

2011 SENATE HUMAN SERVICES

SB 2079

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2079
1-12-2011
Job Number 12815

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a person's ability to provide adult foster care after a license is denied or revoked.

Minutes:

Attached testimony.

Senator Judy Lee opened the hearing on SB 2079.

Jan Engan, Director for the Aging Services Division of the Dept. of Human Services, testified in support of SB 2079. Attachment #1

Senator Tim Mathern wondered how this would protect. If someone is providing inappropriate care it seems like it could still happen.

Ms. Engan replied that unfortunately it could still happen. They can notify the Vulnerable Adult Protective Care Services. If the division is notified they provide information and notice to the judicial unit of the department for follow up and follow through.

Senator Tim Mathern asked if they wanted to go the further step and eliminate this kind of care for anybody unless they are licensed.

Ms. Engan believes they should be licensed.

Senator Judy Lee pointed out that earlier it was mentioned that if a family was caring for their own family member they wouldn't need to be licensed.

Senator Gerald Uglem asked if it is intended to be forever, once a license is revoked. They cannot get it back again.

Ms. Engan said, yes, that was her understanding.

Veronica Zietz, Executive Director at the Arc of Cass County, testified in support of SB 2079. Attachment #2

This will only affect those who have been licensed providers. It will not help with those who have avoided the licensing process.

Connie Hutmacher, Dickinson, ND, testified in support of SB 2079. Attachment #3 She told her personal story about the financial exploitation and undue influence on her father who was cared for by someone who had their license revoked.

The process leading to revocation was discussed.

Judy Tschider, Program Administrator with the Aging Services Division and responsible for licensing of adult family foster care. She explained they do an investigation when there is a complaint and if they feel there is a violation this law would allow them to prevent it from occurring.

Senator Tim Mathern pointed out that, in this case, it seemed like this could not be stopped.

An emergency clause was mentioned.

There was discussion that now a person who has their license revoked can be relicensed. If the bill passes, they wouldn't be able to be relicensed.

Ms. Tschider explained that everyone has the right to apply. Individuals who are adult family foster care providers must also be enrolled as a qualified service provider. That is why they are no longer allowed to be paid by a public pay program. If they lose their QSP as well they are not eligible to be paid public pay. They can reapply. Each situation would be looked at individually.

Senator Dick Dever asked, if in this case and others, prosecution is sought and what the penalty is for operating without a license.

Ms. Tschider did not know what the ramifications would be. In this case she believed there was some criminal activity being pursued in the physical neglect. Information was provided to the State's Attorney's office on the financial exploitation. That information was passed on from their investigation.

Senator Tim Mathern wondered if there was something being missed in terms of empowering counties or human services to protect vulnerable adults. Why wasn't the county able to stop this from happening?

Ms. Tschider replied there is a process and she believes they have in place what they need to stop some of what is happening. Sometimes it is the amount of time it takes for the investigation. With every revocation, there is a chance for appeal.

Senator Judy Lee pointed out that in a case she was aware of it was the lack of willingness on the part of the county to do anything.

Ms. Tschider added that it is a Class B Misdemeanor for operating without a license to provide care to more than one person or two if they are related.

Brian Quigley, Mountrail Social Services, testified in support of SB 2079. He said part of the problem is that it doesn't go far enough. It is a real issue for vulnerable adults that the law doesn't have any teeth in it. It's not only stealing, it is transferring out assets so they can be eligible for Medicaid.

Senator Tim Mathern asked if there is a bill in our system right now that deals with vulnerable adults.

Mrs. Quigley was not aware of any other than this.

Shawna McFarland, Divide County, offered information that their county has had to take guardianship of two vulnerable adults and it is pretty much unheard of for a county to take guardianship. They have a States Attorney who is very pro-active but has been unsuccessful with prosecution. One thing that needs to be taken into consideration when dealing with dementia patients is that they will not be credible – she gave examples of problems.

A problem that has surfaced is that there is no one to check on guardians.

Senator Tim Mathern asked if she would be supportive of adding an emergency clause and study resolution.

Ms. McFarland was supportive.

Senator Dick Dever thought this bill seemed to be a small part of the solution to a very large problem. Thought the real solution should be in the hands of the States Attorney's. He asked if she thought they had the tools they need to pursue it.

