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OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

1220

2007 HOUSE JUDICIARY

HB 1220

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1220

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/17/07

Recorder Job Number: 1295, 1296

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HB 1220.

Rep. Darrell Nottestad: I am a sponsor and support this bill.

Chairman DeKrey: Thank you. Further testimony in support.

Arlette Moen, Executive Director of the Circle of Friends, Animal Shelter: We are a private non-profit animal shelter that cares for lost and unwanted animals. I'm here in support of HB 1220 as a member of the animal welfare community. First of all, I would like to thank Rep. Nottestad for help with this bill. We want to add ND to an important list. That list includes 42 other states which felony animal cruelty laws. ND is only one of 8 states that do not have felony level penalties for some forms of animal cruelty. We are not breaking new ground here. We're not suggesting radical means of looking at animal cruelty or the penalties involved. ND has fallen behind the progress of other states. Other states have very basic animal protection. Regardless of the cruelty or abuse perpetrated on an animal, only a misdemeanor charge will be imposed in the state of ND. The person who beat his elderly dog bloody and then kicked him down a flight of stairs because the dog urinated on the floor, this person has little to fear from ND law. That actually happened. Felony level penalties are essential in protecting animals from abuse. This bill takes a huge leap forward in strengthening ND's animal

protection laws. Animal cruelty encompasses a range of behaviors from neglect to malicious killing. Most cruelty investigated by law enforcement officials is unintentional neglect that can be resolved through education. Intentional cruelty or abuse is willingly depriving an animal of food, water, shelter or veterinary care, or maliciously torturing, maiming, mutilating or killing an animal. This bill is not intended for the person who kicks his dog, even though that's inhumane treatment that is not the kind of behavior and activity that we're interested in for the felony level penalty. In addition to the welfare concern, there is a well documented connection between animal cruelty and other forms of violence. Many studies in psychology, sociology and criminology during the last 25 years has demonstrated that violent offenders frequently have childhood and adolescent history of serious and repeated animal cruelty. The FBI has recognized the connection since the 1970's when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. Other research has shown consistent patterns of animal cruelty among perpetrators of more common forms of violence, including child abuse, spouse abuse and elder abuse. In fact, the American Psychiatric Association considers animal cruelty one of the diagnostic criteria of conduct for these behaviors. Those of us who initiated this bill are not radical animal activists. There is no hidden agenda. Another bill, HB 1208 will be introduced tomorrow January 18, in the Ag Committee. This bill is quite similar to ours. It will be introduced Rep. DeKrey, a republican from Pettibone and Rep. Meyer, a democrat from Dickinson. Both are farmers and ranchers. As you can see, those endorsing this change are not doing so as a result of partisanship or because of regional issues or how they make their living. Our purpose is to effect a meaningful change in the consequences imposed on criminal behavior, namely cruelty to animals because it is the right thing to do. I represent people in the business of caring for lost and unwanted animals. Most are cats and dogs.

Rep. Klemin: A couple of questions back on line 7, refers to the State Board of Animal Health?

Arlette Moen: I believe so.

Rep. Klemin: On line 6 and 7, the language added and crossed out, was that done by you and others who wanted this bill.

Arlette Moen: The knowingly was taken out by the attorney that put this together and willfully was added and his explanation was that a willful act is easier to prove. There is a certain level of terminology; willfully included knowingly.

Rep. Klemin: I was wondering if you looked at the implications of the case that addresses this particular section, that said that the words knowingly and willfully only apply to violating rules adopted by the Board and did not apply to the other violating part here. And it has to do with the level of culpability in order to get somebody on this. There is a substantive change in the statute by taking those words out; you apply the same standard to both aspects of this. Is that something that was considered?

Arlette Moen: It was considered by our attorney. This was, in his determination, the best way to word this particular bill.

Rep. Klemin: Is that a private attorney, or someone who worked for the state.

Arlette Moen: Yes, he's a private attorney.

Rep. Koppelman: You aren't sure if the rules that are being referred to as the Board, is the State Board of Animal Health.

Arlette Moen: Yes.

