

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1390

2007 HOUSE HUMAN SERVICES

HB 1390

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1390

House Human Services Committee

Check here for Conference Committee

Hearing Date: January 23, 2007

Recorder Job Number: 1623

Committee Clerk Signature

Judy Schock

Minutes:

Chairman Price opens the hearing on HB 1390.

Representative James Kersman, District 31: See attached testimony. The attachment to the testimony came from the department.

Representative Porter: The three items of concern on line 11. The fiscal note the department said that each one of those would cost 78,000 dollars, plus the 4th being the general liability. Would you have any problem reducing it down to just covering vehicles?

Representative Kersman: We would be willing to look at anything. I just think there should be some thing. The children are awards of the state, and the foster parents don't have the means. Putting the burden on the foster parents would soon result in less foster parents.

Representative Kaldor: The policy itself would be a liability policy for each licensed family foster care home. So it is not exactly like department is taking out insurance on the foster care child. The family is being covered by a policy. What if there gets to be a dispute that requires potential litigation? Would it be better if the policy followed the child?

Representative Kerzman: My intention was to follow the child. I just wanted liability on the child. I would not object to you looking at, if the foster family has coverage and the state picks up the deductible.

Senator Aaron Krauter, Dist 31: As we look at the budget relating to human services foster care, and you list some issues that parents have developed that want to be foster parents.

There is a sincere appreciation for them. We need to provide coverage so we are able to get more foster parents. I respect your wisdom to make these changes.

Shari Doe, Director of Burleigh Social Services: See attached testimony. We do tell new foster families to use home owners first. The question, if someone would have been hurt, I don't know what would have happened. We have been fortunate that has not happened.

Representative Porter: When this is all said and done, could you go back to the ND insurance reserve fund, or the county commissioners to do an over view of the coverage of the policy, where the hole was in the policy that didn't allow for this?

Ms Doe: Yes I have spent a lot of time on the phone.

Paul Ronningen, Director of the Children and Family Services Division of the Department of Human Services: See testimony attached, and Foster Care Children Self-Insurance program. We have not had a conversation with the Insurance Reserve about going to the reserve fund verses our insurance in house. What if someone would be killed? I don't know I am not an attorney, but anyone can be sued.

Representative Porter: When you reviewed the Montana statute, did the Department with the caps and limits and the umbrella that are put into place on the amounts payable out. Did the Department look at the amount of money in the self insurance fund that it would take to have a similar type provision for ND?

Mr. Ronningen: We just became aware of that in the last couple days, and have not priced any out. Insurance premiums for foster care have accelerated with a lot of sexual abuse claims nationally.

Representative Conrad: Have you had claims for water vehicles or aircraft? I would also be interested in Insurance Reserve coverage for child and foster parent.

Don Snyder: As far as I know we have not had damage on either.

Chairman Price: Any other testimony on HB 1390? We will close HB 1390

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1390

House Human Services Committee

Check here for Conference Committee

Hearing Date: Jan 24, 2007

Recorder Job Number: 1856

Committee Clerk Signature

Judy Schock

Minutes:

Chairman Price: Take out HB 1390.

Committee discusses do we take out the water craft and aircraft. Would that mean we would have to look at a separate policy? Read the Montana plan. It has an umbrella plan and has a maximum payout. It does have a deductible per claim and also tells the family that just because this is in place doesn't mean you don't need Insurance. There is money there they just need some direction on how to use it. We will get some amendments drawn up, possibly putting it in a revolving account, and check with appropriations.

Chairman Price: The committee is dismissed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1390

House Human Services Committee

Check here for Conference Committee

Hearing Date: January 29, 2007

Recorder Job Number: 2216

Committee Clerk Signature

Judy Dehock

Minutes:

Chairman Price: Take out HB 1390.

Representative Porter: In our discussions, we were looking at the Montana Program it didn't fit very well. I will go through the attached amendments. I have no ownership to them.

Paul Ronningen with DHS: he helps committee with some changes. We would proceed with the 20,000.dollars.

Work with intentional and non intentional act is a concern to the committee. The committee continues to work on language.

Representative Weisz moves the amendments, **Representative Potter** seconds. The verbal vote is all yeas. **Representative Hofstad** moves a do pass as amended. **Representative Harlestad** seconds the motion. The vote is 11 yeas 0 nays and 1 absent. **Representative Hatlestad** will carry the bill to the floor.

FISCAL NOTE
 Requested by Legislative Council
 03/02/2007

Amendment to: Engrossed
 HB 1390

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.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$11,180 | | \$11,180 |
| Expenditures | | | \$8,820 | \$11,180 | \$8,820 | \$11,180 |
| Appropriations | | | | | | |

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

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires the Department to provide liability coverage for every licensed family foster care home. The coverage is for property damage which is caused by the act of a foster child.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The department already provides liability coverage through "self-insurance" for foster parents. This amendment requires changes to the policy to allow for coverage of acts of foster children. This bill also changes the deductible from \$250 to \$100, the maximum payout per claim from \$2,000 to \$5,000 and the maximum payout per claimant from \$5,000 to \$10,000.

Based on historical claims experience the Department is estimating that the fiscal impact of this bill would be \$20,000. The Department's 2007-09 budget contains \$20,000 for the payment of these types of claims.

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.*

The other funds revenues are the federal Foster Care funds that would be available to be matched with the general fund dollars for the payment of any claims.

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.*

The estimated expenditures of \$20,000 would consist of \$8,820 of general fund dollars and \$11,180 of federal funds.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Senate Bill 2012 contains \$20,000 for the payment of these types of claims so no additional appropriation authority is needed.

| | | | |
|----------------------|-----------------|-----------------------|------------|
| Name: | Brenda M. Weisz | Agency: | DHS |
| Phone Number: | 328-2397 | Date Prepared: | 03/02/2007 |

FISCAL NOTE

Requested by Legislative Council

01/31/2007

Amendment to: HB 1390

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.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$11,180 | | \$11,180 |
| Expenditures | | | \$8,820 | \$11,180 | \$8,820 | \$11,180 |
| Appropriations | | | | | | |

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

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires the Department to provide liability coverage for every licensed family foster care home. The coverage is for property damage to the property of the foster parent, which is caused by intentional or unintentional acts of a foster child placed in their care.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

The department already provides liability coverage through "self-insurance" for foster parents. This amendment requires changes to the policy to allow for coverage of intentional acts or omissions of foster children placed in their care. This bill also changes the deductible from \$250 to \$100, the maximum payout per claim from \$2,000 to \$5,000 and the maximum payout per year/per family from \$5,000 to \$10,000.

