2015 SENATE HUMAN SERVICES

SB 2081

2015 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2081
2/11/2015
23643

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Donald Mueller

Explanation or reason for introduction of bill/resolution:

Relating to definitions used in foster care homes for children and adults.

Minutes:

Attach #1: Testimony by Kelsey Bless
Attach #2: Proposed Amendment

Kelsey Bless, Residential Child Care Facilities for the Department of Human Services, introduced SB 2081 (attach #1) and testified IN FAVOR of SB 2081. Ms. Bless also provided a proposed amendment (attach #2). (end 5:45)

Senator Warner the increase in 10-to-13, does that impact staffing ratios? You aren't talking about single parent foster homes with 13 kids?

Ms. Bless that is specific to group home facility licensing. As an example of facility license, if they have 13 beds or greater, they would be classified as a facility, and they have established staffing ratios through North Dakota administrative code 75.03.16. So they meet all licensing compliance.

Senator Warner what if it is only 12 children?

Ms. Bless that would be example of group home, classified under North Dakota Administrative Code 75.03.16. They have to meet that licensing standard to be a group home or a facility. Family homes tend to be licensed for a maximum of 4 unless there are sibling arrangements.

Senator Warner asked the normal behavior for their biological children, is there an expectation that most foster parents have biological children and the foster children are supplement to their household.

Ms. Bless answered not always the case. There are some individuals with a family structure already in place and provide foster care. They might be allowing their teenage son to be on football and also have foster child, they have opportunity to offer that. The example of biological children versus foster children was offered because a lot feedback is with independent living. The young people there is that there are times they are treated

differently between foster child and biological. This public law is trying to be more inclusive, of offering that normalcy to youth who are in foster care.

Senator Warner one of the issues for foster children is being able to drive and get driver's license. There is recognition of huge insurance implications. Please address.

Ms. Bless confirmed that driving is a hot topic as this public law was passed. Nationwide, there is a lot of flexibility in other states specific to driving because liability has become a question. In North Dakota, we do have legal custodians who allow for this. They can receive that license before the youth ages out of care. The immunity clause going in here allows foster parents the opportunity for the youth to be engaged in that activity and not be fully responsible.

Senator Warner but it doesn't imply any liability in part of the state to cover the insurance costs, the increase cost of vehicle.

Ms. Bless there are a lot of ways to proceed how we will define the coverage based on their insurance policies. The foster families already have the insurance policies. But who is going to assume the cost will be individualized.

Senator Warner issue of teenage labor. Important to ease into the labor market to develop skillsets. Is there a process to determine the appropriate level of work for foster children and compensation before they age out.

Ms. Bless employment opportunities is part of independent plans. The federal government requires states to have an independent plan in place for every 16 year old in care. They also require states to meet two times a year to address the needs of a child. In North Dakota, we have quarterly child and family meetings, so at that time, the foster family can review if foster child should be working and work with the team.

Senator Warner is there some allocation to savings or setting money aside for college.

Ms. Bless absolutely, emphasis on providing positive outcomes as they are leaving care.

Senator Howard Anderson, Jr. number 10 on page 2, is that a significant change and are we going to make it more difficult for residential childcare facilities because now we are requiring it to be licensed or approved where previously it appears it didn't require that.

Ms. Bless we have always required that they be licensed and approved. Previously the definition it didn't state this, but later language it was included. The approved part is for any group home or facility that may reside on tribal lands.

Senator Dever seems odd that we would take foster children in the home and then say that it is okay to engage children in regular activities. What is the federal state mix in funding.

Ms. Bless we receive Title IV-E funding to help supplement the cost of the child for their maintenance rate. Medicaid is paid in addition for services to the youth. Title IV-E funding

does not pay for education or medical services. The foster care provider would be IV-E federal funding, and there is a state match to the federal fund.

Senator Dever asked what percentage is for the match.

Ms. Bless will provide that. The county also pays a share.

Senator Dever if someone was to offer a bill to transfer the cost to the state, that would be a good bill.

Senator Warner do these activities run through department review. Some things that parents might approve that make you nervous.

Ms. Bless the child and family team approach has embraced the opportunity to ensure that all high risk areas are viewed under consideration to make final determination. We are providing technical assistance to counties to note appropriateness of activities.

Senator Dever commented that stated that student was a foster child and she was a wonderful young lady.

Chairman Judy Lee taking for granted that the Department of Human Services is keeping a good watch on this.

