

1999 SENATE EDUCATION

SB 2074

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2074

Senate Education Committee

Conference Committee

Hearing Date January 12, 1999

Tape Number		Side A	Side B	Meter #
	1	x		1-2795
1/26	2	x		5210-6173
1/26	2		x	1-549
1/27	1	x		4669-5220

Committee Clerk Signature



Minutes:

SENATOR FREBORG called the meeting to order, all SENATORS were present.

SENATOR FREBORG : We will now hear SB2074. Any testimony in favor.

Janet Placek, Executive Director of the Education Standards and Practices Board testified in favor of SB2074. Testimony attached.

SENATOR FREBORG : Any questions?

SENATOR WANZEK : All you are asking is for them to pay attorneys fees, now currently the board pays these fees.

Janet: Correct

SENATOR WANZEK : Should you prevail under existing laws, he still pays the fees.

Page 2

Senate Education Committee
Bill/Resolution Number Sb2074
Hearing Date January 12, 1999

Janet: I stand corrected, if he brings an attorney in with him he pays his own attorney but doesn't pay the costs we bear. This costs us about \$1,000.

SENATOR FREBORG : Possibly we could require payment for a convicted felon. Payment and automatic revocation of certificate.

Janet: I'm not an attorney, I don't know.

SENATOR FREBORG : I'm not either but by statute we should be able to automatically revoke the certificate after a conviction without going through another administrative hearing because revoking the certificate, the reason is the same, they committed a crime so you need the certificate. Why should you have to go through the expense of a hearing after they are convicted.

Janet: My understanding it is due process.

SENATOR FREBORG : They've been convicted they've had due process.

SENATOR KELSH : Is there a difference in how you handle those.

Janet: Bad check is a misdemeanor. Gross sexual imposition is a felony. We can't start revocation of certificate until they've gone through the courts. We don't have private investigations or anyone to do that sort of thing.

SENATOR FREBORG : Thank you Janet.

SENATOR WANZEK : Many of us are not attorneys but we play one all the time.

SENATOR FREBORG : Further testimony in favor of 2074? Any testimony in opposition?

Helen Busche, ND Education Association spoke in opposition of SB2074. No printed testimony so an overview of her testimony is as follows: I understand about paying charges but it would have a chilling affect on the educator and make it more difficult to seek justice if there is a \$2,000 plus bill attached. The cost may be prohibitive, some may try to cut a deal with the

Standards Board rather than avoid the risk of these undetermined fees. In lines 12 & 13 Janet included other costs such as staff time, witness fees, etc. Difficult to determine the exact fee.

Line 9 may impose a fee that may cause educators to question who would be assessed the whole cost & which would be charged the lesser amount of money. Who would determine who was assessed and who wouldn't be. Would that be fair. Without a cap on the amount of money that would be charged or the limit that we would be looking for, the different variations. We stand in opposition of this bill. The Standards Board should bear the cost. We urge a DO NOT PASS .

SENATOR REDLIN : Last sentence of this bill "when applicable the teacher's certificate or in the case of administrators professional practice, the administrators certificate may be suspended. Sounds like after the hearing the individual is going to get their certificate back and still pay all these costs.

Helen: My understanding is you suspend their certificate through disciplinary action say for a 3 month period of time, then after a 3 month period if this person has not paid the Board the amount of money they were assessed, then they can withhold giving them back their certificate.

SENATOR REDLIN : Assume that the person is going to be entitled to it back

Helen: Yes

SENATOR KELSH : Talk about 3 month suspension. What type of activity would qualify you to have your license suspended for periods of time.

Helen: One example of having your license suspended is say you are in the classroom teaching and you didn't renew your certificate. Didn't reapply when it expired. In that instance the Board does suspend your certificate. Say for an amount of time because you failed to renew.

SENATOR WANZEK : If an educator goes through a hearing and has to bring legal counsel or someone to represent themselves. Do the educators pay for this themselves.

Helen: If you are a member we provide the legal services. If you are not a member of ours and you need to seek an attorney you would have to pay those costs yourself. You would be paying both those yourself, the Boards share and also your own costs. if this bill should pass.

SENATOR WANZEK : Even if you are a member of the Teachers Assoc. you still would be paying the cost of dues. It's a service right?

Helen: That's right. Part of the cost of membership.

SENATOR O'CONNELL : What do you think of SENATOR FREBORG's idea that once you are convicted you lose or automatically revoke rather than go through a procedure like this.

Helen: Would want to do more research on that depending on what the crime is. There is a possibility people can be rehabilitated. Don't know how you would prove that. Maybe we should set the standards high enough so that those people are not brought back into the profession again. Would like to do more research before making a decision.

SENATOR REDLIN : Situation where teacher is indicted and obviously she would be taken off the staff. When trial was over they get acquitted. That's what I'm referring to in the last sentence. They get their license, it proves they didn't do it why should they have to pay the cost of the whole hearing?

Helen: Certificates would not be taken away from them until the court proceedings were complete.

SENATOR REDLIN : OK

SENATOR COOK : How often in a years time has a member of your organization been through this process.

Helen: I think in the last year, 2 times all the way through the process.

SENATOR COOK : Disagreement that proper credentials are in place.

SENATOR FREBORG : If they don't have the dollars to warrant a certificate, I don't understand how they got it in the first place.

Helen: An error made when the certificate was reviewed. That was are understanding.

SENATOR FREBORG : Any other questions.

SENATOR REDLIN : Are there situations where a matter of physical or mental health comes in to play?

Helen: I would imagine there are. I don't recall.

SENATOR WANZEK : Janet's testimony says the only way the fees will be accessed of an educator is if there is disciplinary action taken or if the educator is found to be in violation or guilty. On the other hand what if the educator is vindicated. Are your costs reimbursed.

SENATOR WANZEK : I'm saying if the educator is subjected to an investigation and hearing based on some accusation or claims of improper behavior and then is vindicated. The educator must defend themselves and spend money or the Association does. If they are vindicated are you ever able to recoup your costs.

