

2011 SENATE JUDICIARY

SB 2082

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2082
January 11, 2011
12844

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

The ND Department of Human Services learned that information in district court files filed under the present statute are considered child custody proceedings and are therefore available to the public.

Minutes:

One attached testimony

Senator Nething opened the hearing on SB 2082 relating to the confidentiality of identified adoption proceedings.

Julie Hoffman, Administrator of Adoption Services for Children and Family Services Division in the ND Department of Human Services testified in support of SB 2082. Written testimony #1

Senator Nething asked for clarification that the records they were talking about are the relinquishment of parental rights.

Ms. Hoffman said that under the statute, the information regarding the identity of the adopted parents and the birth parents are disclosed to one another as part of the relinquishment practice. She said that it was not their understanding that these same records would be available to the general public.

Senator Nething said that this bill will restrict that part that makes it available to the general public.

Ms. Hoffman said that was correct.

Senator Olafson asked if when they talk of relinquishment of parental rights are they talking voluntarily or involuntary termination of parental rights or both.

Ms. Hoffman said this is specifically a voluntarily relinquishment proceeding.

Senator Sitte asked if this would prohibit children from finding their birth parents.

Ms. Hoffman answered no. She explained that it would put the search for adopted parents under the current statute in ND Century Code 14-15-16 and it would allow identified relinquishments that same procedure for discovering and birth search information.

Senator Nething closed the hearing on SB 2082.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2082
1/26/11
Job #13505

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to the confidentiality of identified adoption proceedings

Minutes:

Senator Nething – Chairman

Senator Sitte motions for a do pass
Senator Lyson seconds

Roll call vote – 6 yes, 0 no
Motion passes

Senator Sorvaag will carry

REPORT OF STANDING COMMITTEE

SB 2082: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2082 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2082

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2082
March 2, 2011
14871

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2082.

Julie Hoffman, Administrator of Adoption Services for Children and Family Services Division with ND Dept of Human Services: Support (attached 1).

Rep. Delmore: You said that there is only one case that you know of so far.

Julie Hoffman: That we're aware of. I did a search on the public website to see if I could find any that we were aware of, but I did not find any. We have about 20 years of identified relinquishments potentially that could have been put on the website.

Rep. Delmore: Are we going to ask that all new records from this point on are confidential or are you thinking we would go back to the past records.

Julie Hoffman: I don't think this bill proposes that we go back into the past. I think that would be something that would have to be decided at the Supreme Court level, and how they would treat those historical cases if they are on the website.

Rep. Delmore: In reading this, it looks like they would need to go back and see if some of those cases are available because of open records. If so, they are probably going to put a fiscal note on this bill for somebody; either the Supreme Court side or your side.

Julie Hoffman: I would assume that is possible and we could provide a list of cases. I think our data system would allow us to do that, to go back and document the names and locations of identified relinquishments.

Rep. Klemin: Looking at the format of this bill, the bill deals with one section of chapter 14-15.1 on the petition for relinquishment. However, the amendment to that section, says all files and records and proceedings under this chapter are confidential. Why did you put this under this section 3, rather than have it as a stand-alone section since it refers to everything in this chapter.

Julie Hoffman: I was looking for our legal advisory unit who drafted this bill. I'm not really able to answer that question.

Rep. Klemin: It seems like it could have been a stand-alone section to me. The rest of that amendment refers to, are confidential pursuant to section 14-15-16, which I was just looking at and that goes on for about five pages of matters. I noticed, in connection with what you were being asked by Rep. Delmore, section 14-15-16, in subsection 25, provides for retroactive application of this section. Apparently this was adopted in 1979, because it says in subsection 25 that the provisions regarding the release of identifying and non-identifying adoptive information applies to adoptions completed before and after July 1, 1979. By tying this to section 14-15-16, which provides for retroactive application, does that mean that this new requirement would also have retroactive application?

