

**2013 SENATE GOVERNMENT AND VETERANS AFFAIRS**

**SB 2063**

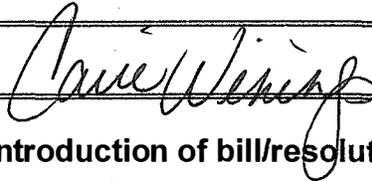
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

SB 2063  
01/11/2013  
Job Number 17111

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

A Bill for an Act to amend and reenact section 23-02.1-01, subsection 3 of section 23-02.1-13, sections 23-02.1-15, 23-02.1-19, and 23-02.1-20, subsections 3 of section 23-02.1-25, and subsection 5 of section 23-02.1-30 of the North Dakota Century Code, relating to definitions, birth registration, delayed registration of birth, death registration, fetal death registration, amending vital records, and persons required to keep records under the Health Statistics Act.

## Minutes:

**Chairman Dever:** Opened the hearing on SB 2063.

**Carmell Barth, Deputy State Registrar, Department of Health's Division of Vital Records:**

See Attached Testimony #1 in support of the bill.

**(13:43) Senator Cook:** You make numerous references to national model law; who writes that?

**Carmell Barth:** National model law is drafted by a standing group of people from the Centers from Disease Control and the National Association of Public Health systems; of which the division of vital records is a member.

**Senator Cook:** What effect does it have on North Dakota law? We don't have to follow it correct?

**Carmell Barth:** That is true.

**Senator Cook:** What are the challenges or consequences if we do not choose to follow it?

**Carmell Barth:** The main challenges are comparing North Dakota data to national data.

**Senator Cook:** Most of your changes here as you gave your testimony are justified to align ourselves with national model law. What if we do what a sovereign state was right? Would we be doing things differently?

**Carmell Barth:** We would not be doing them probably anything differently than we do now, but we would like the law to reflect our current processes. There are some things that we do right now that aren't included in model law, for example the change of not registering a birth for a person who has been deceased for more than one year. At present we do that, but national model law has encouraged us not to do that for several years.

**Senator Cook:** The fact, I would believe, would be as we deliberate on how we should address this issue that you bring before us, we can base our discussions on just what is right for North Dakota?

**Carmell Barth:** That is correct.

**Chairman Dever:** I think you made a reference regarding your attached administrative rules, are those in existence now or are they proposed?

**Carmell Barth:** There is a section in administrative code right now that deals with those rules. Subsection 2 "out of the institution birth" does exist in rule right now. Although these proposed rule changes expand on what is already in rule and gives a little more requirement to evidence. "Out of institution birth" in administrative rule right now requires just the hospital worksheets and parent worksheets that we require and an affidavit from a person attending the birth.

**Chairman Dever:** I see that it says amended July 1<sup>st</sup>, 2013?

**Carmell Barth:** If these rules are accepted in the rule process, that is when they would come effective.

**Chairman Dever:** Is every death after 20 weeks of gestation required to be filed?

**Carmell Barth:** Every fetal death if it occurs after 20 weeks is required by law to be filed right now. We do file records for less than 20 weeks if the parents want them.

**Chairman Dever:** On page 2, line 3, then an exception is made to fetal death, which says "and which is not an induced termination of pregnancy".

**Carmell Barth:** Exactly, induced termination of pregnancy registration is under a different section of the Century Code. We don't want to confuse a fetal death from an induced termination of pregnancy. Fetal death is a spontaneous event. The intention of induced termination of pregnancy is to terminate the pregnancy.

**Chairman Dever:** So an abortion is not now required to be reported.

**Carmell Barth:** The reporting, yes induced termination of pregnancy is required to be reported at all weeks of gestation but it is covered under another section of the Century Code in the abortion control act.

**Chairman Dever:** But not necessarily included in vital statistics individually?

**Carmell Barth:** Correct.

**Chairman Dever:** This bill was developed by the department?

**Carmell Barth:** Yes sir.

**Vice Chairman Berry:** On page 2 line 6, it mentions heart beats and respirations or gasps, is that defined anywhere?

**Carmell Barth:** This definition and description is taken directly from that national model law.

**Vice Chairman Berry:** Does that national model law have any definition in there as to what is considered as voluntary respirations as opposed to transient cardiac contractions? Are they looking for a sustained cardiac rhythm? Having attended many births, this is pretty ambiguous the way that this is written.

**Carmell Barth:** I do believe there is a definition within the model law that is more expanded. I can provide that to you later.

**Vice Chairman Berry:** that would be helpful.

**Chairman Dever:** Should we reference the model law in the bill?

**Carmell Barth:** That is a very valid point.

**Chairman Dever:** Any other testimony in support? Opposition?

**(22:45) Michelle Erdmann, North Dakota Natural Birth Network: See Attached Testimony #2 in opposition.**

**(25:25) Chairman Dever:** Do home birthers have a concern about getting a birth certificate?

**Michelle Erdmann:** Currently, we had our three children at home, and after the baby was born, our midwife came back and checked in on us all at one week and then we took the time to fill out the paperwork. I suppose with our last eight days after she was born, we filled out the paperwork and then my husband sent it in. So it probably made it to the Department of Health just less than two weeks after her birth. Not long after we received a birth certificate.

**Chairman Dever:** If 5 days was not reasonable, then what would you be consider to be reasonable?

**Michelle Erdmann:** It is helpful to be able to do it at the one week visit when we see our midwife. I would say within two weeks, certainly within 30 days. North Dakota is mainly served by one traveling midwife and so it is difficult for her to get to everyone. I imagine most can be seen within 14 days and certainly within 30.

**Chairman Dever:** Has there been any barriers to that?

**Michelle Erdmann:** I do not believe so in my experience.

**Chairman Dever:** I did notice that the 5 days in the bill says 5 calendar days, which would be different than 5 business days. We might need to take a look at that.

**Vice Chairman Berry:** Does the state have an interest in having those statistics on a birth within 5 days instead of 30 days?

**Michelle Erdmann:** I spoke to Carmell yesterday, and my understanding, based on our conversation, is that the hospitals are requiring turning in the paperwork within 5 days and so they just used the same number for home birth families. I spoke with our midwife, Paulette, and she said that right now ideally we would have it within 5 days but if it takes longer that you can get a stamp that marks delayed and that it is not a large issue. There are others who would understand better than me.

**Chairman Dever:** I think, based on Carmell's testimony, that sometime later it becomes more complicated. It seems to me that some reasonable time is a good thing so that you don't come back a year later and not be sure of dates.

**Michelle Erdmann:** I do understand having a time frame. It is just that 5 days is difficult. Right after the birth would be difficult and to have our midwife for questions would be helpful. She is very understanding of the process.

**(29:15) Donna Henderson, Founder of Home Birth Freedom North Dakota: See Attached Testimony #3 in opposition. (Handed in additional testimony packet #4 in opposition)**

**(36:15) Senator Poolman:** If the rules were placed into law, and we extended the amount of time, would that eliminate the concern? Or is there still concern over the changes in general?

**Donna Henderson:** As long as it is still stated that we could certify our births with our midwives with an affidavit. Our concern is that they are going to change the rules that we need to have doctor visits to provide the proof, and that they won't accept the evidence from a midwife. She used the term, qualified health professional; now that probably doesn't include traditional midwife. We would like to see it in law that midwives are acceptable as far as providing evidence for that.

**Chairman Dever:** Not to put you on the spot, and this is not a question, I don't want to leave the impression that the administrative rules process is a closed process. Administrative rules flow from legislation. As I understand it, there is an open comment period before the rule is then taken to the administrative rules committee which is made of legislators and they approve the rules. Anyone can go to legislative council to receive notice of meeting on changes that are being made and have the opportunity to have input. I want you to be aware of that.

**Donna Henderson:** We see the legislature as being a more open process that we can have more involvement in and we are more comfortable in that setting.

**Chairman Dever:** I don't disagree with that either. The administrative rule code is about 1 ½ times the Century Code and I would like to think that executive branch agencies in North Dakota don't conduct in the ways that federal agencies do but that could be a whole different conversation.

**(39:37) Bryan Stramer, Bismarck Resident:** See Attachment #5 in opposition.

**(41:30) Additional Testimony brought by Bryan Stramer Attachment #6 and #7**

**Vice Chairman Berry:** Just wondering, you recommended a do not pass, are there any amendments to this bill that you could see that would answer both concerns in terms of the timeframe for submission and the state's interest and not having fraudulent birth records submitted.

**Bryan Stramer:** If you were to amend it, I would say to put the rules to establish proof and location of birth and live birth, put the rules in the Century Code and also extend the time period to 30 days instead of 5 days.

**Chairman Dever:** So you see the current system as being ok?

**Bryan Stramer:** Yes.

**Chairman Dever:** And compliance happens?

**Bryan Stramer:** You would hope. The concern could be for legal immigration. I believe those concerns could be alleviated by putting it in the Century Code instead of as an administrative rule.

**(43:15) Paulette Efimenko, Traditional Midwives in North Dakota:** Testifying in opposition. I have been a traditional midwife in North Dakota for 30 years and I have filled out almost 600 birth certificates. They have not changed a lot through the years. They have worked very well for the parents and I do agree with everyone else, it could be a sneaky way of getting in the back door and saying that the new forms that need to be signed can only be signed by a licensed professional, I do not have a license number. Therefore, if parents are having babies at home, a birth certificate is required, all my parents are more than happy to fill out the birth certificates and we do that usually at the one week checkup. I would agree with changing it to probably 30 days after the birth would be a very appropriate time to get the birth certificate sent in. As far as the other forms, and filling out all these birth certificates, I guess I kind of feel those questions are answered on the birth certificate and are appropriately answered there. I know there are many people coming into the state and there are concerns with illegal birth certificates. I would suppose in the home birthing community that could be more of a problem. I guess in the thirty years that I have been sending in birth certificates, I would hope that they would understand and realize that I am an honest person and I would probably not send in a birth certificate if there was not a real baby. I realize that I am not the only one doing it in this state, so I understand the concern about that as well. I think the only thing I believe that should be amended is the extension of the time period. The birth certificate gives plenty of information already and pretty much covers what they are asking for at this point. I don't see the reasoning behind it. Also, making sure that information can be supplied by myself as a

traditional midwife, not a licensed professional that needs to sign those forms. I have not seen the new rules either; I don't think it could be considered at all until you know what the rules are.

**(47:55) Chairman Dever:** You fill out the birth certificates now and is that the requirement?

**Paulette Efimenko:** Yes I do and yes it is the requirement of the state that we follow. The parents have a form that they fill out and I have the certifier's worksheet.

**Senator Nelson:** 80 years ago my husband was born at home as are many from my generation born at home in small towns in North Dakota, they have birth certificates, they are legal, and I don't know who was there when the birth happened, but what is different now than then? We didn't seem to have any trouble then getting birth certificates then.

**Paulette Efimenko:** Nothing is different. The birthing process and the birth itself is exactly the same as it has been since the beginning of time, it is just the government that changes things all the time. Like I say, since I started filling out birth certificates, the forms have not changed very much. I know the immunizations have come in to play and that. The parents can still refuse that and things like that. They have plenty of information from the parents and me already. It puts an extra burden on all of us.

**(50:30) Steve Takacs, Resident and Home Birth Parent:** Testified in opposition. My wife and I had home birth recently with Paulette, a week ago. I have a good ten pages of paperwork that need to be submitted. My problem with the bill as it is written, is that established by the rules of state Department of Health, my personal opinion is that this should be codified in statutory law if there is going to be a change. It should not be arbitrarily left to part of the bureaucracy to suggest those changes and then have a limited number of legislators vote on those changes. If this is something that will affect the entire populous, then that should go before the entire legislative session. I am a Federal Agent for a law enforcement agency so I am very familiar with bureaucracy and any time you can limit it is a good thing. My wife holds

several degrees of higher education one including a Bachelor of Science in Nursing. She is a registered nurse. These are just examples of the people who are having and want to have home births. By adding further cumbersome, arbitrary requirements you are really putting a burden on people who want to do the right thing. I strongly oppose this bill as it is written.