Helen: No

Ron Torgeson. We are opposed to this bill. No testimony.

SENATOR REDLIN : Is there a reason for the bill that indicate that whoever has that authority would take into account the family involved.

SENATOR FREBORG : Any testimony in favor of SB2074. Janet would you go back to the podium please

SENATOR REDLIN : I am wondering about line 9. The word may can be broadly interpreted.

SENATOR COOK : Standard and Practice Board is 6 years old?

Janet: 4 years

SENATOR COOK : Prior to that the DPI was in this position and might I say that there was not the concern back then because DPI had a little different budget than what you have got to work with.

Janet: Exactly.

SENATOR FREBORG : The line including costs of investigation, is that your costs?

Janet: That usually is the cost done by our attorney. Our Asst. Attorney General, Doug Barre does the investigation background of a collection of court documents. Usually most of the evidence has been taken care of through the court process and a collection of court records.

SENATOR FREBORG : If it was possible to draft legislation to automatically revoke a certificate. If a teacher was convicted of a felony, regardless of class you could automatically revoke the certificate, would this bill be necessary.

Janet: No, I'm not speaking with a lot of authority.

SENATOR FREBORG : Thank you. With that we will close the hearing on SB2074.

Continued 1/26, 1999

SENATOR FREBORG : I have the amendments for SB2074. I give it to you because one of the attorneys in the Attorney Generals office drafted that. Sent me this one because it is shorter and simpler than the first one. Doesn't change section one. We'll take it to Council and see what

they want to do. Look at A & B of the first amendment. I believe he would intend for us to retain. If you approve to adopt this we'll take it to Anita.

SENATOR O'CONNELL : Did we want to address page 1, line 9 "may impose a fee".

Line 15, do we want "may" instead of "will be".

SENATOR FREBORG : I believe we need the language.

SENATOR COOK : The examples that they gave us for needing this language would now be removed if we pass this language. I would vote against the bill. I don't have a problem with getting certificates away from convicted people, but if it is a lesser crime or whatever reason there should be due process.

SENATOR FREBORG : If we only adopt these areas would be automatic.

SENATOR COOK : When you say they will have to pay, we're talking the Board of Standards and Practices.

SENATOR FREBORG : I guess if they can't get the money anywhere else they will. I need to know what the committee wants and then I'll have Anita incorporate this into the bill.

SENATOR WANZEK : What we are trying to say is that we can deny or revoke their application if they have been found guilty. It does allow for due process or appeal that they wouldn't pay the fee. So we don't need this language.

SENATOR FREBORG : They wanted all disciplinary action to be covered to be able to get court costs. Committee what is it you want to do.

SENATOR COOK : Get you amendment, get back with Anita, remove section 1 and add these amendments and then we have a good bill we can pass out of here.

SENATOR REDLIN : Try to get some of their money.

SENATOR WANZEK : I could agree to that proposal. Standards and Practices Board wants to recoup their costs. Are teachers able to recoup if found not guilty but they cannot. Should we be fair.

SENATOR FREBORG : Take it up to Anita and get done what we want done.

Hearing closed on SB2074.

January 27, 1999 Tape 1, Side A, Meter 4669-5220

SENATOR COOK : We discussed this yesterday afternoon our concerns were that we needed to delete out section 1 that the amendments you brought was actually we would probably agree and so it becomes a hoghouse amendment. Legislative council brought them down and looks as if it is what we want.

SENATOR FREBORG : Is this the exact amendment or is it changed. The proposal that was given to us. It is the exact amendment that you had brought to us yesterday.

SENATOR FREBORG : So it is just a hog house.

SENATOR COOK : Only difference is we're removing section 1. I move this amendment 98053.0102.

SENATOR WANZEK : 2nd

SENATOR FREBORG Motion is to adopt the amendment to SB2074 titles 98053.0102.

Vote: 7 (Yes) 0 (No)

SENATOR FREBORG : We have an amended bill before us.

SENATOR COOK : I move a DO PASS on SB2074 as amended.

Page 9

Senate Education Committee

Bill/Resolution Number Sb2074

Hearing Date ~~January 12~~, 1999

SENATOR FLAKOLL : 2nd

1-27-99

Vote: 7 (Yes) 0 (No)

CARRIER: SENATOR COOK

PROPOSED AMENDMENTS TO SENATE BILL NO. 2074

Page 1, line 1, replace "a" with "two" and replace "section" with "sections"

Page 1, line 2, after "proceedings" insert "and grounds for automatic denial or revocation of teaching certificates"

Page 1, after line 16, insert:

"SECTION 2. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Crimes against a child and sexual offenses - Denial of or immediate revocation of teaching certificate.

1. Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching certificate and shall revoke immediately the teaching certificate of an individual, other than an administrator, who has been found guilty of a crime against a child or a sexual offense. Notwithstanding any other law, the administrator's professional practices board shall revoke immediately the teaching certificate of an administrator who has been found guilty of a crime against a child or a sexual offense.
2. An individual, other than an administrator, who is denied a teaching certificate or who has had a teaching certificate revoked under subsection 1 may file a request with the education standards and practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. An administrator who has had a teaching certificate revoked under subsection 1 may file a request with the administrator's professional practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. The scope of the hearing is limited to determining whether the individual was convicted of a crime against a child or a sexual offense and whether the conviction has been overturned on appeal.
3. A final decision denying a teaching certificate or revoking a teaching certificate under this section is appealable pursuant to chapter 28-32. A court may not stay the decision pending an appeal. A court shall affirm the decision denying a teaching certificate or revoking a teaching certificate unless the court finds that the individual was not convicted of a crime against a child or a sexual offense or that the conviction was overturned on appeal.
4. As used in this section:
 - a. "Conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction, or a deferred imposition of sentence. The term does not include a finding of guilt overturned on appeal.
 - b. "Crime against a child" means violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is

a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.

- c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or 12.1-22-03.1, or chapter 12.1-27.2, or an equivalent ordinance."

