

2021 HOUSE JUDICIARY

HB 1073

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1073
1/6/2021

Criminal history background checks

Chairman Klemin called the hearing to order at 11:00 AM

Attendance roll call:

Representatives	
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	P
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Facility operational integrity
- Safe handling of hazardous materials.

Dave Glatt, Director of ND DEQ: Introduced bill. Testimony #126 (11:01)

Bridget Weidner: ND Director of NDDoH: (11:51) Went over proposed amendment. Testimony #230

Shelly Peterson, President of Long Term Care Association: No testimony (11:25).

Chairman Klemin closed the hearing. 11:48

Delores Shimek, Committee Clerk

**Testimony
House Bill 1073
House Judiciary Committee
January 6, 2021, 11:00 am
North Dakota Department of Environmental Quality**

Good morning Chairman Klemin and members of the House Judiciary Committee. My name is David Glatt, Director of the North Dakota Department of Environmental Quality (DEQ). The DEQ is responsible for the implementation and enforcement of many of the federal and state environmental protection programs in North Dakota. I provide this testimony in support of HB 1073.

To help ensure facility operational integrity and safe handling of specific hazardous materials, the DEQ can require individuals or responsible parties to complete a criminal history background check prior to gaining employment or receiving a permit or license to operate in the state. Some background checks may go beyond the state boundaries and require access to Federal Bureau of Investigation Criminal History Record Information (CHRI).

As part of the transition from the NDDOH to the DEQ, the US Department of Justice – FBI Office of the General Council reviewed NDCC 12-60-24 (2) as it relates to the requirement for state or federal background checks. It was determined the law as written did not qualify the state for access to the FBI CHRI pursuant to Pub. L 92-544. To allow access to the federal CHRI and provide clarity to the NDCC 12-60-24 (2) we are proposing the following:

Section 1 Amendment. Subdivision vv:

Line 15 Delete: ... *or an employee specified in occupation* ...

Line 16 add: ... *a job opening or a current employee...*

Line 18 and 19 Delete: ... *registration, certification or licensure by the department*

Line 19 and 20 add: ... *a radioactive materials license under chapter 23.1-03 or a solid waste permit under chapter 23.1-08*

Section 2 relates to activities conducted by the ND Department of Health.

Section 3 identifies that the Department has the authority to require a background check of an applicant for a license or permit under section 12-60-24. It goes on to state that if the applicant is not an individual, the state may require the individual responsible for the applicant to complete a background check and submit the information to the state at their cost.

These proposed changes to the statute have been provided to the DOJ for their review and concurrence.

This concludes my testimony and I stand for any questions.

Good morning Chairman Klemin and members of the Judiciary Committee. My name is Bridget Weidner and I serve as the Director of the Division of Health Facilities for the North Dakota Department of Health (NDDoH). I am here to provide testimony in support of the proposed amendment to HB 1073, which provides for the NDDoH to conduct Bureau of Criminal Investigation (BCI)/Federal Bureau of Investigation (FBI) criminal background checks for individuals on the nurse aide registry and emergency medical services (EMS) registry.

Under North Dakota Administrative Code § 33-43-01-22-(1)(b), the NDDoH is authorized to deny, suspend, revoke or encumber the registration status of an individual who has been "convicted of a crime substantially related to the qualifications, functions, or duties of a nurse aide." As such, it is the department's responsibility to do our part to protect the vulnerable populations these nurse aides serve. In order to do this, the NDDoH needs access to an individual's criminal background. Currently, we only have access to the public court records and do not have access to the federal criminal records.

To provide an example, in October 2020, we had a situation with an individual applying for nurse aide registration. She had prior multiple drug felonies and felony charges related to theft of property, endangerment of child or vulnerable adult, and failure to appear after release. These charges were older; however, she was still on probation. Because this seemed unusual, staff from our registry contacted the probation officer and found that she had a recent federal felony for distribution of methamphetamine. She was incarcerated and then placed on probation. We were not able to obtain any additional information related to these federal charges since the registry cannot conduct BCI/FBI background checks. The NDDoH nurse aide registry does not have all of the information needed to ensure the protection of our vulnerable population. An applicant could have federal felonies that the nurse aide registry does not know about. Again, our responsibility is to ensure protection for our vulnerable population, including

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1073

Page 1, line 13, overstrike "~~an application for registration,~~"

Page 1, line 14, overstrike "~~certification, or licensure~~"

Page 1, line 14, replace "~~under title 23~~" with "for applicants, registrants, or investigations under chapter 23-44, or for applicants, licensees or certificate holders, or investigations under section 23-27-04.3"

Page 2, line 2, replace "~~an applicant for registration, certification, or licensure~~" with "a final applicant for a job opening or a current employee with the department as designed by the state health officer"

Page 2, remove lines 4 through 7.