**(53:07) Senator Cook:** I would argue that today there is an incentive to have a fake birth certificate. Eighty years ago there was no desire to have a fake birth certificate because there was no benefit in having one. There are benefits associated with having a birth certificate today. Things have changed and that does create a problem now that is at the table now that we need to find a solution to and I think you would agree.

**Steve Takacs:** I do. I actually am a border patrol agent and I teach fraudulent document certificates, so I am very well versed with fraudulent birth certificates. There are issues and concerns, but realistically with my personal experience in North Dakota, this is not a process that illegal immigrants are capitalizing on to further their stay inside the United States. This is a process that law abiding residents in North Dakota are utilizing to give birth the way they want to give birth.

**Robert Efimenko, Resident:** My daughter was home birthed. To go through all of this of having to find another person to be with you, whether it is a doctor or physician attending nurse, midwife, or whatever is contrary to any belief in the freedoms that this country is established on. Birth is inherent, apparently, rocks don't give birth. Every other living creature in the whole world does. We have to keep things simple. The rules that you ask to implement here, added on to whatever, there are already rules in other places in place. If I didn't have a birth certificate to prove who I was. WIC, school registration, social security, driver's license, and all require proof of birth certificate you run up against a wall. Why are we going to criminalize/penalize people who are trying to have a home birth; to abide by these rules

already the way that they are set up, when the other rules that get broken are the ones that should have a criminal intent. I don't know if I made that clear, what I am saying. I think there is too much bureaucracy in all this anyway. I hate to add more to it. I think the rule works real well the way it was. When we filled out the paperwork for my child being born at home, I had no problems with any of that. The other rules are already implanted.

**Chairman Dever:** Any others in opposition? neutral?

**Senator Poolman:** I have two questions of Carmell? How many fraudulent birth certificates are we starting to see in North Dakota? Are we looking for a solution to a problem that doesn't exist here?

**Carmell Barth:** We don't have an answer for that. We don't like that. Our concern is not the births are attended by birth attendants and midwives. It is the births that are attended by only the mother or mother and father; that there is not a third party validation.

**Senator Cook:** How many of those are there?

Carmell: In 2009 home births numbered about 40. As of yesterday, in 2012 we have 85. And more than half of those were not attended by a midwife or birth attendant.

**Senator Poolman:** As I look at the rules that are going to be established, or the evidence that needs to be established, is that in addition to the current forms or is that in replacement?

**Carmell Barth:** It is in addition. The statement about the mother being pregnant, really the mother takes care of that. The certifier signs that form saying that the mother was pregnant and that they had a live birth and the establishment of the place of birth is also on that.

**Senator Poolman:** In essence they are going to fill out the current forms and provide a driver's license and a rent receipt in addition to that to validate that they live there.

**Chairman Dever:** Closed hearing on SB 2063.

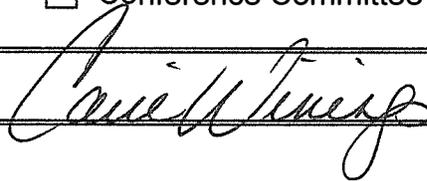
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

SB 2063  
01/17/2013  
Job Number 17322

Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Dever:** I have had some conversations with some people in regards to this bill. I understand and appreciate the concerns. Laws are not and should not be written for the law abiding but they should be written for that smaller population that does not abide by the law. As the people that testified here, they felt the bill targeted them. I think we need to ask ourselves the questions; why do we have birth certificates and why would this bill be necessary to protect the integrity of the birth certificates. I thought about under what circumstances might someone either not want a birth certificate or would want a fraudulent one. The only two circumstances that I thought about is maybe an incest situations, but another one would be the same reason that when I went to visit my new grandson on the maternity ward I had to pick up a telephone and tell them who I was there to see and what my relationship was with them. I am a law abiding citizen, why should I have to go through that except that there are people that kidnap other people's babies for their own. I think that is why it is important to have a birth certificate and why it is important to have proof that you had a baby but also that you were pregnant. I think that sheds a little different light than what we considered. As we look at this bill, my feeling is that we should make adjustments where necessary but we shouldn't just kill the bill because some people don't like it. Some people that had concerns, when I brought that point up, it kind of made more sense.

**Senator Nelson:** I had not thought about that particular thing. What I heard from birthing people that 5 days was just too short. That a month would work to get all of the paperwork done. There are a number of people that change the name of their child after they get home because they did not like the first name they chose.

**Chairman Dever:** Mrs. Barth said they picked 5 days because that is what hospitals do. Well hospitals are processing that information all of the time. I am not sure that 30 days is necessary. I can appreciate that the longer it goes that the less factual the information might be.

**Vice Chairman Berry:** I think they mentioned that they started to address that at the one week visit. That seems reasonable. A lot of times we will do things to coordinate it with a visit and it is reasonable and good practice. In this case, I agree that 30 days seems too long, I think two weeks seems very reasonable. I do agree with the fundamental purpose. The intent of the bill is to validate the three primary facts at birth. I do think that is important.

**Chairman Dever:** I am thinking 10 business days which would basically be two weeks.

**Vice Chairman Berry:** That is reasonable.

**Senator Nelson:** It could be 13 to 16 days by that. Holidays play into that.

**Vice Chairman Berry:** It does not change the intent. The importance of the birth certificate is obviously great. I delivered many babies in Houston, Texas that the mothers that came across the border the day before and would present to our hospital in labor with no pre-natal records. You could not turn them away, that child was a US citizen and that was the purpose of them coming. Sometimes it would be a week or two in advance to stay with family and then when they went into labor and then they have the birth certificate. For the people that are law abiding that is fine, but trying to put some mechanisms in place to make

sure that the information is accurate and that it did occur; That there was in fact a pregnancy, live birth, and in the state.

**Senator Nelson:** We are talking about changing 5 to ten. What about page 5 when we are talking about the death registrations? It says that the medical certification must be completed within 15 days previously and they want to reduce it to 10. Does that need to be changed? Is it calendar or business days?

**Chairman Dever:** I would imagine it would be calendar days.

**Senator Nelson:** Why can't we make sure on page 5 that is 10 business days too?

**Vice Chairman Berry:** Did we hear any testimony as to why they wanted that 5 day change? I am trying to determine why the need? If there is a compelling reason I am for that but if we are changing it for change sake. Out of hospital deaths do require an investigation, and as they should. That needs to be looked at to find out what the cause and manor of death. Maybe 15 days is necessary to do that. I don't remember hearing testimony as to why that was necessary?

**Senator Nelson:** I have noticed that for sections 3 and 5 on page 5 is lousy sentence structure. It says death by the physician. There is not a comma there, nothing. The way it reads now it says 15 days after death by the physician.

**Chairman Dever:** I think the answer on the 15 to 10 is to follow model law. I don't feel committed to having to do that. I am not sure how we interact with other states in a way that that needs to be universal.

**Vice Chairman Berry:** Again, is there a compelling reason for change? There are a lot of laws in the books. Sometimes we need to change the current ones or provide new one, however, I am not a change for change sake. If it is a change for a benefit and it is going to

make a difference and help. In this case, I cannot think where 5 days where that is going to change anything as it relates to the purpose.

**Chairman Dever:** Reads from testimony regarding model law and North Dakota maintain proper vital event registration method and fine tuning current processes.

**Senator Nelson:** Do we know if they have to file national reports that everyone has to be on the same system?

**Chairman Dever:** I am sure they file statistics on everything, but I am not sure that 5 days is going to make a difference.

**Senator Poolman:** I would agree with Vice Chairman Berry. The bill in general, I did not feel like there was compelling need to make any of the changes. I felt that it was a lot of technicalities and you are upsetting people and they did not have any proof that this was really a problem. So, I just have a tough time understanding the compelling need for this bill.

**Chairman Dever:** That particular amendment takes up a page and a half in our bill; we could take the whole thing out.

**Senator Nelson:** Talking about section 4?

**Chairman Dever:** I don't see anything else in there.

**Vice Chairman Berry:** If you say take it out, it is already in law. Can we just let it stay at what it is? It is there and if it serves a purpose than that is fine. It is nice to have something as it relates to death registration in the statute. If there is a problem with it, maybe we need to hear from the witness again. Maybe 10 days has to do with electronic instead of paper. In absence of that, I would not mind leaving it there and it seems to be working well. I don't have a problem with the changes early on as it relates to section 2 of the bill where it talks about preparing the form. I don't mind tightening up the regulations to

make sure that now or in the future that there are not issues with the verification I would loosen the time frame.

**Chairman Dever:** How do you feel about the language on page 2, line 6-8?

**Vice Chairman Berry:** What they are trying to distinguish is between an actual rhythm as opposed to in situations in the dying process we often see where the heart rate will become agonal. It will be very sporadic and not in a regular life sustaining fashion. It is not a rhythm that is compatible with life. Then it talks about fleeting respiratory gasps, again it is the same thing, the difference between someone breathing, someone taking voluntary respiratory motions as opposed to an occasional gasp. Gasps are a reflex. They are changes in the metabolic state. I think that federal law was kind of the genesis of that. I don't have problem with it because there certainly is a difference between an agonal gasp and an agonal beat of the heart as opposed to one that are consistent with sustaining of life.

**Chairman Dever:** Is it necessary to have greater clarification?

**Senator Nelson:** Because of what is in line 5, they probably need to put a definition in there. A doctor would know whether that is showing any evidence of life. They say previous to that it is not induced termination of pregnancy.

**Vice Chairman Berry:** They are trying to distinguish that from a still born. The tone of a child is very important. It also would not bother me leaving it in. It is added here for model law and to be consistent. I don't think you have to put it in there. I have it written in here that they need a definition from model law as to what this means.

**Chairman Dever:** I don't know that we are ready to move ahead with drafting amendments. Maybe we need to do a little more study and then bring it up for discussion again. One question, on page 7, we are changing or amending a fetal death record by court order, I

always that the purpose of the court was to determine what the facts are. That might be something we want to ask for clarification.

**Closed discussion.**

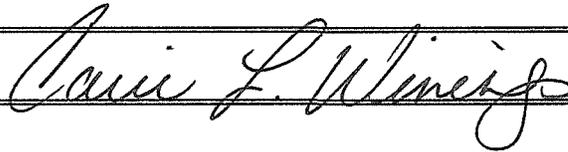
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

SB 2063  
02/21/2013  
Job Number 19352

Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Dever:** Opened SB 2063 for committee discussion.

**Carmell Barth, Deputy State Registrar, Department of Health's Division of Vital**

**Records:** Here to answer any questions the committee has.

**Chairman Dever:** We have received a lot of e-mails on this bill and I think some of the concerns and conversations that I have had with people are that they are ok with the bill and they are ok with the proposed administrative rules, but they have a problem with the fact that the department can promulgate rules and I don't think that we are going to be able to address that in this bill and this committee. This bill does not grant that authority it just exists. Carmell, could you share with the committee what parts of the bill you feel are important which ones are not.

**(2:20) Carmell Barth:** (Walks through the bill and what is necessary and gives a current example of a mother that has left the state with a baby born in North Dakota that till now has no birth certificate due to the fact that the proper paperwork has not been filed.)

**(5:54) Carmell Barth:** What we want to do with this bill is to add that validity to those out of institution births that are filed in North Dakota.