Ms. McFarland replied that in the cases she has seen they are very hard to prosecute. From her experience she didn't think they have the right tools.

Shelly Peterson, LTC Association, supported SB 2079. Financial exploitation is a huge issue. It has been a top priority of their association. They would like consideration for a statewide program for vulnerable adults so when there are issues of exploitation there is someplace to refer them to for investigation and evaluation.

There was no opposing or neutral testimony.

The hearing on SB 2079 was closed.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2079
1-18-2011
Job Number 13020

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to a person's ability to provide adult foster care after a license is denied or revoked.

Minutes:

Attachments

Senator Judy Lee opened committee work on SB 2079. She reported that she had an opportunity to speak with the Chief Justice who was extremely concerned with this issue and agrees with the study.

Amendment 11.8081.01001 was discussed. Attachment #4 It includes a study and an emergency clause.

Senator Tim Mathern pointed out that the testimony indicated there were more problems than just stopping the possibility of some continuing to be licensed as a foster home. Some suggestions were brought up in terms of the role of the public administrator, guardians etc. The amendment is in the form of a permissive resolution – "shall consider" studying. The emergency clause, if adopted and signed, would permit this to go into effect immediately.

Senator Judy Lee asked the committee to look at an amendment drafted, at her request, by Julie Leer from the department. Attachment #5 It talks about vulnerable adults not just elderly. Ms. Leer suggested including those sections of law and any barriers to the use of those sections.

Further discussion took place about including those sections of Chapter 12, which is the criminal chapter of the Century Code. Exploitation of vulnerable adults and exploitation of the elderly was discussed as was the meaning of indigent. Making the study mandatory was talked about and it didn't seem to be necessary. Having a study in the bill would not have an effect on the emergency clause. It was agreed to blend the two amendments.

Senator Tim Mathern moved to **accept the blended amendment.**

Seconded by **Senator Dick Dever.**

Roll call vote 5-0-0. **Amendment adopted.**

Senator Tim Mathern moved a **Do Pass as Amended.**

Seconded by **Senator Dick Dever.**

Roll call vote. 5-0-0. **Motion carried.**

Carrier is **Senator Dick Dever.**

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2079
1-25-2011
Job Number 13389

Conference Committee

Committee Clerk Signature *T. Mansou*

Explanation or reason for introduction of bill/resolution:

Relating to a person's ability to provide adult foster care after a license is denied or revoked.

Minutes:

Senator Judy Lee opened committee work on SB 2079.

Senator Tim Mathern moved to reconsider actions on SB 2079.

Seconded by **Senator Dick Dever**.

Motion passed on a voice vote.

Senator Judy Lee asked **Senator Tim Mathern** to explain the changes that needed to be made.

Senator Tim Mathern explained that their earlier discussion suggested they study two groups of people - the elderly and the state's vulnerable adult population. The reason there are two groups is there are separate statutes that relate to both groups. The earlier wording implies that they would only be studying the group where the person is both elderly and vulnerable adult. The intent is to study the state's elderly, whether or not they are vulnerable, and the state's vulnerable adult, whether or not they are elderly.

Senator Tim Mathern moved to (1) add the words "the state's" after "and" on the second line (2) add the word "to" after "and" and before "vulnerable" on the second to last sentence of the amendment.

Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0. **Motion carried.**

Senator Tim Mathern moved a **Do Pass as Amended**. Seconded by **Senator Dick Dever**.

Roll call vote 5-0-0. **Motion carried**. Carrier is **Senator Dick Dever**.

January 17, 2011

#4

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency"

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - EXPLOITATION OF ELDERLY. During the 2011-12 interim, the legislative management shall consider studying the exploitation of the state's elderly population. The study must include a review of state and county services available to detect and respond to elderly abuse. The study also must include a statewide review of the role public administrators and guardians have in providing services to the elderly who are indigent. The legislative management shall report its findings, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

mandatory

#5

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency."

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY – EXPLOITATION OF VULNERABLE ADULTS. During the 2011-12 interim, the legislative management shall conduct a study of the exploitation of vulnerable adults. The study must include a review of the vulnerable adult protection system, of the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and of any barriers to the use of those sections. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

These amendments are prepared at the request of Senator Lee.