Renumber accordingly

January 26, 1999

PROPOSED AMENDMENTS TO SENATE BILL NO. 2074

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15-36 of the North Dakota Century Code, relating to grounds for the automatic denial or revocation of teaching certificates; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Crimes against a child and sexual offenses - Denial of or immediate revocation of teaching certificate.

1. Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching certificate and shall revoke immediately the teaching certificate of an individual, other than an administrator, who has been found guilty of a crime against a child or a sexual offense. Notwithstanding any other law, the administrator's professional practices board shall revoke immediately the teaching certificate of an administrator who has been found guilty of a crime against a child or a sexual offense.
2. An individual, other than an administrator, who is denied a teaching certificate or who has had a teaching certificate revoked under subsection 1 may file a request with the education standards and practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. An administrator who has had a teaching certificate revoked under subsection 1 may file a request with the administrator's professional practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. The scope of the hearing is limited to determining whether the individual was convicted of a crime against a child or a sexual offense and whether the conviction has been overturned on appeal.
3. A final decision denying a teaching certificate or revoking a teaching certificate under this section is appealable pursuant to chapter 28-32. A court may not stay the decision pending an appeal. A court shall affirm the decision denying a teaching certificate or revoking a teaching certificate unless the court finds that the individual was not convicted of a crime against a child or a sexual offense or that the conviction was overturned on appeal.
4. As used in this section:
 - a. "Conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt overturned on appeal.

- b. "Crime against a child" means violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
- c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or 12.1-22-03.1, or chapter 12.1-27.2, or an equivalent ordinance.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Date: 1/27
 Roll Call Vote #: 2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2074

Senate EDUCATION Committee

Subcommittee on _____
 or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken Motion for Do Pass on SB2074 as amended

Motion Made By Cook Seconded By Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg, Chairman	✓				
Senator Cook, Vice Chairman	✓				
Senator Flakoll	✓				
Senator Wanzek	✓				
Senator Kelsh	✓				
Senator O'Connell	✓				
Senator Redlin	✓				

Total (Yes) 7 No 0

Absent _____

Floor Assignment Cook

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

REPORT OF STANDING COMMITTEE

SB 2074: Education Committee (Sen. Freborg, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2074 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 15-36 of the North Dakota Century Code, relating to grounds for the automatic denial or revocation of teaching certificates; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Crimes against a child and sexual offenses - Denial of or immediate revocation of teaching certificate.

1. Notwithstanding any other law, the education standards and practices board shall deny an application for a teaching certificate and shall revoke immediately the teaching certificate of an individual, other than an administrator, who has been found guilty of a crime against a child or a sexual offense. Notwithstanding any other law, the administrator's professional practices board shall revoke immediately the teaching certificate of an administrator who has been found guilty of a crime against a child or a sexual offense.
2. An individual, other than an administrator, who is denied a teaching certificate or who has had a teaching certificate revoked under subsection 1 may file a request with the education standards and practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. An administrator who has had a teaching certificate revoked under subsection 1 may file a request with the administrator's professional practices board for a due process hearing under chapter 28-32. The hearing must be held within ten days of the request. The scope of the hearing is limited to determining whether the individual was convicted of a crime against a child or a sexual offense and whether the conviction has been overturned on appeal.
3. A final decision denying a teaching certificate or revoking a teaching certificate under this section is appealable pursuant to chapter 28-32. A court may not stay the decision pending an appeal. A court shall affirm the decision denying a teaching certificate or revoking a teaching certificate unless the court finds that the individual was not convicted of a crime against a child or a sexual offense or that the conviction was overturned on appeal.
4. As used in this section:
 - a. "Conviction" means a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02, or a deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. The term does not include a finding of guilt overturned on appeal.

- b. "Crime against a child" means violation of chapter 12.1-16, 12.1-17, 12.1-18, or 12.1-29, or an equivalent ordinance, in which the victim is a minor or is otherwise of the age required for the act to be a crime or an attempt to commit these offenses.
- c. "Sexual offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, or 12.1-22-03.1, or chapter 12.1-27.2, or an equivalent ordinance.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

1999 HOUSE EDUCATION

SB 2074

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2074

House Education Committee

Conference Committee

Hearing Date 3-3-99

Tape Number	Side A	Side B	Meter #
Tape # 1	x		0.1 to 14.9
Committee Clerk Signature <i>Joan Diers</i>			

Minutes:

Chairman R Kelsch , Vice Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep Haas , Rep Johnson , Rep Nelson , Rep Nottestad , Rep L Thoreson , Rep Grumbo , Rep. Hanson , Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg .

Chairman R Kelsch : We will open the hearing on SB 2074 and ask the clerk to read the title.

Janet Placek: Executive Director of the Education Standards and Practices Board (See attached testimony) .

Max Laird; President of NDEA Was dealing with confusion about this legislation. The orginial legislation had to do with disciplinary process and administrative rules hearings and the cost therein. The final legislation was passed without testimony on the senate floor, and it is a bill to submit automatic revocation for a variety of convictions. I am not in opposition to the bill, but some confusion as to how this occurred. I would encourage you to not include this amendment

Page 2

House Education Committee

Bill/Resolution Number Sb 2074

Hearing Date 3-3-99

in the bill. Some discussion was held at this point on several issues that may happen if the bill would pass.

Larry Klundt: North Dakota School Administrators Association. spoke in opposition to SB 2074.

We feel that the ESPB should pay the bill because that is just the cost of doing business.

Some discussion was held on disciplinary proceedings and who should pay for them.

Chairman R Kelsch : Anyone else wishing to speak in opposition to SB 2074. Hearing none we will close the hearing on SB 2074.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2074-3-16-99

House Education Committee

Conference Committee

Hearing Date 3-16-99

Tape Number	Side A	Side B	Meter #
Tape # 1	x		9.8 to 28.9
Committee Clerk Signature <i>Joan Diers</i>			

Minutes:

Chairman R Kelsch , Vice Chair Drovdal , Rep Brandenburg , Rep Brusegaard , Rep Haas , Rep Johnson , Rep Nelson , Rep Nottestad , Rep L Thoreson , Rep Grumbo , Rep. Hanson , Rep. Lundgren , Rep. Mueller , Rep. Nowatzki , Rep. Solberg .