**Senator Cook:** How would these proposed amendments help solve that situation?

**Carmell Barth:** Currently the documentation required to file home birth is simply filling out the required forms and the parents signing an affidavit saying that the child was born in North Dakota on a specific day and location.

**Senator Cook:** So presently that is all she would do and you would give a birth certificate?

**Carmell Barth:** We ask for more documentation, however, we receive a lot of pushback from people asking if they really need to provide that.

**Senator Cook:** If we change the law as you propose we change, is it not going to solve the problem. What are you going to do? Are you going to refuse to give a birth certificate?

**Carmell Barth:** No. However, this adds to the validity of the certificate. If you have a certificate that you don't have any documentation to prove it, then we just feel that that birth certificate probably isn't worth that, being that birth certificate is a primary identity document.

**Senator Cook:** So, if we require 5 calendar days, we require that they have a third party verify that it was born in North Dakota, but they don't do any of that and they still don't follow the law, what are you going to do? Are you going to deny the birth certificate? I don't see how passing this is going to make the problem go away. There is a baby out there and we need to get a birth certificate to the baby, is it that important that we know that the baby was born in North Dakota?

**Carmell Barth:** We do not want to file fraudulent birth certificates.

**Senator Cook:** I know you don't.

**Senator Nelson:** How is this kid going to start school without a birth certificate?

**Carmell Barth:** That is the first place that it will be a problem, if you don't end up needing it before then. A lot of insurance companies require that birth certificate before you can add

them to your health insurance claim. You need it for income taxes and to get a Social Security Number.

**Vice Chairman Berry:** I agree with Senator Cook's question. So this is to put the requirements in and if they are not met then no birth certificate shall be awarded. We all know that it is important for a variety of reasons and I think we all want it to be valid and true. What I am hearing you say that if this in law and if that information is not provided, then no birth certificate gets awarded, is that correct?

**Carmell Barth:** What we will do on those home birth situations is that we will work with the parents until they are able to collect that information to get that birth certificate filed.

**Vice Chairman Berry:** But, ultimately they will have to supply the information you asking for before they can have it, isn't that right?

**Carmell Barth:** That is correct.

**Vice Chairman Berry:** That seems reasonable with me.

**Chairman Dever:** Regarding the length of time, the 5 days, we talked about a little longer period of time and I understand you are ok with that?

**Carmell Barth:** We could live with being a longer period of time. The reason why we chose 5 was because that is the amount of time that it is in that same section of code that deals with institutions filling birth certificates.

**Vice Chairman Berry:** It seemed that was one of the biggest issues of those testifying. I don't see a problem with extending the time period to make it fit with what is customary; however, I do want to make sure valid birth in North Dakota.

**Chairman Dever:** Are there penalties for not reporting a death or birth?

**Carmell Barth:** In Health Statistics Act section of the Century Code, it states that if a birth or death certificate is not filed, the party is guilty of an infraction and that is a \$500 fine.

**Senator Cook:** Then they get one.

**Carmell Barth:** As long as they file the certificate they get one.

**Chairman Dever:** In the case of that child that does not have a birth certificate, they wouldn't likely report a death either then. In our conversation the other day you also indicated that Section 6 was important?

**(14:32) Carmell Barth:** (Reviews Section 6) The way it is currently worded in the Century Code it is used only to amend the person's name and our proposed changes would allow the changing of any of the information of that certificate based on the court order, for example, changing one of the parent's names. This is different than an adoption order; this is a court action outside of that adoption procedure.

**Chairman Dever:** Asked about a subsequent court order.

**Carmell Barth:** Quite often there is a second court order that asks us to change the information on that first court order based on inaccuracy of information.

**Chairman Dever:** Are there any other areas of the bill you feel are important?

**Carmell Barth:** The other sections of the bill that are addressed in relation to the Health Statistics Acts are definitions of what a fetal death is and the definition beginning on Page 7, does take the definition out of federal model law that helps standardize birth and death statistics. In addition on page 4, line 20 there is an addition to add the restriction of filing a report of live birth after a person has been deceased for more than one year after the date of birth.

**(18:45) Senator Nelson:** I am concerned about line 23 of page 7 that talks about fetal death after we passed the bills we did last week defining fetal deaths.

**Carmell Barth:** A fetal death that is required to be reported is 20 weeks and over gestation.

**Senator Nelson:** Would that definition have to be changed with the bills that we passed last week?

**Chairman Dever:** Is that a discussion you don't want to get into?

**Carmell Barth:** Yes sir.

**Chairman Dever:** Closed committee discussion on SB 2063.

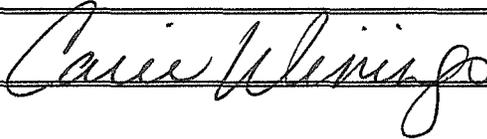
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Government and Veterans Affairs Committee  
Missouri River Room, State Capitol

SB 2063  
02/21/2013  
Job Number 19360

Conference Committee

Committee Clerk Signature



## Minutes:

**Chairman Dever:** Opened SB 2063 for committee discussion.

**Vice Chairman Berry:** See Attachment #1 for proposed amendment.

(The intern updates the committee on what other amendments were discussed by the committee. See Attachment #2 for revised amendment.)

**(6:55) Vice Chairman Berry:** Moved proposed amendments.

**Senator Cook:** Seconded.

**A Roll Call Vote Was Taken:** 7 yeas, 0 nays, 0 absent.

**Vice Chairman Berry:** Moved a Do Pass As Amended.

**Motion fails for lack of a second.**

**Senator Schaible:** Moved a Do Not Pass As Amended.

**Senator Poolman:** Seconded.

**A Roll Call Vote Was Taken:** 6 yeas, 1 nays, 0 absent.

**Senator Poolman:** Carrier.

February 21, 2013

2/21/13  
RD

PROPOSED AMENDMENTS TO SENATE BILL NO. 2063

Page 3, line 19, replace "five" with "fourteen"

Page 5, line 4, after "ten" insert "calendar"

Page 5, line 12, after "ten" insert "calendar"

Page 5, line 14, after "ten" insert "calendar"

Renumber accordingly

Date: 2/21

Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 2023

Senate Government and Veterans Affairs Committee

Check here for Conference Committee *Amendment #2* } *Sen. Berry Amendment + Add Calendar behind 10 on three places pg. 5*

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

Motion Made By Senator Berry Seconded By Senator Cook

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry	✓		Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 2/21  
 Roll Call Vote #: 2

2013 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES

BILL/RESOLUTION NO. 2063

Senate Government and Veterans Affairs 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 Senator Berry Seconded By \_\_\_\_\_

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever			Senator Carolyn Nelson		
Vice Chairman Spencer Berry			Senator Richard Marcellais		
Senator Dwight Cook					
Senator Donald Schaible					
Senator Nicole Poolman					

*fails* *NO* *Second*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Date: 2/21

Roll Call Vote #: 3

2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES

BILL/RESOLUTION NO. 2063

Senate Government and Veterans Affairs Committee

Check here for Conference Committee

Legislative Council Amendment Number: 13.8043.01001

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

Motion Made By Senator Schaible Seconded By Senator Poolman

Senators	Yes	No	Senator	Yes	No
Chairman Dick Dever	✓		Senator Carolyn Nelson	✓	
Vice Chairman Spencer Berry		✓	Senator Richard Marcellais	✓	
Senator Dwight Cook	✓				
Senator Donald Schaible	✓				
Senator Nicole Poolman	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Senator Poolman

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

**REPORT OF STANDING COMMITTEE**

**SB 2063: Government and Veterans Affairs Committee (Sen. Dever, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2063 was placed on the Sixth order on the calendar.

Page 3, line 19, replace "five" with "fourteen"

Page 5, line 4, after "ten" insert "calendar"

Page 5, line 12, after "ten" insert "calendar"

Page 5, line 14, after "ten" insert "calendar"

Renumber accordingly

**2013 TESTIMONY**

**SB 2063**

**Testimony  
Senate Bill 2063  
Government and Veterans Affairs Committee  
January 11, 2013; 10 a.m.  
North Dakota Department of Health**

Good morning, Chairman Dever and members of the Government and Veterans Affairs committee. My name is Carmell Barth and I am the Deputy State Registrar for the Department of Health's Division of Vital Records. I am here today to provide testimony in support of Senate Bill 2063.

The Division of Vital Records is required by state law to register and certify all vital events that occur in the state. These include births, deaths, fetal deaths, marriages, divorces and abortions. The primary purpose of this bill is to solidify the requirements for registering a birth that occurs outside of a hospital setting and to make a few other minor changes to the Health Statistics Act based on a recent update to the national model law governing vital records.

I will cover all the changes requested in Senate Bill 2063, but I would like to start with the primary one that strengthens the requirements for births that occur outside of a hospital. Births of a child in a hospital setting are registered by the hospital using an electronic process. Currently, a parent of a child born outside of a hospital is only required to fill out the parent and hospital worksheets and submit those with an affidavit to the Division of Vital Records in order for us to register the birth. The information on these worksheets is necessary to accurately document the facts regarding the birth. Our issue is not with the documentation, but with validation. The paper process can make it very easy to fraudulently submit these documents and register a birth with or without a baby ever being born, and no proof of which state the baby was born in. Under our current process, we request additional documentation from parents to validate the facts of birth. Some families have questioned our requirements and the current law does not support our validation process.

The changes we would like to make start on page 3, in line 17. The amendment provides that the required worksheets be submitted by one of the parents to our office within five days of the birth. Starting on line 20, we want to validate the three primary facts of birth by requiring acceptable evidence that will be established by the rule making process, to document that: a) the mother was pregnant, b) the child was born alive, and c) the baby was born in North Dakota. The rules proposed to accomplish this are outlined in the attached draft

version of changes to ND Administrative Code, Chapter 33-04-04, subsection 2, regarding Out-of-Institution Births that I will go through now. (See attachment 1, section 33-04-04-02 changes)

The proposed rules allow different options to prove the three basic facts of birth. These proposed rules will provide the Division of Vital Records the necessary information to validate every birth that occurs in our state. We need to make every effort to ensure the births we are registering actually happened and that the information presented is accurate and authentic. We believe that the evidence requirements should be authorized through administrative rule because if other acceptable forms of evidence become available, we can simply edit the rules, rather than changing the law. However, the intent of the law is clear, which is to validate the three primary facts of birth.

The remaining changes required by Senate Bill 2063 relate to revisions in national model law and are necessary for North Dakota to maintain proper vital event registration methods and fine tune some of our current processes. The first is at the top of page 2, line 1, where the definition of a Fetal Death needs to be modified to match the national definition. The reason for the change is to add language to the definition so that it clearly differentiates a fetal death from an induced termination of pregnancy. Fetal deaths are spontaneous events that cause a pregnancy to end and a fetus to die. We do not want there to be any confusion between this event and an induced termination of a pregnancy. The additional language starting on line 6 comes directly from the national model law and is being added to distinguish heartbeats from transient cardiac contractions and respiration from fleeting respiratory efforts or gasps. These are important because it helps medical personnel to determine if the fetus showed any signs of life, which in that case the event would be determined to be a birth and not a fetal death. This determination is left solely to the doctor or other medical personnel at the time of the birth.

The next change is on page 4, starting in line 18, under the delayed registration of birth section. This minor change reduces the time the Division of Vital Records is required to keep an application open for a delayed registration of birth. Currently, the law requires us to keep the file open for two years. The process to document a birth that was never originally registered takes some effort on the part of the person trying to register a birth, but we have found that this usually takes about 2 to 3 months at the most. Requests that are more than one year old are generally never completed. Also, in this same section of law, subsection 5 on line 20 is a new change that would prohibit the Division of Vital Records from registering a birth record for someone that has been deceased for more than one year. This reduces the risk of registering a birth for

fraudulent reasons. Birth certificate fraud is much more prevalent than it has been in the past, and this is another change that is in the newest revision of the national model law.