Based on historical claims experience the Department is estimating that the fiscal impact of this bill would be \$20,000. The Department's 2007-09 budget contains \$20,000 for the payment of these types of claims.

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.*

The other funds revenues are the federal Foster Care funds that would be available to be matched with the general fund dollars for the payment of any claims.

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.*

The estimated expenditures of \$20,000 would consist of \$8,820 of general fund dollars and \$11,180 of federal funds.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Senate Bill 2012 contains \$20,000 for the payment of these types of claims so no additional appropriation authority is needed.

| | | | |
|----------------------|-----------------|-----------------------|------------|
| Name: | Brenda M. Weisz | Agency: | DHS |
| Phone Number: | 328-2397 | Date Prepared: | 01/31/2007 |

FISCAL NOTE

Requested by Legislative Council

01/15/2007

Bill/Resolution No.: HB 1390

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.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 Biennium | |
|-----------------------|--------------------|-------------|--------------------|-------------|--------------------|-------------|
| | General Fund | Other Funds | General Fund | Other Funds | General Fund | Other Funds |
| Revenues | | | | \$354,048 | | \$375,610 |
| Expenditures | | | \$279,312 | \$354,048 | \$296,322 | \$375,610 |
| Appropriations | | | \$270,492 | \$342,868 | \$296,322 | \$375,610 |

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

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The bill requires the Department to provide liability insurance coverage for every licensed family foster care home. The insurance is to cover property damage to the property of the foster parent, which is caused by intentional or unintentional acts of a foster child placed in their care.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill directs the department to obtain general liability insurance coverage as well as coverage to include property damage caused by the foster child which arises out of the operation or use of a motor vehicle, aircraft, or watercraft and any property damage that results from dishonest, fraudulent, criminal, or malicious conduct by the foster child. At this time a comprehensive policy is not obtainable for all four levels of coverage. The coverage mentioned in the bill would require four separate policies. A policy for general liability exists while policies would have to be developed for motor vehicle, aircraft, and watercraft liability. The amounts included in this fiscal note represent the cost of obtaining four separate policies. The amount is based on the last quoted price of the general liability policy which was \$78,000. The other three policies will cost a minimum of \$78,000 each. The policies would not require a per claim deductible paid by the foster parents or submission of a claim to a private insurer before the department's coverage is provided.

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.*

Other fund revenues would include federal Foster Care IV-E funds in 2007-2009 of \$354,048 and \$375,610 in 2009-2011.

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.*

The expenditure amounts listed above include the cost of obtaining four separate insurance policies for the 849 licensed family foster care homes with a total cost for the 2007-2009 biennium of \$633,360.

The cost for the 2009-2011 biennium is \$671,932

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a*

continuing appropriation.

The Department of Human Services would need a general fund appropriation of \$270,492 and other funds appropriation of \$342,868 for the 2007-2009 biennium. The 2007-2009 appropriation is \$8,820 (general funds) and \$11,180 (other funds) less than the expenditures due to funding contained in the 2007-2009 budget for these types of claims.

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|----------------------|-----------------|-----------------------|------------|
| Name: | Brenda M. Weisz | Agency: | DHS |
| Phone Number: | 328-2397 | Date Prepared: | 01/19/2007 |

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1390

Page 1, line 2, remove "insurance"

Page 1, replace lines 6 through 16 with:

"Department to provide liability coverage.

1. The department shall provide liability coverage for the intentional and unintentional acts or omissions of foster children placed in the care of foster families. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:
 - a. *or a 3rd family* Must provide coverage for damage to the property of a foster family which is caused by the intentional acts of the family's foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property and must include a deductible in an amount not to exceed one hundred dollars per claim.
 - b. *Must* May not provide coverage for damage to the property of a foster family which is caused by the unintentional acts of the family's foster child.
 - c. Is secondary to any other coverage the foster family may have for claimed losses.
 - d. Must provide coverage for claims of third parties for damage caused by the malicious or willful act of a foster child. The coverage under this subdivision may not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subdivision must include a deductible not to exceed one hundred dollars per claim.
3. The department may provide for exclusions from liability coverage provided under this section."

Renumber accordingly

Date: 4/29
 Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. "Click here to type Bill/Resolution No."

House HUMAN SERVICES HB 1390 Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No pass as amended

Motion Made By Rep Hofstad Seconded By Rep Hatlestad

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------------|-----|----|------------------|-----|----|
| Clara Sue Price - Chairman | ✓ | | Kari L Conrad | | |
| Vonnie Pietsch - Vice Chairman | ✓ | | Lee Kaldor | | |
| Chuck Damschen | ✓ | | Louise Potter | ✓ | |
| Patrick R. Hatlestad | ✓ | | Jasper Schneider | ✓ | |
| Curt Hofstad | ✓ | | | | |
| Todd Porter | ✓ | | | | |
| Gerry Uglem | ✓ | | | | |
| Robin Weisz | ✓ | | | | |
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Total (Yes) 11 "Click here to type Yes Vote" No 0 "Click here to type No Vote"

Absent 1

Floor Assignment Rep Hatlestad

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

REPORT OF STANDING COMMITTEE

HB 1390: Human Services Committee (Rep. Price, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1390 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "insurance"

Page 1, replace lines 6 through 16 with:

"Department to provide liability coverage.

1. The department shall provide liability coverage for the intentional and unintentional acts or omissions of foster children placed in the care of foster families. The department may provide this liability coverage through self-insurance.
2. The liability coverage under this section:
 - a. Must provide coverage for damage to the property of a foster family which is caused by the act of the family's foster child. This coverage must be for the lesser of the reasonable cost to repair or to replace the damaged property.
 - b. Is secondary to any other coverage the foster family may have for claimed losses.
 - c. May not exceed five thousand dollars per claim, with an annual maximum of ten thousand dollars per year per claimant. The coverage under this subsection must include a deductible not to exceed one hundred dollars per claim.
3. The department may provide for exclusions from liability coverage provided under this section."

Renumber accordingly

2007 SENATE HUMAN SERVICES

HB 1390

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1390

Senate Human Services Committee

Check here for Conference Committee

Hearing Date: 2-28-07

Recorder Job Number: 4080

Committee Clerk Signature *Mary R Monson*

Minutes:

Chairman Senator J. Lee opened the hearing on HB 1390 relating to liability coverage for damage caused by foster children.

Representative James Kerzman (District #31) introduced HB 1390. His testimony and a proposed amendment is attached (#1).

Senator J. Lee asked him to review the purpose of his amendment.

Rep. Kerzman said the purpose of the amendment is to expand it to more of the community.