Rep. Koppelman: Do you know whether the State Board of Animal Health go through the normal rule making process that is subject to the Administrative Practices Act.

Arlette Moen: Yes.

Rep. Koppelman: Are you aware that the way this reads, then, the Board makes a rule, administrative rules carry the force and effect of the law. So what we are doing here is, as Rep. Klemin indicated, relaxing the standard of proof and ratcheting up the penalty. If the Board of Animal Health were to make a rule in the future, someone could be thrown in prison for a class C felony for violation of that rule which doesn't go through the normal procedure as we do in the state to make a law. Does that concern you at all?

Arlette Moen: I can only speak from my experience as Exec. Director of our organization. I will tell you that most of the calls that we get would not fall under this at all. Again, we're looking at those things that are the most egregious offenses against animals. I don't know what those rules would be. I can't really say, I can't imagine a rule being made that when you kick your dog, you would be guilty of a class C felony. That's not what we're interested in.

Rep. Koppelman: I agree with you. I can't imagine it either. I've seen a lot of things that I can't imagine in administrative rules before. That makes me a little nervous in the legislature when we give blanket advanced approval to someone to make the rules. Do you know if this would apply to everybody. Would it apply to law enforcement officials or to pounds, to the Humane Society.

Arlette Moen: I would expect that it would. If I were to see a member of my staff or member of the general public, trying to set one of my animals on fire, absolutely it would apply.

Rep. Koppelman: Along that line of thought, I'm an animal lover. As much as I love animals, I am a little concerned with the effect of the bill. Recently there was a family pet that was lost. He went to the pound, there was some confusion as to which pound he was at, the family called the wrong pound because they were told the pet was there by the local city office, by the time they caught up with the pet, the other pound had it and put it to sleep. If causing the

death of an animal is one of these thresholds, I'm sure it's not the first animal that the pound has caused the death of, would that person be guilty of a felony.

Arlette Moen: Any euthanasia that is conducted by animal shelters is not inhumane treatment. I would certainly not expect that to be covered under this bill. The bill that says that cruel, inhumane, malicious, that is what we are trying to cover.

Rep. Koppelman: I'm sure if you talked with that family, they would say that there had been no reason to put that pet to death. There was a three day window in this particular town. They felt bad about it, but nobody is trying to put them in jail.

Arlette Moen: Those are regulations put together by each animal care institution and their internal regulations that they adhere to. We euthanize animals too, but we have set rules and regulations that are implemented for the institution.

Rep. Koppelman: I see nothing in this act that exempts you. I just asked you if it applied to everybody and you said yes.

Arlette Moen: I don't see euthanasia of animals by shelters, unless it is done inappropriately, or to cause torment or torture, that doesn't fall into that.

Rep. Koppelman: I grew up out in the country. What if the farmer shot an old dog, would that be cruel and unusual treatment.

Arlette Moen: No.

Rep. Koppelman: Where are those definitions.

Arlette Moen: That would be determined at some point. Our purpose is to see that we are brought in line with other states and if this bill can be compromised with other bills, that's what we're interested in and be happy to work together to change terminology.

Rep. Klemin: I've looked through this chapter dealing with inhumane treatment of animals, and there are quite a few prohibitions that are referred to here; such as no person may

abandon an animal. If this was the second time a person was convicted of abandoning an animal, do you really thing that sending them to prison for five years, is an appropriate sentence.

Arlette Moen: No.

Rep. Klemin: But that could be the result from this bill. That is quite different from the examples you gave earlier for cruelty.

Arlette Moen: Our intent is to relate this to the most severe treatment of animals. That would have to be worked out. We are willing to work together to make changes as necessary.

Rep. Klemin: In HB 1208 that you referred to, is that something different than this bill.

Arlette Moen: It is different, it does allow for a class C felony, as well but the circumstances are a little different and they list situations under which it would apply.

Rep. Klemin: So it's a little more detailed.

Arlette Moen: Yes. Our purpose in bringing this forward is just to make the legislature aware that there is some concern out there and to let people know that we do feel that this is important for the state.

Chairman DeKrey: Thank you. Further testimony in support.