The next set of changes starts on page 5, under the death registration section, starting on line 4. This change reduces the maximum number of days required to file the medical certification of death from 15, down to 10. Since we have implemented our electronic death registration system back in 2008, we have found that 75 percent of our deaths are now reported in 10 days or less. This change is again reflected on line 12 and again on line 14 for consistency. The minor change in subsection 7, on line 27, clarifies that the intent of this subsection is to mandate that the social security number for each death registration is required when available and not that the social security number must be printed on each death record issued. We issue three types of death records, one of which does not include a person's social security number. This minor change addresses any misunderstanding about the mandate regarding a person's social security number.

The next change is on page 6 and deals with fetal death registration, starting on line 5. The language in the subsection refers to the required number of weeks of gestation before a fetus can be called a fetal death. The model law requirement is twenty (20) completed weeks or more, but our law allows for less than that when provided by rules of the state department of health. The fact is there are no rules for less than twenty (20) weeks. There never have been to my knowledge. So we are asking for that part of subsection 1 to be removed to reflect the current model law requirement.

Subsections 2 and 3 are being amended to reflect the current electronic process for fetal death registration that has been in place since January 1, 2008. Although the term "death" may imply a funeral home, fetal deaths are typically completed and registered by hospital staff and may or may not involve a funeral home. The new language in subsection 2 and the removal of subsection 3 more accurately reflect the current registration process. Subsections 4, 5 and 6 are renumbered 3, 4 and 5, respectively.

The next change is in subsection 23-02.1-25, starting with line 13 on page 7, regarding correcting and amending vital records. The language in the current version of the law is too restrictive regarding what the Division of Vital Records can amend with a court order. Court orders are usually a last resort when amending vital records; however, we want the law to reflect that we will accept a court order to amend any field on a record and not just a person's

name. The changes we have made also more accurately reflect the current processes governing the court order requirements.

The final change is a minor correction to subsection 5 of section 23-02.1-30, regarding persons required to keep records. This minor change, starting on page 7 in line 20, reflects the omission of hospitals and other institutions to file monthly event reports with the Division of Vital Records. This requirement has always been in place as a check and balance to ensure that we have every birth, death and fetal death filed each month. We still need this manual process in place even with our new electronic systems and this correction more accurately describes the current process.

This concludes my testimony and I'd be happy to answer any questions you may have.

**CHAPTER 33-04-04  
BIRTH REGISTRATION**

Section

33-04-04-01	General Provisions
<u>33-04-04-02</u>	<u>Out-of-Institution Births</u>

**33-04-04-01. General provisions.** If the mother of the child was not married at the time of conception or birth, the child's surname shall be shown on the record as the legal surname of the mother at the time of the birth unless otherwise determined in a court paternity action, or unless an acknowledgment of paternity signed by both parents is received stating the surname of the child to be the legal surname of the mother or father.

If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate.

**33-04-04-02. Out-of-Institution Births.** When a live birth occurs in this state outside of a hospital or institution, and there is found to be no live birth registration and the report of live birth is registered before the first birthday, additional evidence in support of the facts of live birth will be required.

A report for the live birth shall be completed and registered upon acceptance by the State Registrar of the following evidence by the individual responsible for submitting the report:

1. Evidence of pregnancy, such as but not limited to:
  - a. Prenatal record from a hospital or clinic; or
  - b. A statement from a physician or other health care provider qualified to determine pregnancy; or
  - c. A statement from a local public health nurse or other health care provider who has seen mother prior to delivery; or
  - d. A statement from any other person in attendance at or immediately after the birth who is not related to the mother or father.
2. Evidence that the infant was born alive, such as but not limited to:
  - a. A statement from the physician or other health care provider who saw or examined the infant; or
  - b. A statement from a local public health nurse who has seen the mother and baby after delivery; or
  - c. A statement from any other person in attendance at or immediately after the birth who is not related to the mother or father.
3. Evidence of the mother's presence in this State on the date of the live birth, such as but not limited to:

- a. If the live birth occurred in the mother's residence,
    - i. A rent receipt that includes the mother's name and address, or
    - ii. Any type of utility, telephone, or other bill that includes the mother's name and address, or
    - iii. A driver's license, or a State-issued identification card, which includes the mother's current residence on the face of the license/card.
  - b. If the live birth occurred outside of the mother's place of residence, and the mother is a resident of this State, such evidence shall consist of:
    - i. An affidavit from the tenant of the premises where the live birth occurred, that the mother was present on those premises at the time of the live birth; and
    - ii. Evidence of the affiant's residence similar to that required in paragraph (3)(a)(i) of this regulation; and
    - iii. Evidence of the mother's residence in the State similar to that required in paragraph (3)(a)(i) of this regulation.
4. If any of the evidence in subsections 1, 2 or 3 does not meet the requirements of the State Registrar, only a certified copy of an order from a court of competent jurisdiction establishing the facts outlined in paragraphs 1, 2 and 3 will be accepted to register the live birth.

**History:** Amended effective January 1, 2008 July 1, 2013.

**General Authority:** NDCC 23-02.1-04, 28-32-02

**Law Implemented:** NDCC 23-02.1-13

Michelle Erdmann, representing  
North Dakota Natural Birth Network  
722 N 20th St  
Bismarck, ND 58501

1/11/2013

**Testimony in opposition to SB 2063**

Mr. Chairman and members of the Government and Veterans Affairs Committee: my name is Michelle Erdmann and I am here representing the North Dakota Natural Birth Network, a grassroots advocacy organization serving North Dakota home-birth families desiring to promote natural childbirth, and to preserve all families' right to birth as they choose.

We oppose SB 2063 for the following reasons.

- Five days is not adequate time for filling out necessary forms. It makes it very difficult for home birth families to comply with the law.
- What is written in the proposed bill is too vague and too easily changed.
  - How does one “prove” that a mother was in North Dakota at the time she gave birth?
  - What constitutes acceptable proof that the mother was pregnant?

Under Section 2, the bill requires that when a birth occurs outside an institution, forms must be filled out and “accompanied by acceptable evidence established by the rules of the state department of health to establish” that the mother was pregnant, that the child was born alive, and that the mother was present in North Dakota at the time of the birth.

Allowing the State Department of Health to establish these rules instead of writing the rules into law is problematic in many regards. Some of the issues we take with this are as follows:

- Effectively allows a state agency to administratively write laws taking power away from the legislature
- Does not allow for adequate public input
- Should the law change (administratively) many people desiring to follow the law would inadvertently and without notice become lawbreakers
- Gives a state agency the power to create great difficulty in obtaining a very necessary document – a birth certificate

Birth is a natural part of life. Ordinary, everyday people are having home births and are not trying to subvert the law. Putting these requirements governing birth certificates into administrative rules takes things too far away from public review and scrutiny. We would feel more comfortable having these details required for a birth certificate in statute. We would ask the committee to vote “Do Not Pass” on Senate Bill 2063.

GVA

Attachment #3

1.11.2013

Good Morning Mr Chairman and Committee Members. My name is Donna Henderson. I live in Calvin, ND. I am the founder of Home Birth Freedom North Dakota. It is an Association Dedicated to Preserving Traditional Midwifery in ND. Just to be clear, traditional midwives are also called lay midwives or direct-entry midwives.

Our Association strongly opposes ~~SB2063~~ and we ask for a Do Not Pass Recommendation out of this committee. Our main concerns are the changes in Section 2-- lines 17 thru 29 relating to required forms for birth certificates for babies born outside an institution and giving the ND Dept of Health the power to establish undisclosed rules of acceptable evidence that the mother was pregnant and that the child was born alive.

While we realize this does not prohibit us from having our babies at home, we believe this opens the door for the Dept of Health to put unwarranted and burdensome restrictions on the homebirth community and it could be destructive to lay midwives in North Dakota.

There would be no public hearing or votes representing the people of ND, it would just be the board of the Dept of Health establishing the rules and changing them as they choose. We do not have great confidence that the Dept of Health will continue to accept lay midwives certifying births. We home birth to stay at home, not be forced into medical visits to certify evidence of pregnancy and birth in an unreasonable time frame.

If one looks back to the last legislative session (62nd assembly in 2011) to SB2315, and study the committee reports we can clearly see a bias by the Dept of Health and others with an agenda to eliminate traditional midwives thru licensing and regulations.

It opens on page 1 of the SB2315 committee work with the bill being introduced in the Senate Human Service Committee by a representative of the Dept of Health. She gives a 6 page overview of the bill which would require licensing and regulating of lay midwives, and provides penalties. ( page 1 and attachment #1)

The Dept of Health is represented and participates in the discussion at all but one of the closed committee meetings. The minutes show discussions on such topics as:

---whether requiring an ultrasound would be necessary to determine if there are any problems ( page 5)

---filing birth certificates was talked about ( page 5) –Now that’s interesting --It doesn’t go into specifics, but makes you wonder if they were talking about the idea for the bill up for discussion today?

---registration would be voluntary for 2 years then required ( page 9)

---talk that voluntary registration is not going to do a great deal, with the Chairman answering that “voluntary registration is just a small first step” ( page 9)

---The Dept of Health says that they have studied this issue for 6 months about how and with which organization set up a regulatory board for midwives ( page 10)

---The Dept of Health also has concerns with voluntary vs mandatory (page 10)

---discussion and consensus that the Dept of Health was the best choice for being the convener for a task force study and the one to report to the interim committee (page 11)

You can clearly see the bias and determination of the Dept of Health and Senate Human Service Committee to move the status of traditional midwives in ND from free to practice as they are today, to licensing with regulations. Regulations that will limit traditional midwifery care to women in ND. I have studied the restrictions put in place in other states by this same process and I can tell you I would not have been allowed to use a midwife under those conditions. Some examples of the restrictions are the mother's age, her weight, where she lives, if she ever had previous complications with childbirth, believe it or not, sleep apnea or gastrointestinal disease are listed as reasons to deny someone a homebirth.

The people who choose lay midwives are very satisfied with their services. The idea to regulate seems to come from the different medical fields and the Dept of Health and the Senate Human Service Committee. These attempts are unwarranted and unwanted by the consumers of midwifery.

The first attempt to regulate came in 2007 with SB2377. It started out as a bill to outlaw midwives, then it was amended to be a legislative study. In the House of Representatives we had great support in the Human Service Committee who voted it down unanimously 9-0. We had many positive comments of support by legislators and here are some of their quotes—these are legislators talking:

---“women should have an option”

---“they seem to be pretty happy with things the way they are now”

---“to study it will only get further regulations”

---“childbirth has been around as long or longer than medicine”

---“in 2005, we had 44 home births. That is a small number for us to get our nose in there and start regulating”

--- “I get the feeling everything is going alright for those that are doing it”

(found on pages 36 -- 38 of SB2377 Committee Work.)

In summary, proposed laws to study, license or regulate midwives were defeated in the House in 2007, and defeated in the Senate in 2011.

Proposed SB2063 appears to be just a sneaky, back-door approach to regulating midwives DESPITE the known wishes of the people of North Dakota, and the majority of legislators in both the House and Senate.

I would ask all of you on the committee, on behalf of Home Birth Freedom ND, to help us preserve our freedom to choose traditional midwives in North Dakota. Keep the power to make these decisions in the legislature so we can continue to have a fair and open process. Please do not turn it over to a Gov. Agency with an agenda to regulate midwives. Please give SB2063 a Do Not Pass.

