

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1345

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1345

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1345

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-24-05

Tape Number	Side A	Side B	Meter #
1		x	10.end
Committee Clerk Signature <i>Jay Rucke</i>			

Minutes:

Chairman Keiser: Opened the hearing on HB 1345. All committee members were present.

Representative Conrad: Appeared in support of bill and also was a sponsor, she also provided a written statement (SEE ATTACHED TESTIMONY).

Larry Galvin appeared on behalf of Doug Rued of Bremer Insurance, Minot: Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Marge Ramsay, Dakota Boys and Girls Ranch: Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Diane Taylor Szudera, Business Administration Director, Home on the Range:

Appeared in support of bill and provided a written statement (SEE ATTACHED TESTIMONY).

Dave Marion, Prairie Learning Center, Raleigh, ND: Appeared in support of HB 1345. (SEE ATTACHED TESTIMONY).

Bonnie Palecek, Coalition Against Sexual Assault: Appeared in support of HB 1345.

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1345

Hearing Date 1-24-05

Paula Grosinger, Lobbyist, ND Trial Lawyers Association: Appeared in opposition of bill

and provided a written statement (SEE ATTACHED TESTIMONY).

Steve Spilde, CEO, ND Insurance Reserve Fund: Appeared neutral on HB 1345 and provided

a written statement (SEE ATTACHED TESTIMONY).

Hearing closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1345

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-26-05

Tape Number	Side A	Side B	Meter #
4	xx		33.2--end
4		xx	0.0--4.0
Committee Clerk Signature <i>Pam Dever</i>			

Minutes: **Chair Keiser:** Let's look at HB 1345. This is a tough one. Non-profit organization participation in the government health insurance pool and the liability of the non-profit organizations. With the exception of hospitals. No one has gotten back to us. Steve testified that he had his legal staff look to see if they could insure any other than political subdivisions and still maintain their own non-taxable status.

Rep. Dosch: I think we should move ahead on this, since they did not get back to us.

Rep. Dosch: I move a DO PASS on HB 1345.

Rep. Ekstrom: I second.

Rep. Thorpe: Didn't Rep. Conrad bring this bill forward and say we needed to have an amendment?

Chair Keiser: You are correct. I don't have the amendment. I have written that an amendment is possible.

Rep. Dosch: I withdraw my motion.

Rep. Ekstrom: I withdraw my second.

Chair Keiser: We will get the amendments and bring back to committee.

Rep. Dosch: Looking at my notes, in line 15 and 16, they indicated the \$750,000 amount. There was a suggestion made because right now the amount is \$500,000 for political subdivisions and do we want to amend that to \$500,000 so we are consistent.

Chair Keiser: That would make sense to the parties, I think. Anything else in the bill?

Rep. Froseth: This bill was put together basically for Dakota Boys Ranch.

Chair Keiser: Let me hand this out. I requested this from Prairie Learning Center when they were testifying as to how much their coverage cost. (end tape 4, side A) (begin side B)

Rep. Froseth: Where does the private sector fit in to this.

Chair Keiser: The ones I talked to are strongly opposed to this bill. They make their living off these premiums. Last session we had a request from the for profit recreational entities in ND to have access to enter the horse riding operations in Medora. They are open three or four months a year and had to pay a lot for insurance. You put little kids on a horse and think of their exposure.

Discussion closed

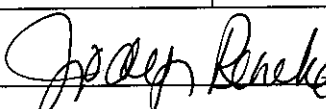
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1345

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-1-05

Tape Number	Side A	Side B	Meter #
3		x	46.2-end
4	x		0-1.7
Committee Clerk Signature 			

Minutes:

Representative Keiser: Reconvened on HB 1345.

Representative Kasper: I move a **DO NOT PASS** on HB 1345

Representative Ruby: I **SECOND** the **DO NOT PASS**.

Motion carried. **VOTE: 11-YES 2-NO 1-Absent (EKSTROM).**

Representative Boe will carry the bill on the floor.

Hearing adjourned.

