

2011 SENATE JUDICIARY


SB 2199

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2199
January 26, 2011
13495

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

The State Board of Respiratory Care is requesting the authority to do criminal back ground checks for applicants seeking licensure.

Minutes:

Attached testimony

Senator Nething opened the hearing on SB 2199 relating to criminal history record checks for individuals licensed by the state board of respiratory care.

Senator G. Lee, District 22 introduced SB 2199. Written testimony #1

Senator Nething asked if the thrust of this bill is simply to give the authority to do the criminal background checks.

Senator Lee said that is the request. It would require under section 12, the Bureau of Criminal Investigation to do the background check. He said the other section being amended has to do with the professional section under which this board falls.

Senator Nething said there are no background checks now.

Senator Lee said it is not required on these individuals.

Senator Lyson asked if they were expecting the state to cover the costs of the background checks rather than the applicants.

Senator Lee replied that in the last line, line 16, it states that the record checks are the responsibility of the applicant or licensee.

Senator Nelson said that it says "may". What's the determination of "may"?

Senator Lee explained that it is there so they can do a check and the language "may" was not intended to be used to discriminate on who gets checked and who doesn't.

Senator Olafson shares Senator Nelson's concern on the use of the word "may". He said if they were going to do this the "may" should be changed to a "shall".

Senator Lee said that personally he would not have a problem with that but deferred to others who would be testifying to answer that.

Jack McDonald testified in support of SB 2199 on behalf of the North Dakota Society for Respiratory Care. This is the member organization of all the licensed respiratory therapists in North Dakota. They are supporting this bill. He distributed a copy of the section of the law that is being amended. (#2 attachment) He said that under federal law the only way that you can request a FBI check for a national criminal record background check is to be authorized by state law to do so and to issue that request through a state agency. He explained why they used the word "may".

Senator Nething asked about this list he distributed and how many use "may".

Mr. McDonald gave some examples but said he would have to go back and find that out. He said that he believes the intent of the board was that they did not want to require every single licensee to go through the check. Their intention was to start with the new licensees.

Joseph Link, a Registered Respiratory Therapist at Medcenter One hospital and a member of the North Dakota State Board of Respiratory Care testified in support of SB 2199. Written testimony #3

Senator Olafson said that in his testimony he said that the bill would give the board the authority to acquire criminal background checks on new license applications and for a therapist undergoing disciplinary action from the board. He said the bill doesn't say anything about checks of therapist undergoing disciplinary action. He asked if that was board policy or if they had an official policy to that effect. How are we assured of the circumstances under which you would do these checks on others that are not new applicants?

Mr. Link gave an example of what happened in the past where they could not do a check.

Senator Olafson asked if their board had a written policy.

Mr. Link said, he thought that is what they were trying to do. It may have to be amended to say when criminal background checks can be done on therapists that are not new.

Senator Sitte explained why the "may" language could be more acceptable.

Senator Sorvaag asked how often they had to renew their license and suggested that it might be important to do background checks on all applicants when licensing.

Mr. Link said they have to be licensed every year and there would be some complaining about the costs. He said that their job as a board is to take care of problems that come up and when we do this we want the ability to check criminal backgrounds. He does not believe it is necessary to do the criminal background checks on all yearly applicants.

Senator Olafson commented that it allows the board to do the checks when they feel it is necessary. I am comfortable with leaving that to the discretion of the board until we hear it is not working.

Mr. McDonald pointed out language in the code dealing with criminal checks.

No opposing testimony.

No neutral testimony.


Senator Nething closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2199
2/9/11
Job #14273

Conference Committee

Committee Clerk Signature 

Explanation or reason for introduction of bill/resolution:

Relating to criminal history record checks for individuals licensed by the State Board of Respiratory care

Minutes:

Senator Nething – Chairman

The committee discusses whether to change the words may and shall. Senator Olafson said this bill was brought in by the State Association for Respiratory Care and this would be primarily used for new licensees. That is why they put the word may in the bill as so they can do a check or "may" decide not to. There was no opposition to the bill.

Senator Olafson moves a do pass
Senator Nelson seconds

Roll call vote – 5 yes, 0 no, 1 absent

Senator Nething will carry

Date: 2/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2199

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By S. Olafson Seconded By S. Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson					
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 5 No 4

Absent 1

Floor Assignment S. Nething

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

REPORT OF STANDING COMMITTEE

SB 2199: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2199 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2199

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2199
March 9, 2011
15148

Conference Committee

Committee Clerk Signature

J. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2199.

Sen. Gary Lee: Sponsor, support. Explained the bill (see attached 1).

Rep. Delmore: Right now, they aren't requiring any background checks on the respiratory therapists.

Sen. Lee: That is correct. I don't think they have the authority to do background checks.

Rep. Hogan: Is it your intent to just do new applicants or are you going to go back and require this of all the therapists.

Sen. Lee: The intent of the bill is for new licensees; there also might be an occasion where somebody would want to go back for some reason and check history, but they don't intend to go back for the existing group.

Chairman DeKrey: Thank you. Further testimony in support.

Joe Link, Registered Respiratory Therapist at MedCenter One: Support (see attached 2).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. What are the committee's wishes in regard to SB 2199?

Rep. Hogan: I move a Do Pass.

Rep. Boehning: Second the motion.