Susan Keller, State Veterinarian: (see attached testimony). I am here in support of the intent of this bill.

Chairman DeKrey: Where are the state veterinarians on this bill.

Susan Keller: The NDVMA?

Chairman DeKrey: Yes.

Susan Keller: I don't know. I would guess after hearing this discussion, they would probably have the same concerns. I have some additional concerns myself. As always when you write something like this, the problem is somebody has to be the final authority and do the

investigation and make a decision. In the past, someone asked who had that ability. Under 36-21.1-01, it says that authority goes for any sheriff, police officer, licensed vet or investigator. The odd thing in our state, most people, if it's not being dealt with properly, or the public is not satisfied, we get those calls. We'll get local sheriffs calling us, saying please can you contact or send a vet out and help us investigate further. Actions aren't taken lightly on these cases. I think that's the concern with the language. If you strike knowingly out, is that somehow going to cause people to be penalized unduly without having the case fully investigated. I share that same concern. The intent is that they do not want to see second time offenders, the State Board of Animal Health takes the same position. When we have somebody who is in violation of any other requirement under chapter 36, repeat offenders, the penalty is much stiffer and we would like to see the same thing with inhumane treatment of animals. The discretion of who will be making that decision is my question. If that is being changed from what we have done in the past, I think that is something that should be discussed.

Chairman DeKrey: There are three bills out there, do you have a favorite.

Susan Keller: Whichever one is easiest to tweak. In terms of all three, they all have their good point and bad points. I still think somebody needs to look at where the discretion is going, how you want those decisions made. I don't have a favorite.

Rep. Charging: What about the process today that isn't working, otherwise you wouldn't have to do this.

Susan Keller: This is my personal opinion. We get calls from local sheriffs who are not even familiar with where to go, what language they follow. Their impression is that it is our responsibility in many counties. Some local counties don't appreciate our input and don't want that. It's not very clear from this bill, you have a whole group of people that are involved in

animal health. What are the humane standards of care. Usually it goes to the local vet or back to our office, but it doesn't say where the authority is.

Rep. Koppelman: You talked about the concern earlier about repeat offenders, isn't there some discretion prosecutorial, and in terms of penalties meted out for violation of any crime, in this case the current statute calls for a class A misdemeanor. There is always a range of penalties within each class. I would assume that most courts, if it's a first time offense we're going to lean more toward the lenient side and somebody is back there a second time, then they might lean toward the severe side. Is that not what is happening.

Susan Keller: I couldn't get a hold of our attorney because I'm not familiar with what the class C felony is. I don't know what the range is. Yes we do meter out, the Board of Animal Health does for other violations, other than this section, it's a \$5,000 penalty. They may waive half of that the first time and hold the other half as a motivation to be compliant for another three years. But within that you don't have to levy the whole penalty.

Rep. Charging: If you're able to levy fines by administrative rules through the Attorney General's office. What's missing is the public at large, that's the missing component.

Susan Keller: That's my impression that there may be miscommunication. We don't have a statewide standard of protocol that is followed. It may be handled differently from county to county. Some counties would like that, that we have more structure.

Rep. Boehning: Out of all the statistics, how many people are sentenced to a year in jail or 30 days, etc. If the judge is not doing their duty to sentence them to the maximum penalty, what can we do.

Susan Keller: That's a good point. I don't know of anybody who has gone to jail for inhumane treatment of animals. It's always been a monetary penalty or animals are taken

away which is looked at as being punitive; or taking the animals and having them sold so that the solution is remedied.

Chairman DeKrey: Can the state right now confiscate animals and sell them, and pay their expenses for the investigation, etc.

Susan Keller: Yes, that can be done right now.

Rep. Meyer: The problem with people complaining about treatment of animals, is that they know so little about animal husbandry. They don't understand animal husbandry, is this going to be opening the door. My horse is going on the track and is a lot thinner than the one I ride at home. Some people would say that the horse is being starved and they don't know, they want to help. There are different reasons for confinement, or training, or just varied things and if you don't find exactly what it is, this is why I have a problem with this particular piece of legislation.