Chairman R Kelsch : We will take up SB 2074, we have a proposed amendment for this bill from Janet Placek.

Rep Nelson : I would move the amendments in Ms Placek's testimony.

Rep Brandenburg : seconded the motion.

Chairman R Kelsch : Committee discussion.

Rep Haas : We need to amend the amendments, we need to add the statement, if after the administrative hearing, and the person is not going to be disciplined then I donot think that

person has to pay the cost. So if we would add the statement on bottom of page two to her testimony to the amendment, then I would find it acceptable.

Chairman R Kelsch : If the office of administrative hearing finds that there is no need for disciplinary action there would be no fee assessed to the educator or administrator.

Rep Nottestad : I would move the amendment for purposes of discussion.

Rep Brusegaard : seconded the motion.

Chairman R Kelsch : Committee discussion. Move to amend the amend. Voice vote, motion carried. Committee discussion. Hearing none, voice vote of the amendment. Roll call vote. The motion passes 9 Yes 5 NO 1 Absent.

Rep Brusegaard : Move a DO PASS as amended.

Rep Brandenburg : seconded the motion. .

Chairman R Kelsch : Committee discussion. Ask the clerk to call the roll on a DO PASS as amended motion. Motion passes 10 YES 3 NO 2 Absent Floor assignment Rep Brusegaard .

Roll call on amended amendment

Date: 3-16-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2074

House Education Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken _____

Motion Made By Nelson Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Rep. ReaAnn Kelsch-Chairperson	✓		Rep. Dorvan Solberg	✓	
Rep. David Drovdal-Vice Chair		✓			
Rep. Michael D. Brandenburg	✓				
Rep. Thomas T. Brusegaard	✓				
Rep. C. B. Haas	✓				
Rep. Dennis E. Johnson	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad		✓			
Rep. Laurel Thoreson					
Rep. Howard Grumbo		✓			
Rep. Lyle Hanson		✓			
Rep. Deb Lundgren		✓			
Rep. Phillip Mueller	✓				
Rep. Robert E. Nowatzki	✓				

Total (Yes) 9 No 5

Absent 1

Floor Assignment _____

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

Date: 3-16-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2074

House Education Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number 98053.0201

Action Taken Do Pass as amended

Motion Made By Brusegaard Seconded By Brandenburg

Representatives	Yes	No	Representatives	Yes	No
Rep. ReaAnn Kelsch-Chairperson	✓		Rep. Dorvan Solberg	✓	
Rep. David Drovdal-Vice Chair	✓				
Rep. Michael D. Brandenburg	✓				
Rep. Thomas T. Brusegaard	✓				
Rep. C. B. Haas	✓				
Rep. Dennis E. Johnson	✓				
Rep. Jon O. Nelson	✓				
Rep. Darrell D. Nottestad					
Rep. Laurel Thoreson					
Rep. Howard Grumbo		✓			
Rep. Lyle Hanson		✓			
Rep. Deb Lundgren		✓			
Rep. Phillip Mueller	✓				
Rep. Robert E. Nowatzki	✓				

Total (Yes) 9/10 No 4/3

Absent 2

Floor Assignment Brusegaard

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

REPORT OF STANDING COMMITTEE

SB 2074, as engrossed: Education Committee (Rep. R. Kelsch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2074 was placed on the Sixth order on the calendar.

Page 2, after line 8, insert:

- "4. The education standards and practices board or, in the case of a school administrator, the administrator's professional practices board, may impose a fee against a certificate holder to reimburse the education standards and practices board or, in the case of a school administrator, the administrator's professional practices board, for all or part of the costs of administrative actions that result in disciplinary action against the certificate holder."

Page 2, line 9, replace "4" with "5"

Renumber accordingly

1999 SENATE EDUCATION

SB 2074

CONFERENCE COMMITTEE

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2074CC

Senate Education Committee

Conference Committee

Hearing Date March 31, 1999

Tape Number	Side A	Side B	Meter #
2	x		0 to 3097
4/1/99 1		X	0-1797
Committee Clerk Signature <i>Jinela Christman</i>			

Minutes:

CONFERENCE COMMITTEE:

SENATOR COOK

REP. H. DROVDAL

SENATOR FREBORG

REP. R.KELSCH

SENATOR O'CONNELL

REP. MUELLER

SENATOR COOK opened the Conference Committee hearing on SB2074. All members presents.

REPRESENTATIVE KELSCH: I would like to hear why you hoghoused the bill and amended it the way you did in the first place.

SENATOR O'CONNELL: The main concerns that came from the Committee was the philosophical concern of somebody having to pay to prove their innocence. If they go to a

hearing to defend themselves, they have to pay their costs incurred and if they lose I don't think it's right that anybody should have to pay the other sides costs.

SENATOR FREBORG stated that what we tried to do and this is drafted by an assistant Attorney General to stay out of trouble taking these certificates in this kind of situation. They wanted to get paid, they said it cost a \$1000 to revoke a certificate for all they have to go through. The reason we hoghoused the bill and did this, we tried to find a way that they could revoke a certificate automatically. In other words, if these things happen they don't have to spend a \$1000 to get the certificate, it will happen. It was the easiest way to take the financial burden off of ESPD.

SENATOR COOK: They made reference to an individual who was in the state penitentiary that was fighting to keep his certificate and they also indicated that they have about 6 such claims a year. The average cost is about \$1000 so basically we force the budget for \$6000. Those fees are paid for by the members in their certificate fees. We felt that by doing this we eliminated 6 claims a year.