FISCAL NOTE
Requested by Legislative Council
01/13/2005

Bill/Resolution No.: HB 1345

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The Insurance Department does not anticipate that this bill will cause any fiscal impact on either the general fund or any special fund.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-4984	Date Prepared:	01/14/2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1345

Page 1, line 13, after "organization" insert ", other than a nonprofit organization whose primary mission is to provide medical services,"

Page 1, line 14, replace "502(c)(3)" with "501(c)(3)"

Page 1, line 15, replace "seven" with "five"

Page 1, line 16, remove "fifty"

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1345

Page 1, line 13, replace "that" with ", other than a nonprofit organization whose primary mission is to provide medical services, which"

Page 1, line 14, replace "502(c)(3)" with "501(c)(3)"

Renumber accordingly

Roll Call Vote #: 1 Date: 2-1-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1345

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Kasper Seconded By Rep. Ruby

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman		X
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	AB	
Rep. D. Dietrich	X		Rep. E. Thorpe		X
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigesaa	X				

Total (Yes) 11 No 2

Absent (1) Rep. Ekstrom

Floor Assignment Rep. Boe

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

REPORT OF STANDING COMMITTEE (410)
February 2, 2005 6:51 a.m.

Module No: HR-22-1627
Carrier: Boe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1345: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
HB 1345 was placed on the Eleventh order on the calendar.

2005 TESTIMONY

HB 1345

Chairman Kaiser and members of the Committee. I am Kari Conrad, District 3 Representative from Minot.

HB 1345 can be most accurately described as enabling legislation. First, it sets in place the mechanisms for non-profit organizations to apply for membership in "a government self-insurance pool", namely the ND Insurance Reserve Fund. Secondly, it establishes a \$250,000 liability limit per individual and a \$750,000 limit liability per incident for non-profit organizations. The political subdivisions that are already members of the Fund also have this limitation on liability. It does not require the NDIRF to accept non-profits as a membership category, nor does it require individual non-profit organizations to join the Fund, if they become eligible. It simply allows this as a new option.

The types of organizations addressed in this bill vary significantly. They may, for instance, be recreational programs for young people, residential child care facilities, employment programs for disabled person, or art galleries. The bill does not however apply to non-profit organizations like hospitals, nursing homes or clinics. Organizations like this, organized primarily to provide medical services, have unique insurance issues and are therefore excluded.

Today, the non-profits and their insurance agents will provide you with the projected savings to their organizations and to the state, and I am sure you will be as impressed as the sponsors of this bill with the numbers. Please also remember that, in this era of increasingly privatized government services, the present cost of insurance to non-profits is also a cost to tax payers. Because so many of these organizations are offering services that are funded with state, local and federal government contracts and grants, the state, federal and local governments are indirectly paying for these insurance costs. Costs we would not be paying if we provided the services ourselves.

Unfortunately, we cannot give you an accurate projection of the savings. Insurance costs are in each facility or program's contract and are not compiled separate from the individual budgets. Thus, significant savings that realistically can be expected are not included in the bill's fiscal note.

To answer specific operational questions, we have invited representatives from the Fund, the Department of Human Services and trial lawyers, as well as insurance agents, to attend this hearing and offer amendments, if necessary. We want to see a workable mechanism to emerge from this process. If it is, we believe this Legislature will have created an environment where precious service dollars can be redirected toward their intended purpose, rather than paying high insurance costs.

If you have any questions for me, I would be pleased to answer them for you.

House Bill No. 1345 Supporting Testimony

I am Doug Rued of Bremer Insurance in Minot. Our agency is one of North Dakota's largest and represents several thousand North Dakota insureds including many nonprofit organizations. Personally, I have been involved in the insurance agency business for 37 years.

The largest loss in our agency's 103 year history and also one of our community's occurred last week. This has preempted me from personally appearing for testimony to your committee on this important bill. I am sure you will all understand that if your home or business was totally destroyed, you would want your insurance agent on the scene.

I firmly stand in support of House Bill 1345. The following testimony will center on the insurance ramifications of this bill. They involve availability, pricing and distribution of insurance protection for many North Dakota nonprofits.

First, we must understand that insurance is not a product of choice. We are forced to buy it due to several reasons. They are law, contractual agreement and financial requirement. It is due to these reasons plus others that insurance be readily available for proper functioning of our economic and social activities.

