

**1999 SENATE JUDICIARY**

**SB 2409**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2409

Senate Judiciary Committee

Conference Committee

Hearing Date February 1, 1999

Tape Number	Side A	Side B	Meter #
1		x	870 - 2313
2-2-99 2		x	520 - 1120
2-10-99 1		x	240 - 1100
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SB2409 relates to parties in a declaratory action.

SENATOR STENEHJEM opened the hearing on SB2409 at 10:25 a.m.

All were present.

BILL DELMORE, Manufacturer Housing Association, testified in support of SB2409. A person cannot go to there association to challenge a law, they have to do this individually. In other states, associations are able to bring an action on behalf of an individual only to challenge the Constitutionality of the law or the rule or ordinance. So this bill would not affect a contract that may be broken or a tort where they are injured. It would only allow an individual to go to there association and the association could go in and challenge that law or rule, the Constitutionality and impact of it in relation to their member. A declaratory judgment action is basically what is your opinion of this statute or rule. Many states have this to a degree.

SENATOR WATNE asked if there are different types of declaratory judgment.

BILL DELMORE stated there are different effects that declaratory judgment have.

SENATOR STENEHJEM stated that this bill seems very broad.

BILL DELMORE stated this isn't broader than some states. We picked the declaratory judgment section so we wouldn't get involved in torts and contract, actions between individuals. We can look at some amendments. We can also provide some definitions.

SENATOR TRAYNOR testified in support of SB2409. I think the most common action under declaratory judgment is to determine whether a person is covered by an insurance policy.

JOY JOHNSTON, GNDA, testified in support of SB2409. Testimony attached.

SENATOR LYSON asked if they can only bring a suit if its unconstitutional.

JOY JOHNSTON stated this is to test the validity of the Constitutional law. It is also a clarification of law.

SENATOR STENEHJEM asked about the discretionary section. Will that discretionary section apply to this bill also.

JOY JOHNSTON stated she did not know.

BILL DELMORE stated that the full intent is that all the discretionary authority would remain.

KEN YANTES, North Dakota Township Officers Association, testified in opposition of SB2409. We have concerns with this legislation. We feel this will remove the local authority.

SENATOR STENEHJEM CLOSED the hearing on SB2409.

FEBRUARY 2, 1999 TAPE 2, SIDE B

Discussion.

SENATOR WATNE stated that this bill really bothers her.

SENATOR STENEHJEM stated that he feels this bill is too broad. This asks a Court to give an opinion where there may not be a controversy. They need a definition on trade or professional organization. We need some type of amendments.

SENATOR WATNE made a motion for DO NOT PASS, SENATOR LYSON seconded.

Discussion.

SENATOR TRAYNOR would like to talk to Mr. Dellmore to make some amendments.

SENATOR WATNE AND SENATOR LYSON withdrew their motions to give Mr. Delmore time to make some amendments.

February 10, 1999 Tape 1, Side B

SENATOR STENEHJEM stated there are amendments proposed by Bill Delmore.

SENATOR TRAYNOR made a motion on Amendments, SENATOR BERCIER seconded.

Motion carried. 6 - 0 - 0

Discussion.

SENATOR LYSON stated that if the word licensing was put in the as an amendment, I could agree with that.

SENATOR WATNE asked how do you define professional organization.

SENATOR TRAYNOR made a motion on Further Amendments to insert licensed, SENATOR LYSON seconded. Motion carried. 6 - 0 - 0

SENATOR TRAYNOR made a motion for DO PASS AS AMENDED, SENATOR BERCIER seconded. Motion carried. 5 - 1 - 0

Page 4

Senate Judiciary Committee

Bill/Resolution Number SB2409

Hearing Date February 1, 1999

SENATOR TRAYNOR will carry the bill.

PROPOSED AMENDMENT TO SENATE BILL NO. 2409

Page 1, line 13 after "business" insert "whose members are regulated by state or federal agencies"

Page 1, line 15 remove "affects the rights, status, or other legal" and insert immediately thereafter "threatens to injure"

Page 1, line 16 remove "relations of"

Renumber accordingly









**REPORT OF STANDING COMMITTEE**

SB 2409: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2409 was placed on the Sixth order on the calendar.

Page 1, line 13, after "state" insert "and whose members are licensed and regulated by state or federal agencies"

Page 1, line 15, replace "affects the rights, status, or other legal" with "threatens to injure"

Page 1, line 16, remove "relations of"

Renumber accordingly

1999 HOUSE JUDICIARY

SB 2409

## General Discussion

- Committee on Committees
- Rules Committee
- Confirmation Hearings
- Delayed Bills Committee
- House Appropriations
- Senate Appropriations
- Other

SB 2409

Date 3/15/99			
Tape Number	Side A	B Side	Meter #
1	x		10.6-17.5
Committee Clerk Signature			

Minutes: REP. DELMORE states to the committee that there is an amendment to be discussed.

REP. KLEMIN then defines a lot of the topics that are an issue with the bill.

REP. KOPPELMAN about the situation and effects of the bill.

REP. KLEMIN states that there is a need for a coalition for clean water.

REP. DEKREY states to the committee that he does not like the bill.

REP. DELMORE brings up the amendment again. REP. DEKREY comments that they will hold it since REP. MAHONEY has something to put in the bill. So then it will be held over.