REPRESENTATIVE DROVDAL: We had hearings on the amended bill which gave ESPB the authority to withhold a certificate or take it back after they have been convicted and I think it was after the appeals process. What we did was after all this process and due justice was served, we put an amendment on it saying that if this convicted person, and at this point he would be convicted and his appeal process if he wished to go after it, would have been played out so his conviction would have stood and they asked for his teacher's certificate back. At that point if he refused to do it and got a state appointed attorney to fight the case and then he lost which we wish he would because we do not want sex offenders teaching in our schools, then the initial cost

after that point could be recovered by the board. So it is after all his convictions before this fee can be added on to, when he refuses to give his license up.

SENATOR COOK: If an individual is convicted of a sex crime, that individual automatically loses his teacher's certificate.

REPRESENTATIVE DROVDAL: Yes, if you go back to Section 1 and 2, then the individual would have the right to go to appeal on his conviction. If he lost his appeal in court, then they would say your license is revoked. At that time if he said he was going to fight you on this, the cost of that hearing from there on if the sex offender lost would be against him. Only after he had gone through the due process on the conviction.

SENATOR COOK: Is the scope of the hearing limited to determining whether the individual was convicted of a crime or whether the conviction has been overturned on an appeal.

REPRESENTATIVE KELSCH: Correct, when they file for that appeal, that is what costs the money.

SENATOR COOK: What is there to appeal. The conviction is there or its not and if they still appeal then it would be a simple appeal and certainly wouldn't cost a \$1000.

REPRESENTATIVE KELSCH: If there is no need for disciplinary action there would be no fee assessed to the educator. That is why we put that amendment back on because we too felt that if you have a teacher that is requesting an administrative hearing such as this one that is sitting in jail. Number one, we can revoke their license automatically but they still have the ability to go through due process and come back and request an administrative hearing. That is what ESPD is paying for right now out of all the teacher's certificate fees that they pay in the state. What we

are asking is that those costs are turned and reimbursed to ESPD rather than them bear the full burden of it. The rest of the bill is great.

SENATOR COOK: The only thing is if the certificate is taken away the minute they are found guilty of the crime. Then only that can be appealed now the way this bill came is whether or not they were guilty. Prior to this bill, they could actually appeal whether they committed the crime or not. Is that correct.

REPRESENTATIVE KELSCH: You have always been able to go through due process and request a hearing. However, what happened was your teaching certificate was suspended, but it was not revoked. You could not have an automatic revocation of the teaching certificate, but you could suspend it. Then they would go through that hearing process, what you are doing right now is taking the teacher's certificate away. However, they still have the ability to ask for a due process hearing.

SENATOR COOK asked but the difference is before that due process hearing, they had to proven guilty of the crime. Now the only thing they can appeal is whether or not they have been found guilty or not. Is that correct.

SENATOR COOK: Say an individual teacher bounces 20 checks and is found guilty of bouncing checks. They would not automatically lose their certificate the way we pass this now. Explain the difference in the rights of that teacher versus a teacher who was found guilty of a sexual crime.

REPRESENTATIVE KELSCH: That is the way you have this bill written. You are correct, it would not be an automatic revocation of the teaching certificate. The House bill that we had would have been an automatic revocation for bouncing 10 checks. We killed the bill. The

difference is you have narrowly defined if found guilty of a crime against a child or a sexual offense. Even though the teaching certificate has been revoked, they are still able to request the administrative hearing and go through the administrative hearing process.

SENATOR COOK: If it were a crime against a child or a sexual offense, that hearing process that they are able to pursue can only hear whether or not they were found guilty or not. If they had committed a felony that hearing process that they could pursue would be much more in-depth.

REPRESENTATIVE KELSCH: Correct.

SENATOR COOK: Does your amendment provide both hearing processes.

REPRESENTATIVE KELSCH: The way you have the bill written, the original intent of the bill was to do that so that any teacher would have to pay. Now because it is narrowly written that would not be the case, it would only have to be those.

SENATOR COOK: Do you want your amendments to apply only to the hearings that are followed by somebody losing their certificate because of a crime against a child or sexual offense.

REPRESENTATIVE KELSCH: Correct.

SENATOR FREBORG: It deals only with those cases pertaining to sexual offenses or a crime against a child. My only concern was that this was after the convicted had every opportunity to go through the entire appeal process. I don't mind the amendment providing that after all avenues of appeal have been pursued, if they are going to appeal.

REPRESENTATIVE KELSCH: The way we were told it was because of where we put that is when they would be able to do this after they had gone through the administrative hearing then this is what they would be able to impose.

REPRESENTATIVE DROVDAL: That is the conclusion I came to. The other thing we talked about the \$1000. It is not a set fee, they may impose a fee and all or part of the costs.

SENATOR FREBORG: I really have a hard time revoking a certificate automatically. That happens as soon as you are convicted. What is it that they are going through here now the person who is found guilty can appeal. They appeal the revocation of their certificate, is that right. Where is their grounds for appeal when it is automatic in the law. What are they appealing.

REPRESENTATIVE KELSCH: There is nothing in the first section that says anything about an appeal. So if it is overturned on appeal, their teaching is already automatically revoked, how do they go about getting it back. Then they have to have the ability to go through the due process.

SENATOR FREBORG: I am not opposed to this as long as its after they have gone through all the appeal process.

SENATOR O'CONNELL: I wish we had someone to clear up this information. I am not comfortable with this yet.

REPRESENTATIVE DROVDAL: We felt comfortable putting that amendment on because there is always some due process loop hole.

SENATOR COOK: Who could we get to explain this to us.

SENATOR O'CONNELL: Janet or Anita.

SENATOR COOK: About the crimes against the child, simple assault, does anybody have any red flags that maybe that could be too inclusive.

REPRESENTATIVE KELSCH: If you were talking about a teacher that pushes a child.

SENATOR COOK: Yes, a child who gets belligerent to the point where there has to be a certain amount of restraint, and the teacher is in court for simple assault.

REPRESENTATIVE KELSCH: The problem with leaving this out, there are other definitions that are pertinent. I guess we could exempt out simple assault.