With 1/10 of 1% of the total United States property-casualty premiums our state does not secure across the board market driven response to providing risk transfer through the insurance mechanism. This can be seen through a history of years where the liability insurance market was hardened due to losses elsewhere but North Dakota rates and availability were significantly affected.

A very good example is the liability hard market of the 1980's. Insurance companies were severely hitting coverage and premiums for government entities. The North Dakota Insurance Reserve Fund(NDIRF) consequently was started in 1986. Even though we have experienced another insurance industry hard market since that time, the members of NDIRF are still enjoying readily available broad insurance coverage. The same can not be said of other nonprofit organizations.

Some nonprofits may be limited to one or two insurance alternatives. The threat of nonrenewal is always present since our small North Dakota market does not lead to a wide selection of insurance companies. It's understandable from an insurance company standpoint because the premium dollars are just not there. However, since this product is a necessity it leads to a heavily weighted supplier side of the marketplace. Tax dollars through nonprofit insurance premiums are supporting this.

This leads to another concern and that is premiums. This last hard market has seen many nonprofit's insurance premiums double and even triple. Those are the accounts with good loss ratios. It's interesting to note that at the same time the members of NDIRF are enjoying basically the same rates they saw in 1986. In addition, we are delivering conferred benefit credit checks to them for approximately 38% of their annual premiums. Their net premiums are a fraction of what they would pay if this was not available. North Dakota experience speaks for itself.

On the nonprofit side we see premium rates that are over 100 times as high for some of the same types of exposure covered through NDIRF. In addition, insurance companies have instituted higher minimum policy premiums. We regularly see minimum premiums of \$1000 and \$2500 or higher. NDIRF on the other hand is still offering insurance protection for minimum policy premiums of \$50 to \$300 depending upon the type. You can probably attribute some North Dakota efficiency to the equation.

This bill does not stop competitive, market driven distribution of insurance products. It only enhances it. With another market present such as NDIRF, more agents will have the capacity to provide insurance proposals for their local nonprofit. NDIRF is not a government subsidized insurance company. It was originated in order that our North Dakota, tax based government entities could efficiently purchase insurance protection. NDIRF provided another option.

Currently many small agencies simply can't provide the volume required by insurance companies. NDIRF is available through all licensed North Dakota agents. In years past, insurance companies were satisfied with \$100,000 or even less. Now it's common to see volume requests of \$1,000,000 or more. This can be literally impossible for small agencies to meet. In the insurance companies' quest for efficiency, the small agent is being left behind. This leaves a void for our small communities to have broad market insurance product coverage and competitive premiums from their local agent.

With this bill, you are not bringing government into insurance. You are providing another competitive choice for our nonprofits to obtain their required insurance coverage. In addition, the distribution will be available through all licensed agents and not just a select few. Also, the bill does not mandate NDIRF to write these nonprofits, but gives them the ability to enter that marketplace if they should so chose.

I thank you for your kind attention and consideration. Please consider supporting this important bill. Should you have any questions please contact me at (701)852-12777 or [djrued@Bremer.com](mailto:djrue@Bremer.com)

Doug Rued

Testimony given by: Marge Ramsay, Dakota Boys and Girls Ranch

Chairman George Kaiser and members of the Industry Business and Labor Committee. My name is Marge Ramsay, Director of Finance. I am testifying on behalf of Dakota Boys and Girls Ranch, a residential center that has been treating North Dakota children for over 52 years.

Dakota Boys and Girls Ranch is in favor of House Bill # 1345 relating to non profit organizations participation in a government self-insurance pool (ND Insurance ReserveFund) and the liability of a non profit organization.

Currently Dakota Boys and Girls ranch pays approximately \$77,000 per year for liability insurance. This translates into approximately \$770 per resident per year. This money could be better spent to provide more effective services to ND children and their families. Our liability claims have been minimal. During the past 5 years, we have had only 2 liability and employment practice claims. We anticipate that we would save 50% or more through the ND Insurance Reserve Fund.