Page 2, line 8, overstrike "~~background record check.~~"

Page 2, after line 10, insert:

"**SECTION 3.** A new subsection to section 23-44-02 of the North Dakota Century Code is created and enacted as follows:

The department may require an applicant for registry status on the nurse aide registry or an individual on the nurse aide registry submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant or registrant."

Page 2, line 10, replace "3" with "4"

Page 2, after line 20, insert:

"**SECTION 5.** Section 23-27-04.3 of the North Dakota Century Code is amended and reenacted as follows:

23-27-04.3. Emergency medical services personnel training, testing, certification, licensure, and quality review – Penalty.

The state health council shall adopt rules prescribing minimum training, testing, certification, licensure, and quality review standards for emergency medical services personnel, instructors, and training institutions. Rules adopted must include a definition of minimum applicable standards, a definition of emergency medical services personnel, provide for a mechanism for certifying or licensing persons who have met the required standards, provide a mechanism to review and improve the quality of care rendered by emergency medical services personnel, and define minimum standards for emergency medical services training institutions. Licensing as an emergency medical services training institution is optional. The department may require an applicant for a certificate or license, or the holder of a certificate or license, issued pursuant to this section to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided in section 12-60-24. All costs associated with the criminal history record check are the responsibility of the applicant or registrant. It is a class B misdemeanor for an individual to willfully misrepresent that individual's certification or licensing status as emergency medical services personnel. Quality review and improvement information, data, records, and proceedings are not subject to subpoena or discovery or introduction into evidence in any civil action.

ReNUMBER accordingly

2021 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1073
1/18/2021

Criminal history background checks

Chairman Klemin called the meeting to order at 4:05 PM.

Representatives	Attendance
Representative Lawrence R. Klemin	P
Representative Karen Karls	P
Representative Rick Becker	A
Representative Ruth Buffalo	P
Representative Cole Christensen	P
Representative Claire Cory	P
Representative Karla Rose Hanson	P
Representative Terry B. Jones	P
Representative Jeffery J. Magrum	P
Representative Bob Paulson	P
Representative Gary Paur	P
Representative Shannon Roers Jones	P
Representative Bernie Satrom	P
Representative Steve Vetter	P

Discussion Topics:

- Health department criminal history checks
- Amendment

Rep. Jones: Motion to adopt amendment #21.8114.01001. **Rep. Vetter** Seconded.

Voice Vote. Motion passed. (4:33)

Rep. Roers Jones: Motion for a Do Pass as amended on HB 1073. **Rep. Jones:** Seconded.

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Rick Becker	A
Representative Ruth Buffalo	Y
Representative Cole Christensen	N
Representative Claire Cory	Y
Representative Karla Rose Hanson	Y

Representative Terry B. Jones	Y
Representative Jeffery J. Magrum	N
Representative Bob Paulson	Y
Representative Gary Paur	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Steve Vetter	N

Motion carried 10-3-1

Rep. Paulson is carrier

Chairman Klemin Closed the hearing at 4:17 PM.

Delores Shimek, Committee Clerk by Donna Whetham

21.8114.01001
Title.02000

Adopted by the Judiciary Committee

January 18, 2021

DR 1/18/21
1st

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1073

Page 1, line 20, replace "23.1" with "23.1-08"

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1073: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). HB 1073 was placed on the Sixth order on the calendar.

Page 1, line 20, replace "23.1" with "23.1-08"

Renumber accordingly

2021 HOUSE APPROPRIATIONS

HB 1073

2021 HOUSE STANDING COMMITTEE MINUTES

Appropriations Committee Brynhild Haugland Room, State Capitol

HB 1073
1/29/2021

Relating to criminal history background checks for applicants for licenses and permits issued by the department of environmental quality;