Thank you,

Donna Henderson

Calvin ND

701-697-5104

**2011 SENATE HUMAN SERVICES**

**SB 2315**

## 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2315  
2-1-2011  
Job Number 13827

Conference Committee

Committee Clerk Signature *RAMONA*

### Explanation or reason for introduction of bill/resolution:

Relating to licensing and regulating direct entry or lay midwifery services and to preserve the right of women and families to home delivery of infants.

### Minutes:

Attached testimony.

**Senator Judy Lee** opened the hearing on SB 2315. There is a fiscal note.

**Sen. J. Lee** (District 13) introduced SB 2315 and said it came about because of past concerns of less than adequate care given to mothers and babies at the time of delivery. A lot of medical professionals have concerns about that.

**Darlene Bartz**, ND Department of Health, provided an overview of the bill. Attachment #1 She explained that a certified nurse midwife is a registered nurse who has gone through advanced training, has taken a certification exam and is licensed by the board of nursing.

**Senator Dick Dever** asked if a nurse could act as a midwife without being subject to provisions of this bill.

**Ms. Bartz** deferred that to the Board of Nursing. A registered nurse without advance practice could not be performing as a lay midwife.

**Nelson (Buzz) Benson**, ND Board of Nursing, provided neutral testimony. Attachment #2 This included an e-mail to Constance Kalanek from the Director of the American College of Nurse Midwives.

In response to a previous question about limiting the certified nurse midwife's participation in the board he said he didn't think the intent would be to limit anybody's participation.

Discussion followed on representation on the board.  
The ND Nurse Leadership Council was explained.

Certified nurse midwives don't routinely perform home deliveries mainly because of safety reasons. They typically work within hospital or clinic settings.

**Bruce Levi**, NDMA, provided neutral testimony. Attachment #3 includes physician statements.

**Karen Macdonald**, NDNA, provided opposing testimony but agreed with the need to regulate based upon the need for public safety. Attachment #4 included proposed amendments.

**Levi Erdmann**, Bismarck, testified in opposition. Attachment #5 includes a chart.

**Sara Karges**, Hazen, testified in opposition. She believes she has the right as a woman to choose the caregiver she wants to preside over her when she is giving birth and the place she does it. She didn't feel it is the states opinion to determine who the caregiver is over her pregnancy and birth. She is familiar with both the risks at home and in the hospital.

**Senator Spencer Berry** asked if, in the event of difficulties or problems incurred during childbirth, she would want the state to be involved in financing the care that the child may need in the long term.

**Ms. Karges** replied not unless she came willingly and asked for it. If she doesn't, then she is taking full responsibility for the rest of that child's life. She said she wants to be fully financially responsible in that matter, too. She said she isn't expecting anybody to fix any problems that might occur.

**Senator Judy Lee** talked about situations that no parent can anticipate that may result in long term services being needed and provided by the state, county, and private providers.

**Darrin Karges** spoke about the insurance issues. He reported that their doctor said he couldn't do a home birth. There is no guarantee, wherever the birth, that the child will be physically fit to live on his own for the rest of his life.

**Marilyn Moen**, Upham, spoke in opposition. This bill is supposed to be for the safety of mothers and children. She said the safest place for a baby to be born is at home.

**Donna Henderson** spoke in opposition. She reported that she had safer home births than hospital births. She talked about the repeal of Obamacare and to her this sounds like typical Obamacare. According to her there is more protection for mothers who want to abort their children.

The hearing was recessed until after the floor session.

Additional testimony submitted – Attachment #6

The hearing on SB 2315 continued.

**Andrea Toman**, ND Birth Action, testified that while having a bill legalizing and regulating midwifery is acceptable, there were some changes they would like to see. Attachment #7

**Senator Dick Dever** asked who the ND Birth Action is and what connection their involvement is with the midwifery profession.

**Ms. Toman** explained the ND Birth Action is an on-line group formed of both certified professional midwives that operate in the state of ND and consumers with an interest in midwifery within the state.

**Becky Olson** testified against SB 2315. It would eliminate at least one midwife in the western part of the state. Home birth is safe and a hospital birth does not guarantee a healthy baby.

**Loyal Karges** didn't see a need to certify a midwife. He talked about the freedom to make the decision to have whom they deem to be qualified and suits their needs in a birth. He speculated as to the motivation for the regulation.

**Dr. Ben Stegman**, Cavalier ND, testified that all of their children were born under midwifery care. He started off opposed to home births but his wife would have been unassisted if they couldn't have midwife services. She couldn't handle a hospital situation due to bad hospital experiences. He cautioned introducing any type of legislation that could limit the services, particularly in rural areas.

The hearing on SB 2315 was closed.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2315  
2-2-2011  
Job Number 13905

Conference Committee

Committee Clerk Signature *[Handwritten Signature]*

## Explanation or reason for introduction of bill/resolution:

## Minutes:

Attachments

**Senator Judy Lee** re-opened the hearing on SB 2315.

**Rafael Ocejo, MD**, (Pediatrician) spoke to the committee in support of SB 2315. There is a need to recognize that there are many women who want to have the freedom to have their babies at home. That is a valid point. Delivering at home is a natural process that should be allowed. He believes the bill would be providing a safer environment for those mothers and the children born at home.

The technology in medicine is constantly changing. He believes the mothers wanting to deliver at home want to do so because they don't want a lot of intervention. They want the natural process to be natural. There is plenty of technology now that is not invasive that allows them to do this in a much better way. Problems in babies can be diagnosed ahead of time with the use of ultrasound.

The bill has built in its process the concept of allowing the lay midwives, currently providing services, to enhance their education so they can actually provide better care for these mothers and their babies.

There is no willingness on his part to stop the practice. What he wants is to enhance the education.

He had concerns of talking about how many healthy babies these mothers may have without taking into account those crises when the mother would need to be moved to a hospital to deliver after a very prolonged labor. These would not represent the statistics of a birth at home because they get moved ahead of time.

This bill has a lot of validity because it gives those midwives, currently in practice, the opportunity to become better within two years and then to continue their education so they can provide better care for these mothers and babies.

**Senator Judy Lee** was concerned that those who should be improving their skills would just go underground and there won't be any regulation or control at all. Those who are directly affected by this don't want it.

**Dr. Ocejo** replied that the concept in medicine is to advance and move a little bit at a time to gradually improve the care. The problem he sees is they haven't been able to improve that care. This is the beginning to opening a door and allowing them to provide better care.

A short discussion took place on whether this should be under the Board of Nursing.

There was discussion on whether requiring an ultrasound would be necessary to determine if there were any problems. There was speculation as to whether that would make a difference and whether education is enough.

There is a need to work together and there is a need to start somewhere. If the standards are put too high they will just move underground.

Filing birth certificates was talked about and Darlene Bartz, Department of Health, thought they were getting the information on most of the births. It is required by law.

**Jan Bury**, Obstetrician, asked for support of this bill. Attachment #8 She said that the media portrays the idea that negative things don't commonly happen. She gave examples of negative outcomes in home birth situations.

The topic of abuse and neglect was brought up and discussed. It's a touchy thing.

**Senator Dick Dever** stated that those who do home births are very passionate about it and take the decision very seriously. He wanted to know if they ask about their midwives credentials.

**Dr. Bury** said they don't. They just accept it.

**Dr. Rhonda Schaefer McLean** testified in support of SB 2315. Her perspective was different. She had the opportunity to train in Colorado where midwifery is a very strong constant within those communities and health care systems. She shared her experiences of having been trained by midwives, taking care of patients who were taken care of by lay midwives, and some of the outcomes and transitions surrounding those scenarios. She reiterated that this is a safety choice for the people of ND.

There is a big difference between certified nurse midwives and lay midwives. They understand that but would like to move towards a standard with this group of people who are trying to provide a service.

There are three different tiers: lay midwife with no certification or endorsement, the registered or licensed midwife, the certified nurse midwife.

**Darlene Bartz**, Department of Health, reflected on the Board of Nursing testimony. She pointed out that basically their approach was neutral. The entity that came in opposing was the Nursing Association which is different than the regulatory body.

She also pointed out that there were 3 lay midwives in ND who would be eligible for training. It would cost about \$7500 to train them.

**Senator Judy Lee** closed the hearing on SB 2315.

Committee discussion followed on possible abuse cases and the gray areas of abuse reporting.

**Senator Judy Lee** provided some points for the committee to consider – delayed implementation, ideas on how to work together, what the challenge is, who should be on the advisory committee, and who pays for it.

**Senator Gerald Uglen** was not comfortable with the idea of punishment after the fact. Need to start with education.

**Senator Dick Dever** referred to various amendments suggested to the committee.

The committee reviewed those suggestions. There was also a suggestion to have just a registry with the health department but to be on that registry certification of education is required. Grants would be available to get the program started.

**Senator Judy Lee** adjourned the committee.

Attachment #14 – Additional information provided to the committee at a later date.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2315  
2-8-2011  
Job Number 14212

Conference Committee

Committee Clerk Signature *RAMBOLD*

## Explanation or reason for introduction of bill/resolution:

## Minutes:

Attachments

**Senator Judy Lee** opened SB 2315 for committee work and informed the members that she was waiting for written testimony from those physicians who had testified on the afternoon of 2-2-11.

The fiscal note was discussed.

Attachment #9 is information prepared by Marlys Baker, Dept. of Human Services, to answer concerns the committee had about child abuse/neglect.

Attachment #10 is a packet from ND Birth Action of additional information and testimony

**Paulette Efimenko**, a lay midwife, spoke to the committee. She explained her background, training, continuing education, and experience. She didn't feel certification was necessary for herself. She said she basically does her own continuing education and explained that she makes herself aware of new books, technologies, etc. She keeps in touch with doctors on the latest things that are happening.

She gives out references to prospective home birthing families – from both the families with good outcomes and the families with bad outcomes.

**Senator Tim Mathern** asked her to explain some of the pre natal preparation that she is involved in with these families.

**Ms. Efimenko** answered that usually the people are referred to her and contact her by phone. They are mostly seeking a different option for a birth rather than the hospital. She tells them about her history and experiences. They set up an appointment where she does an extensive family history and their own medical history. She checks blood pressure, pulse, weight, hemoglobin check, and urinalysis. She said she is a stickler on exercise and nutrition. She went on to explain how she monitors and checks the baby. She doesn't work with any drugs.

The emotional aspect is very important and it is important that the mother is comfortable with her surroundings.

She said the difference between herself and doctors is that they see the whole process as a medical procedure and she sees it as a beautiful and natural thing.

**Senator Spencer Berry** asked her about the deaths that occurred with baby's she delivered and she replied they happened once the mother had gone into labor. She explained the causes of death.

**Senator Gerald Uglem** asked her if she saw anything wrong with requiring certification so those who are not competent and want to enter the field would need to get that education.

**Ms. Efimenko** said she did not. She thought licensing and regulation especially for people just getting into it was important but she didn't think it should be required for someone like herself. It should still be the choice of the parents to choose somebody they know whether they are licensed or not.

**Senator Judy Lee** asked if she encourages her patients to have an initial visit with a physician when they first find out they are pregnant.

**Ms. Efimenko** said she kind of leaves it up to the parent but they do talk about it. She doesn't require it.

**Senator Judy Lee** asked how she finds out about the health history of the new mom in case there is something she's predisposed to have as an issue.

**Ms. Efimenko** replied that in the first pre natal visit they talk extensively about any health problems the mother has had whether in pregnancies or not – even family health problems.