11 YES 0 NO 3 ABSENT

DO PASS

CARRIER: Rep. Maragos

Date: 3/9/11
 Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2199

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Boehning

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin			Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury					
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner					

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Maragos

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

REPORT OF STANDING COMMITTEE

SB 2199: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2199 was placed on the
Fourteenth order on the calendar.

2011 TESTIMONY

SB 2199

1

**SB 2199 – Related To Criminal History Checks For Individuals
Licensed By The State Board of Respiratory Care**

Judiciary – Fort Lincoln Room – 9:00 AM, January 26th, 2011

Good Morning, Mr. Chairman & Committee Members. I am Gary A. Lee, State Senator from Casselton, representing District 22.

The State Board of Respiratory Care Licenses Respiratory Therapists and Polysomnographic Technologists. Currently, there are 474 of these licensed professionals in the State. On average the Board will issue about 34 new licenses per year.

These healthcare workers routinely care for patients that are vulnerable, critically ill and dependant on life saving technology.

In SB 2199, The State Board of Respiratory Care is requesting the authority to do criminal back ground checks for applicants seeking licensure. The background check would be primarily for first time licenses in the State. The applicant would be responsible for the cost of the background check.

Unfortunately, this practice has become common & necessary among healthcare professionals. Rationale for the background check would include: patient safety, colleague security, employer liability and professional integrity.

SB 2199 is a good bill, seeking to improve the safety & security of patients served by these healthcare professionals. I ask that you give the Bill your favorable consideration.

North Dakota Statutes - Chapter 12-60. Bureau of Criminal Investigation

§ 12-60-24. Criminal history record checks

1. a. Each applicant, employee, or petitioner for adoption or name change who is subject to a criminal history record check under subsection 2 shall consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, registration, employment, or adoption.

b. Each applicant, employee, registrant, or petitioner for adoption or name change subject to a criminal history record check shall provide to the requesting agency or entity written consent to conduct the check and to release or disclose the information in accordance with state and federal law, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.

c. The agency, official, or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.

2: The bureau of criminal investigation shall provide to each agency, official, or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:

a. The governing body of a city or a county, by ordinance or resolution, for a final applicant for a specified occupation with the city or county.

b. The agriculture commissioner for each applicant for a license to grow or process industrial hemp under section 4-41-02.

c. The education standards and practices board for initial, reentry, and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.

n. The state department of health for a final applicant for or an employee in a specified occupation with the department as designated by the state health officer; an individual being investigated by the department; or, when requested by the department, an applicant for registration, certification, or licensure by the department.

o. The board of nursing for applicants, licensees, registrants, or disciplinary investigations under chapter 43-12.1, except that criminal history record checks need not be made unless required by the board.

p. The state board of pharmacy for applicants or disciplinary investigations under chapter 43-15 and registrations, or revocation or suspension of registrations, under chapter 19-03.1, except that criminal history record checks need not be made unless required by the board.

q. The state real estate commission for applicants, licensees, or investigations under chapter 43-23, except that criminal history record checks need not be made unless required by the commission.

r. The North Dakota board of social work examiners for applicants for initial licensure or licensees under chapter 43-41, except that criminal history record checks for licensees need not be made unless required by the board.

s. All agencies, departments, bureaus, boards, commissions, or institutions of the state, including the North Dakota university system, for all employees or final applicants for employment as a security guard or to otherwise provide security.

t. The office of management and budget for each individual who has access to personal information as designated by the director.

u. The department of corrections and rehabilitation for all agents and employees and a final applicant for employment designated by the director and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the department who exercises direct authority over juveniles, inmates, probationers, or parolees.

v. A city, county, or combination of cities or counties that operates a correctional facility subject to chapter 12-44.1, for each agent and employee and a final applicant for employment of the correctional facility who has direct contact with or exercises direct authority over any juvenile or inmate of the correctional facility, and for each agent, employee, or a final applicant for employment of a privately operated entity providing contract correctional services for the correctional facility who exercises direct authority over juveniles, inmates, probationers, or parolees.

gg. The marriage and family therapy licensure board for applicants, licensees, or investigations under chapter 43-53, except that criminal history record checks need not be made unless required by the board.

#3

Good morning, members of the Senate Judiciary Committee:

My name is Joe Link, a Registered Respiratory Therapist at Medcenter One hospital and a member of the North Dakota State Board of Respiratory Care.

I am representing the NDSBRC this morning in regards to Senate Bill 2199. This bill would give the board the authority to acquire criminal background checks on new license applications and for any therapist undergoing disciplinary action from the board. Over the last five years the board has averaged 35 new licensees and last year (2010) we had 42 new licensees. This includes new RT graduates as well as those moving from out of state to work in North Dakota.

One of the board's main functions is to protect patients and the public of North Dakota by assuring the competency and character of licensed, practicing respiratory therapists. Since becoming a board member in 2008, the most time consuming issues we've dealt with have been in regards to a few employees' legal issues outside of the work environment, which then become our concern within the work environment. An initial criminal background check for new licensees would alert us to an applicant's possible background issues and prevent possible harm to a vulnerable patient and the public in general.

The fee for this record check will be the applicant's responsibility at a cost of \$47.35, plus \$5-10 for fingerprinting.

North Dakota is still considered one of the safest places to live in the country, please help us to continue to provide this measure of safety to our patients and the public by considering passage of SB 2199.

Thank you for your time and consideration.

Sincerely,

Joseph Link, MBA, RRT, RPSGT
NDSBRC

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