The floor testimony in the House said that community was covered under the current engrossed bill, but there is a little bit of gray area (meter 3:10). This broadens the coverage.

Senator J. Lee said then it wouldn't just be damage to a foster family's property but to others as well.

Rep. Kerzman said that was right. He then addressed the fiscal note. They looked at the Dept. buying liability insurance but they could probably self insure.

Senator Dever asked if the self insurance would be through the insurance reserve fund.

Rep. Kerzman said it was brought up but they didn't want to go there. This would just be through the Dept.

Senator Dever asked if the child's parents continue to have liability for this.

Rep. Kerzman said if the parents have primary coverage they would be first. The Dept. is a secondary payer.

Senator Dever – It says secondary to any coverage the foster family has. What about the child's biological parents.

Rep. Kerzman said most of the time when they are removed from the parents; they become wards of the state. That is where the problem lies.

Senator Aaron Krauter (District #31) testified in support of HB 1390. We look to foster parents to provide a place for children and when things like this happen it creates a little rub. We need to make sure it works.

Senator Warner asked if it was his understanding that the Dept. would be allowed to accumulate this pool from biennium to biennium if it is not used.

Sen. Krauter deferred to the Dept.

Senator Dever referred to subsection C, lines 17-18. Is the deductible the responsibility of the foster family?

Sen. Krauter said his understanding was that it was whoever the claimant was.

Shari Doe (Director, Burleigh County Social Services) See attached testimony #2 in support of HB 1390.

Senator J. Lee asked if she would respond to the question about this covering damage to the property of the foster family.

Ms. Doe said she does support the amendments. They need those to be unintentional and intentional damage and foster families and non foster families.

Senator Erbele referred to her example of the fall of 2006 and asked how often this type of thing happens.

Ms. Doe said this is the first she has had in six years. She had other incidences that involved lesser amounts of damage, minor things.

Senator Dever asked if the vehicle owner's insurance covered it.

Ms. Doe said he only had liability insurance, no collision.

Don Snyder (Administrator, Foster Care Program, Children and Family Services Division DHS)

See attachment #3 in support of HB 1390.

Senator J. Lee asked why they would limit it to property damage caused by an intentional act and not include the property that might be owned by someone other than foster parents.

Mr. Snyder said he wasn't totally involved with that process so he wasn't sure what went into it.

Senator J. Lee asked if he had any thoughts to expand this to include these other areas and what the additional cost might be.

Mr. Snyder said they have had considerable discussion about what kind of impact there would be. He suggested Dawn Pearson might have some information.

Dawn Pearson (Children and Family Services) said that this hasn't been a well known program to the foster parents and she suspects that as they move forward with these amendments that it will become better known and more utilized. The feeling from the Dept. is that the \$20,000 that is currently budgeted for the cover is what they suspect the claims will be. That is only a guest.

Senator J. Lee asked if something was needed saying the Dept. is the payer of last resort so if there is other insurance that would pay first.

Ms. Pearson replied that was part of their current policy and that would be recommended for future policy, as well.

Senator J. Lee said the \$100 deductible is a small number.

Ms. Pearson said she personally felt it would be a benefit to the foster parent since insurance seems to be a stumbling block.

Senator J. Lee asked if they could leave payer of last resort in rule or if she wanted something in statute.

Ms. Pearson deferred to Mr. Snyder.

Mr. Snyder said if it is in rule it has force and effect of law and he was ok leaving it there.

Senator Heckaman said it was her understanding that the amendment took intentional and unintentional out. Should it be out or leave it in?

Ms. Pearson said her understanding is that this amendment will be further amended to say "the department shall provide liability coverage for acts or omissions of foster children". That would cover everything.

Senator Warner asked if there was a claw back provision that you can sit the kid down and say "you're going to pay at least part of the damage you've done."

Ms. Pearson said, yes, that is the first resort a lot of the custodians and counties would take – to get them to be partially responsible. There are circumstances where that isn't possible.

Senator Warner asked if the \$20,000 was just an appropriation and not a pool in the sense of an insurance pool which accumulates and generates its own income through interest.

Ms. Pearson said that was her understanding.

Senator Warner what would happen if they went considerably over that. Would they have the authority to expend those monies, whatever it cost in the parameters of the deductibles and maximum payments under current law?

Neither Ms. Pearson nor Mr. Snyder had an answer.

(Meter 24:00) There was discussion on the insurance reserve fund.

Senator Warner referred to part b on Mr. Snyder's testimony. He asked if the state was liable for damages caused by physical and sexual abuse caused by the foster child on a foster sibling.

Mr. Snyder said his understanding was that the state was only responsible for providing the defense cost for the foster parents.

Senator Warner asked "What if the foster family was the plaintiff?"

Mr. Snyder wasn't sure.

There was no opposing or neutral testimony.

The hearing on HB 1390 was closed.

Senator Erbele moved to accept the Kerzman amendment .0201.

The motion was seconded by Senator Heckaman.

Roll call vote 6-0-0. Amendment accepted.

Senator Heckaman moved a Do Pass on HB 1390 as amended and rerefer to appropriations.

The motion was seconded by Senator Pomeroy.

Roll call vote 6-0-0. Motion carried. Senator Dever is the carrier.

JK
2-28-07

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1390

Page 1, line 7, remove "the intentional and unintentional"

Page 1, line 11, remove "the" and remove "of a foster family"

Page 1, line 12, replace "the family's" with "a"

Page 1, line 14, remove "the foster family may have for claimed"

Page 1, line 15, remove "losses"

Renumber accordingly

Date: 2-28-07

Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1390

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 70630.0201 Title .0300

Action Taken Do Pass / amended / refer

Motion Made By Sen. Heckaman Seconded By Sen. Pomeroy

| Senators | Yes | No | Senators | Yes | No |
|---------------------------------|-----|----|------------------------|-----|----|
| Senator Judy Lee, Chairman | ✓ | | Senator Joan Heckaman | ✓ | |
| Senator Robert Erbele, V. Chair | ✓ | | Senator Jim Pomeroy | ✓ | |
| Senator Dick Dever | ✓ | | Senator John M. Warner | ✓ | |
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Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Dever

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

REPORT OF STANDING COMMITTEE

HB 1390, as engrossed: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the Appropriations Committee (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1390 was placed on the Sixth order on the calendar.

Page 1, line 7, remove "the intentional and unintentional"

Page 1, line 11, remove "the" and remove "of a foster family"

Page 1, line 12, replace "the family's" with "a"

Page 1, line 14, remove "the foster family may have for claimed"

Page 1, line 15, remove "losses"

Renumber accordingly

2007 SENATE APPROPRIATIONS

HB 1390

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1390

Senate Appropriations Committee

Check here for Conference Committee

Hearing Date: 03-09-07

Recorder Job Number: 4750

Committee Clerk Signature



Minutes:

Chairman Holmberg opened the hearing on HB 1390.

