

1999 HOUSE JUDICIARY

HB 1120


1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1120

House Judiciary Committee

Conference Committee

Hearing Date January 12, 1999

Tape Number	Side A	Side B	Meter #
2	X		32
Committee Clerk Signature 			

Minutes:

BLAINE NORDWALL: (Hum. Ser.) Presented written testimony, a copy of which is attached.

The department likes to use the lightest tool to secure compliance with the law.

AL WOLF: (ND Elec. Board We have some of the same problems and we support this bill. I suggest the amendments attached to my letter, copies of which are attached.

COMMITTEE ACTION: January 20, 1999

JOHN WALSTAD: (LC) Appeared at the request of the chairman and pointed out that this bill is unnecessary as the Supreme Court says that this is allowable practice now. See 488 NW2d 401.

REP. KOPPELMAN moved that the committee recommend that the bill DO NOT PASS. Rep. Mahoney seconded and the motion was passed on a roll call vote with 12 ayes, 0 nays and 3 absent. Rep, Klemin was assigned to carry the bill on the floor.

Date: 4/20
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1120

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not pass

Motion Made By Koppelman Seconded By Mahoney

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. SVEEN	✓	
REP. CLEARY					
✓ REP. DELMORE	✓				
REP. DISRUD	✓				
REP. FAIRFIELD	✓				
REP. GORDER	✓				
REP. GUNTER					
REP. HAWKEN	✓				
REP. KELSH	✓				
REP. KLEMIN	✓				
REP. KOPPELMAN	✓				
REP. MAHONEY	✓				
REP. MARAGOS					
REP. MEYER	✓				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Klemin

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

REPORT OF STANDING COMMITTEE (410)
January 21, 1999 10:21 a.m.

Module No: HR-13-0950
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1120: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1120 was placed on the
Eleventh order on the calendar.

1999 TESTIMONY
HB 1120

**TESTIMONY BEFORE THE
HOUSE JUDICIARY COMMITTEE
REGARDING HOUSE BILL NO. 1120
January 12, 1998**

Chairman DeKrey and members of the House Judiciary Committee, my name is Blaine Nordwall. I appear on behalf of the Department of Human Services.

The department requested introduction of House Bill 1120 in response to a court decision. We had asked the court for an injunction to prevent the operation of an unlicensed adult foster care facility. The court denied the request because there is a criminal penalty attached to operating such an unlicensed facility. Under section 32-05-02, if there is any kind of criminal penalty provided, the criminal conduct cannot be enjoined. As a result of losing the injunction, we were obliged to pursue a criminal complaint.

House Bill 1120 is intended to specifically allow an injunction to enforce a licensing law, even if the licensing law can also be enforced in the criminal justice system. It is the department's strong preference to use civil, rather than criminal, enforcement tools whenever possible. On the other hand, we did not wish to remove the criminal penalty for violating foster care laws because it may be appropriate to use that penalty if a violation results in significant injury or harm to anyone. House Bill 1120 resolves all of those concerns.

I'd be happy to try and answer any questions members of the committee may have.

Presented by:

**Blaine L. Nordwall
Director, Legal Advisory Unit
ND Department of Human Services**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1120

Page 1, line 6, remove the overstrike over "Preventive"

Page 1, line 7, remove "1. Except as provided in subsection 2, preventive"

Page 1, line 9, overstrike the period and insert immediately thereafter: "except:"

Page 1, replace lines 10 through 13 with:

- "1. In a case of nuisance; or
2. To enforce a provision of this code that requires a license to lawfully conduct an activity."

Renumber accordingly

WHEELER WOLF

ATTORNEYS

Albert A. Wolf
Jack McDonald
Gregory C. Larson
Steven L. Latham
Suruli VogelArnold V. Fleck
Michael L. Wagner
Melissa Hauer
Courtney Koebele*Legal Assistants*
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January 13, 1999

BY FAX: 328-1802

Al Grindberg, Clerk
House Judiciary Committee
State Capitol
Bismarck, ND 58505RE: HB 1120
OUR FILE: 16743.002

Dear Al:

Attached are proposed amendments to HB 1120. This is to confirm my concern on behalf of the North Dakota Electrical Board that this Bill should pass with these amendments. State's attorneys are very reluctant to prosecute local persons who perform electrical wiring or plumbing work for others without a license in violation of the law, including criminal penalties and therefore the 1997 Session enacted cease and desist civil powers which provides a more effective enforcement process. The criminal provisions still may provide a deterrent where the consequences of the actions may be more severe.

Sincerely,

WHEELER WOLF LAW FIRM


Albert A. Wolf

AAW:ko

Encl.

c: ND State Electrical Board
(FAXed without review by AAW)

ND State Electrical Board
January 13, 1999

PROPOSED AMENDMENT TO HOUSE BILL 1120

Line 6, remove the overstrike.

Line 7, remove "1. Except as provided in subsection 2. preventive".

Line 9, after "forfeiture" insert "except in the following:"

Line 10, remove "2. Preventive relief may be granted to enforce a penal law;"

Lines 12 and 13, replace

"b. That proscribes conduct except by persons properly

licensed or authorized under this code." with

"b. To enforce a penal law to prevent conduct or services

when provided by unlicensed persons where licensing is required

under this code."

Renumber accordingly.