Date: 1-18-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2079

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.8081.01001 -revised

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Revised amendment 1-18-2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency"

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY- EXPLOITATION OF ELDERLY. During the 2011-12 interim, the legislative management shall consider studying the exploitation of the state's elderly and vulnerable adult population. The study must include a review of the vulnerable adult protection system, of the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and of any barriers to the use of those sections. The study also must include a review of state and county services available to detect and respond to elderly abuse. The study also must include a statewide review of the role public administrators and guardians have in providing services to the elderly and vulnerable adults. The legislative management shall report its findings, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this ACT is declared to be an emergency measure."

Renumber accordingly

Date: 1-18-2011

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2079

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Gerald Uglen, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Reconsidered

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

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

January 25, 2011

[Handwritten signature]
1-25-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency"

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - EXPLOITATION OF ELDERLY. During the 2011-12 interim, the legislative management shall consider studying the exploitation of the state's elderly and the state's vulnerable adult population. The study must include a review of the vulnerable adult protection system, the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and any barriers to the use of those sections. The study also must include a review of state and county services available to detect and respond to elderly abuse. The study also must include a statewide review of the role public administrators and guardians have in providing services to the elderly and to vulnerable adults. The legislative management shall report its findings, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

Date: 1-25-11

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2019

Senate HUMAN SERVICES

Committee

Check here for Conference Committee

Legislative Council Amendment Number Further amend -

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

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

Date: 1-25-11

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2079

Senate **HUMAN SERVICES**

Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.8081.01002 Title .02000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Sen. Mather Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mather	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Dever

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

REPORT OF STANDING COMMITTEE

SB 2079: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2079 was placed on the Sixth order on the calendar.

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency"

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - EXPLOITATION OF ELDERLY. During the 2011-12 interim, the legislative management shall consider studying the exploitation of the state's elderly and the state's vulnerable adult population. The study must include a review of the vulnerable adult protection system, the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and any barriers to the use of those sections. The study also must include a review of state and county services available to detect and respond to elderly abuse. The study also must include a statewide review of the role public administrators and guardians have in providing services to the elderly and to vulnerable adults. The legislative management shall report its findings, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

2011 HOUSE HUMAN SERVICES

SB 2079

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2079
March 2, 2011
Job # 14818

Conference Committee

Committee Clerk Signature

Marlynn Kienzle

Explanation or reason for introduction of bill/resolution:

A bill for an Act to amend and reenact section 50-11-01.4 of the North Dakota Century Code, relating to a person's ability to provide adult foster care after a license is denied or revoked; provide for a legislative management study; and to declare an emergency

Minutes:

Testimonies #1 and 2

Chairman Weisz: Called the hearing to order on SB 2079.

Jan Engan: Director, Aging Services DHS testified in support of bill. (See Testimony #1)

Rep. Porter: Can you give me some examples why a license would be revoked. Also, if I were new to offering these services, what would you be looking for and how would you determine if I should be licensed or denied a license.

JudyTschider, Program Administrator for Aging Services and Program Administrator for Adult Family Foster Care Licensing: Some of the reasons for revoking the licenses are for poor care, neglectful care or financial exploitation. When someone applies to be a foster care provider, it is required that they do a criminal background check and completed a child abuse and neglect report. We also check court records for violations and sex offender registry.

Rep. Porter: In the initial application processes, how is the Healthy Safe Home Inspection completed prior to the application granted??

Judy Tschider: The County Case Service Manager that is responsible for the Adult Family Foster Care Licensing does complete a home visit. There is a 3 or 4 page assessment document to complete, which looks at room size, sanitation and other requirements.

Rep. Hofstad: Once the license has been revoked is there a process for reinstated that license or is that license gone forever.

Judy Tschider: They can apply for a new license but we would look at the reason for the revocation and make a decision at that point. We would look if they have met some

rehabilitation issues before a license is reissued but if offense was severe we would not reissue a license or renewed.

Rep. Porter: Where would the two sides that differ than through the revocation process get together and see who is right or wrong? Is there a hearing process or an administrative hearing or district court?

Judy Tschider: We do an investigation by interviewing residents in the home, those bring forth the investigation and the provider. There is an appeal process when the license has been revoked. The provider can ask for an administrative hearing.

Rep. Porter: It could end up with an administrative law or judge in that section of that code.