Representative James Kerzman, district 31, Mott, introduced HB 1390 indicating the reason it had been introduced was because of an incident that happened in his district and it was discovered there was no coverage for damage caused by foster children. The Foster Parent Program is expanding to have self insurance through the department for needs that arise. He felt it is important for the program to look out for the best interest of the foster parents.

Senator Fischer questioned the fiscal note

Sherry Doe, Director, Burleigh County Social Services, testified indicating the particular child being referenced is from the Burleigh County Area, the damage done was to an individual that was not the foster parent and they did find some compensation to cover \$1000 of \$3000 damage. The young person ran away and is still on the run. She indicated the department knows where he is, but they can't get him. She also indicated that to carry a policy to cover these nearly 1,000 foster kids would be \$70-\$80 thousand a year, which makes the cost benefit is not there.

Senator Bowman questioned whether there was any data that could be looked at to see the amount of damage that has previously been reported, that foster kids have done. It was indicated that this would be provided.

Senator Tallackson wondered if in this instance if the keys were in the car and the responsibility the owner needs to take. It was indicated the keys were not in the car, it was hot wired.

Senator Krebsbach indicated this is to cover the foster families and would the self insurance cover situations that involved others. It was indicated an amendment came out that stressed anyone having damage would be compensated.

Don Snyder, Department of Human Services, Foster Care Administrator, briefly informed the committee that premiums were about \$75-\$80 thousand dollars and the department was paying about \$5,000 over a four year period of time which is why we initially looked at the self-insured. So far, since starting this self insured status, the department has paid out about \$4400 in claims.

Senator Christmann asked what version of the bill we would be voting on. Some checking was done to make sure the right bill was with the committee. Alan gave a revised bill.

Senator Krauter moved a do pass on the bill numbered .0300, Senator Krebsbach seconded. A roll call vote was taken resulting in 14 yes, 0 no, 0 absent. The motion passed and Senator Dever will carry the bill.

Chairman Holmberg closed the hearing on HB 1390.

Date: 3/9/07
 Roll Call Vote #: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1390

Senate Appropriations Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP on 0300 version of bill

Motion Made By Krauter Seconded By Krebsbach

| Senators | Yes | No | Senators | Yes | No |
|------------------------------|-----|----|---------------------------|-----|----|
| Chairman Ray Holmberg | ✓ | | Senator Aaron Krauter | ✓ | |
| Vice Chairman Bill Bowman | ✓ | | Senator Elroy N. Lindaas | ✓ | |
| Vice Chairman Tony Grindberg | ✓ | | Senator Tim Mathern | ✓ | |
| Senator Randel Christmann | ✓ | | Senator Larry J. Robinson | ✓ | |
| Senator Tom Fischer | ✓ | | Senator Tom Seymour | ✓ | |
| Senator Ralph L. Kilzer | ✓ | | Senator Harvey Tallackson | ✓ | |
| Senator Karen K. Krebsbach | ✓ | | | | |
| Senator Rich Wardner | ✓ | | | | |
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| | | | | | |

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rever HMS

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

*expressed
 a amend*

amend # 14 to order

REPORT OF STANDING COMMITTEE (410)
March 9, 2007 11:25 a.m.

Module No: SR-45-4861
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1390, as engrossed and amended: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1390, as amended, was placed on the Fourteenth order on the calendar.

2007 HOUSE HUMAN SERVICES

CONFERENCE COMMITTEE

HB 1390

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1390

House Human Services Committee

Check here for Conference Committee

Hearing Date: April 4, 2007

Recorder Job Number: 5740

Committee Clerk Signature

Judy Schock

Minutes:

Chairman Porter: Calls the conference committee to order with HB 1390.

Senator Dever: The amendments the Senate put on would propose to make to include not just damage to the foster family's property, but other property.

Chairman Porter: I am not sure if you have been getting the same emails that we have been getting, but apparently there is an association of foster care and facility association that I am not clear on the trigger points. Was it based on the amendments that the Senate did or what it was? We are leaving the foster parents to hang out there. There is verbiage out there that is now lacking coverage or the foster family themselves had more exposure prior to this bill being introduced. I think that is where some of the concerns have come up.

Senator Dever: I received an email from one of our senators who is in the insurance business. He raised the issue that the State pays \$5,000.00 on a claim that could leave a bigger exposure, because it would be assumed there was guilt. I have not been receiving the emails you have.

Representative Weisz: We looked in the House those specifically protecting and we noticed you took all that out. You just addressed foster child. We need coverage for the foster family.

The Department paid a few dollars. Why did the Senate take out the lines of referencing family? We never had testimony or discussion on that part and attaching the \$5,000.00.

Senator Dever: It was a matter of considering damage done, not just with in not just the foster family and their property but the community.

Representative Porter: The thing that came up on how it was looked at was that the way it was worded. It did include the community as being secondary to any other coverage. The example with the car that Representative Kerzman referred to the value of the car was more than the insurance company appraisal of the car was after it was pulled out. The insurance company felt the car was worth less and the individual felt the car was worth more. So there was a gap, but the insurance company was not going to pay. The foster family wasn't going to pay that either. The foster child, awarded of the state did the damage. The state of ND wasn't going to step up and pay the difference either. Under this scenario of having the bill in place like we passed in the house, our understanding was that the money from the insurance company would be paid to the vehicle owner and they would have a claim the state would than pay for the rest up to the value. The foster family wouldn't have any responsibility towards that. The way I am reading it now is that the foster family may have some unintended liability inside of this by removing it. That was a point of concern, would the foster family have the responsibility or their insurance company.

Representative Conrad: What would the liability be?

Representative Porter: The liability would be the difference between what the insurance company paid and what the value of the property was.

Representative Conrad: I would like to hear from the department to see what they have to say.

Representative Porter: Senator Dever, when you discussed Representative Kerzman's scenario was it the intent of the senate to have risks assumed by the foster family?

Senator Dever: No, it was to take away the risk to the foster family.

Representative Porter: Everyone seems to be looking at this now saying maybe there is more risk to the foster family than there was even before.