The meeting was then closed.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2409

House Judiciary Committee

Conference Committee

Hearing Date 3-16-99

Tape Number	Side A	Side B	Meter #
One SB 2409	x		18.8 to
Committee Clerk Signature <i>Orlan Hanson</i>			

Minutes:

Rep Delmore: I'm not a fan of this bill but these business's are doing business in our state and it authorizes them to do business in our state. I guess it means that they are actually doing business in our state and providing employee jobs.

Rep Klemm: It doesn't take doing much business in our state to be doing business

Motion by Rep Delmore to pass the amendments to SB 2409, second by Rep Mahoney carried

Unanimous vote on the amendment.

Rep Cleary moves a DO NOT PASS, second by Rep Hawken

Vote total on do not pass SB 2409 YES 10 NO 2 ABSENT 3

Motion prevailed

Page 2  
House Agriculture Committee  
Bill/Resolution Number SB 2409  
Hearing Date 3-16-99

3-16-99.. 2:30 pm Motion by Rep Hawken to reconsider action taken earlier on SB 2409 Second  
by Rep Meyer, motion prevailed.

Mr Cooper: GNDA, Just want to make sure we understand what this bill does. It allows an  
association to

Rep Koppelman: A declaratory judgment is it a matter with constitutionality of an ordinance that  
is in question with that section that we are talking about.

Mr Cooper: You are talking to another non attorney.

Bill Delmar: GNDA Attorney Might get in as friend of the court.

Rep Mahoney: If we continue to limit it are we getting ourselves painted into a corner.

Motion by Rep Koppelman for a DO PASS as amended Second by Rep Klemin

Vote total on SB 2409      YES    12      NO    0      ABSENT    3 motion prevailed

Carrier of bill    Rep Klemin

Date: 3/16  
Roll Call Vote #: \_\_\_\_\_

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2409

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do Pass

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

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

Total Yes 12 No 0

Absent 3

Floor Assignment klemin

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

90810.0201  
Title.0300

Prepared by the Legislative Council staff for  
Representative Delmore  
March 16, 1999

VR  
3/16/99

HOUSE AMENDMENTS TO ENGROSSED SENATE BILL NO. 2409 JUD 3-16-99

Page 1, line 13, after "do" insert ", and doing."

Renumber accordingly



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

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2409

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do Not Pass as Amendment

Motion Made By Rep Cleary Seconded By Rep Howken

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

Total Yes 10 No 2

Absent 3

Floor Assignment Rep Dekrey

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

Reconsider

Date: 3-16-99  
 Roll Call Vote #: 2

**1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2409**

House JUDICIARY Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

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

Action Taken Do pass As Amended

Motion Made By Rep Koppelman Seconded By Rep Klemm

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

Total Yes 12 No 0

Absent 3

Floor Assignment Rep Klemm

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

**REPORT OF STANDING COMMITTEE**

SB 2409, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). Engrossed SB 2409 was placed on the Sixth order on the calendar.

Page 1, line 13, after "do" insert ", and doing,"

Renumber accordingly

A handwritten signature in black ink, appearing to be "DeKrey", is written in the upper right quadrant of the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

1999 TESTIMONY  
SB 2409



Senate Judiciary  
Proponent Testimony for SB 2409  
February 1, 1999

Mr. Chairman, members of the committee:

My name is Joy Johnston. I am the Executive Director of the Manufacturers and Processors Division of the Greater North Dakota Association as well as its corporate counsel. On behalf of GNDA I am providing testimony in support of SB 2409.

As stated by the proponents of the bill, SB 2409 gives professional organizations the standing necessary to bring an action for declaratory judgement on behalf of its members. The standing to bring suit in SB 2409 is limited to the determination of the clarification or validity of a law or regulation. It merely allows a professional organization to test the validity of the law.

Other states allow professional organizations the opportunity to engage in the initial action for declaratory judgement. It would be expensive and inefficient to our overburdened court system to have to litigate numerous lawsuits to determine the construction or validity of a law. The standing allowed under SB 2409 provides a convenient cost saving and time saving approach. It would protect the interest of members of business, labor, or any other trade or professional organization.

SB 2409 does not prohibit individuals from seeking their own declaratory judgement. It merely provides another vehicle by which many members of an association can get the answer they need under one action by its association or organization.

GNDA urges the committee to recommend a "do pass" for SB 2409.

90810.0100

Fifty-sixth

Legislative Assembly **SENATE BILL NO. 2409**

of North Dakota

Introduced by

Senators Traynor, Heitkamp

A BILL for an Act to amend and reenact section 32-23-11 of the North Dakota Century Code, relating to parties in a declaratory action.

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

**SECTION 1. AMENDMENT.** Section 32-23-11 of the North Dakota Century Code is amended and reenacted as follows:

**32-23-11. Parties.** When declaratory relief is sought, all persons who have or claim any interest which that would be affected by the declaration shall must be made parties, and no a declaration shall may not prejudice the rights of persons not parties to the proceeding. In any proceeding which that involves the validity of a municipal ordinance or franchise, such the municipality shall must be made a party, and ~~shall be~~ is entitled to be heard, and if the statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general of the state also shall must be served with a copy of the proceeding and ~~shall be~~ is entitled to be heard. Any trade or professional association authorized to do business whose members are regulated by state or federal agencies in the state has standing to bring an action for declaratory judgment to determine any question of construction or validity of any statute, ordinance, resolution, rule, or regulation that threatens to injure its members.