee Clerk Signature



Minutes:

**Chairman Traynor** opened the discussion on HB 1201. This is Representative Kaiser's bill on professional licenses and the accompanying request from Assistant Attorney General Edward Erickson to attach an amendment

**Senator Nelson** said she would like to not accept the amendment. This amendment has already been defeated in GVA and this is just another attempt at the same amendment..

**Senator Traynor** said the accountants feel distressed they will have to go through this again.

**Senator Nelson** said the Board of Social Work requested a change from 60 days to 90 days to resolve the matter..

**Senator Triplett** said this is a bad bill, it has no penalties, it is a waste of paper.

**Senator Trenbeath** said he thinks so too.

**Senator Triplett** moved a do not pass on HB 1201.

**Senator Trenbeath** seconded the motion.

Page 2

Senate Judiciary Committee

Bill/Resolution Number HB 1201

Hearing Date March 22, 2005

**Senator Triplett** said the intention was good and they are trying to fix a problem. However, if there is a problem, it is better to be fixed individually, board by board, based on the requirements of each board and based on the guidelines of the board. The good boards will have such timelines and the other boards should be encouraged to develop them.

**Senator Traynor** said every discipline is different and unique.

The motion passed on a roll call vote 6-0-0.

**Senator Triplett** will carry the bill.

Date: 3/22/05  
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1201

Senate Judiciary

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By Senator *Triplett* Seconded By Senator *Trenbeath*

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 6 No 0  
Absent 0 0

Floor Assignment *Senator Triplett*

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

**REPORT OF STANDING COMMITTEE (410)**  
**March 22, 2005 12:31 p.m.**

**Module No: SR-52-5719**  
**Carrier: Triplett**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1201, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1201 was placed on the Fourteenth order on the calendar.**

2005 TESTIMONY

HB 1201

TO: HUMAN SERVICES COMMITTEE  
FROM: ROLF P. SLETTEN, EXECUTIVE SECRETARY  
RE: HB 1201  
DATE: JANUARY 11, 2005

Please consider the following:

1) The Board of Medical Examiners holds just three (3) regular meetings per year. In other words, the time between meetings is approximately 120 days.

In spite of that fact many of our cases are disposed of within the 120 day time period. Typically, when a complaint is submitted to the Board's office the staff immediately begins an investigation and the case is reviewed by one of the Board's two investigative panels at the next meeting. If the panel decides that formal disciplinary proceedings should not be brought against the doctor then the case is dismissed. Generally this is accomplished in less than 120 days but if a complaint is submitted to the office shortly before one of our meetings then there may not be sufficient time to complete the investigation before the time of that meeting. In those cases the decision as to whether or not formal proceedings should be brought against a licensee will have to be carried over to the next meeting and that meeting will not be scheduled within 120 days of the time the original complaint was received.

In some cases the members of the investigative panel will decide they need more information before they can decide whether or not to bring a formal case against the doctor. In those cases the decision is normally put over until the next meeting.

The real problem involves those cases where the members of the panel conclude that formal disciplinary proceedings should be brought against a licensee. In those cases a formal complaint must be served on the doctor, the discovery process must run its course, an administrative hearing must be scheduled, the ALJ must prepare recommended findings, and finally the Board must meet again to make the final decision in the case. Some of these cases are extremely complex, the equivalent of trying several malpractice cases at one time.

Some of these cases cannot be completed within 120 days of the time the formal action was served on the doctor. Almost none of them can be completed within 120 days of the time the original letter of complaint was received in the Board's office.

2) We have had very few complaints from physicians who feel the process is too slow. It is much more common for us to get a request for a continuance.

3) We are often accused of being too aggressive. If this bill is passed in its current form it will force the Board to take a far more aggressive stance in the cases we prosecute. We will continually be pushing to get the cases to hearing as quickly as possible. That posture will clearly cast the Board in a very poor light in most cases.

4) We are told that this bill is prompted by the inactivity of one or two other boards, not the Board of Medical Examiners. If that is the case, then please consider legislation that is specifically focused on those boards. That legislation could become a part of the practice act of those specific professions rather than a part of the administrative agency's practices act where it impacts every licensing board.

5) In addition to the preceding overall concerns we have a number of "technical" questions regarding the specific language used in the bill:



- a) In line 8 what is meant by "complaint, grievance, or request for disciplinary action"? Does it refer to a citizen's letter reporting a perceived violation of the Medical Practice Act or does it refer to the legal document that specifies the allegations in a formal disciplinary action? The word "complaint" is often used to refer to each of these documents.
- b) In line 10 what is meant by the phrase "has not taken action to resolve the matter"? Does that mean that the process must be concluded or does it mean that some action has been taken to start the process?
- c) In line 13 what is the standard for determining whether the explanation of good cause is adequate?
- d) In line 14 what is meant by the phrase "initiate adjudicative proceedings"? Does this mean that the evidentiary hearing must be scheduled?.... completed? Does it mean that the final dispositional hearing must be scheduled?.....completed?
- e) What is the consequence if the 120 days runs out with no adequate "explanation of good cause"?
- f) How much extra time does the agency get once it has filed an explanation of good cause?

We urge you to vote "do not pass" on House Bill No. 1201.

AH #1

Testimony in Favor of House Bill 1201

By Glenn A. Elliott, a private citizen and resident of Mandan, North Dakota, appearing on his own behalf on Monday, 21 March 2005

Before the Judiciary Committee of the North Dakota Senate

To the Chair and Senators of the Committee:

I submit this testimony and appear before the Committee in favor of House Bill 1201, to allow an occupational or professional licensee against whom a complaint has been filed to demand resolution of the complaint if the licensing agency has not initiated action within sixty days after receipt of the complaint.