Don Schneider: How it reads with the senate amendments, and the coverage and the foster families inherited liability inside the situation with we are kind to relate. The bill that was passed the house and compare that with the senate, the one thing we wanted to make sure of that was covered was the intentional and unintentional act. Prior to this it only covered unintentional acts. A lot of things were not covered. The way this was rewritten from my perspective came a lot clearer. When it talks about the family foster child verses just must provide coverage for damage to property which is caused by the act of a foster child made it much more global, and provide better coverage to the foster parents, and other people in the community.

Chairman Porter: You are speaking to the way the house passed the bill, or the way the it is engrossed with the senate amendments?

Mr. Schneider: The Senate amendments.

Chairman Porter: In sub division 1 the words intentional and unintentional where we moved in the senate version it just talks about liability coverage per acts or omissions. It doesn't address intention or unintentional acts or omissions.

Mr. Schneider: The coverage for the acts or omission part of it really kind of opens it up so that we can have a much broader perspective when we are dealing with claims. We don't have to make those interpretations.

Representative Weisz: Mr. Schneider, you have just indicated a minute ago that you liked the intentional and unintentional language to insure the questions the acts or omissions being intentional or unintentional.

Mr. Schneider: My meaning earlier was in past before we started the session, the only thing we had was the unintentional thing. We needed that clarification, and where it talks about the acts or omissions. That includes it all for us.

Chairman Porter: I am sure you heard the same association that have been emailing us in regards to the bills and how it is leaving the foster parent hanging out there with out any kind of coverage. Have you had any discussions with them?

Mr. Schneider: I have not had any of those emails recently. I have had some conversation with the state president of the association. Never any concerns. It was opened up and better coverage.

Chairman Porter: When we were getting emails from this association telling us that we kind of leaving them hanging, you were getting information saying this is the right way to go?

Mr. Schneider: My information I got from them was like a couple months ago.

Chairman Porter: Can you go back to them and email them and include us in the email and ask them what they think of it now, so we have some direction coming from that association. We don't want to miss anything. We don't want to make it where people don't want to be foster parents and we want to protect them.

Senator Dever: I feel at a disadvantage not having seen the emails. I am wondering if the foster Family Association represents pretty much all the families.

Mr. Schneider: There is an association in each region and than there is a state association. We have contact with presidents of both.

Chairman Porter: adjourns the committee.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1390

House Human Services Committee

Check here for Conference Committee

Hearing Date: April 11, 2007

Recorder Job Number: 5907

Committee Clerk Signature

Judith Schock

Minutes:

Chairman Porter: We will open HB 1390. We asked for information that did come back to us via email in relationship to some of the concerns that were presented from the foster child association. Their whole point of the information was the fact they felt the department should provide primary liability coverage for the acts of a foster child, which would be a brand new precedence in the state of ND. The department has never been the primary. I am guessing the premium would cost in the hundreds of thousands of dollars for the state of ND to provide that primary coverage. It has always been a case in our intention on the House side was to provide that gap coverage and be a little clearer about the gap coverage that the State has available to fill the gap between the value and what a personal policy may pay. The wording the Senate brought to the house on their amendments in comparison to how the House sent it over to the Senate. I don't see any big problem with that.

Representative Conrad: I talked with Representative Kerzman and he said that he had looked at the issue of the primary verses secondary and that Dirk was not interested. Doing insurance for foster families, they had gotten some numbers and it was just to high. So that had been investigated by the sponsor.

Chairman Porter: We had that discussion in the House Human Services also.

Representative Weisz: I move the House accede to the Senate amendments, seconded by **Representative Conrad.**

Senator Dever: I think if that was to become the case that we would be duplicative of the insurance. I think we should be concerned with making sure foster families don't have out of pocket expenses.

Chairman Porter: I think that this is the right step to do that. We are covering that gap as a secondary.

Representative Weisz: I know there was concern over the emails over the change in the language (could not understand him).

Senator Dever: In any case I think we are improving the situation for them now. I appreciate the email Don Pearson sent that included the comparisons.

Chairman Porter: The whole purpose of the bill from Representative Kerzman was to have guidelines in place for these gaps for coverage, and there was still an expense. I think we have met the expectations of the sponsor of the bill and cleared up the internal policies of the department. The clerk will call the roll, with 6 yeas, 0 nays, and 0 absent. **Chairman Porter** will carry the bill to the floor.

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number 1390 (, as (re)engrossed):

Date: 4/11/07

Your Conference Committee House Human Service

attend
For the Senate:

For the House:

| YES / NO | | YES / NO | |
|-------------------------------------|--|---------------------|-------------------------------------|
| <input checked="" type="checkbox"/> | | <u>Chair Porter</u> | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> | | <u>Rep Weisz</u> | <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> | | <u>Rep Conrad</u> | <input checked="" type="checkbox"/> |

recommends that the (SENATE/HOUSE) (ACCEDE) to (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 982 - 983

and place 1390 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

_____, having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/11/07

CARRIER: Porter

| | |
|-----------------------------------|----------------|
| LC NO. _____ | of amendment |
| LC NO. _____ | of engrossment |
| Emergency clause added or deleted | |
| Statement of purpose of amendment | |

MOTION MADE BY: Weisz

SECONDED BY: Conrad

VOTE COUNT 6 YES 0 NO 0 ABSENT

REPORT OF CONFERENCE COMMITTEE

HB 1390, as engrossed: Your conference committee (Sens. Dever, Erbele, Pomeroy and Reps. Porter, Weisz, Conrad) recommends that the **HOUSE ACCEDE** to the Senate amendments on HJ pages 982-983 and place HB 1390 on the Seventh order.

Engrossed HB 1390 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

HB 1390

Madam Chair, Rep. Price

Members of the House Human Services Committee

Rep. James Kerzman, District 31

HB1390 is being forwarded out of concern that there is very limited liability for the actions of children, who are basically wards of State, placed in foster care. And there is little recourse for victims with damage caused by criminal actions of these foster kids.

We had an incident in Flasher, ND where a foster kid went on a driving excursion, where he basically totaled a vehicle of someone other than the foster parents. Working with County Social Services, they were able to get some funds from 32-03-39 I believe, but which is limited to \$1000.00 and short of covering actual damages. Visiting with the Department of Human Services revealed very little else they could do other than law suit against State. If this kid would of been yours or mine, more than likely we would be liable for these actions.

This is a tough situation since there is a Federal mandate that basically directs the State to find families for kids if at all possible. Plus we don't want to put more burden on foster families or we may cut down on number of families willing to take foster kids. Also it has been brought to my attention that foster kids are getting tougher, years ago a large number of foster kids just were without parents or immediate family; now many of them are being removed from dysfunctional families, have been involved in criminal activity and may be on drugs. This is some of the rationale used to figure maybe the State should provide liability coverage. I really feel the State has exposure and it would be in the best interest of our citizens and the State to fill this gap.