In conclusion, Dakota Boys and Girls Ranch would like this committee to approve House Bill 1345.

House Bill No. 1345
Industry, Business, and Labor Committee

Date: January 24, 2005

Following is testimony prepared by Home On The Range, Sentinel Butte, North Dakota.

Chairman Keiser and members of the Industry, Business, and Labor Committee: This testimony was prepared on behalf of Home On The Range, a residential child care facility that has been caring and treating North Dakota children for over 55 years.

Home On The Range supports House Bill 1345 because it allows facilities another option in purchasing insurance. In recent years it has become increasingly difficult to find insurance companies willing to provide insurance to small non-profits such as ours. Due to the lack of competition by insurance providers for the non-profit business, premium costs are high. Higher insurance costs are incorporated into our cost for care of the children, which results in a higher cost to the Department of Human Services.

Home On The Range also supports the liability limit. Although we have not had occasion to defend ourselves against a substantial lawsuit, that potential is a threat to our existence.

Respectfully submitted by:

Diane Taylor Szudera
HOME ON THE RANGE
Business Administration Director

Keiser, George J.

From: Dave Marion [dmarion@westriv.com]
Sent: Monday, January 24, 2005 2:36 PM
To: Keiser, George J.
Subject: Requested information on PLC and HB 1345

Rep. Keiser,

Here is the information on our limits on the liability insurance.

Commercial Liability:

General Aggregate Limit	\$2,000,000
Each Occurrence Limit	\$1,000,000
Each Professional Limit	\$1,000,000

Directors and Officers Liability:

Limit of liability	\$1,000,000 per policy year and occurrence (one a year)
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Prairie Learning Center pays the following in premiums on the above:

Directors and officers:	3,023
Commercial Liability:	12,214.07
Property Insurance:	\$22,288.00

Hope this helps you and if there is anything else please let me know.

Thanks

David Marion
Executive Director, Prairie Learning Center

1/26/2005

HB 1345
Industry, Business & Labor Committee
January 24, 2005

Information prepared by
Paula J. Grosinger, Lobbyist
North Dakota Trial Lawyers Association
701-202-1293 grosingr@ndtla.com

The goal of allowing non-profit 501(c)(3) organizations to obtain affordable liability coverage is a good one. To that end, Section 1 of HB 1345 is not objectionable.

Section 2, as it currently reads would limit the liability of health care provider organizations and could be amended to follow the intent of Section 1, as below:

The liability of a nonprofit organization which is exempt from federal taxation under section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)], other than a nonprofit organization whose primary mission is to provide medical services, is limited to a total of two hundred fifty thousand dollars per person and seven hundred fifty thousand dollars for any number of claims arising from any single occurrence. The nonprofit organization may not be held liable for punitive or exemplary damages.

Even with such an amendment, the language in section 2 poses several serious problems for the very people non-profit organizations generally serve. It would relegate children, the elderly, developmentally disabled, behaviorally challenged, or physically challenged individuals served by non-profits to a lower standard of legal protection, and limit their ability to be made whole following an injury.

One of the underlying principles of our justice system is that **all should be treated equally under the law.** Section 2 of this bill undermines that principle by limiting the responsibility of non-profits organizations that act negligently.

Section 2 would actually encourage lawsuits against individuals associated with non-profit organizations. If injured parties/individuals are unable to pursue legal remedies or be compensated for the full extent of their injuries, they will be forced to sue officers, board members, volunteers, and employees of non-profit organizations.

Limiting liability by state statute does not have the effect of lowering liability insurance premiums for such organizations because premium cost is generally a function of investment trends and national underwriting practices. Most of the companies underwriting such liability policies are national companies and would not see any impact on losses resulting from a change in North Dakota state law.

For that reason, it is a worthwhile objective to let non-profits opt into a government self insurance pool, but Section 2 of this bill is not justified.

Examples:

There is a fire at a nonprofit community youth center. Five non-employees are killed, two employees are killed, and 20 individuals are injured with injuries ranging from moderate burn injuries to permanent disability. The fire marshal discovers fire exits were blocked with overflow items from storage preventing egress, a decision made by the facility management. Five of the injured individuals have no health insurance and five injured individuals have Medicaid coverage.

