

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

20992

2005 SENATE POLITICAL SUBDIVISIONS

SB 2092

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2092

Senate Political Subdivisions Committee

Conference Committee

Hearing Date **January 7, 2005**

Tape Number	Side A	Side B	Meter #
1	A		604 - 1133
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

Vice Chairman Hacker opened the hearing on SB 2092, relating to violations of statutes, orders, or rules governing auctioneers and auction clerks; and to provide a penalty

Susan Richter, Director, Licensing Division, Public Service Commission, testified in support of SB 2092. (See attachment #1)

Vice Chairman Hacker asked for questions.

Senator Triplett asked if practicing without a license had ever happened.

Susan Richter answered yes.

Senator G Lee asked what the cost of a license was.

Susan Richter answered the cost of a license is \$35.00 for both auctioneer and auction clerk.

Senator Hacker asked what monetary amount of penalty they were looking at.

Susan Richter answered that they have the authority to access up to a \$5000 penalty. It would depend on what the infraction was but probably would start out with \$50.00 to \$100.00 fine.

Page 2

Senate Political Subdivisions Committee

Bill/Resolution Number SB 2092

Hearing Date January 7, 2005

Susan Richter passed out a letter of support from the North Dakota Auctioneers Association in support of SB 2092 as they were unable to attend the hearing. (Attachment #2)

No further questions.

Vice Chairman Hacker closed the hearing on SB 2092.

The committee was adjourned.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2092

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 13, 2005 (Action)

Tape Number	Side A	Side B	Meter #
1	X		2035 - 2233
Committee Clerk Signature <i>Shirley Borg</i>			

Minutes:

Senator Cook opened the discussion of SB 2092. All committee member (6) present.

Senator Cook said he had ask an auctioneer how we protect the public to make sure the auctioneer is licensed and bonded. His answer was that every auction bill has the bonding number on it.

Senator Triplett said Susan Richter was very convincing that if someone does lose their license it is very easy to get a license back. It is a \$35.00 fee and the turnaround is a day or two.

Senator Gary Lee motioned a Do Pass on SB 2092.

Senator Fairfield seconded the motion.

Roll call vote: 6 Yes 0 No 0 Absent

Carrier: **Senator Fairfield**

Date: 1-13-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2092

Senate Political Subdivisions Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Senator Gary Lee Seconded By Senator Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Dwight Cook, Chairman	✓				
Senator Nicholas P. Hacker, VC	✓				
Senator Dick Dever	✓				
Senator Gary A. Lee	✓				
Senator April Fairfield	✓				
Senator Constance Triplett	✓				

Total Yes 6 No 0

Absent 0

Floor Assignment Senator Fairfield

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

STANDING Comm
1-13-05

REPORT OF STANDING COMMITTEE (410)
January 13, 2005 1:13 p.m.

Module No: SR-08-0418
Carrier: Fairfield
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2092: Political Subdivisions Committee (Sen. Cook, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2092 was placed on the Eleventh order on the calendar.

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 2092

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2092

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2/24/05

Tape Number	Side A	Side B	Meter #
3	x		9.9-28.8
Committee Clerk Signature			

Minutes: SB 2092 Relating to violations of statutes, orders, or rules governing auctioneers and auction clerks and to provide a penalty.

Chairman Haas: We will open the hearing on SB 2092 and ask the clerk to please read the title.

Susan you may begin when you ready.

Susan Richter-Director, Licensing Division Public Service Commission-For-Testimony

Attached

Chairman Haas: Can you give us examples, in your experience with the public service commission where this tool may have been useful or where you would have used it.

Susan: We will occasionally find individuals that will come into the state and they will conduct a sale and they will not have a license and not be bonded. We have been fortunate that nobody that we are aware of has not been paid by them, there is always the likely hood that it could occur.

Chairman Haas: So how frequent an occurrence has this been. Can you give us any historical prospective on.

Susan: Chairman Haas I would say that cases that come to my mind, that are a little more significant, not maybe more then 3 times a year. I think again what this does is an addition for providing the bond coverage for people who that are hiring them, what it also does it makes an even playing field for somebody that make come in and does not have a license.

Rep. Meier: Can you visit with us about the civil penalty and what that would impose.