I appreciate the involvement of Rep. Wald and Sen. Krauter on this issue, and would hope the committee takes a serious look at this. Be happy to try and address any questions.

Respectfully submitted.

Rep. James Kerzman

Family Foster Care Home Property Damage Policy

This policy was created by the Department to assist licensed family foster care home parents and other family members living in the home, for damages to property they might experience, that are caused by unintentional acts or omissions of a foster child placed in their care. This policy will replace the Department's former use of group insurance policies.

This policy is the "insurer of last resort" and should be used only when a private insurer, such as Homeowners, Tenants, Personal Automobile, Personal Umbrella Liability Insurances, or any other collectible insurance, will not cover the damages or loss.

Following is a summary of the coverage, exclusions, and claim procedure.

COVERAGE

The Department will provide coverage in the following amounts to licensed family foster care home parents and other family members living in the home, for damages to property they might experience, that are caused by unintentional acts or omissions of a foster child placed in their care.

- **\$250 deductible per claim**
- **\$2,000 maximum payout per claim**
- **\$5,000 maximum payout per year/per family foster care home**

For those claims covered by a private insurance, in which the foster parent(s) paid a deductible greater than \$250 (amount of the Department's deductible), the Department will cover the difference between \$250 and the amount of the deductible paid to the private insurer. This applies only to those claims deemed covered by this policy.

EXCLUSIONS

The following is a summary of important exclusions. Additional exclusions may apply as determined by the Department on a case-by-case basis.

1. Property damage arising out of the operation or use of any land motor vehicle, aircraft, or watercraft. This also includes any damage to the foster parent's vehicle, aircraft, or watercraft.
2. The destruction of property intentionally caused by a foster child.
3. Property damage resulting from dishonest, fraudulent, criminal, or malicious conduct on the part of the foster parent(s), family members living in the home, or the foster child.
4. Theft or loss of property.
5. Damage to property used for business or business pursuits.
6. Bodily injury of any kind.
7. Property damage resulting from the negligence of a foster parent.

CLAIM PROCEDURE

The following must be included in all claims:

1. A completed "Foster Parent Claim Of Property Damage" Form, (SFN 327)
2. A photograph of the damage
3. A letter of denial from a private insurer
4. A written estimate or bill for damages
5. When applicable, verification of the amount paid by the private insurer
6. When applicable, proof of the amount of deductible paid to a private insurer

Claims need to be postmarked within 90 days after discovery of the damage, and sent to the individual identified below.

A review committee consisting of the Assistant Foster Care Administrator, Children and Family Services; the CFO, Fiscal Administration; and the Risk Manager/Attorney, Legal Advisory Unit, or their designee, will review the claims and make a determination within 45 days of receipt. If a claim is approved, a check will be issued within 14 days of the date of determination. If a claim is denied, a letter stating the reason for the denial, will be sent to the foster parent(s) within 14 days of the date of determination. The Department will not make a determination if claims are incomplete, and are not completed within the 90-day timeframe.

Any questions regarding this policy should be directed to the following:

Dawn Pearson
Children and Family Services Division
ND Department of Human Services
600 E. Boulevard Avenue
Judicial Wing/State Capitol
Bismarck, ND 58505-0250

Telephone (701)328-1018
Email: sopead@state.nd.us

Testimony
House Bill 1390
House Human Services Committee
Representative Price, Chair
January 23, 2007

Chairman Price and members of the House Human Services Committee, I am Shari Doe, Director of Burleigh County Social Services. I am here to offer comments on and support for House Bill 1390.

In the fall of 2006, a foster child, under the custody of Burleigh County Social Services ran away from the foster home, stole a car and had an accident causing significant damage to the vehicle. The foster child was not hurt but fled the scene, stealing personal property from the vehicle. All total, the damages to the car and the stolen property were estimated at over \$3200.

Naturally the owner of the stolen vehicle, who was not the child's foster parent, requested compensation for the damages to his vehicle and the loss of the personal property. I contacted the Department of Human Services Foster Care Director and our local insurance company. I understood that the Department had a "fund" to help cover such costs and requested that this fund be used to help compensate the victim. The North Dakota Insurance Reserve Fund refused to pay anything on the claim because, based on their findings, they did not see any negligence on behalf of Burleigh County or their employees.

In this case, the Department was very cooperative in helping Burleigh cover the costs so I offered the victim a \$1000 payment. He settled for that amount but was quite disappointed that we couldn't do better by him.

I arrived at this \$1000 figure through my conversations with the claims department of the NDIRF. I learned that they often refer to NDCC 32-03-09.2 *Liability for willful damages to property* and NDCC 32-03-39 *Parental Responsibility for minor children – recovery limitations*, when considering claims such as this. Basically, these statutes limit the liability of a parent whose child maliciously or willfully destroys property to actual damages or an amount not to exceed one thousand dollars. This leaves open for interpretation if this coverage includes minor children not in the custody of their parents.

Fortunately, situations such as these come up very infrequently, at least in my county. But when they do, we need clear direction and guidelines on how and who is responsible. The victim in the case I described was incredulous that there was no insurance coverage in place for “all those kids running around out there.” State-wide, there are close to 1000 children in foster care and we basically depend on the foster parents insurance to cover damages caused by the children they bring into their homes.

I support HB 1390 as it would delineate responsibility for handling damages caused by foster children. I believe this bill could enhance the Foster Care Program in North Dakota by taking away this huge potential liability for the state, custodian, foster families and others in the community.

This concludes my testimony. I am happy to answer your questions.

Testimony
House Bill 1390 – Department of Human Services
House Human Services Committee
Representative Price, Chairman
January 23, 2007

Chairman Price and members of the House Human Services Committee, I am Paul Ronningen, Director of the Children and Family Services Division of the Department of Human Services. I am here to share some history and payment patterns regarding the foster care liability policy.

In 2004, the Department reviewed the foster care liability policy regarding the cost and coverage. Foster Care Liability Insurance was increasing at a rapid rate. The renewal cost for this insurance was quoted at approximately \$78,000 while annual claims were less than \$5,000.

The coverage was a four-part coverage:

- A. Bodily injury and property damage.
- B. Physical and sexual abuse sub limit defense fees for sexual abuse.
- C. Property damage to property of others \$250 deductible with a \$5,000 max payout.
- D. Property damage to insured's property.

All claims paid were under "C" and "D". The review also showed that if we dropped the "C" and "D" coverage our premium would still be about \$55,000 and there was no language in our previous policy that stated it covered intentional acts.