Judy Tschider: Yes

Veronica Zietz: Executive Director, The Arc testified in support of the bill. (See Testimony #2)

Connie Hutmaker- Dickinson ND: Told of her family story of her father and step-mother and the exploitation of their money.

Rep. Porter: If Ms Tschider could please come forward again. We would like to question some of the wording so we are clear on this. The way it reads on Lines 10 and 11, it starts out with a person may not furnish foster care if they previously have had their licenses denied or revoked. With that strict of language, how would a reinstatement process work? Even if a person made the corrections and reapplied for a license, it states you can't reinstate the license.

Judy Tschider: It is the intent that if someone has their license revoked they would not want them to care for someone else.

Rep. Porter: Say it is a health/safety situation and you revoked their license and they took care of the problem, the way this is written they could not be relicensed. Is that what you want?

Judy Tschider: That is what the intent of this change.

NO OPPOSITION

Chairman Weisz: Closed the hearing on SB 2079.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2079
March 7
Job #15027

Conference Committee

Committee Clerk Signature

Vicky Crabtree

Minutes:

Chairman Weisz: You should all have a copy of the amendment. There was some concern that was raised on the hearing on 2079 having to do with the way the current language is written on 2079. Once that license is denied or revoked you are never getting it back. I shouldn't say that. You could get it back, but you will never be able to do adult foster care. Conversations with the department, that wasn't really their intent and so they had Jonathon Alm do a draft of an amendment which you should see in front of you. What the amendment would do is say that if your license is denied or revoked you cannot provide foster care for an adult unless the department subsequently issues a license to that person. If you lost your license because of ingress or egress and they were forced to revoke your license and you cleaned up your act and able to get your license back, this would allow you to provide adult foster care once again. The way the bill was written that could have never happened. I think this fixes that problem.

Rep. Paur: I move we adopt the amendment as written.

Rep. Hofstad: Second.

Voice Vote: Motion Carried

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

Rep. Devlin: Second.

Chairman Weisz: As far as the study, assuming both of these bills pass, 1199 that has the consulting study and this one, I assume they would end up being combined anyway. I haven't any indication that 1199 won't pass the Senate and if it doesn't, maybe we will have to put this one in conference committee to take care of any study language we want. I think it is ok to let them both go through.

VOTE: 13 y 0 n Motion Carried

Bill Carrier: Rep. Paur

YK
3/7/11

March 7, 2011

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2079

Page 1, line 10, remove "previously"

Page 1, line 11, after "revoked" insert "unless the department subsequently issues a license to that person"

Renumber accordingly

Date: 3-7-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2079

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Rep. Paur Seconded By Rep. Hofstad

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote
Motion Carried

Date: 3-7-11
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2079

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Porter Seconded By Rep. Devlin

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. Paur

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

REPORT OF STANDING COMMITTEE

SB 2079, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2079 was placed on the Sixth order on the calendar.

Page 1, line 10, remove "previously"

Page 1, line 11, after "revoked" insert "unless the department subsequently issues a license to that person"

Renumber accordingly

2011 TESTIMONY

SB 2079

Testimony
Senate Bill 2079 – Department of Human Services
House Human Services Committee
Senator Judy Lee, Chairman
January 12, 2011

Chairman Lee, members of the Human Services Committee, I am Jan Engan, Director for the Aging Services Division of the Department of Human Services. I am here today in support of Senate Bill 2079.

N.D.C.C. 50-11-01.4 states a person may not furnish foster care for adults for more than one adult, or for more than two adults who are related to each other, without first procuring a license to do so from the Department. When Section 50-11-01.4 was enacted, it was to establish a means by which a family member could provide care for another family member without requiring the caregiver family member to be licensed as an adult family foster care provider. While this section has allowed that, the Department has found that this section also provides a way around licensure for some people who really should not be caring for vulnerable adults. The proposed amendment is intended to close that loophole.

Currently, if an adult family foster care provider has their license denied or revoked they are no longer eligible to receive public-pay funds, such as Medicaid payments or state funds, to furnish foster care to any adult. This law, however, does not prohibit an adult family foster care provider who has their license denied or revoked from providing adult family foster care to an adult who is paying with "private" funds; i.e., who has the means to pay for his or her own care.