**Senator Judy Lee** asked how often she sees herself as a primary care provider.

**Ms. Efimenko** said about 98% of the time. There are a few doctors she can call with any questions that she has.

**Senator Judy Lee** recessed the committee.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2315  
2-9-2011  
Job Number 14262

Conference Committee

Committee Clerk Signature *J. Moore*

## Explanation or reason for introduction of bill/resolution:

## Minutes:

Attachments

**Senator Judy Lee** opened SB 2315 for committee work. She explained she had amendments prepared as a result of the previous discussions. Attachment # 11 She asked **Karen Macdonald** to explain some of the background.

**Ms. Macdonald** reminded the committee that the ND Nurses Association opposed the bill in the methodology that was in the original bill but agreed with the concept in principle. Through a series of conversations with a variety of people, representatives from the Board of Nursing and the Nurses Association sat down to see how they could make it the best they could and came up with these amendments. She then reviewed the points of the amendment .02005.

Discussion: There would be voluntary registration for 2 years but required certification after that. It does expire July 30, 2013. Mandatory registered is desired but is costly and in order to make it mandatory, there has to be some funds available.

Preceptorship is when someone works side by side with an individual as they are learning the trade.

Fees were discussed. The board has the ability to set the fees. It is not expected to be costly. Under the Board of Nursing there is already the Unlicensed Assistive Person Registry which this could possibly be under.

**Senator Dick Dever** referred to the study and stated that the feasibility and desirability of developing a mechanism for mandatory regulation almost sounds like that is the outcome.

**Ms. Macdonald** responded that they would deal with this in nursing even though it is not a nursing problem. As nurses they are always willing to step up and help with health care issues. They will deal with this in nursing for two years but would like help to come up with a better mechanism. Voluntary registration is not going to do a great deal.

**Senator Judy Lee** said it is just a small first step to try to assure people who want to know what the background might be of the person whom they want to assist with their home

birth. She said it's not necessarily a predetermined outcome but whether or not it's the right thing to do. She felt the study should be an open ended approach.

**Senator Tim Mathern** also proposed amendments - .02004 – which he explained.  
Attachment # 12

An advisory board would need to be funded therefore a fiscal note would be required. A structured method where people are on an advisory board clarifies the record about having notice of meetings.

The primary issue is to make sure the system is in place and the parties are there at the table.

**Buzz Benson** said because the Board of Nursing already has a registry set up with "Unlicensed Assistive Persons" it would be an easy process and at minimal cost.

**Senator Tim Mathern** asked if his board would take part in the feasibility and desirability of developing a mechanism for mandatory regulation of lay or traditional midwives.

**Mr. Benson** replied that if it is the wish of the committee they would do it. As the board of nursing they would encourage all parties to be at the table.

**Senator Tim Mathern** asked how they would pay for that cost – interim committee.

**Mr. Benson** replied that it is voluntary.

**Darlene Bartz**, Dept. of Health, said they had studied this for about 6 months and they feel the board of nursing would be the appropriate setting. The nursing board works with the certified nurse midwife so they do have a knowledge base working with the midwife practice. The health department doesn't have that expertise.

She was concerned with making the registry voluntary versus mandatory because if someone doesn't want to be on the registry the information wouldn't be captured even for a study down the road. The reporting piece is very important.

She thought a section on immunity should be included.

**Senator Judy Lee** pointed out that there is a problem with making it mandatory. There are people who are so strongly committed to home births and resist any kind of regulation at all. She is hopeful that with this very minimal requirement there will be some cooperation.

**Senator Tim Mathern** was concerned that it is not just the medical folks but the families saying they can't afford health insurance or want a different way of taking part in birth or that are physically in distance areas. He was concerned that the families were not involved in the studies.

**Ms. Bartz** responded that the workgroup that studied this did visit with the midwives they were aware of at the time.

Discussion: Information that would be included in the registry. The certified lay midwife does not need to be a nurse. The lay midwife is not under the direction of the nurses.

A discussion on the immunity clause indicated that it might be necessary but putting it in the nurse practice act might be the wrong place to put it. It might be in some other chapter.

**Senator Tim Mathern** appreciated hearing from the Board of Nursing, Nurses Association, and Department of Health and asked to hear input from lay midwives or families about how they view the amendments.

**Senator Judy Lee** asked if there were comments from any of the home birth people.

**Sarah Karges** commented that it seems reasonable to ask for a registry. As a citizen who would be concerned about the issues with respect to the study, she would probably be interested in being a part of that process.

Discussion topics included the effective date of required certification and the organizations the certification could be under. The certification would be for "lay" midwives.

**Senator Judy Lee** encouraged those who were involved to think about how to change the study to do something like a task force where the stakeholders in question actually spend time around the table talking about the details.

There is no way now to collect data about situations in which there has ended up being a hospital delivery but started out as a home birth in which there were problems. The data collection is vital.

**Senator Tim Mathern** asked Ms. Karges for her comparison of the two amendments.

**Ms. Karges** saw the main difference was under whom the registry falls and the advisory board. She felt the study would be more appealing to the public than the idea of an advisory board.

**Senator Judy Lee** asked for collaboration on further amendments to consider a task force and gathering of data and asked Cal Rolfson to help facilitate it.

A short break was taken.

**Cal Rolfson**, reported back to the committee that there had been participation from all interested parties – nursing, health dept., lawyers, and lay persons. They took the two issues and combined them into one section. Attachment # 13

The only question they had was who should be the convener - Board of Nursing, Dept. of Health, or The Nurses Association.

After committee discussion with those involved there was some consensus that the Department of Health might be the most neutrally perceived and probably the best choice for the convener. The convener would be the one to report to the interim committee.

**Senator Tim Mathern** showed concern with putting this in the Board of Nursing and preferred working with the Department of Health in moving forward with this study and with the gathering of data and how this would look in the next legislative session.

**Senator Judy Lee** pointed out that the Department of Health would rather not do it and the Board of Nursing is willing to do. They would all still be at the table in the discussions.

**Senator Dick Dever** moved the .02005 amendments with substitution of the new language in the amendment as proposed.

Seconded by **Senator Gerald Uglem**.

**Senator Tim Mathern** resisted the amendments.

Roll call vote 4-1-0. **Amendments adopted.**

**Senator Gerald Uglem** moved a **Do Pass as Amended**.

Seconded by **Senator Spencer Berry**.

Roll call vote 4-1-0. **Motion carried.**

Carrier is **Senator Dick Dever**.

Darlene Bartz

Attachment  
# 1

## 2011 Legislation SB 2315 Explanation

This bill would establish a system for licensing and regulating lay midwife services. At the present time lay midwives are not licensed or subject to any regulation by any professional body in North Dakota. The regulation of lay midwives varies from state to state. For example, judicial decisions in one state concluded that because childbirth is a natural process, lay midwives assisting pregnant women during childbirth are not engaged in the practice of medicine or the practice of nursing.

See State Board of Nursing v. Ruebke, 259 Kan. 599, 913 P.2d 142 (1996) ("the terms... used to define healing arts clearly and unequivocally focus... on pathologies, i.e., diseases) and abnormal human conditions (i.e., ailments...). Pregnancy and childbirth are neither pathologies nor abnormalities").

Not much is heard about the practice of lay midwives or direct entry midwives, until something goes wrong with either the baby or mother. The department of health received a phone call from a hospital after they had received a patient when something had gone wrong in the home delivery. The department received the concern because we regulate hospitals and the hospital wanted to know who to go to with their concerns. As lay midwives in our state are not licensed or subject to regulation by any professional body in North Dakota, there was nowhere to refer the hospital with their concerns. The decision was made to pull together a group to look at this issue and to pull together members representing the professional boards for nursing and medicine, the department of health, and the North Dakota Hospital Association, the North Dakota Medical Association, a Certified Nurse Midwife, Hospital Medical Director, Obstetrician, and Neonatologist participated in the discussions. In addition, information was sought from the lay midwives practicing in North Dakota as well as the Certified Nurse

Midwives in our state. All agreed that safety of the mother and infant was of key importance.

Statutes from several other states were reviewed, as well as discussion with the North American Registry of Midwives related to the competency evaluation of lay or direct entry midwives. In many states, the regulation of lay midwives comes under the purview of the Board of Medicine or Board of Nursing. After discussion, the best fit for North Dakota was identified to be the Board of Nursing.

The review of the bill section by section is as follows:

**Section 1** of the bill amends section 43-12.1-05 relating to the composition of the board of nursing. It provides that a certified nurse midwife appointed to the midwife advisory board, which is established by this legislation, may participate in board of nursing matters relating to the licensure and practice of licensed midwives.

**Section 2** of the bill (page 1, beginning at line 18) – would establish a new chapter to title 43 of the North Dakota century code for the licensing and regulation of lay midwives.

Definitions – the definitions included a definition of an advisory board on lay midwives and a definition of a "licensed midwife" (which is found at page 2, lines 2-4)

A licensed midwife is defined as an individual who is not licensed as a physician [M.D.] or nurse [R.N.] and who holds a current license issued by the board of nursing pursuant to the provisions of this chapter "to engage in the practice of midwifery, who must be designated LM."

"Midwifery" or the "practice of midwifery" (page 2, lines 5-9) -- means providing maternity care outside a hospital or clinic setting which is consistent with the midwife training education and experience to women and their newborn children throughout the childbearing cycle, and it includes identifying and referring pregnant women or their newborn children who require additional health care to a qualified health care professional.

Licensure Requirements (page 2, beginning at line 10) -- This section of the new chapter specifies the licensure requirements for a lay midwife. Basically, any individual providing midwifery services in North Dakota, regardless of whether for consideration or pay must be licensed. The licensure requirements require an individual to file a board-approved application; provide proof of current certification as a certified professional midwife or CPM by the North American Registry of midwives; and other requirements that are spelled out on page 2 of the bill.

The licensure requirements also include a grandfather clause -- so that a midwife who has been continuously practicing midwifery in North Dakota for at least five years before July 31, 2011 is exempt the qualifications for an initial license for a period of two years, if such midwife provides documentation to the board of nursing.

The licensing section also provides that the board may license a midwife who provides evidence of current licensure or certification by another state with requirements that are at least as stringent as those set forth in this new chapter -- if the applicant is in good standing in that state, and has not been sanctioned by another state without resolution satisfactory to the board of nursing.

Regulation of the Practice of Midwifery (Page 4, Lines 16-26.) The next section provides that the Board of Nursing may adopt rules governing the practice of midwifery upon consultation with the midwifery advisory board. In general, these rules may be consistent with the North American Registry of midwives current job description and the national Association of certified professional midwives standards of practice.

*(As a practical matter, there are too few lay midwives in North Dakota to justify a separate board to regulate lay midwives.)*

Education grants (page 4, beginning at line 27) – the board of nursing is required to establish a grant program for midwives who have been continuously practicing midwifery in North Dakota for at least five years before July 31, 2011.

Advisory Board on Midwifery (page 5, beginning at line 8) – an advisory board on midwifery is established consisting of five members. The section spells out the terms of office of the board members, the appointment of a Chairman, etc.

Requirements for Disclosure and Written Agreement (page 5, lines 29-31 and page 6, many lines 1-25) -- this section requires a midwife, **before initiating care**, to obtain a signed written agreement from each client that the client has received certain documents of, including a description of the midwife's qualifications, a written protocol for medical emergencies, a description of the midwives model of care, a copy of the regulations governing the practice of midwifery, a statement concerning the licensed midwife's malpractice liability insurance coverage; and "a statement of informed consent."

Subsection 2 of this section (page 6, lines 26-27) -- requires a licensed midwife to have a signed written agreement form on file for each client.