Susan Keller: I think you can even find a group of veterinarians that would not always agree on a determination. One of the things that we do, is we look to the ADVMA for their normal standards of care. We look to groups like the American Association of Equine Practitioners, the National Rodeo Association. So whatever the activity is, there should be somebody who you can go to who has some guidelines as to what is considered normal. Like you said, different breeds of horses can look different. That can be normal. We have to look at a lot of different resources before we can come to a conclusion.

Rep. Charging: There are three bills this session, has anybody done research on what do other states doing for the penalty. There is a great difference between domestic cats/dogs and large animals. Is there a way we can take care of this problem. The judge does have some say. Is there a level of care. We should be able to come up with something.

Susan Keller: I think this would get down to what is my opinion of how things should be dealt with. You do have a Board of Animal Health in ND. They all have species representatives on the Board. They actually would consult with other people when they do. Our office does.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition.

Brian Kramer, ND Farm Bureau: We are opposed, there are two other bills dealing with these issues. We think it would be easier to roll some of this language into one of those bills, rather than try to amend this bill. We certainly don't have a problem with penalizing those that are inhumanely treating their animals. That is something, from an agricultural standpoint, is atrocious in the first place and we certainly need to get a handle on it. We do have some problems with some of the knowingly. I think that needs to stay in the language. The situation

that we are starting to face here in ND like it's happened in our states, dealing with not only inhumane treatment of animals, but animal husbandry practices, etc. I can see a point at which a kid with a 4H steer, could wind up with a class C felony because of this. There are places where you cannot tether an animal. Tethering an animal is what 4H kids do. They tie their steer up, feed them, take care of them, etc. They have them on a halter when they lead them into the show ring. They could get in trouble under this scenario. We would like to take a look at the whole section of code and do some rework on it, and we would certainly offer to work with whichever subcommittee deals with this to get the language right.

Rep. Koppelman: Do you, in your opinion, is current enforcement adequate or is it a problem.

Brian Kramer: I guess if you look at the incidents of repeat offenders. I don't know how many there are. Every once in a while you will see in the paper where someone has lost their cattle, because of inhumane treatment such as not feeding them properly or whatever. Does that happen on an ongoing basis with that certain individual. I don't know. I don't know that

there are that many repeat offenders. If I got hit with something like that the first time around, I would make sure that didn't happen again. There are those folks out there that do it. If they are repeat offenders, they do need to have stiffer penalties.

Rep. Koppelman: Do any of the other bills delineate between the kinds of things you're talking about and I think we're all concerned with unintentional and what many of us might consider appropriate treatment of animals for whatever scenario vs. someone who is out there who is maliciously torturing an animal. Do any of them delineate between those two kinds of behaviors.

Brian Kramer: One does speak to the cruelty and torture of animals. Again, I think those are things that need to be worked into a good bill. That's what we would certainly try to work for.

Rep. Klemin: You referred to stiffer penalties, aren't we really talking about not stiffer penalties but stiffer enforcement of existing penalties.

Brian Kramer: I am certainly not going to argue with you on that. The fact is that those folks, there may need to be better enforcement of the penalties that we have at the current time.

Chairman DeKrey: Thank you. Further testimony in opposition.

Wade Moser, ND Stockmen's Association: I don't have more to add than what Brian has stated. We do have a concern with this bill, but we do support increasing the penalties especially for repeat offenders. We don't want that in our industry. I think it reflects poorly and we need to try and eliminate those. In some of the cases that Dr. Keller talked about, is I think we are going to see some of these repeat things come back. It seems like they behave themselves for a certain length of time until they are off the hook and all of a sudden they are back in trouble again. Some of it just because of the circumstances that surround them. Just listening to the testimony and the questions about removing the word "knowingly" also has

some concern to me knowing the fact that when we're dealing with our livestock and animals, whether it's horses or cattle, from time to time they'll get out on their own. You may not know and they may be gone for several days or weeks and we certainly don't want those kinds of unintended consequences. One of the problems that we have, we get a lot of calls in our office which we refer to the Board of Animal Health, because they are the ones responsible for it. One of the things we see in the countryside, whenever you throw something out there with a misdemeanor you don't get the attention of the law enforcement, you don't get the attention of the state's attorneys. They just aren't interested in prosecuting these cases. It's not a big enough fine or penalty to deal with. They've got bigger fish to fry. So there are times, especially on a second offense, when we need stiffer penalties. We think there are probably with a combination of the three bills that are out there, they could be better fixed than acting on one at a time.