Julie Hoffman: I'm not certain about that. I think that's very likely. The identified relinquishment law, I believe, came into effect in the early 1980's. I believe we could provide a list of identified relinquishments that occurred under that statute to the Supreme Court to be able to identify those cases, if it were to be retroactively applied.

Chairman DeKrey: Please have your legal counsel come in to the committee and clear that up for us.

Rep. Koppelman: You talked about a case that brought this issue to your attention, when the district court was notified of the issue, that the Clerk of District Court removed the information from public scrutiny, but that the Supreme Court said that it would require statutory change to make it confidential. How did the clerk of District Court have the authority to do that under current law, at your request?

Julie Hoffman: I'm not certain.

Rep. Koppelman: You've given a case as an example, but why is it that you believe that this information should not be public. Adoptions are nothing new; they've been going on for a long time. I thought that some of the information was already supposed to be confidential. What is the history of this issue?

Julie Hoffman: In this particular situation, the birth mother's name and the adoptive parents' names and the child's birth name were all on the public website. The individual that saw that information, although the identities of those parties are disclosed to one another, we have never operated under the practice that that same information is available to the public. In that case, it provided some difficulty for that birth mother who is being considered for a position to have her prospective boss have that information and have to deal with it with her.

Rep. Koppelman: That's specific to this case again. As a general public policy point, why do you think it's important that that information is confidential and why has it not been before if it's important.

Julie Hoffman: I think as a general public policy issue, the standards in ND are that adoption information is confidential and not to be disclosed. The section that Rep. Klemin referenced is a very detailed lengthy section about under what conditions that information can be disclosed. The public policy in this state has always been that the information is very confidential.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition to SB 2082. We will recess the hearing until we hear from the DHS department counsel.

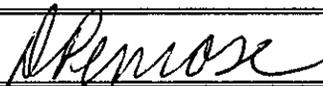
2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2082
March 7, 2011
15025

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will reopen recessed SB 2082. Jonathan Alm, Attorney with Dept of Human Services will answer questions from the original hearing on 3/2/2011.

Rep. Koppelman: Regarding the last line of the bill which indicates that all records and proceedings under this chapter are confidential pursuant to this section. By this chapter, are we referring to 14-15 totally?

Jonathan Alm: We're referring specifically to the section, it says pursuant to section 14-15-16, so that would be the entire section there.

Rep. Koppelman: That section is six pages long; I know that it deals with adoption but have those records always been confidential in practice, or are we doing something different here in terms of making papers confidential that weren't in the past.

Jonathan Alm: In practice they have been confidential.

Rep. Klemin: On the new section, I have two questions. It states that "all files, records and proceedings under this chapter are confidential"; that chapter being 14-15.1, correct.

Jonathan Alm: Correct.

Rep. Klemin: Should this be a stand-alone section since it refers to the whole chapter and not just this particular section in that chapter.

Jonathan Alm: When we looked at drafting this bill, we noticed that 14-15-16 was about five pages long, and instead of five pages into this bill, we just wanted to make the reference.

Rep. Klemin: That's not my question. This subsection 5, on lines 8 and 9, should that be a stand-alone section in chapter 14-15.1.

Jonathan Alm: The Dept. would have no objections to that.

Rep. Klemin: It really doesn't seem to be part of this 14-15.1-03; because it refers to the whole chapter 14-15.1. The other question – when it relates back to section 14-15-16, subsection 25 of that section has a provision for retroactive application. Since we're incorporating that by reference here, does that mean that this new language on page 2 of this bill would also have retroactive application?

Jonathan Alm: The Dept. would look at it like this, if the Dept received a request after August 1st for records from back to 1980, we would treat those as confidential pursuant to this bill.

Rep. Klemin: So it would have retroactive application.

Jonathan Alm: Yes.

Chairman DeKrey: Thank you. We will close the hearing.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2082
March 14, 2011
15348

Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will take a look at SB 2082.

