

2009 HOUSE JUDICIARY

HB 1024

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1024

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1-12-09

Recorder Job Number: 6802, 6812

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1024.

John Walstad, Legislative Counsel: A problem was discovered during last session on a bill that was put in by the County Boards. They uncovered a number of concerns with how penalty provisions are put into statute and how penalties might relate to administrative rules. The committee was given the assignment and contacted the 44 licensing boards that we could identify that have criminal provisions in their statutory boards. The 44 agencies were given a list of questions that they could address with regard to the statutes governing their occupation or professional statutes and we talked to the staff in the Attorney General's office. All of these boards have somebody in that office they work with on statutory rulemaking activity. So we had them review with the AG staff their statutory provisions. What you see before you is a bill draft I don't regard as having any revolutionary, statutory changes; a number of provisions in the Code, and it's more than occupational and professional, but that's all the committee was looking at. At the end of the chapter, whoever wrote the law for that whole chapter for the occupation or profession, how the board members are appointed, how you get your license, when you have to submit it, if you have to pay a late fee, etc. All of that kind of information is laid out in a chapter, and then the penalty is added at the end of the chapter. If that language

was applied absolutely, anything that you do that doesn't comply with the chapter is a crime. Obviously there is prosecutorial discretion; but this is sloppy law. This bill is identify the information in those chapters that the penalty was intended to apply to and generally it relates to practicing whatever the profession or occupation is, without being licensed. This bill is collecting the recommendations that were received by the committee from occupational and professional licensing boards for statutory changes to apply to the provisions that should be criminalized and get rid of that general reference to everything that is in the statute. There is nothing in here that was dreamed up by the committee, all of it is a recommendation that came from the affected entity.

Rep. Koppelman: On line 17, a change should be made to relate the fraud to the license.

Mr. Walstad: Right.

Chairman DeKrey: We can fix that.

Rep. Wolf: Of the 44 professional entities, were the other ones not included in this bill not affected.

Mr. Walstad: In their opinion they were okay. The committee didn't overrule anybody that said "no, our statutes are fine". But the committee was satisfied that all of the affected groups talked to the Asst. AG they work with, looked at their statutory provisions with these things in mind; are there provisions that need to be more specific, and in some cases, their statutes are already specific. They don't have that violation of this chapter stuff. We wanted all of them to look at it. These are the recommendations that came back from those groups.

Rep. Kretschmar: A couple of places in the bill it says "a person that" and in other places it says "a person who". It sounds better to say "a person who"

Mr. Walstad: "A person who" sounds better to me as well; however, one of my bosses said a person can be an individual, government entity, or a corporation and therefore would be "a person that". We should be consistent.

Chairman DeKrey: Thank you. Further testimony in support of HB 1024, testimony in opposition. We will close the hearing. We will take a look at HB 1024. Any discussion.

Rep. Koppelman: I move that we amend HB 1024, on line 17 remove "by fraud" and insert "fraudulently" before procures.

Rep. Klemin: Second.

Chairman DeKrey: All those in favor. Motion passed. We now have the bill before us as amended.

Rep. Delmore: I move a Do Pass as amended.

Rep. Dahl: Second.

13 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Dahl

YR
1/13/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1024

Page 1, line 17, after "~~person~~" insert "fraudulently" and remove "by fraud"

Renumber accordingly

Date: 1/12/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1024

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Dahl

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Dahl

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

REPORT OF STANDING COMMITTEE

HB 1024: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1024 was placed on the Sixth order on the calendar.

Page 1, line 17, after "~~person~~" insert "fraudulently" and remove "by fraud"

Renumber accordingly

2009 SENATE JUDICIARY

HB 1024

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB1024

Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 3/10/09

Recorder Job Number: 10579

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

John Walstad – Legislative Council – Code Reviser - See written testimony. He contacted the 44 boards and asked them to identify the offenses that are subject to penalty in their organizations. The bill draft is suggestions from those boards and commissions.

Senator Nething – Asks are these primarily for practicing without a license.

Walstad – Responds, practicing without a license is what the criminal penalty would attach to.

Senator Nelson – Asks for each section amendment to be identified.

Walstad – Identifies all for the committee.

Senator Fiebiger – Asks about the funeral establishment license and the state plumbing code. He wonders why the penalty has been changed from an infraction to a class B.

Walstad – Replies, This makes these violations consistent with the legislation from last time.

Senator Nelson moves do pass

Senator Schneider seconds.

Vote – 6-0

Senator Nelson will carry

Date: 3/10/09
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

HB 1024

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen. Nelson Seconded By Sen. Fiebiger

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Nelson

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

REPORT OF STANDING COMMITTEE

HB 1024, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1024 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1024

OCCUPATIONAL AND PROFESSIONAL LAWS AND RULES VIOLATION PENALTIES STUDY

Senate Bill No. 2060 directs a Legislative Council study of laws providing criminal penalties for violation of the state's laws and administrative rules regulating occupations and professions. The bill requires the study to include consideration of whether it is the desired public policy of this state to have laws that create criminal penalties applicable to entire chapters of the North Dakota Century Code and rules contained in the North Dakota Administrative Code regulating occupations and professions.

The State Board of Plumbing introduced Senate Bill No. 2060 to increase meeting compensation for members of the board and to increase penalties for violation of plumbing laws, rules adopted by the board, or the State Plumbing Code. Before introduction of Senate Bill No. 2060, NDCC Section 43-18-24 provided that a violation of any provision of Chapter 43-18 or the State Plumbing Code is an infraction. The bill as

*Attachment 1
HB 1024*

introduced by the State Board of Plumbing would have added the penalty to violation of rules adopted by the board as well as the plumbing laws and plumbing code and increased the penalty from an infraction to a Class B misdemeanor. During discussion of the penalty provision, members of the standing committees considering the bill expressed concern about the lack of specific statutory provisions for which a violation would be punishable and about adding rules adopted by the board and making them punishable under the proposed criminal penalty. Ultimately, the bill was enacted with specific statutory provisions listed for which a violation would be a Class B misdemeanor. References to rules adopted by the board and the State Plumbing Code were eliminated from the penalty provision. The study language was added to Senate Bill No. 2060 after a brief review of occupational and professional laws and rules and penalty provisions. The expressed hope was that an interim study would provide the opportunity to examine such provisions for uniformity and clarity and to determine whether penalties should apply to statutory provisions, rules provisions, or both.

The Administrative Rules Committee identified 44 separate occupational and professional licensing boards or commissions having statutory provisions for penalties for violations of law. Each of these boards or commissions was invited to review its statutory and rules provisions and to consider the following:

1. Whether penalty provisions under laws and rules administered by the board or commission could be more specific in terms of identifying prohibited behavior.
2. If rules violations are subject to penalties, whether it is appropriate to move the prohibition to statutory status by introducing legislation.
3. Whether the culpability standard for violations subject to penalties should be for intentional, reckless, willful, or negligent behavior or no culpability standard should be applied.
4. Whether the penalty provisions under laws and rules administered by the board or commission should be uniform with penalties that apply for other occupations and professions and, if not, what special circumstances exist to justify different penalties for the laws and rules that apply to this occupation or profession.

The committee received specific suggestions for statutory changes from 12 occupational and professional licensing boards or commissions.

Recommendation

The committee recommends House Bill No. 1024 to incorporate suggestions received from occupational and professional licensing boards or commissions to make statutory language specific as to the conduct that constitutes a violation under certain occupational and professional licensing laws.