OPPOSITION to SB 2081
No opposing testimony

NEUTRAL TO SB 2081
No neutral testimony

Closed Public Hearing

Senator Howard Anderson, Jr. moved to ADOPT AMENDMENT as presented from Department of Human Services (attach #2). The motion was seconded by **Senator Axness**. No discussion.

Roll Call Vote as amended
6 Yes, 0 No, 0 Absent. Motion passes.

Senator Howard Anderson, Jr. moved a DO PASS AS AMENDED for SB 2081. The motion was seconded by **V. Chairman Oley Larsen**. No discussion.

Roll Call Vote Do Pass As Amended
6 Yes, 0 No, 0 Absent. Motion passes.

Senator Warner will carry SB 2081 to the floor.

15.8041.01001
Title.02000

Adopted by the Human Services Committee

February 11, 2015

TD
2/11/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2081

Page 1, line 1, after "to" insert "create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to immunity for a person providing foster care for approving reasonable and prudent activities; and to"

Page 2, after line 24, insert:

"**SECTION 2.** A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Immunity for a person providing foster care.

A person providing foster care for children in a licensed or approved facility is immune from civil liability for any act or omission resulting in damage or injury to or by a child in foster care if, at the time of the act or omission, the person providing foster care for children applied the reasonable and prudent parent standard in a manner that protects child safety, while also allowing the child in foster care to experience age or developmentally appropriate activities."

Renumber accordingly

Date: 02/11/2015
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB2081

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: Proposed Amend from DHS

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Anderson Seconded By Axness

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Tyler Axness	X	
Senator Oley Larsen (V-Chair)	X		Senator John M. Warner	X	
Senator Howard C. Anderson, Jr.	X				
Senator Dick Dever	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment

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

Date: 02/11/2015
Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2081

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 15.8041.01001 Title 02000

Recommendation:
☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐

Motion Made By Anderson Seconded By Larsen

Senators	Yes	No	Senators	Yes	No
Senator Judy Lee (Chairman)	X		Senator Tyler Axness	X	
Senator Oley Larsen (V-Chair)	X		Senator John M. Warner	X	
Senator Howard C. Anderson, Jr.	X				
Senator Dick Dever	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Warner

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

REPORT OF STANDING COMMITTEE

SB 2081: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2081 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to immunity for a person providing foster care for approving reasonable and prudent activities; and to"

Page 2, after line 24, insert:

"**SECTION 2.** A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

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A person providing foster care for children in a licensed or approved facility is immune from civil liability for any act or omission resulting in damage or injury to or by a child in foster care if, at the time of the act or omission, the person providing foster care for children applied the reasonable and prudent parent standard in a manner that protects child safety, while also allowing the child in foster care to experience age or developmentally appropriate activities."

Renumber accordingly

2015 HOUSE HUMAN SERVICES

SB 2081

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2081
2/23/2013
Job #24251

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Vicky Cratchree

Explanation or reason for introduction of bill/resolution:

Relating to definitions used in foster care homes for children and adults.

Minutes: Testimony 1

Chairman Weisz opened the hearing on SB 2081.

Kelsey Bless: From Residential Child Care Facilities for DHS Children and Family Services Division. (See Testimony #1)

5:22
Rep. Porter: In the immunity section going back to your definitions, is that all encompassing between the three different types? It seems to me that it is only capturing licensed or group home facilities.

Bless: That is correct. The definition that came forward with the immunity clause is right out of public law the Sex Trafficking and Strengthening Families Act. That is for the purpose of foster care providers for children.

Rep. Porter: If it is good enough for the immunity for those types of services in bigger facilities, why wouldn't it be good enough for the foster home for adult facilities? Why don't we one size fits all?

Bless: It was specific mind set of working with the children. I can look to our legal department to see if there is anything else.

Rep. Porter: Was the discussion on the limiters or was it a discussion that everyone that deals with foster care should have immunity?

Jonathan Alm: Attorney with DHS. The question is should the immunity clause provision also apply to adults in foster care.

Rep. Porter: Right, one size fits all. If you are doing foster care, no matter which component inside of the definitions you are doing you should also share in the immunity provision.

Alm: This bill was drafted to specifically address the federal change in the requirement as to anybody providing care to foster children. In adult foster care settings, some situations where the individual will not have a guardian they may not be able to make some of those decisions on their own. We drafted this specifically to address the children situation according to what federal law wanted us to do.

Chairman Weisz: Why isn't family foster homes part of the immunity then?

Alm: I look at it as a person providing foster care for children which would RCCF, family foster care home or any other type of facility.

Chairman Weisz: Ok, you think it is.