The Department developed a policy that mirrored our insurance policy, which included a review team made up of staff from our Children and

Family Services, Legal Services and the Fiscal Administration Division to review each claim submitted.

In addition, foster parents are required to submit their claim to their insurance company first. If the claim is denied the Department will then screen the claim for reimbursement. If the insurance company pays the claim, the foster parent typically has a deductible to incur.

Since July of 2004 we have had two claims denied, totaling \$3,505 and paid three claims totaling approximately \$2,900. Of the two claims that were denied, a claim for \$3,000 was denied because the damage was caused by an intentional act of the foster child, which is excluded in our past and current policy; and a claim for \$500 was denied because the deductible was not paid.

The Department did contact Bain Insurance for a quote on HB 1390. Based on the language of HB 1390 four separate policies would be required, covering motor vehicle, aircraft, watercraft and a general liability policy. The liability policy alone would be approximately \$78,000. Currently, the Department budgeted \$20,000, with \$8,820 of general fund for our "self insurance".

Finally, I have attached information from the Montana Foster care Children Self-Insurance Program (See attachment A). The program:

- Caps claims by foster parents at \$2,500 per occurrence,
- Pays the lower of the cost to repair or replace the damaged property,
- Covers malicious acts of the foster child and
- The Department pays a \$100 deductible

This concludes my testimony. I would be happy to answer any questions.

Foster Care Children Self-Insurance Program

*An Agreement Between the Risk Management & Tort Defense
Division and the Department of Public Health & Human Services*

PREFACE

The basic purpose of the state self-insured foster care program is to recognize the important public function performed by foster parents. Because commercial property and liability insurance typically does not protect foster parents, it is desirable for the Department of Administration to provide this program. It is intended to provide, without a premium expense to the foster parent, a program of protection from the following:

- ✓ 1) Damages or losses to property of foster parents caused by the intentional acts of foster children.
- 2) Claims made by third parties against foster parents because of the intentional acts of foster children.

In accordance with §2-9-201, MCA and the Tort Claims Act, the Risk Management and Tort Defense Division will administer this program and evaluate and resolve all claims. The Department of Public Health and Human Services (DPHHS) will remit an agreed upon premium to fund the program, and together with the foster parents will report all claims in an expeditious manner in accordance with the Division's claims administration procedure.

COVERAGE PROVISIONS

- This program is established under authority of §2-9-201, MCA which allows the Department of Administration to provide a comprehensive insurance program for the state. This coverage is applicable for children placed and supervised by DPHHS in a family foster home.
- For purposes of the Tort Claims Act, foster parents are not considered to be independent contractors, and are not state employees. They are not covered under the Tort Claims Act.
- Foster parents will be covered only for damage caused by intentional acts of foster children to their personal and real property.
- This insurance program is secondary to any other coverage the foster parents may have for claimed losses.

LIMITS/DEDUCTIBLES

A. Damage to Property of Foster Care Provided For Intentional Acts of Foster Children.

- ✓ The lower of the reasonable cost to repair or replace the damaged property.
- ✓ Deductible per occurrence \$100
(Paid by DPHHS)

*Excess to other available coverage and only for intentional acts of foster children. Foster Parent must first submit the claim to own insurance and make a good faith effort for full recovery before their claim will be considered by RMTD. Proof of such efforts of full recovery must be provided to RMTD.

B. Liability - Claims made by third parties in accordance with 340-6-327, MCA.

For purposes of 340-6-237, MCA, third parties are entitled to recover damages from the state in an amount not to exceed \$2,500 for a foster child under the age of 18 years, placed and supervised by the Department of Public Health & Human Services living in a state licensed family foster home, who shall maliciously or willfully destroy property, real, personal, or mixed belonging to such third parties.

- ✓ Per occurrence \$2,500*
Deductible (Paid by DPHHS) \$100

*Excess to other available coverage and only for intentional acts of foster children.

EXCLUSIONS

- A. Any act or omission arising from actual fraud, willful misconduct, intentional acts or malice or to any claim arising from the commission of a crime by the foster parent(s).
- B. Any act, error, or omission, of a foster parent due to the rendering or failure to render professional services. The care and services rendered in the role of a foster parent shall not be deemed to constitute professional services;
- C. Any act, error, omission, or occurrence directly arising out of an activity as a foster parent;
- D. Liability assumed by a foster parent under any agreement, written or oral, unless expressly approved in advance by the state.
- E. Any obligation for which a foster parent or any carrier as his insurer may be held liable under workers' compensation, unemployment compensation, disability benefits law, or

any similar law.

- F. Cash, coin collections, collectibles, antiques, furs, and jewelry.
- G. Damage caused by normal wear and tear of real or personal property.
- H. Credit cards and/or their misuse.
- I. Mysterious disappearances.
- J. Claims that are not directly related to the actions of the foster child (i.e. the child has a pet that destroys foster parent's property or friend who causes damage).
- K. Claims that reflect a lack of supervision of the child at a level that could reasonably be expected by a foster parent. For example, a very young child who is barely walking pulls himself up into a standing position in a manner that damages the item that was used as a prop, or allowing an unsupervised child to burn leaves near a garage and the garage subsequently burns down.
- L. Charges for unauthorized phone calls.
- M. Firearms.

SUBROGATION

The state will be subrogated to all the foster parents rights of recovery against any person or organization and the foster parents shall do nothing after a loss to prejudice such rights.

DISPUTES

Where a dispute as to the existence or amount of coverage arises, the foster parent shall make application to the Department of Public Health & Human Services and the Risk Management & Tort Defense Division for an administrative hearing to resolve the issue. After hearing the matter and conferring with DPHHS, the Risk Management & Tort Defense Division shall have resolution authority in accordance with the Tort Claims Act 2-9(parts 1-3), MCA.

BUDGETING

The Risk Management & Tort Defense Division will include in its budget rates the premium amount that will be billed each fiscal year of the biennium. The amount will be included in all insurance premium rates for the Department of Public Health & Human Services. The budgeted amount will be based upon a per home basis at a rate established by the Risk Management & Tort Defense Division and agreed to by the Department of Public Health & Human Services. The Department of Public Health & Human Services will provide accurate source data to RMTD

for the number of homes that will be expected to have foster children in them in the upcoming biennium. The budget rates are subject to legislative approval. The Department of Public Health & Human Services is responsible to assure that the budget rates are included in its operational budget. Appropriate amounts will be billed each fiscal year of each biennium.

PAYMENT

Payments, as legislatively appropriate to DPHHS, will be made annually (by September) to the Risk Management & Tort Defense Division, as per the Tort Claims Act. This program will remain in effect as long as is mutually agreeable to the Risk Management & Tort Defense Division and the Department of Public Health & Human Services, and is subject to periodic review and evaluation.