Susan: The commission has the authority under the section of law, to impose a penalty up to 5000 dollars. We start out at a nominal penalty assessment, maybe 50.00 dollars, maybe 100.00 dollars, it depends on each particular case. First time violation you may get a 50.00 dollar fine or 100.00 dollar penalty. If it occurs more frequently, then we may increase that penalty.

Rep. Meier: If you had to implement a 5000.00, what would they have to do to get that kind of penalty.

Susan: I don't have any history to base that on. What I would envision is that it would have to be something that is really severe.

Rep. Amerman: Auctioneers that come from another state, do they have to be licensed in both there state and our state?

Susan: Anyone that comes into the State of North Dakota to conduct a sale is required by law to have a license and be bonded.

Rep. Klemin: You are really looking at somebody coming into the state and doing an auction and then leaving the state. How do you force them.

Susan: If we don't have the authority, because they are located out of state we can at least bring a complaint proceeding, hopefully will help educate the other people of the state, so they know to check with our office before they are hired, to let them conduct a sale for them.

Chairman Haas: How many out of state or auctioneers or clerks apply for license in North Dakota in a given year?

Susan: I don't have that exact figure, but we do have quite a number of out of state licensing and some of them will renew year after year, some of them will come in one time license, one time sale.

Chairman Haas: How long does it take if they are coming in for a one time sale? How long does it take for them to get a license?

Susan: Once we receive the application package, there is a ten day waiting period before they can conduct a sale.

Chairman Haas: There is probably auctioneers on either side of the border that are licensed in both states on a regular basis.

Susan: That is correct.

Rep. Klemin: If somebody came in here and was auctioning without a license, could you bring a complaint for auctioning without a license?

Susan: We could bring a complaint, what we cannot do is we cannot penalize them whatsoever for what they have done. They don't have a license we can't take a license away that they don't have.

Rep. Klemin: You can't assess a penalty without going through an administrative procedure, giving him notice.

Susan: Even going through that process we can not assess a penalty, unless the law provides that we can assess a penalty.

Rep. Klemin: The example you gave us was a person out of state and naturally you will not be able to assess a penalty on them, really this would only work on someone that is in the state of North Dakota.

Susan: Again we would hope that even if we are unable to collect any money for assessing a penalty, hopefully it would be used as an educational tool. Having the authority to assess a penalty, it further enforces why they shouldn't be coming into North Dakota and operating illegally.

Rep. Klemin: For education purposes, you don't need that to assess a penalty to that, you can still bring a complaint for operating without a license and accomplish the same education objective can't you.

Susan: That is true, if you are looking at a license, from somebody that does have a license.

Rep. Amerman: If they are bonded in South Dakota, that covers North Dakota, also.

Susan: North Dakota requires their own bond to be filed with our department.

Rep. Boehning: If they are not licensed or bonded in North Dakota you could only bring a civil penalty against them.

Susan: Currently we can't bring a civil penalty against them. You can't assess a penalty, you can't suspend a license, you can't revoke a license, you go through the process you get to the end and it stops right there.

Rep. Klemin: There is a penalty provision, there is a penalty on the criminal side.

Susan: Ours is a civil not a criminal penalty.

Page 5
House Government and Veterans Affairs Committee
Bill/Resolution Number SB 2092
Hearing Date 2/24/05

Rep. Klemin: What you are asking is in addition is to be able to impose a civil penalty.

Susan: That is correct.

Rep. Kasper: How much money is being lost in this action being lost to the public.

Susan: It is just under 4000 dollars.

Chairman Haas: Is there any further questions, thank you Susan. Is there any additional testimony on SB 2092? Is there any opposition testimony on SB 2092, if not, we will close the hearing on SB 2092.

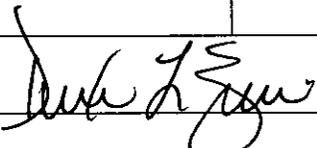
2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2092

House Government and Veterans Affairs Committee

Conference Committee

Hearing Date 2/24/05

Tape Number	Side A	Side B	Meter #
3		x	5.6-9.0
Committee Clerk Signature 			

Minutes: SB 2092 Relating to violations of statutes, orders, or rules governing auctioneers and auction clerks and to provide a penalty.

Discussion and voting.