Limitations of Practice (Page 7, Lines 2-4) -- subsection 1 of this section provides the licensed midwife may not prescribe, dispense, or administer prescription drugs except as permitted by the board of nursing specific to the maternity care, labor, delivery, and post partum care of the mother and newborn infant. And, a midwife may not prescribe or administer any controlled substances as defined by DEA (page 7, lines 9-10, subsection 1(c)).

The section also provides (page 7, lines 6-9, subsection 1(d)) -- that a licensed midwife may not prescribe, administer, *sign for*, dispense, or procure pharmaceutical samples.

Subsection 2 (page 7-lines 18-19) also provides that a licensed midwife may not perform any operative or surgical procedures except for suture repair of first-degree or second-degree perineal lacerations (*of the mucosa of the perineal area, the Vulva, vagina*).

Immunity from Liability (page 7, beginning at line 20) -- A physician, nurse, hospital, emergency medical technician, or ambulance personnel is not liable in any civil action for damages for any injury resulting from an act or omission of a licensed midwife in the treatment of a mother or infant, or a pregnant woman whose delivery was attempted under the care of a licensed midwife, even if the health care provider has consulted with or received a referral from a licensed midwife.

But a physician, nurse, emergency medical technician, ambulance personnel, or hospital is liable for the provider's own subsequent independent negligent acts or

omissions, or if the provider has a business relationship with a licensed midwife who provided care to the patient. But a health care provider is not considered to have established a business relationship a relationship of agency, employment, partnership, or joint venture with the licensed midwife solely by providing consultation or accepting a referral from a licensed midwife. (Pages 7, lines 25-30, and page 8, lines 1 and 2.)

Reporting (page 8, lines 3-16) This section provides that – a licensed midwife must complete a record of birth in accordance with requirements of the vital records act, section North Dakota century code 23-02.1-13; a midwife must compile a summary report on each client; a licensed midwife must promptly report to the board of nursing any maternal, fetal, or neonatal mortality or morbidity. And, a midwife must report to the board termination, revocation, or suspension of the licensed midwife's certification or disciplinary action taken against the midwife by the North American Registry of midwives or by another jurisdiction.

Protected titles and licensure & penalty (page 8, lines 17-27) This section provides that "it is unlawful for any person to assume or use the title or designation licensed midwife or LM, or other titles words or abbreviations – unless the person is licensed as a midwife under the new chapter or is exempt from the requirement to be licensed until July 31, 2012. A violation of this section is a class A misdemeanor. (A class A misdemeanor is punishable by imprisonment for up to one year or a fine of up to \$2,000, or both.)

# # #

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2377

House Human Services Committee

Check here for Conference Committee

Hearing Date: March 19, 2007

Recorder Job Number: 5308

Committee Clerk Signature

*Judy Schock*

Minutes:

**Vice Chair Pietsch:** Take out SB 2377 for discussion and possible action.

**Representative Hatlestad:** After discussing this with my wife, the ladies in her group felt women should have an option. She and her group were rather adamant about that.

**Representative Conrad:** Do we want to have a study, or do we leave them on there own?

**Representative Schneider:** I spoke to the gentleman who spoke against, in opposition to the bill. I tend to agree with his comments. They seem to be pretty happy with things the way they are now, and to study it will only get further regulations. By studying it you are only endorsing the idea of putting any further restrictions on this.

**Representative Damschen:** I agree with Representative Schneider. I think there is some indication after the fact that those testified in favor were just relieved it was not what it started out to be. They seem to have reconsidered their feelings, and wouldn't care for the study. I think the study will end up in regulation. Child birth has been around as long or longer than medicine.

**Representative Hofstad:** The statistics out of the 379 births in 2005, we had 44 home births. That is a small number for us to get our nose in there and start regulating. I only problem I identified from the testimony was finding someone in that field.

**Representative Uglem:** I get the feeling everything is going alright for those that are doing it, but it is not a generally excepted practice, and a lot more could be doing it successfully, if there were regulations, and they felt confident. We would have to be careful, because I hear some states were regulated out of business, because it costs more to go to a midwife than go to the doctor.

**Representative Potter:** A question I had with it, after I thought about it, in some of their testimony that a problem they had was the midwives have left the state. I didn't understand if we don't have regulations, than what is it we are doing that makes them leaving the state?

**Representative Weisz:** The whole idea is practicing medicine with out a license. Depending on your interpretation there seems to be a grey area. The medical profession is very protective.

**Representative Hatlestad:** What I have heard from people about the concern of the study is the fact the medical community will shake the direction and they will be SOL. I don't know that.

**Representative Conrad:** I think the way the study is written, it is written from the medical nursing perspective, not from advancing the use of midwives. I think more people would use midwives if it was understood better.

**Representative Damschen:** I don't think a little regulation of the government fit in the same line. If we regulate it will it be over done?

**Representative Hofstad** moves a do not pass, seconded by **Representative Damschen**.

The roll was taken with 9 yeas, 0 nays, and 3 absent. **Representative Conrad** will carry the bill to the floor.

Date: 3/9  
Roll Call Vote #: 1

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

House HUMAN SERVICES SB 2377 Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Does not Pass

Motion Made By Rep. Hoystad Seconded By Rep. Damschen

Representatives	Yes	No	Representatives	Yes	No
Clara Sue Price – Chairman			Kari L Conrad	<u>L</u>	
Vonnie Pietsch – Vice Chairman	<u>L</u>		Lee Kaldor		
Chuck Damschen	<u>L</u>		Louise Potter	<u>L</u>	
Patrick R. Hatlestad	<u>L</u>		Jasper Schneider	<u>L</u>	
Curt Hofstad	<u>L</u>				
Todd Porter					
Gerry Uglen	<u>L</u>				
Robin Weisz	<u>L</u>				

Total (Yes) 9 "Click here to type Yes Vote" No 0 "Click here to type No Vote"

Absent 3

Floor Assignment Rep. Conrad

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

Attachment #4

Greetings Government and Veteran's Affairs Committee members,

**Real briefly I will share why I am OPPOSED to SB 2063 and why I believe that midwifery is working well in North Dakota just as it is.**

I am the mother of 3 children with 3 extremely different birth experiences. My first child was born in a small local hospital 25 years ago. My husband and I were alone most of the time and it was a calm and peaceful experience. We had no idea, when we had our second child at a large metropolitan hospital, that a birth could be such a terrible experience. Our son, due to professional misconduct of the nurse at his birth, was born with a terrible neck injury that required years of chiropractic care to correct. I was left with a severe pelvic injury which caused repeated miscarriages.

Our third child was born at home. This was as peaceful as our first birth experience even though the midwife was 2 states away when the birth process began. This was before cell phones but our faithful midwife stopped every few hours and used phone booths to call us to check on our progress and to guide our experience. After the cruel treatment that I endured at my second birth, the loving and caring attitude of my midwife made this last birth the most special of all to us! When she arrived 2 hours after the birth, the midwife took over for my husband and saw to what needed doing. The whole experience was peaceful and calm compared to the stressful hospital birth with our second child. Truthfully, the large hospital birth was one of the WORST experiences of my life!!!

For this reason I oppose this bill which will make getting a certificate of live birth next to impossible for women having home births. Really, I don't know a single woman who is thinking about paperwork 5 days after giving birth. The family is adjusting to a new family member and trying to get caught up on lost sleep. Who is thinking about certificates of live birth then?

This whole bill is about making home birth that much more difficult and complicated. WHY?

Tell me something, have you ever heard of people going to a hospital (either as a patient or a visitor) and picking up an infection? I sure have and I cannot think of a more unhealthy place to have a baby enter this world than a hospital. YUCK!

The thing that concerns me the most, though, about SB 2063 is that the requirements which home birth families will need to meet are not specifically stated in the bill. Rather authority is given to the Department of Health to create the requirements as an administrative rule, with NO public input. This also means that the requirements can change at any time with no warning. Any such ambiguous power grab against the people must surely be met with your disgust and rejection.

Thank you for considering my thoughts.

Mrs. Dawn Bornemann  
5860 23rd Ave. SE  
Kintyre, ND 58549

**Paul & Donna Henderson**

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**From:** "Timothy & Louisa Stegman" <lemandteresa@gmail.com>  
**Date:** Wednesday, January 09, 2013 11:27 AM  
**To:** <henders@utma.com>; <homebirthfreedomnd@yahoo.com>  
**Subject:** testimony on SB2063  
To Whom it may concern:

I am a 25 year old father, 5 years married and lifelong resident of Pembina County, ND  
I want to express my concern about SB2063. It has some red flags, in my opinion.

I do not want the ND Dept. of Health having authority to put ANY additional requirements  
before or after their children are born, in fact, I think we have enough laws governing such  
already and don't need more layers.

My Wife and I are strongly in favor of home birth as an alternative to hospital birthing  
and we want the choice to use a midwife's services without interference.  
North Dakota should do all it can to keep all choices available so young parents like us wi.  
this wonderful state.

We feel the open ended authority that this bill would give to the Dept of  
Health is not good, especially concerning home births.

Please leave things as they are now or make them less regulated if anything.

Louisa & I oppose SB2063 and ask you to recommend a Do Not Pass.

"WITH LIBERTY AND JUSTICE FOR ALL"  
Please feel free to contact us.

Timothy & Louisa (and Zachary!) Stegman  
10583 143rd Ave, NE.  
Neché, ND. 58265

(701) 521-0565

**Paul & Donna Henderson**

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**From:** "D Henderson" <homebirthfreedomnd@yahoo.com>  
**Date:** Wednesday, January 09, 2013 6:19 PM  
**To:** "undisclosed recipients:"  
**Subject:** Fw: Traditional Midwifery Testimony

----- Forwarded Message -----

**From:** "rnienhuis@juno.com" <rnienhuis@juno.com>  
**To:** homebirthfreedomnd@yahoo.com  
**Sent:** Tuesday, January 8, 2013 9:59 PM  
**Subject:** Traditional Midwifery Testimony

To whom it may concern:

I feel that TRADITIONAL MIDWIFERY is a very important option that should be available to women in North Dakota.

Childbirth is a very important event in the life of a woman, and she should have every option available to her. Here in North Dakota, we don't always have a lot of options because we are so sparsely populated. If a woman is able to find a TRADITIONAL MIDWIFE to work with her in her pregnancy and delivery, that should be her right to choose. No one should have the ability to take that freedom of choice away from her.

I have several friends who have delivered using TRADITIONAL MIDWIVES with excellent results. I think it is wonderful that we can have this freedom here in North Dakota.

Please feel free to contact me.

Sincerely,

Lori Nienhuis  
6165 97th Ave. NE  
Lawton, ND 58345

(701)739-9946-cell

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Woman is 53 But Looks 25

Mom reveals 1 simple wrinkle trick that has angered doctors...

<http://thirdpartyoffers.juno.com/TGL3141/50eceb62789e36b6255b1st02vuc>

**Paul & Donna Henderson**

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**From:** "D Henderson" <homebirthfreedomnd@yahoo.com>  
**Date:** Wednesday, January 09, 2013 6:18 PM  
**To:** "undisclosed recipients:"  
**Subject:** Fw: Response to SB2063

----- Forwarded Message -----

**From:** Kyle <ihsenterprises@yahoo.com>  
**To:** homebirthfreedomnd@yahoo.com  
**Sent:** Wednesday, January 9, 2013 12:26 AM  
**Subject:** Response to SB2063

To the Government and Veterans Affairs Committee,  
 From a North Dakota homebirthing Dad.

I am against SB2063 on numerous levels, three of which I will state here.