In the past two years, the Aging Services Division has learned of two incidences where adult family foster care providers who had their license denied or revoked continued to provide foster care for two individuals on

a private-pay basis. In both situations, there were serious health and safety violations, including exploitation of the individuals receiving care in each of the providers' homes.

Individuals who receive adult family foster care services typically are frail or otherwise vulnerable. By prohibiting the provision of adult family foster care by any person who has had their adult family foster care license denied or revoked, this law would protect those private-pay individuals from potential harm as it does individuals who are under a public-pay program.

I would be happy to address any questions that you may have.



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**Testimony of Support Senate Bill 2079
Human Services Committee
January 12, 2011**

Good morning Madam Chair and members of the Human Services Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with intellectual and developmental disabilities to foster empowerment and full inclusion in the community.

The Arc supports Senate Bill 2079, because it would provide greater protection for older adults and individuals with disabilities. This bill adds language to current law that would make it illegal for individuals to continue providing adult foster care services if they have had a license denied or revoked. Licenses may be denied or revoked for many reasons; for example, if the home is not in sanitary condition or properly equipped to provide good care for all residents. If this bill was enacted, in this situation an adult foster care provider wouldn't be able to continue providing subpar services to clients after a license is revoked.

Senate Bill 2079 is a positive change for people who utilize this adult foster care services. Enacting this bill would substantially defer instances of abuse and neglect with a population that is often considered vulnerable. It is necessary to take precautionary steps, such as this in order to maintain the quality of services provided to individuals with disabilities. This quality of care ultimately impacts personal choice across a range of services and is necessary to keep individuals living safely and independently in the community.

Please support Senate Bill 2079. Thank you for your time and consideration.

Chairman Lee and fellow committee member's thank you for letting me speak to you today about some of the hardships my family has endured since 2008.

My name is Connie Hutmacher, due to deteriorating health, especially dementia with the onset of Alzheimer's disease, our family felt it necessary to get our dad full time care, as part of that I was given power of attorney for my dad. In 2008 our dad was placed in the home of Mary Jane and Ralph Olheiser, who at the time were licensed by the state to care for vulnerable adults such as our dad. Things seemed to be going well at first, but things were not what they appeared. I will briefly highlight some of the things we discovered were happening.

- In September 2008 a farm equipment auction was held, the money was deposited into my dad's account in October. A short while later the bank informed me that my dad and Mary Jane Olheiser had withdrawn 15,000 dollars in \$50.00 bills. I then informed Stark County Social Services.
- October 24, 2008 Mary Jane Olheiser was with my dad when he cashed in a life insurance policy for \$18,819.99
- November 13, the life insurance check was deposited into Mary Jane Olheiser's bank account
- November 18, Stark County Social Services visited the Olheiser's and spoke with Mary Jane, Ralph, and my dad about what was going on

- November 19, my dad revoked my power of attorney by certified letter
- November 24, Mary Jane Olheiser was made to close the account at Dacotah State Bank and open a new account at Well's Fargo in my dad's name, none of the money was recovered
- December 30, Stark County Social Services called, my dad's 50,000 dollar truck had been titled to Mary Jane Olheiser since May. There was no evidence of any payments made so ownership of the truck was transferred back to dad
- January 30, 2009 dad came into my office and ranted about how the Olheiser's were going broke paying for lawyers and he was going to sue my sisters and I for making trouble (he was driven to my office by Mary Jane Olheiser)
- July 9, I was contacted by Mark Jesser from Badlands Human Service Center and he said, "Your father needs a guardian."

These are just a few examples of what my dad and our family have gone through since 2008. "Why not just get him out of there", you ask? Because as of this date I still only have limited guardianship which means I can only suggest he moves and due to his state of mind, the Olheiser's is all he is familiar with and he is scared and very confused. My next step is to apply for Full guardianship, which I am working on at this time. I think if this bill passes it would make the task much

easier and perhaps save other families from going through what my family has gone through these last 2 plus years.

Chairman Lee, Committee members thank you for your time and your consideration of this bill.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency"

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY- EXPLOITATION OF ELDERLY. During the 2011-12 interim, the legislative management shall consider studying the exploitation of the state's elderly and vulnerable adult population. The study must include a review of the vulnerable adult protection system, of the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and of any barriers to the use of those sections. The study also must include a review of state and county services available to detect and respond to elderly abuse. The study also must include a statewide review of the role public administrators and guardians have in providing services to the elderly and vulnerable adults. The legislative management shall report its findings, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this ACT is declared to be an emergency measure."