SENATOR FREBORG: A really rigid disciplinarian who likes to use corporal punishment consistently has that philosophy. I understand the person that may be having a bad day and get a little rough. But a person who does it all the time, I would like to have his certificate.

SENATOR COOK: We can think about that and have another short meeting and have Anita come down and explain some things.

SENATOR COOK CLOSED the Conference Committee on SB2074.

4-1-99

SENATOR COOK opened the Conference Committee hearing on SB2074. All members were present.

SENATOR COOK asked Janet Placek about the House amendments.

SENATOR COOK : This amendment was only supposed to apply to somebody who appealed their revocation under situations where they were found guilty of a particular crime against a child or sexual offense. Is that your intent?

JANET PLACEK: That is exactly right. The reason we asked the House committee to add that back on as on page 1, line 19. Even if we automatically revoke their license because they have

April 1, 1999

done something, they still have ten days wherein they can appeal and they can still go through the appeal process.

SENATOR COOK: If somebody had their license revoked for reasons other than a crime against a child or a sexual offense, the way this amendment is worded in this bill is it your intent that you are able to recover those costs also.

JANET PLACEK: No. The intent of this amendment is just for these cases listed in this bill.

REPRESENTATIVE KELSCH: It has to be a crime against a minor child.

SENATOR O'CONNELL: What is considered a simple assault against a child.

ANITA THOMAS passed out the definition of simple assault of the code. Simple assault involves willfully causing bodily injury to another person or negligently causing it with use of a firearm, destructive device or other weapon.

REPRESENTATIVE KELSCH: Could we just exclude simple assault. Maybe we could put in some discretion for the ESBP so they could have the ability to take a look at what they were convicted of and giving them a little authority back again. We realize that the simple assault is kind of a thorn and removing it completely could still endanger some of the students.

SENATOR FREBORG: Could we leave this out but still have the opportunity to do whatever they want. They could still take action to revoke the certificate. Under this section we are looking at automatic revocation. So we are taking nothing away.

SENATOR COOK asked Anita what her suggestion would be if we were going to take this out.

ANITA THOMAS: If you take out 17-01, she passed out proposed amendments.

REPRESENTATIVE MUELLER: Are these the ones that you have, I don't really know what all these are. Are you comfortable with working with these.

April, 99

ANITA THOMAS stated those are the offenses that are in the bill right now with the exception of simple assault.

SENATOR COOK: Aggravated assault and assault is still in there.

REPRESENTATIVE KELSCH: I move the present amendments to engrossed SB2074.

SENATOR COOK: What about the location of the House amendments, the way they read does it leave any doubt that it is only to apply to individuals who have their license revoked because they were found guilty or does it indicate that possibly other people who have their license revoked for other reasons, does this apply to them also.

ANITIA THOMAS: You may want to put some limiting actions.

REPRESENTATIVE DROVDAL: If a person was charged with simple assault a few times, does it move from simple assault to assault.

ANITA THOMAS: I don't know.

SENATOR COOK: They would continually be charged with simple assault. Hopefully if that is the case ESPB would say we have some problem and deal with this.

REPRESENTATIVE DROVDAL: Does ESPB have other avenues that they could deal with this.

SENATOR COOK: That is correct.

REPRESENTATIVE KELSCH: The amendment coming under section 1, denial of or immediate revocation of a teachers certificate, I don't know how it could be deemed anything else other than what is in this section.

SENATOR COOK: You may be correct.

Page 10

Senate Education Committee

Bill/Resolution Number SB2074CC

Hearing Date ~~March 31, 1999~~

April 1, 1999

REPRESENTATIVE KELSCH: I move for the House to recede from the House amendments and further amend.

SENATOR O'CONNELL: 2nd .

VOTE: 6 Yes 0 No

REPRESENTATIVE KELSCH: I move to put back on from the House amendment and at the end at certificate holder the last line and under this act and to add proposed amendment by Anita Thomas.

SENATOR O'CONNELL : 2nd

VOTE: 6 Yes 0 No

SENATOR COOK closed the conference committee on SB2074.

(Bill Number) SB 2074 (, as (re)engrossed):

Your Conference Committee

For the Senate:

<u>Sen. Cook</u> ✓ Yes	<u>Yes</u>
<u>Sen. Freborg</u> ✓ Yes	<u>Yes</u>
<u>Sen. O'Connell</u> ✓ Yes	<u>Yes</u>

For the House:

<u>Rep. A. Drowdal</u> ✓ Yes	<u>Yes</u>
<u>Rep. R. Kelach</u> ✓ Yes	<u>Yes</u>
<u>Rep. Mueller</u> ✓ Yes	<u>Yes</u>

recommends that the (SENATE/HOUSE) (ACCEDE to) (RECEDE from)

the (Senate/House) amendments on (SJ/HJ) page(s) 847 - 848

and place _____ on the Seventh order.

, adopt (further) amendments as follows, and place SB 2074 on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: 4/1/99

CARRIER: Cook

LC NO. 98053 . 0202 of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

SB 2074, as engrossed: Your conference committee (Sens. Cook, Freborg, O'Connell and Reps. Drovdal, R. Kelsch, Mueller) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 847-848, adopt amendments as follows, and place SB 2074 on the Seventh order:

That the House recede from its amendments as printed on pages 847 and 848 of the Senate Journal and page 929 of the House Journal and that Engrossed Senate Bill No. 2074 be amended as follows:

Page 2, after line 8, insert:

- "4. The education standards and practices board or, in the case of a school administrator, the administrator's professional practices board, may impose a fee against a certificate holder to reimburse the education standards and practices board or, in the case of a school administrator, the administrator's professional practices board, for all or part of the costs of administrative actions that result in disciplinary action against the certificate holder under this section."