Rep. Meyer: Your office gets quite a few calls, do you ever have to address a situation and find out that they really don't understand the situation?

Wade Moser: That does happen. I guess we kind of get off the hook because we refer them to the Board of Animal Health. But often times they'll ask if our investigator is involved in the area, and they'll find out whether this is a real situation or is it a neighbor feud. We've had cases where someone tried to say that someone's cattle were starving. We do get calls which aren't justified and people don't understand the industry that is true. Most of the time we can sort those out and report back to the Board about what is the actual situation is.

Rep. Meyer: Are they all referred, do you ever go out and check it out.

Wade Moser: We will refer all of them because if a request is made, but as we refer them we might also tell them what may be going on and what we know about it. That may trigger them

just to document it and not have to respond; or else they may want to call another law enforcement agency.

Rep. Boehning: If nobody goes to jail under the misdemeanor, so basically all we're going to do is increase the fine up to the maximum dollar amount. Is it monetary or jail time that you are looking at for higher penalties.

Wade Moser: In agriculture, going to jail won't help the cattle, it will increase the problem. The person needs to be out on the ranch taking care of those animals in a proper way. Going to jail won't help. The problems we see with pets need to be a different situation. In most cases, we would need to do, especially on second offenses, is to take those animals away. For some reason, they aren't able to manage them in a proper way. A judge could take the animals away, on a second offense.

Rep. Boehning: I don't like cruelty to animals either, but maybe six months in jail would send a clear message to the rest of them.

Rep. Koppelman: Is there anything that you're aware of under current law that actually gives a court the authority to take the animals away, or was that just a judge acting in the instance of the case. Is there anything in the law that calls for that.

Wade Moser: The case in Williams County was quite a while ago. I don't remember, apparently they had the authority because they did it. I'm not sure what statute they had that authority under. But in most cases, the Board of Animal Health, through their rules, probably has got more power and authority to issue fines and get their attention than a lot of the local judges do.

Rep. Charging: Do you think that law enforcement and states' attorneys look the other way because they don't want to deal with it, and I don't know what the solution would be if they

aren't feeding the animals, maybe they can't afford to feed them, something happened, penalizing them may not make sense.

Chairman DeKrey: Thank you. Further testimony in opposition. We will close the hearing.
(Reopened later in the same session)

Chairman DeKrey: What are the committee's wishes in regard to HB 1220.

Rep. Koppelman: I move a Do Not Pass with a rereferral to Ag Committee.

Rep. Boehning: Second.

Rep. Delmore: Is Ag going to be hearing your bill.

Chairman DeKrey: My bill and another one. This is the third bill dealing with this issue. Tomorrow is when they are going to hear them.

Rep. Klemin: I don't think that rereferring this bill to Ag is going to change anything. If they have two other bills that are amending the same statute, sending this one down for them to do something with it with a Do Not Pass recommendation, why don't we just kill it now.

Rep. Koppelman: I withdraw my rereferral, but move a Do Not Pass.

Rep. Boehning: I take back my second for the rereferral.

Rep. Kretschmar: I didn't even know that this was in the law. My fear is making crimes out of things by administrative rules and I would be against making this a class C felony out of administrative rules. Criminal code and penalties, in my judgment, should be made by the legislative assembly, not by administrative rule process. The current law is that it is a class A misdemeanor but to make it a felony, I have a problem with that.

Chairman DeKrey: I really understand the concerns about this bill. Recently, one of our vet's daughter, in the Rodeo Club at NDSU, and she had her horse with her down at NDSU and people were driving by and seeing these horses when it was 30 below and they were reporting this as cruelty to the city of Fargo, because NDSU didn't have those horses in a

shed. Well, if they had any clue at all about that as long as they had wind break, that's not unusual. But NDSU, being the Ag College, instead of taking the high road and say we're taking care of the animals, they had the kids take their horses home because they didn't want to have to deal with that.