CLAIMS

The Department of Public Health & Human Services will utilize the claims procedures as outlined in the Risk Management Procedures Manual (also found on the division's website).

EXECUTION OF AGREEMENT

It is hereby agreed between the Risk Management & Tort Defense Division of the Department of Administration and the Department of Public Health & Human Services that the provisions of this agreement will remain in force until further notice. This contract may be modified as necessary by the Department of Administration as agreeable to the Department of Public Health & Human Services.

This agreement is effective September 1, 2001

SIGNATURES

Chuck Hunter, Division Administrator, Foster Care Program

Date

Brett Dahl, Administrator, Risk Management & Tort Defense
Division

Date



(701) 328-2316
Toll Free 1-800-245-3736
Fax (701) 328-3538

John Hoeven, Governor
Carol K. Olson, Executive Director

MEMORANDUM

TO: Chairman Lee and Members of the Senate Human Services Committee
FROM: Dawn Pearson, Independent Living Coordinator
RE: Response to Questions, EHB 1390
DATE: January 28, 2007

The following is in response to the committee's request for additional information during earlier testimony regarding House Bill 1390.

Currently, the Department has budgeted \$20,000 annually to pay claims under the Property Damage Policy. If annual claims were to exceed the annual budget, the Department would need to look to other areas within the Department to pay the allowable claims.

#1

Madam Chair, Sen. J. Lee

Members of the Senate Human Services Committee

Rep. James Kerzman, District 31

HB1390 is being forwarded out of concern that there is very limited liability for the actions of children, who are basically wards of State, placed in foster care. And there is little recourse for victims with damage caused by criminal actions of these foster kids.

We had an incident in Flasher, ND where a foster kid went on a driving excursion, where he basically totaled a vehicle of someone other than the foster parents. Working with County Social Services, they were able to get some funds from 32-03-39 I believe, but which is limited to \$1000.00 and short of covering actual damages. Visiting with the Department of Human Services revealed very little else they could do other than law suit against State. If this kid would of been yours or mine, more than likely we would be liable for these actions.

This is a tough situation since there is a Federal mandate that basically directs the State to find families for kids if at all possible. Plus we don't want to put more burden on foster families or we may cut down on number of families willing to take foster kids. Also it has been brought to my attention that foster kids are getting tougher, years ago a large number of foster kids just were without parents or immediate family; now many of them are being removed from dysfunctional families, have been involved in criminal activity and may be on drugs. This is some of the rationale used to figure maybe the State should provide liability coverage. I really feel the State has exposure and it would be in the best interest of our citizens and the State to fill this gap.

I appreciate the involvement of Rep. Wald and Sen. Krauter and the Department of Human Services on this issue. As amended by the House, HB 1390 addresses concerns of foster parents but may not address community exposure. Thus, I would like to offer further amendments for your consideration suggested by the Department.

Be happy to try and address any questions.

Respectfully submitted.

Rep. James Kerzman

Testimony
House Bill 1390
Senate Human Services Committee
Senator Lee, Chair
February 28, 2007

Chairman Lee and members of the Senate Human Services Committee, I am Shari Doe, Director of Burleigh County Social Services. I am here to offer comments on and support for House Bill 1390.

In the fall of 2006, a foster child, under the custody of Burleigh County Social Services ran away from his foster home, stole a car and had an accident causing significant damage to the vehicle. The foster child was not hurt but fled the scene, stealing personal property from the vehicle. All total, the damages to the car and the stolen property were estimated at over \$3200.

Naturally the owner of the stolen vehicle, who was not the child's foster parent, requested compensation for the damages to his vehicle and the loss of the personal property. I contacted the Department of Human Services Foster Care Director and our local insurance company. I understood that the Department had a small fund to help cover such costs and requested that this fund be used to help compensate the victim. The North Dakota Insurance Reserve Fund refused to pay anything on the claim because, based on their findings, they did not see any negligence on behalf of Burleigh County or their employees.

In this case, the Department was very cooperative in helping Burleigh cover the costs so I was able to offer the victim a \$1000 payment. He settled for that amount but was quite disappointed that we couldn't do better by him.

Fortunately, situations such as these come up very infrequently. But when they do, we need clear direction and guidelines on how and who is responsible. The victim in the case I described was incredulous that there was no insurance coverage in place for "all those kids running around out there." State-wide, there are close to 1000 children in foster care and we basically depend on the foster parents insurance to cover damages caused by the children they bring into their homes.

I support HB 1390 as it would delineate responsibility for handling damages caused by foster children. I believe this bill could enhance the Foster Care Program in North Dakota by taking away this potential liability for the state, custodian, foster families and others in the community.

This concludes my testimony. I am happy to answer your questions.

Testimony
Engrossed House Bill 1390 – Department of Human Services
Senate Human Services Committee
Senator Lee, Chairman
February 28, 2007

Chairman Lee and members of the Senate Human Services Committee, I am Don Snyder, the administrator of the Foster Care Program of the Children and Family Services Division for the Department of Human Services. I am here to share some history and payment patterns regarding the foster care liability policy.

In 2004, the Department reviewed its current foster care liability policy because of rapidly increasing premiums. The renewal cost for this insurance was quoted at approximately \$78,000, while previous claims were less than \$5,000 annually.

The previous policy covered the following areas:

- A. Bodily injury and property damage.
- B. Physical and sexual abuse sub limit (defense costs only).
- C. Property damage to property of others.
- D. Property damage to foster parent's property.

All previous claims had fallen under sections "C" and "D" of the policy, and the Department determined that we would be able to "self-insure" for far less than the cost of the insurance premium.

In turn, the Department developed our current Foster Parent Property Damage policy. This policy is the insurer of last resort and applies when a private insurer will not cover the damages. The Department will provide coverage in the following amounts to licensed family foster care

home parents for damages to their property, that are caused by unintentional acts or omissions of a foster child placed in their care:

- \$250 deductible per claim
- \$2,000 maximum payout per claim
- \$5,000 maximum payout per year/per family foster care home

Since July of 2004, the Department has reviewed two claims that were denied, totaling \$3,505; and has paid five claims totaling \$4,434.92. Each claim was denied due to one or both of the following reasons, which are excluded in our past and current policy:

- The damage was caused by an intentional act of the foster child.
- The damages were to property other than that belonging to the foster parents.

Currently, the Department has budgeted \$20,000, with \$8,820 of general fund dollars budgeted to pay claims under our policy.

This concludes my testimony. I would be happy to answer any questions.