Page 2, line 9, replace "4" with "5"

Page 2, line 16, replace "chapter 12.1-16, 12.1-17, 12.1-18" with "sections 12.1-16-01, 12.1-16-02, 12.1-16-03, 12.1-16-04, 12.1-17-01.1, 12.1-17-02, 12.1-17-03, 12.1-17-04, 12.1-17-05, 12.1-17-06, 12.1-17-07, 12.1-17-07.1, 12.1-17-10, 12.1-18-01, 12.1-18-02, 12.1-18-03, 12.1-29-01, 12.1-29-02, or 12.1-29-03"

Page 2, line 17, remove "or 12.1-29,"

Re-number accordingly

Engrossed SB 2074 was placed on the Seventh order of business on the calendar.

1999 TESTIMONY

SB 2074

Senator Freborg,

I think the below language is better than the language I provided you yesterday:

- b. "Conviction" includes a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, or a judgment of conviction even though the court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02 or deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02 or an equivalent statute. A conviction does not include a finding of guilt overturned on appeal.

Please call me if you have any questions.

Doug Bahr

328-3625

TESTIMONY OF JANET L. PLACEK
ON
SENATE BILL 2074

Mr. Chairman, members of the committee, I am Janet L. Placek, Executive Director of the Education Standards and Practices Board and wish to comment on Senate Bill 2074.

The Education Standards and Practices Board proposes this legislation to be able to recover the costs of administrative actions which result in disciplinary action. If the office of administrative hearings finds that there is no need for disciplinary action, there would be no fee assessed to the educator.

The Education Standards and Practices Board operates on educator's certificate fees and believes the field should not have to bear the cost of administrative actions which result in disciplinary action.

The board asks for an emergency since they expect litigation and would like to recoup the administrative action costs from those educators where disciplinary action is founded.

Thank you for the consideration given this bill.

Section _____. A new section to chapter 15-36 of the North Dakota Century Code is created and enacted as follows:

Automatic Denial – Automatic Revocation – Appeal Rights.

1. Notwithstanding section 15-36-15 or any other provision of law, the education standards and practices board shall automatically deny an application for a teacher's certificate and immediately revoke the teaching certificate of an individual who has been found guilty of a crime against a child or a sex offense.

2. Notwithstanding section 15-36-15 or any other provision of law, the administrator's professional practices board shall immediately revoke the teaching certificate of an administrator who has been found guilty of a crime against a child or a sex offense.

3. An individual who is denied an application or subject to automatic revocation under this section may request a hearing pursuant to chapter 28-32. A hearing concerning an automatic revocation will be held within ten days of receipt of the request for hearing. The scope of the hearing is limited to whether the individual was convicted of a crime against a child or a sex offense and whether the conviction has been overturned on appeal.

4. A final decision denying an application or revoking a certificate under this section may be appealed pursuant to chapter 28-32. The court may not stay the decision pending decision on appeal. The court shall affirm the decision of the education standards and practices board, or the administrator's professional practices

board in the case of an administrator, unless the evidence does not support a finding the individual was convicted of a crime against a child or a sex offense or that the conviction has not been overturned on appeal.

5. As used in this section:

- a. "A crime against a child" has the same meaning as defined in subsection a of section 1 of section 12.1-32-15.
- b. "Sex offense" means a violation of section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, 12.1-20-11, chapter 12.1-27.2, or section 2 of section 12.1-22-03.1, or an equivalent ordinance.
- c. "Conviction" includes a finding of guilt, a guilty plea, a plea of no contest, a plea of nolo contendere, a judgment of conviction, and a deferred imposition of sentence. A conviction does not include a finding of guilt overturned on appeal.

TESTIMONY OF JANET L. PLACEK
ON
ENGROSSED SENATE BILL 2074

M. Chairman, members of the committee, I am Janet L. Placek, Executive Director of the Education Standards and Practices Board and wish to comment and offer amendments on Engrossed Senate Bill 2074.

The Education Standards and Practices Board proposed the original legislation to be able to recover the costs of administrative actions which result in disciplinary action. A copy of the original Senate Bill No. 2074 is attached for your information.

Engrossed Senate Bill No. 2074 would provide the ESPB to revoke a teacher's certificate if the teacher has been found guilty of the following crimes: sexual offenses, homicide, assault, threats, coercion, harassment, offenses against unborn children, kidnapping, and prostitution. The teacher would still be provided due process outlined in Chapter 28-32 as administrative hearing.

For a teaching certificate to make it to the administration level of discipline, it first must be reviewed and acted upon by the Education Standards and Practices Board.

The only time the ESPB could issue a certificate to a teacher that has been convicted of one of the above crimes under NDCC 12.1-33-02.1 (attachment b) if that teacher can prove they have been sufficiently rehabilitated and the offense does not have a direct bearing upon that person's ability to serve the public as an educator in North Dakota. Under NDCC 12.1-33-02.1 the ESPB must also consider the time elapsed since the conviction.

If the teacher does not like the decision of the Education Standards and Practices Board, the teacher requests a hearing by the administrative law judge.

The administrative law judge then collects all pertinent information, has a hearing, makes a decision which is sent back to the Education Standards and Practices Board. The administrative law judge process usually costs the Education Standards and Practices Board approximately \$1500-\$2000 per case.

The original bill asked for authority for these costs to be paid by the teacher requesting the administrative hearing.

If the office of administrative hearings finds that there is no need for disciplinary action, there would be no fee assessed to the educator.

An example of a current case we are presently working on is the teacher has spent approximately two years in the State prison for sexual misconduct with a minor. The Education Standards and Practices Board asked him to voluntarily give up his license. He denied and requested an administrative hearing. The bill for the process so far is approximately \$1700.00. He is a convicted sex offender and appears on the North Dakota sex offender list.

The Education Standards and Practices Board operates on educator's certificate fees and believes the field of teachers should not have to bear the cost of administrative actions which result in disciplinary action of the teacher requesting the administrative hearing.

The Engrossed Senate Bill 2074 asks for an immediate revocation of the teaching certificate and asks for a hearing within ten days.