The maximum liability for the organization is \$750,000. That may not even cover the medical claims of the five individuals with no health insurance.

Local children's dance group takes its performances to another community in their non-profit owned bus. The bus driver falls asleep at the wheel and slams into a van killing four family members inside and permanently disabling two. Five of the dance group members are seriously injured.

Even though there was motor vehicle coverage for the dance group's bus, the limit of liability is only \$750,000 total as a result of this bill.

A nonprofit youth boot camp operator takes a group of ten girls on an all-day hike. Temperatures are in the lower 90s. The girls are carrying 25 pound backpacks. The girls are only allowed to take sips of water with the permission of the hike leaders. Three hours into the hike, an overweight thirteen-year-old complains of nausea and cramps, and says she cannot keep up. She is denied water and is not evaluated for dehydration. Three and a half hours into the hike she collapses. The leaders tell her she is weak. They leave her in shade and tell her she can rest until they return. An hour later they return and discover she has just expired. Her body temperature is 106 degrees. (Similar case in South Dakota)

The boot camp liability is a max of \$250,000 and no punitive damages may be awarded.

A homeless shelter sells tacos at an annual fair as a fundraiser. The taco meat has been prepared off-site in the shelter's health department approved kitchen but is improperly stored. The meat becomes contaminated with preformed enterotoxin. Numerous individuals become ill. Approximately 230 people report to local hospitals. Twenty-two individuals are ill for over two weeks. One elderly individual dies. The maximum liability for the organization is \$750,000. Unlikely to cover all medical expenses and wage loss.

A local theatre company is asked to provide actors for a training exercise at another nonprofit organization. The nonprofit will pay \$500 to the non-profit theatre for the service. The actors are not paid individually. The actors are asked to portray thugs committing a surprise robbery, which they do convincingly complete with firearms and blanks. One of the employees runs from the building and calls police. Police have not been informed of the training exercise. The police arrive at the facility and one of the actors is shot while the police try to affect an arrest. *The maximum liability for either non-profit organization is \$750,000 and the individual who was shot might be able to recover \$500,000 (\$250,000 from each organization) as well as workers compensation benefits.*

A church youth minister sexually abuses children to whom he is supposed to minister. The church hierarchy shuffles the youth minister from parish to parish with the knowledge that he is an abuser. In total, the youth minister abuses over 100 children.

The church's liability is limited to \$750,000 and there can be no recovery for punitive damages.

Testimony Concerning HB 1345
To The
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
January 24, 2005
By Steve Spilde, CEO, North Dakota Insurance Reserve Fund

Chairman Keiser and members of the House Industry, Business and Labor Committee, I am appearing on behalf of the North Dakota Insurance Reserve Fund (NDIRF), a government self-insurance pool authorized under Chapter 26.1-23.1 NDCC.

To our knowledge, the NDIRF is the only government self-insurance pool currently operating in North Dakota, with over 2500 political subdivision members.

The NDIRF did not seek introduction of HB 1345 and, at this time, is taking a neutral position regarding the bill because its language is permissive in nature, i.e. the nonprofit organizations mentioned would not be required to be provided coverage. In addition, we offer the following information:

Nonprofit organization membership in NDIRF has been limited primarily due to (1) lack of statutory authorization; (2) difference in risk as compared to governmental entities; and (3) tax concerns.

- (1) HB 1345 (Section 1) partially addresses the statutory authorization issue.
- (2) Political subdivisions, with statutory immunities and limitations on damages (\$250,000 per person / \$500,000 per occurrence) available to them, are a distinctly different risk than nonprofit organizations.
- (3) The NDIRF's tax-excluded status is due, at least in part, to the statutory limitation of its membership to political subdivisions. NDIRF tax counsel is currently researching whether new statutory authorization (as in HB 1345) to provide coverage to nonprofit organizations could jeopardize our tax exclusion. It is possible a problem could be created in this regard even if nonprofit coverage were not actually written. If so, the NDIRF would need to oppose Section 1 of HB 1345.

Thank you for allowing me to address this issue – I would be pleased to respond to any questions committee member may have.