Rep. Porter: As long as they are licensed to do foster care, you think they are covered?

Alm: Any facility that is licensed or approved would have that liability coverage.

Rep. Porter: A family in the definitions in the top of page 2, you would see based on the language in your immunity provision that they are also covered? If we are going to give immunity, let's give immunity.

Alm: I would say any licensed or approved foster care facility would be covered.

Rep. Porter: I disagree with you because the only place you use approved is down in line 22 where it talks about approved residents. If it our intent to provide immunity in foster care it should be in all foster care and not inside of those specific definitions.

Alm: The approval foster care comes from Tribal. They do an affidavit process. They submit it to us and we approve them. It is not necessary a license for that aspect. They will qualify for federal funding.

Chairman Weisz: Wouldn't we have to say person or individual as we use person as a corporate meaning?

Alm: I would have to look into that definition of individual and person to make sure it is covered.

Chairman Weisz: Your intent is to cover the individual family foster home in the immunity language and not just facilities, correct?

Alm: We would be looking at individuals and entity as well.

Chairman Weisz: Is that the intent?

Alm: Yes.

NO OPPOSITION

Chairman Weisz closed the hearing on SB 2081.

2015 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Fort Union Room, State Capitol

SB 2081
2/23/2015
Job #24270

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature	Vicky Crabtree

Minutes:

Chairman Weisz: Let's look at 2081. I asked the question about person and Jonathan got back to me and said a person be an individual or person which means a corporation or entity.

Rep. Porter: My concern was that we are covering everybody with the umbrella and the department felt with the language change it covers everyone. I'm comfortable with it and I Move a Do Pass on 2081.

Rep. Seibel: Second.

ROLL CALL VOTE: 13 y 0 n 0 absent

MOTION CARRIED

Bill Carrier: Rep. Seibel

Date: 2-23-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2081

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Porter Seconded By Rep. Seibel

Representatives	Yes	No	Representatives	Yes	No
Chairman Weisz	✓		Rep. Mooney	✓	
Vice-Chair Hofstad	✓		Rep. Muscha	✓	
Rep. Bert Anderson	✓		Rep. Oversen	✓	
Rep. Dick Anderson	✓				
Rep. Rich S. Becker	✓				
Rep. Damschen	✓				
Rep. Fehr	✓				
Rep. Kiefert	✓				
Rep. Porter	✓				
Rep. Seibel	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Seibel

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

REPORT OF STANDING COMMITTEE

SB 2081, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2081 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2081

Attach #1
SB 2081
02/11/2015
J#23643

Testimony
Senate Bill 2081– Department of Human Services
Senate Human Services Committee
Senator Judy Lee, Chairman
February 11, 2015

Chairman Lee, members of the Senate Human Services Committee, my name is Kelsey Bless. I license the Residential Child Care Facilities for the Department of Human Services (Department), Children and Family Services Division. I am here today in support of Senate Bill 2081, which was introduced at the request of the Department. The Department is also proposing an amendment to Senate Bill 2081 to address a new requirement recently passed in the federal "Preventing Sex Trafficking and Strengthening Families Act" (PL 113-183).

North Dakota Century Code chapter 50-11 addresses foster care homes for children and adults. The Department proposes the change on page 1, lines 16 and 18 through 21, to revise the definition of "facility" and "family foster home for adults." The definition on Page 1 Lines 18 through 21 has been moved to Page 2 Lines 15 through 18. The proposed changes are to ensure consistency in the terms we use.

In North Dakota, a group home or residential child care facility providing group foster care for children must either be "licensed" or "approved" by the Department to receive reimbursement for placement under Social Security Act, Title IV-E funding. Providers are required to meet full compliance with licensing standards to gain a licensed or approved status. The proposed changes on page 2, lines 19 and 22 clarify that a group home and residential child care facility can either be a licensed or an approved facility. This change is proposed as a clarification.

In addition, the bed capacity limits identified in the definitions of "group home" and "residential child care facility" currently in chapter 50-11 are slightly different than the federal definitions. The proposed changes on page 2, lines 20 and 23, will align the North Dakota definition of "group home" and "residential child care facility" with the federal definition. This change would allow for a clear numeric division between group home and residential facility bed capacity which will be reflective of the Department's federal reporting expectations. Passage of this bill is not expected to affect the current foster home for adults, residential child care facilities, or group homes.

As I indicated at the start of my testimony, the Department is proposing an amendment to Senate Bill 2081 to comply with requirements of recently passed P.L. 113-183.