Rep. Klemin: I move the amendment .01001 (explained the amendment, see attached 1). The bill as originally introduced amended section 14-15.1-03 by adding a new subsection 5, but then subsection 5 doesn't refer just to that section, it refers to the whole chapter. My thought was that instead of putting it as a subsection 5, under this section 03, that it really should be a new subsection as part of chapter 14-15.1 that stands on its own. Secondly, that section 14-15-16 is about six pages long, I don't believe there is anyway would know that this is going to be retroactive unless we specifically mention it because you go back to subsection 25 of section 14-15-16, that's where the retroactive provision is. The testimony was that this provision in this bill would also be retroactive but how would you know that. I was thinking that it would be better to say that upfront so that the reader would find that out right away rather than being expected to go back and make a close examination of that other section. That's really the whole amendment, it is a hog house for a new section and provide for the confidentiality to be retroactive.

Rep. Delmore: Second the motion.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended.

Rep. Klemin: I move a Do Pass as amended on SB 2082.

Rep. Delmore: Second the motion.

12 YES 0 N O 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

March 14, 2011

VK
3/14/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2082

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-15.1 of the North Dakota Century Code, relating to the confidentiality of identified adoption proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 14-15.1 of the North Dakota Century Code is created and enacted as follows:

Confidentiality of records. All files, records, and proceedings under this chapter are confidential pursuant to section 14-15-16. This confidentiality requirement is retroactive pursuant to subsection 25 of section 14-15-16."

Renumber accordingly

Date: 3/14/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2082

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.8079.61001 02000

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

Motion Made By Rep. Klemin Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning			Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos					
Rep. Steiner	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Klemin

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

REPORT OF STANDING COMMITTEE

SB 2082: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2082 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 14-15.1 of the North Dakota Century Code, relating to the confidentiality of identified adoption proceedings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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Renumber accordingly

2011 TESTIMONY

SB 2082

**Testimony
SB 2082 – Department of Human Services
Senate Judiciary Committee
Senator Nething, Chairman
January 12, 2011**

Chairman Nething and members of the Senate Judiciary Committee, I am Julie Hoffman, Administrator of Adoption Services for Children and Family Services Division in the ND Department of Human Services. Thank you for the opportunity to provide testimony for SB 2082. The Department supports the passage of SB 2082.

SB 2082 would make the records related to an identified relinquishment of parental rights under North Dakota Century Code 14-15.1 confidential and therefore not available to the general public via the Supreme Court’s web site district court case search tool. Once published on this site, records, including identifying information, are available to the general public searching the web site. Additionally, as I understand it, these public records may also be purchased by entities doing district court records searches for the purposes of their investigation.

The Department and licensed child placing agencies have always operated under the practice that while the identities of the parties are disclosed to one another, the information is not available to the general public.

Last year, the Department was made aware of a situation where a religious entity completing a background check on a prospective employee was made aware of that individual’s having relinquished a child for adoption some years earlier. The individual’s name, the name of the adoptive parents and the name of the child were all published on the Supreme Court web site. Since the person completing the background

check also served on the board of the local child placing agency who was involved in this identified adoption, he brought this discovery to the agencies attention and in turn the Department was alerted. The Department learned that information in district court files filed under this statute are considered child custody proceedings and are therefore available to the public. In that particular case and after the department expressed our concern, the local district court clerk did remove that information from public scrutiny; however, the Department has no way of knowing how many other such cases exist. The Supreme Court advised that a statutory change would be necessary to make these records confidential and not available to the public. The Department therefore supports the passage of SB 2082.

Thank you for your time today. I would be happy to answer any questions the committee may have at this time, or to provide additional information as you may need.

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Testimony
SB 2082 – Department of Human Services
House Judiciary Committee
Representative DeKrey, Chairman
March 3, 2011

Chairman DeKrey and members of the House Judiciary Committee, I am Julie Hoffman, Administrator of Adoption Services for Children and Family Services Division with the ND Department of Human Services. Thank you for the opportunity to provide testimony for SB 2082. The Department supports the passage of SB 2082.

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