1. An occupational or professional licensee against whom a complaint has been filed operates under a cloud until the complaint is resolved, regardless of the merit of the complaint. This is at least not helpful to the accused. The licensee has reason to expect that the licensing body will act with dispatch in proceeding to resolution.

2. The complainant also has an interest to know that the complaint is taken seriously and that the licensing agency is actually doing something with the complaint. Regardless of the propriety of confidentiality in occupational or professional disciplinary proceedings, that confidentiality does raise questions in the minds of many complainants about the effectiveness of the process and the motivation of the participants. Prolonged delay in action does nothing to defray the doubt of complainants and the public in the disciplinary process, and likely aggravates it.

3. During the hearing on House Bill 1201 before the North Dakota House Judiciary Committee, comments were raised that the licensing agencies had to retain legal counsel to investigate complaints, which adds to the time required to arrange for investigations and strains the budgets of the agencies. I vigorously if not vehemently disagree with this.

a. The United States military conducts numerous administrative investigations using regular service members (commissioned or warrant officers, or noncommissioned officers in pay grade E-6 or above) as investigators. As an officer in the North Dakota Army National Guard, I performed ten administrative investigations.

b. The appropriate role for legal counsel in an administrative investigation is to review the investigator's report and findings for legal sufficiency, as they should also be reviewed as needed by a subject matter authority for technical accuracy, which is the military approach.

c. An administrative investigator must be able to research applicable legal and subject-matter material, conduct fact-finding in a logical and diligent manner with attention to relevance, and if needed evaluate the available facts in light of the applicable law (including administrative rules) in a diligent manner that is not arbitrary, capricious, or unreasonable, and render a reasonable finding supported by fact and consistent with law. While attorneys should possess these attributes, there are many other people who also possess them, may have greater subject matter knowledge, and usually cost less to employ.

I recommend that the Committee vote "do pass" on House Bill 1201.

Testimony on Engrossed House Bill No. 1201  
Before the Senate Judiciary Committee  
Edward Erickson, Assistant Attorney General  
Monday, March 21, 2005

Thank you Chairman Traynor and members of the Senate Judiciary Committee; I am Edward Erickson, an Assistant Attorney General. I have some proposed amendments to Engrossed House Bill No. 1201, and our office has received permission from the bill sponsor, Rep. Keiser, to present these amendments.

House Bill No. 1201 addresses the authority of several professional or occupational licensing boards in disciplinary matters. When reviewing disciplinary statutes governing several of the Boards, we discovered a statute in the Accounting Practices Act which may violate the constitutional right of free speech. These amendments are intended to correct this issue, and we request that you add them to this bill because the bill and the amendments are germane to the topic of regulatory licensing boards.

The United States Supreme Court has held that states may not prohibit businesses from using truthful statements in their advertising concerning the products or services being sold. Virginia Pharmacy Board v. Virginia Consumer Council, 425 U.S. 748 (1976). The Accounting Practices Act, chapter 43-02.2 of the North Dakota Century Code, states that persons not licensed by the Accounting Board may not use the terms "accountant," "auditor," or "accounting," even though those services may lawfully be performed by bookkeepers or other unlicensed individuals. N.D.C.C. § 43-02.2-12(7). This issue was brought before the Supreme Court of California, which held that the similar California statute was an unconstitutional violation of the free speech rights of bookkeepers and other unlicensed persons because it prevented them from advertising the services which they may lawfully provide to the public. Moore v. California State Board of Accountancy, 9 Cal.Rptr.2d 358 (Ca.1992).

The amendments we propose follow comments from the United States Supreme Court and the California Supreme Court in the cases I mentioned. Under the amendment, unlicensed individuals may advertise the services they may legally perform, but must include a disclaimer, noting that they are not licensed and that the services that are being offered are limited to those acts which may lawfully be performed by an unlicensed person. Without these amendments, it is likely that a court would hold the limitation on advertising in North Dakota's Accounting Practices Act to be unconstitutional. We are offering these amendments to correct this problem in our law and allow those persons who are legally authorized to perform accounting and auditing work to continue in their businesses.

I would be pleased to answer any questions from the Committee.

**PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1201**

Page 1, line 3, after "authority" insert "; and to amend and reenact subsection 7 of section 43-02.2-12, relating to regulating the practice of accounting"

Page 1, underscore lines 7 through 16

Page 1, after line 16, insert:

**"SECTION 2. AMENDMENT.** Subsection 7 of section 43-02.2-12 of the North Dakota Century Code is amended and reenacted as follows:

7. A person or firm not holding a valid certificate, license, or permit issued under this chapter may not assume or use any title or designation that includes the words "accountant", "auditor", or "accounting", or other terms in any manner that implies such person or firm holds such a certificate, license, or permit or has special competence as an accountant or auditor unless the words are accompanied by a suitable disclaimer that the person or firm does not hold a valid certificate, license, or permit issued under this chapter and stating that the services being offered are limited to services which do not require a certificate, license, or permit. This subsection does not prohibit any officer, partner, or employee of any firm or organization from affixing the person's name or signature to any reference to the financial affairs of such firm or organization with any wording designating the position, title, or office that the person holds and does not prohibit any act of a public official or employee in the performance of duties."

Renumber accordingly.