Firstly, In Section 2. It is amended to say that "The forms must be accompanied by acceptable evidence established by the rules of the state department of health...". This an open ended authority given to an unelected bureaucracy that gives them(the state department of health) the ability to, by fiat, and against the wishes of the voting constituency of this chamber, simply implement rule changes that will make it impossible to get a birth certificate for a child with out the presence of a "licensed" health care practitioner. This infringement was attempted last session and it was made very clear then, that those of us who engage in "homebirth" do not want, or need, the involvement of the state department of health, or any other governmental organization, in the birth of our children! I'm sure the argument will be made that "we only want these regulations for the safety and health of the children and mothers". I find it hard to believe that a group who thinks so little of human life that they allow people, by law, to literally suck the life out of unborn infants, and have the gall to call it "women's choice", would have any genuine concern for the life of my child, simply because it is born at home. No sir, I do not for one moment believe that someone in a government position has my children's best interest at heart. All of that being said, I would also point out that if I have the right to suck the brains out of my child then I damn well have the right to have that same child at home if I so choose! And if I have that right then I refuse to stand by and watch while the ability to do away with that right is given to some unelected, unaccountable bureau! If it is going to be debated as to whether or not a midwife has to be licensed to attend homebirths, or whether or not a child has to be born in the presence of an "approved" physician in order to get a birth certificate, then let the debate be done in a format where those engaging in that activity of homebirthing can have their say! This backhanded approach of getting the jurisdiction through unaccountable regulatory power is beneath the men and women elected to the senate of the great state of North Dakota.

Secondly, in the definitions section of this bill it states that " "Fetal death" or "birth resulting in stillbirth" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy and which is not an induced termination of pregnancy....." So it's a fetal death, regardless of duration of pregnancy, unless I decide to murder it! If the mother or father or health care practitioner murder the "product of conception" then it's not classified as fetal death. What then, I would ask you, is it! Just the removal of unwanted tissue? Or perhaps a better way to describe it would be the removal of the responsibility from two lazy and pathetic excuses of human beings that should have been its parents! Even if you leave out the moral aspect of this, the definition, as amended, is contradictory of itself. "It's death unless its intentional death! Yeah, yeah that's it! I don't know what it then is, but it can't be death!"

Thirdly, the amendment that requires that a parent file the required forms within 5 days. What's the big rush? If I have all of the proper documentation, why does it matter if I get the papers filed in 5 days or three weeks? Last time I checked once you have a child it's not going anywhere for at least another 18 years! There are those of who, when our wives birth at home try and keep things quiet and peaceful at the aforementioned home for at least a week so that the mother and child can rest peacefully. As foreign as this may be to some of you, and I don't mean that rudely, the birth of a child is a very "religious" experience to many of us and is filled with spiritual

**Paul & Donna Henderson**

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**From:** "D Henderson" <homebirthfreedomnd@yahoo.com>  
**Date:** Tuesday, January 08, 2013 5:39 PM  
**To:** "undisclosed recipients:"  
**Subject:** Legislative alert

----- Forwarded Message -----

**From:** Patty Durbin <pattydurbin@gmail.com>  
**To:** D Henderson <homebirthfreedomnd@yahoo.com>  
**Sent:** Tuesday, January 8, 2013 1:49 PM  
**Subject:** Re: Midwife legislative alert-

Dear Donna,

Hello. I have had four amazingly smooth and natural home births, starting with my first child. My midwife has always been very concerned with our safety. She encouraged me to first see my family doctor to find out if he thought I would have any problems before committing to a home birth. She visited me monthly to check on my pregnancy, listening to the baby's heart, checking the size and progress, checking my blood pressure and sharing her wealth of pregnancy and birth knowledge. After the birth she continued to visit us to make sure we were healing well and growing. All of my pregnancies were wonderful and births smooth although I know that had I been in a hospital my second and third would have been forced with pitocin or even c section because of early rupture of membranes. Each baby was perfectly healthy and because of my midwife I had no tearing. I am so grateful that I had the freedom to have four babies born in the privacy, cleanliness and comfort of my own home with my traditional midwife. I hate to think others may not have this choice. Please vote no on SB2063. Please don't pass it on. Keep traditional midwifery the same.

— Patty Durbin, 美真

**Paul & Donna Henderson**

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**From:** "D Henderson" <homebirthfreedomnd@yahoo.com>  
**Date:** Tuesday, January 08, 2013 5:28 PM  
**To:** "undisclosed recipients:"  
**Subject:** Fw: Please send written testimony!

**From:** Jonathan & Jaidra Dagley <jjdagley@gmail.com>  
**To:** D Henderson <homebirthfreedomnd@yahoo.com>  
**Sent:** Monday, January 7, 2013 4:29 PM  
**Subject:** Re: Please send written testimony!

I oppose SB2063 because It will infringe upon my rights as an American by giving power of authority to impose unreasonable terms and requirements on the ND resident.  
Many men and women have died to preserve our freedoms, don't take them away with legislative bills.  
~Jonathan and Jaidra Dagley

**Paul & Donna Henderson**

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**From:** "Curtis Stegman" <shalomacres@gmail.com>  
**Date:** Tuesday, January 08, 2013 12:32 PM  
**To:** "Paul and Donna Henderson" <henders@utma.com>  
**Subject:** SB 2063 written testimony

Dear members of the Government and Veteran's Affairs Committee,

I am writing to express our concern about SB2063. It has some red flags, in our opinion.

We do not want ND State Dept. of Health having authority to put ANY additional requirements upon families before and after birth.

We are strongly in favor of home birth as an alternative to hospital births. Our sons have all used midwives. They are all leaders as young adults. North Dakota should do all it can to keep these choices available so these young parents will want to stay in our wonderful state.

We feel the open ended authority that this bill would give to the Dept of Health is not good, especially concerning home births.

The 5 calendar day requirement for birth certificate applications is unreasonable. Please leave things as they are now.

We oppose SB2063 and ask you to recommend a Do Not Pass.

Please feel free to contact us.

Curtis and Bettie Lou Stegman  
10329 County Road 2  
Neché, ND 58265  
701-265-4299

[shalomacres@gmail.com](mailto:shalomacres@gmail.com)

Subject: re: SB 2063  
From: Jeff Hoverson (jeffhoverson@yahoo.com)  
To: homebirthfreedomnd@yahoo.com;  
Date: Monday, January 7, 2013 1:10 PM

Re: SB 2063

One of the best experiences of our lives was the home birth of our sixth child. With the previous five, my wife used the hospital with doctors and traditional methods involving epidurals, putossin, pressure to have C sections, etc. While we are pleased with all the hospitals, we are even more than grateful for our experience with a mid wife in our home.

We owe our baby's healthy life to our midwife. She was skilled in ways that our previous hospitals doctors, as good as they are, could not have been.

You see, our son was born with a cord around his neck. Our midwife was able to remove it (it was tight) and cut it in time. The baby was born not breathing.

The midwife used techniques that got the baby breathing before any brain damage occurred. This was one of the most intense times of my life. I hope never to repeat it.

But, the hard reality is that, had our birth been in a hospital, the baby would have been rushed of to another unit, after artificial interventions, and most likely would have had brain damage or would have died in the hospital.

Unfortunately, the hospital statistics are not good. The pressure to do C sections is on the rise, and mid-wivery is receiving unfair representation by people who should know better. Doctors are pressured to use means of intervention, not because of the need of the baby or mother, but to protect themselves from lawsuits.

Any legislation that impacts the freedom of parents to use a midwife in their home, should ONLY increase that freedom, NOT hinder it with unnecessary bureacracy, and burdensome regulations. Furthermore, mid-wivery should be encouraged and applauded by our medical field and our Legislature.

Thank you, sincerely, Jeff and JoAnn Hoverson of Minot ND  
701-340-8237 - calls welcome

Dear Congressman/Congresswoman,

We would like to let you know that we strongly oppose SB2063. We believe it is a woman's right to choose to have her baby at home and that she should not be punished for that decision. We have had two home-births. We want to keep that right. The system works as it is in my opinion. We also believe that the state legislature should keep the responsibility of the birth certificates and not delegate it to another department. As seen in the Federal Government, delegation of responsibility tends to make everything harder and more expensive.

In our case, we chose to have unassisted births at home. It was of God that we did as Alyssa would never have made it to the hospital in time to deliver. We would have had the baby on the side of the road. A home delivery that has been planned for is not an emergency. A home delivery that has not been planned for IS an emergency.

By forcing a woman to have to go to the hospital to prove that she has been pregnant and that the baby is indeed hers, you are forcing her to undergo unnecessary medical intervention. You are increasing risks of infection, unnecessary tests, unnecessary expense and just plain making life harder on someone who should be resting and not worrying about where she should have to go or what she should have to do.

The midwives that we have met have been some of the most conscientious and careful ladies we have met. They do not take unnecessary risks. Most err on the side of caution. We want to continue to have the option to have a midwife and not a doctor. There is a time and place for a doctor but a midwife has her time and place too. Don't let someone else's love of money sway you to vote for their agenda!

Sincerely,  
Dan & Alyssa Mathis

Members of the Committee,

My name is Bryan Stramer, a resident in Bismarck. I am a father of 2 and a homebirther.

I oppose SB2063 because it unnecessarily burdens families with undisclosed requirements in order to obtain a birth certificate. These requirements are not stated in the bill, but rather stated as a rule established by the Dept. of Health. This means that the rules could change without notice and without public input.

My concern is that these requirements are the precursor to a system that forces home birth families into visiting a physician before and after birth. I believe giving birth where, how, and with whom I choose is a fundamental human process and unalienable right, not a privelege, and SB2063 is a stepping stone toward restricting that right.

SB2063 may be marketed as a method to reduce fraudulent birth certificates, but it is really a stealthy attempt to give the State the tools it needs to funnel homebirthers into a hospital.

It also requires birth forms and "acceptable evidence" be submitted within 5 calendar days. This is an unreasonably short amount of time. This is acceptable in a hospital setting, where staff is assigned to take care of these things, but home birth is very different. Under the current system, these forms are filed by the midwife. SB2063 would require this be done by the parents: 30 days would be a reasonable time period for filing.

In conclusion I ask that you give SB2063 a "Do Not Pass" recommendation.

Thank You,



Bryan Stramer

To whom it may concern:

My name is Jennie Hall, and I am writing today in opposition to senate bill 2063. As a home birthing mom, I am responsible for taking care of the birth certificate, and I oppose the new guidelines based on the reasons below.

1) The requirement to show proof of pregnancy is vague. It references rules that are not contained in the law itself. I was not able to find the information through the Department of Health's website where I looked for what constituted "proof of pregnancy"

2) The 5 day time limit is very short. Please consider a 30 day deadline. We name our children after birth, and my last son didn't have a name until he was 7 days old.

3) It is unclear what proves a "Live Birth". Again, I was unable to find the rules referenced in the law.

I oppose this law if the requirements for proving either pregnancy or a live birth are unpublished, or subject to change without an amendment to the law that is open to the public before it is decided and voted on in our legislative process.

Thank you for your time.  
~Jennie Hall-Bismarck ND

# 7

To the Government and Veterans Affairs Committee,

I oppose this bill because it doesn't state what is considered acceptable evidence of pregnancy, live birth, or location of birth . Acceptable evidence should be defined in century code, and not as an administrative rule.

Please mark SB 2063 "Do Not Pass".

-Katie Stramer, Bismarck resident

Attachment #1

JANUARY 21, 2013

PROPOSED AMENDMENT TO SENATE BILL NO 2063

Page 3, line 19, replace "five" with "fourteen"

Renumber Accordingly

JANUARY 11, 2013

PROPOSED AMENDMENT TO SENATE BILL NO 2063

Page 3, line 19, replace "five" with "fourteen"

Page 5, line 4, after "ten" insert "calendar"

Page 5, line 12, after "ten" insert "calendar"

Page 5, line 14, after "ten" insert "calendar"

Renumber accordingly