The ESPB asks for the following amendment:

Page 2, line 9, Section 1 subsection 4, insert:

Cost of prosecution-Disciplinary proceedings. The education standards and practices board, or in the case of a school administrator, the administrator's professional practices board may impose a fee against a certificate holder to reimburse the education standards and practices board or, in the case of a school administrator, the administrator's professional practices board for all or part of the costs of administrative actions in this section.

Thank you for the consideration given this bill and requested amendment. I am available for questions at this time. For further information, I can be reached at 328-1659 or jplacek@state.nd.us.

Fifty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2074

Introduced by

Education Committee

(At the request of the Education Standards and Practices Board)

1 A BILL for an Act to create and enact a new section to chapter 15-36 of the North Dakota
2 Century Code, relating to recovery of costs in education disciplinary proceedings; and to
3 declare an emergency.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 15-36 of the North Dakota Century Code is
6 created and enacted as follows:

7 **Cost of prosecution - Disciplinary proceedings.** The education standards and
8 practices board or, in the case of a school administrator, the administrator's professional
9 practices board may impose a fee against a certificate holder to reimburse the education
10 standards and practices board or, in the case of a school administrator, the administrator's
11 professional practices board for all or part of the costs of administrative actions resulting in
12 disciplinary action, including the costs of investigation, the amount paid for services from the
13 office of administrative hearings, attorneys' fees, court costs, witness fees, staff time, and other
14 expenses. When applicable, the teacher's certificate or, in the case of the administrator's
15 professional practices board, the administrator's certificate may be suspended until the costs
16 are paid to the board.

17 **SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

correctional system, and the interest of the prisoner in presenting his testimony in person rather than by deposition. In re E.H., 283 N.W.2d 202 (N.D. 1979).

The holding of a divorce hearing without the convict-husband being personally present because of his imprisonment did not constitute an abuse of the trial court's discretion or violate any of convict-husband's civil rights where his ability to give testimony by deposition and to be represented by counsel was unimpaired by the trial court, and no convincing reasons for a personal appearance were brought forth. *Shulze v. Shulze*, 322 N.W.2d 250 (N.D. 1982).

12.1-33-02.1. Prior conviction of a crime not bar to state licensures — Exceptions.

1. A person may not be disqualified to practice, pursue, or engage in any occupation, trade, or profession for which a license, permit, certificate, or registration is required from any state agency, board, commission, or department solely because of prior conviction of an offense. However, a person may be denied a license, permit, certificate, or registration because of prior conviction of an offense if it is determined that such person has not been sufficiently rehabilitated, or that the offense has a direct bearing upon a person's ability to serve the public in the specific occupation, trade, or profession.
2. A state agency, board, commission, or department shall consider the following in determining sufficient rehabilitation:
 - a. The nature of the offense and whether it has a direct bearing upon the qualifications, functions, or duties of the specific occupation, trade, or profession.
 - b. Information pertaining to the degree of rehabilitation of the convicted person.
 - c. The time elapsed since the conviction or release. Completion of a period of five years after final discharge or release from any term of probation, parole or other form of community corrections, or imprisonment, without subsequent conviction shall be deemed prima facie evidence of sufficient rehabilitation.
3. If conviction of an offense is used in whole or in part as a basis for disqualification of a person, such disqualification shall be in writing and shall specifically state the evidence presented and the reasons for disqualification. A copy of such disqualification shall be sent to the applicant by certified mail.
4. A person desiring to appeal from a final decision by any state agency, board, commission, or department shall follow the procedure provided by the chapter of this code regulating the specific occupation, trade, or profession. If no appeal or review procedure is provided by such chapter, an appeal may be taken in accordance with chapter

DECISIONS UNDER PRIOR LAW

Loss of Ability to Maintain Actions.

A convict could maintain no action except one concerning his personal liberty and based on natural as distinguished, from legal rights, but, if sued, he could defend. *Miller v. Turner*, 64 N.D. 463, 253 N.W. 437 (1934).

Collateral References.

State prisoner's right to personally appear at civil trial to which he is a party — state court cases, 82 A.L.R.4th 1063.

28-32, except for attorneys disbarred or suspended under chapter 27-14.

Source: S.L. 1977, ch. 130, § 5; 1997, ch. 116, § 9.

Effective Date.

The 1997 amendment of this section by section 9 of chapter 116, S.L. 1997 became effective August 1, 1997.

Cross-References.

Definition of offense, see § 12.1-01-04(20).

Collateral References.

Propriety of questioning expert witness regarding specific incidents or allegations of expert's unprofessional conduct or professional negligence, 11 A.L.R.5th 1.

12.1-33-03. Certificate of discharge.

1. If the sentence were in this state, the sentence shall state that the defendant's rights to vote and to hold any future public office are not lost except during the term of any actual incarceration and that he suffers no other disability by virtue of his conviction and sentence except as otherwise provided in such sentence or by law.
2. If the sentence were in another state or in a federal court, the convicted person shall lose the rights to vote and to hold public office only during the term of actual incarceration. Any person who has been sentenced in another state or in a federal court to a term of imprisonment and who is present in this state shall be presumed to have had such rights restored.
3. If another state having a similar statute issues its certificate of discharge to a convicted person stating that the defendant's rights have been restored, the rights of which he was deprived in this state, under section 12.1-33-01, are restored to him in this state.

Source: S.L. 1973, ch. 116, § 32; 1979, ch. 186, § 2.

12.1-33-04. Savings provisions. This chapter does not:

1. Affect the power of a court, otherwise given by law to impose sentence or to suspend imposition or execution of sentence on any conditions, or to impose conditions of probation, or the power of the parole board to impose conditions of parole.
2. Deprive or restrict the authority and powers of officials of a penal institution or other penal facility, otherwise provided by law, for the administration of the institution or facility or for the control of the conduct and conditions of confinement of a convicted person in their custody.
3. Affect the qualifications or disqualifications otherwise required or imposed by law for a designated office, public or private, or to serve as a juror or to vote or for any designated profession, trust, or position, or for any designated license or privilege conferred by public authority.