The proposed amendment would create a new section in chapter 50-11 that would provide immunity for a person providing foster care who applies a reasonable and prudent parent standard in approving activities for a child in foster care.

North Dakota will follow the federal definition of "reasonable and prudent parenting", which means "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities."

Many decisions regarding activity involvement are determined at Child and Family Team meetings which include the custodian, foster care provider, the child, possibly a therapist, teacher, etc. Examples of such decisions may include allowing a foster child to participate in Boy Scouts where he goes on a weekend camping trip, allowing him to water ski during a summer weekend at the lake cabin, or allowing him to join the school football team. These examples are normal everyday activities that children outside of the child welfare system need their parent's permission to do if the parent believes it's appropriate to grant permission. The immunity inclusion in NDCC 50-11 would allow foster care providers the ability to more freely offer their foster children the opportunity to engage in developmentally appropriate activities at the same rate they would allow their biological children.

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

Attach #2
SB2081
02/11/15
J# 23643

PROPOSED AMENDMENTS TO SENATE BILL NO. 2081

Page 1, line 1, after "to" insert "to create and enact a new section to chapter 50-11 of the North Dakota Century Code, relating to immunity for a person providing foster care who applies a reasonable and prudent parent standard in approving activities for a child in foster care; and to"

Page 2, after line 24, insert:

"**SECTION 2.** A new section to chapter 50-11 of the North Dakota Century Code is created and enacted as follows:

Immunity for a person providing foster care. A person providing foster care for children in a licensed or approved facility is immune from civil liability for any act or omission resulting in damage or injury to or by a child in foster care if, at the time of the act or omission, the person providing foster care for children applied a reasonable and prudent parent standard in a manner that protects child safety, while also allowing the child in foster care to experience age or developmentally appropriate activities."

Renumber accordingly

#1

Testimony
Engrossed Senate Bill 2081– Department of Human Services
House Human Services Committee
Representative Robin Weisz, Chairman
February 23, 2015

Chairman Weisz, members of the House Human Services Committee, my name is Kelsey Bless. I license the Residential Child Care Facilities for the Department of Human Services (Department), Children and Family Services Division. I am here today in support of Engrossed Senate Bill 2081, which was introduced at the request of the Department.

North Dakota Century Code chapter 50-11 addresses foster care homes for children and adults. The Department proposes the change on page 1, lines 18 and 20 through 23, to revise the definition of "facility" and "family foster home for adults." The definition on Page 1 Lines 20 through 23 has been moved to Page 2 Lines 18 through 21. The proposed changes are to ensure consistency in the terms we use.

In North Dakota, a group home or residential child care facility providing group foster care for children must either be "licensed" or "approved" by the Department to receive reimbursement for placement under Social Security Act, Title IV-E funding. Providers are required to meet full compliance with licensing standards to gain a licensed or approved status. The proposed changes on page 2, lines 22 and 25 clarify that a group home and residential child care facility can either be a licensed or an approved facility. This change is proposed as a clarification.

In addition, the bed capacity limits identified in the definitions of "group home" and "residential child care facility" currently in chapter 50-11 are

slightly different than the federal definitions. The proposed changes on page 2, lines 23 and 26, will align the North Dakota definition of "group home" and "residential child care facility" with the federal definition. This change would allow for a clear numeric division between group home and residential facility bed capacity which will be reflective of the Department's federal reporting expectations. Passage of this bill is not expected to affect the current foster home for adults, residential child care facilities, or group homes.

Engrossed Senate Bill 2081 was amended in the Senate to ensure North Dakota's compliance with requirements of the recently passed federal "Preventing Sex Trafficking and Strengthening Families Act" (PL 113-183). The proposed changes on page 3, lines 1 through 6 would provide immunity for a person providing foster care who applies a reasonable and prudent parent standard in approving activities for a child in foster care.

North Dakota will follow the federal definition of "reasonable and prudent parenting", which means "the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child, that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities."

Many decisions regarding activity involvement are determined at Child and Family Team meetings which include the custodian, foster care provider, the child, possibly a therapist, teacher, etc. Examples of such decisions may include allowing a foster child to participate in Boy Scouts

where he goes on a weekend camping trip, allowing him to water ski during a summer weekend at the lake cabin, or allowing him to join the school football team. These examples are normal everyday activities that children outside of the child welfare system need their parent's permission to do if the parent believes it's appropriate to grant permission. The immunity inclusion in NDCC 50-11 would allow foster care providers the ability to more freely offer their foster children the opportunity to engage in developmentally appropriate activities at the same rate they would allow their biological children.

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