Chairman Delzer called the meeting to order; roll call was taken

Representatives	P/A
Representative Jeff Delzer	P
Representative Keith Kempenich	P
Representative Bert Anderson	P
Representative Larry Bellew	P
Representative Tracy Boe	P
Representative Mike Brandenburg	P
Representative Michael Howe	P
Representative Gary Kreidt	P
Representative Bob Martinson	P
Representative Lisa Meier	P
Representative Alisa Mitskog	P
Representative Corey Mock	P
Representative David Monson	P
Representative Mike Nathe	P
Representative Jon O. Nelson	P
Representative Mark Sanford	P
Representative Mike Schatz	P
Representative Jim Schmidt	P
Representative Randy A. Schobinger	P
Representative Michelle Strinden	P
Representative Don Vigesaa	P

Discussion Topics:

- Department of Health criminal history record checks
- Department of Environment criminal history record checks

10:52 Representative Klemin-Chairman Judiciary Committee; Introduces the bill

11:06 Representative Kempenich Made a motion to amend the bill; removing sections 1 and 2; leaving lines 15-20 and change section 3

Representative Howe Second the motion

Voice Vote- to amend the bill- motion carried

10:09 Representative Kempenich Made Motion for a Do Pass as Amended

10:09 Representative Howe Seconded the motion

Roll Call Vote;

Roll call vote Representatives	Vote
Representative Jeff Delzer	Y
Representative Keith Kempenich	Y
Representative Bert Anderson	Y
Representative Larry Bellew	Y
Representative Tracy Boe	Y
Representative Mike Brandenburg	Y
Representative Michael Howe	Y
Representative Gary Kreidt	Y
Representative Bob Martinson	Y
Representative Lisa Meier	Y
Representative Alisa Mitskog	Y
Representative Corey Mock	Y
Representative David Monson	Y
Representative Mike Nathe	Y
Representative Jon O. Nelson	Y
Representative Mark Sanford	Y
Representative Mike Schatz	Y
Representative Jim Schmidt	Y
Representative Randy A. Schobinger	Y
Representative Michelle Strinden	Y
Representative Don Vigesaa	Y

Motion Carries 21-0-0

Representative Kempenich will carry the bill

Additional written testimony: No Written testimony

11:11 Chairman Delzer- Closed the hearing

Risa Berube,

House Appropriations Committee Clerk

DR 1/29/21
10/1

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1073

Page 1, line 1, remove "a new section to chapter 23-01 and"

Page 1, line 3, remove "the state department of health and"

Page 1, line 4, replace "subdivisions n and" with "subdivision"

Page 1, line 8, replace "Subdivisions n and" with "Subdivision"

Page 1, line 9, replace "are" with "is"

Page 1, remove lines 10 through 14

Page 1, remove lines 21 and 22

Page 2, remove lines 1 through 9

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1073, as engrossed: Appropriations Committee (Rep. Delzer, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (21 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1073
was placed on the Sixth order on the calendar.

Page 1, line 1, remove "a new section to chapter 23-01 and"

Page 1, line 3, remove "the state department of health and"

Page 1, line 4, replace "subdivisions n and" with "subdivision"

Page 1, line 8, replace "Subdivisions n and" with "Subdivision"

Page 1, line 9, replace "are" with "is"

Page 1, remove lines 10 through 14

Page 1, remove lines 21 and 22

Page 2, remove lines 1 through 9

Renumber accordingly

2021 SENATE JUDICIARY

HB 1073

2021 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee Peace Garden Room, State Capitol

HB 1073
2/17/2021

A BILL for an Act to create and enact a new section to chapter 23.1-01 of the North Dakota Century Code, relating to criminal history background checks for applicants for licenses and permits issued by the department of environmental quality; and to amend and reenact subdivision vv of subsection 2 of section 12-60-24 of the North Dakota Century Code, relating to criminal history record checks.

Hearing called to order all Senators Present: **Myrdal, Luick, Dwyer, Bakke, Fors, Heitkamp, Larson.** [10:00]

Discussion Topics:

- Current requirements for state permits
- Background checks related to Department requirements

David Glatt, ND Department of Environmental Quality provided testimony in favor #6776 [10:00]

Jason Wahl, Division of Medical Marijuana, NDDoH provided testimony in favor and an amendment #6812 [10:05]

Tara Bradner, ND Assistant Attorney General provided Neutral Testimony [10:07]

Senator Luick Moved To Amend The Bill
[LC 21.8114.03001] [10:16]
Senator Heitkamp Seconded [10:16]
Vote Passed 7-0-0

Vote to Amend HB 1073	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Senator Luick Moved a DO PASS
AS AMENDED [10:17]
Senator Myrdal Seconded the motion [10:17]
Vote passed 7-0-0
Senator Luick Carried the bill