Rep. Koppelman: I think you make an excellent point again. That's the problem with many of the people that call in for violations; whether it is an ag scenario or a pet scenario. They don't know what to look for and think something is wrong when it isn't. If there is something out there that specifically defines willful torture of animals, something like this is wide open.

Rep. Charging: There is a difference between the agricultural side and the pet side. Obviously there is a need to look at this, because people keep coming and having bills brought forward. I wish we had the resolve to try and come up with a solution.

Rep. Meyer: One of the things that is really driving this is the PETA organization. That is why this keeps coming forward. I don't think it is as much of a problem as people think. For example, the Rodeo Association, they picket them and target rodeos saying animals are being mistreated. There's so many people that don't have the animal husbandry background to know when something is wrong for real. We have dealt repeatedly with people that have said that's cruel, with the weather. Any horse that's outside is going to be healthier, I guarantee you, than one that is in a box stall. They just are, and yet there are cases where you have put them in a box stall for medicating, etc. But these organizations get going and they have a cause and for us as farmers and ranchers, it creates a great deal of worry and concern.

Rep. Charging: That's why we need the resolve to wade through it, so it protects the very industry that it is being built on; but meanwhile identifying the problems such as puppy mills in ND, needs to be worked on.

Rep. Boehning: I don't think the judges are doing their jobs. If they don't put anybody in jail for violations, if we increase the penalty for just monetary isn't going to work, they need to spend time in jail.

Chairman DeKrey: The clerk will call the roll.

14 YES 0 NO 0 ABSENT

DO NOT PASS

CARRIER: Rep. Griffin

Date: 1-17-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1220

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Koppelman Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Rep. Delmore	/	
Rep. Klemin	/		Rep. Griffin	/	
Rep. Boehning	/		Rep. Meyer	/	
Rep. Charging	/		Rep. Onstad	/	
Rep. Dahl	/		Rep. Wolf	/	
Rep. Heller	/				
Rep. Kingsbury	/				
Rep. Koppelman	/				
Rep. Kretschmar	/				

Total (Yes) 14 No 6

Absent 0

Floor Assignment Rep. Guffin

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

REPORT OF STANDING COMMITTEE (410)
January 17, 2007 2:44 p.m.

Module No: HR-11-0710
Carrier: Griffin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1220: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1220 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

HB 1220

Roger Johnson
AGRICULTURE COMMISSIONER

Dr. Susan Keller
STATE VETERINARIAN

Dr. Beth Carlson
DEPUTY STATE VETERINARIAN

Nathan Boehm, Mandan
PRESIDENT
DAIRY CATTLE

Paula Swenson, Walcott
SECRETARY
SHEEP

Dr. Charlie Stoltenow, Fargo
CONSULTING VETERINARIAN



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Shawn Schafer, Turtle Lake
NONTRADITIONAL LIVESTOCK

**Testimony of Susan J. Keller, DVM
State Veterinarian
House Bill 1220
Judiciary Committee
Prairie Room
January 17, 2007**

Chairman DeKrey and members of the Judiciary Committee, I am State Veterinarian Susan Keller. I am here today on behalf of the State Board of Animal Health and the North Dakota Department of Agriculture in support of HB 1220, which addresses the penalty provision under 36-21.1-11, associated with inhumane treatment of animals.

Our office receives numerous inhumane treatment of animal complaints throughout the year.

From our perspective, it has been frustrating in the past to know that repeat violators would receive no more of a penalty than that imposed on them as a first time offender. A great deal of staff time and resources may be spent documenting and investigating inhumane treatment allegations. If the investigation provides valid evidence that inhumane treatment has/is occurring and legal action is taken, it would serve as a deterrent for the violator, to know that ongoing violations in the future will be met with a more severe penalty.

Chairman DeKrey and committee members, for these reasons, we urge a do pass on HB 1120. I would be happy to answer any questions you may have.