Chairman Haas: Lets look at SB 2092. I have one question for Rep. Klemin, is section 49-07-01.1, is that the section of the statute, that amendment to that statute, which will then include auctioneers in that statute. Is that the statute that allows the public service commission to use civil penalties.

Rep. Klemin: Apparently, title 49 is the public service commission.

Chairman Haas: OK, what are your wishes on this bill, Rep. Froseth moves a DO PASS, seconded by Rep. Potter, is there any further discussion?

Rep. Klemin: I think this position, that we can use this for education is a little bit superfluous, you can use that under any other, for not having a license.

Chairman Haas: I agree with you, I don't think it is really for that purpose, it seems to me that this is simply a more stream line process to impose a penalty as compared to enforcing the last section of the portion of the code that deals with auctioneers, that they can be accused of a class b misdemeanor.

Rep. Klemin: The problem is that they are not going to be able to enforce it outside of the state.

Rep. Conrad: The other section is the citizen has to initiate.

Chairman Haas: If you go through the criminal procedure, it would go through a states attorney.

Rep. Conrad: What you are saying here is if the public service commission finds somebody in violation they can do it. If somebody is out of state, that means if they come back in they would get the penalty, so it puts them on notice.

Rep. Klemin: They just can't impose a penalty, they have to go through a very strict procedure to do that.

Chairman Haas: Any further discussion. If not we will have the clerk take the roll on a DO PASS motion on SB 2092.

VOTE: YES 12 N0 0 ABSENT 2 DO PASS ON SB 2092

REP. POTTER WILL CARRY THE BILL.

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

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2092

House House Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Froseth Seconded By Rep. Potter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	AB				
Rep. Margaret Sitte	AB				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Potter

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

REPORT OF STANDING COMMITTEE (410)
February 24, 2005 4:14 p.m.

Module No: HR-34-3632
Carrier: Potter
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2092: Government and Veterans Affairs Committee (Rep. Haas, Chairman)
recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2092
was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

SB 2092

100

S.B. 2092

Presented by: Susan Richter
Director, Licensing Division
Public Service Commission

*Same
given to the
House*

Before: Political Subdivisions Committee
Honorable Dwight Cook, Chairman

Date: 7 January 2005

TESTIMONY

Chairman and committee members, my name is Susan Richter. I am the Director of the Licensing Division of the Public Service Commission (PSC). The Licensing Division administers the Commission's jurisdiction over auctioneers and auction clerks in North Dakota. The Commission asked me to appear here today to testify in support of Senate Bill 2092.

Senate Bill 2092 would provide the Commission with the authority to assess a civil penalty against auctioneers or auction clerks for violating Chapter 51-05.1. Currently, the Commission can bring a complaint proceeding against a licensed auctioneer or auction clerk and if a violation is found, can suspend or revoke the license. However, unlike many other areas of PSC jurisdiction, the Commission has no authority to assess a civil penalty. The unfortunate result is that if a complaint is brought against an unlicensed auctioneer or auction clerk, there is no penalty available because there is no license to suspend or revoke, and no authority to assess a civil penalty. Without the change, the law, rather strangely, offers an incentive for a rogue auctioneer or clerk to not be licensed.

Additionally, there are times when a violation warrants more than just the suspension of an auctioneer or auction clerk license. Some violations may warrant the imposition of a civil penalty. And it is conceivable that some violations may warrant the imposition of a civil penalty but not suspension or revocation of a license.

Passage of this bill would strengthen the auctioneer and auction clerk laws by giving the Commission additional, flexible authority to assess a civil penalty for violation of the law. Most importantly, it would provide some means of enforcing the law when an auctioneer or clerk simply refuses to obtain a license.

This completes my testimony. I will be happy to answer any questions you may have.

2 

Richter, Susan K.

From: troyorr@daktel.com
To: Wednesday, January 05, 2005 3:57 PM
Subject: Richter, Susan K.
Bill Draft 8

Dear Susan Richter,
In regards to Bill Draft #8 amending section 49-07-01.1 of the North Dakota Century Code, as president of the North Dakota Auctioneers Association our position would be of support. In the public interest we feel that granting the PSC the ability to implement a civil penalty in cases of misconduct of an auction company would be appropriate. We therefor would support this bill.

Sincerely,
Troy Orr
President
North Dakota Auctioneers Association