DO PASS AS AMENDED Vote On HB 1073	Vote
Senator Diane Larson	Y
Senator Michael Dwyer	Y
Senator JoNell A. Bakke	Y
Senator Robert O. Fors	Y
Senator Jason G. Heitkamp	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Hearing Adjourned [10:17]

Jamal Omar, Committee Clerk

February 17, 2021

PROPOSED AMENDMENTS TO REENGROSSED HOUSE BILL NO. 1073

Page 1, line 1, after "enact" insert "a new section to chapter 23-01 and"

Page 1, line 3, after "by" insert "the state department of health and"

Page 1, line 4, replace "subdivision" with "subdivisions n and"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Subdivision n of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- n. The state department of health for a final applicant for ~~or an employee in a specified occupation~~ a job opening or a current employee with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration, certification, or licensure by the department as a designated caregiver or a compassion center agent under chapter 19-24.1."

Page 1, after line 14, insert:

"SECTION 3. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Criminal history background checks.

The state department of health may require a final applicant for a job opening or a current employee with the department, as designated by the state health officer, complete a state and national criminal history record check as provided under section 12-60-24."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1073, as reengrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed HB 1073 was placed on the Sixth order on the calendar.

Page 1, line 1, after "enact" insert "a new section to chapter 23-01 and"

Page 1, line 3, after "by" insert "the state department of health and"

Page 1, line 4, replace "subdivision" with "subdivisions n and"

Page 1, after line 6, insert:

"SECTION 1. AMENDMENT. Subdivision n of subsection 2 of section 12-60-24 of the North Dakota Century Code is amended and reenacted as follows:

- n. ~~The state department of health for a final applicant for or an employee in a specified occupational job opening or a current employee with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration, certification, or licensure by the department as a designated caregiver or a compassion center agent under chapter 19-24.1."~~

Page 1, after line 14, insert:

"SECTION 3. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows:

Criminal history background checks.

The state department of health may require a final applicant for a job opening or a current employee with the department, as designated by the state health officer, complete a state and national criminal history record check as provided under section 12-60-24."

Renumber accordingly

TESTIMONY OF

David Glatt, Director of the Department of Environmental Quality

Good morning Chairman Larson and members of the Senate Judiciary Committee. My name is David Glatt, Director of the North Dakota Department of Environmental Quality (DEQ). The DEQ is responsible for the implementation and enforcement of many of the federal and state environmental protection programs in North Dakota. I provide this testimony in support of HB 1073.

To help ensure facility operational integrity and safe handling of specific hazardous materials, the DEQ can require individuals or responsible parties to complete a criminal history background check prior to gaining employment or receiving a permit or license to operate in the state. Some background checks may go beyond the state boundaries and require access to the Federal Bureau of Investigation (FBI) Criminal History Record Information (CHRI).

As part of the transition from the NDDOH to the DEQ, the US Department of Justice – FBI Office of the General Council reviewed NDCC 12-60-24 (2) as it relates to the requirement for state or federal background checks. It was determined the law as written did not qualify the state for access to the FBI CHRI pursuant to Pub. L 92-544.

HB 1073 is intended to address concerns of the FBI in the following sections:

Section 1: Provides specificity as to the types of individuals or occupations that may require a criminal background check;

Section 2: Provides language that the DEQ may require individuals or an individual designated as responsible for an applicant to complete a criminal background check and identifies who is responsible for the costs to complete a background check.

This concludes my testimony and I stand for any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1073

Page 1, line 1, after "enact" insert "a new section to chapter 23-01"

Page 1, line 3, after "by" insert "the state department of health and"

Page 1, line 4, replace "subdivision" with "subdivisions n and"

Page 1, line 8, replace "Subdivision" with "subdivisions n and"

Page 1, after line 9, insert:

n. The state department of health for a final applicant for a job opening or a current employee with the department as designated by the state health officer; an individual being investigated by the department; or when requested by the department, an applicant for registration as a designated caregiver or a compassion center agent under chapter 19-24.1.

Page 1, after line 20, insert"

"SECTION 2. A new section to chapter 23-01 of the North Dakota Century Code is created and enacted as follows"

Criminal history background checks.

The department may require a final applicant for a job opening or a current employee with the department, as designated by the state health officer, complete a state and national criminal history record check as provided in section 12-60-24.

Renumber accordingly