Renumber accordingly

mandatory

#5

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency."

Page 1, after line 10, insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY – EXPLOITATION OF VULNERABLE ADULTS. During the 2011-12 interim, the legislative management shall conduct a study of the exploitation of vulnerable adults. The study must include a review of the vulnerable adult protection system, of the use of sections 12.1-31-07, 12.1-31-07.1, and 12.1-31-07.2, and of any barriers to the use of those sections. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

SECTION 3. EMERGENCY. Section 1 of this Act is declared to be an emergency measure."

Renumber accordingly

These amendments are prepared at the request of Senator Lee.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2079

Page 1, line 2, after "revoked" insert "; to provide for a legislative management study; and to declare an emergency"

Page 1, after line 10, insert:

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SECTION 3. EMERGENCY. Section 1 of this ACT is declared to be an emergency measure."

Renumber accordingly

#1

Testimony
Senate Bill 2079 – Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
March 2, 2011

Chairman Weisz, members of the Human Services Committee, I am Jan Engan, Director of the Aging Services Division for the Department of Human Services. I am here today in support of Senate Bill 2079.

N.D.C.C. 50-11-01.4 states a person may not furnish foster care for adults for more than one adult, or for more than two adults who are related to each other, without first procuring a license to do so from the Department. When Section 50-11-01.4 was enacted, it was to establish a means by which a family member could provide care for another family member without requiring the caregiver family member to be licensed as an adult family foster care provider. While this section has allowed that, the Department has found that this section also provides a way around licensure for some people who really should not be caring for vulnerable adults. The proposed amendment is intended to close that loophole.

Currently, if an adult family foster care provider has their license denied or revoked they are no longer eligible to receive public-pay funds, such as Medicaid payments or state funds, to furnish foster care to any adult. This law, however, does not prohibit an adult family foster care provider who has their license denied or revoked from providing adult family foster care to an adult who is paying with "private" funds; i.e., who has the means to pay for his or her own care.

In the past two years, the Aging Services Division has learned of two incidences where adult family foster care providers who had their license denied or revoked continued to provide foster care for two individuals on

a private-pay basis. In both situations, there were serious health and safety violations, including exploitation of the individuals receiving care in each of the providers' homes.

Individuals who receive adult family foster care services typically are frail or otherwise vulnerable. By prohibiting the provision of adult family foster care by any person who has had their adult family foster care license denied or revoked, this law would protect those private-pay individuals from potential harm as it does individuals who are under a public-pay program.

I would be happy to address any questions that you may have.



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#2

Testimony of Support Senate Bill 2079
Human Services Committee
March 2, 2011

Good morning Chairman Weisz and members of the Human Services Committee. My name is Veronica Zietz (#99); I am the Executive Director at The Arc of Bismarck and I'm here today representing both The Arc of Bismarck and The Arc of Cass County. The Arc is an organization that provides education and advocacy to people with intellectual and developmental disabilities to foster empowerment and full inclusion in the community.

The Arc supports Senate Bill 2079, because it would provide greater protection for individuals with disabilities. This bill adds language to current law that would make it illegal for individuals to continue providing adult foster care services if they have had a license denied or revoked. Licenses may be denied or revoked for many reasons; for example, if the home is not in sanitary condition or is not properly equipped to provide good care for all residents. If this bill is enacted, an adult foster care provider would be legally unable to continue serving clients through private pay. Additionally, this bill allows for the study of the exploitation of vulnerable adults by legislative management. This could potentially identify cracks in the protection system and barriers to the appropriate usage and responses of the system. Thus, the study has the capacity to identify weaknesses, which could allow the legislature to provide solutions, ultimately limiting the instances of abuse, neglect and exploitation of individuals with disabilities in our state.

Senate Bill 2079 is a positive change for people who utilize adult foster care services. Enacting this bill would substantially defer instances of abuse, neglect and exploitation with a population that is often considered vulnerable. It is necessary to take precautionary steps, such as this in order to maintain the quality of services provided to individuals with disabilities. This quality of care ultimately impacts personal choice across a range of services and is necessary to keep individuals living safely and independently in the community.

Please support Senate Bill 2079. Thank you for your time and consideration.