

2019 SENATE HUMAN SERVICES

SB 2287

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2287
2/4/2019
Job # 32076

- Subcommittee
 Conference Committee

Committee Clerk Signature: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to early childhood services program participation in aquatic activities.

Minutes:

Attachment #1

Madam Chair Lee: Opens the hearing on SB 2287.

Senator Shawn Veeda, District 6. Introducing SB 2287 and gives a brief description.

(01:16) Madam Chair Lee: The biggest question is there are a whole lot of households that only have one parent.

Senator Veeda: Correct.

Madam Chair Lee: Is your intent to make us catch up with the other parent?

Senator Veeda: 25 years ago I was in a situation where I was in a divorce and as a father who paid his child support, I would have felt that I would have been notified that my child was going to the pool also.

Madam Chair Lee: For the reliable parents who are just not living together I get that part. If we look at something in which the non-custodial parent is unavailable there needs to be a way for the remaining custodial parent to have some right to determine whether the child can participate.

Senator Hogan: Would you be comfortable if we changed it to custodial parents because often times custody is shared.

Madam Chair Lee: That wouldn't even cover the non-custodial parent though.

Senator K. Roers: One other thing is that we have received a couple e-mails about this bill and I used to work at a day care when I was 18 years old and I know there are different ratios for different ages so one thing that I'm wondering is if you have any problem with us putting in something about the ratio that could be something like a percentage of their normal ratio.

Senator Veeda: This bill was to just to get the conversation started. We knew that you guys would figure it out.

(05:16-08:20) Lynne Reiseauer, Citizen. Testifying in support of SB 2287. Please see **Attachment #1** for testimony.

Madam Chair Lee: I know it's not easy for you to be here today but I also see that this is a mission for you that is very important and a legacy that really be yours and hers (daughter).

Lynne Reiseauer: I was a single mom since day one until the end and it was hard, I can see where this is going to be an issue. I had primary custody of Grace so I made all legal decisions. I feel like if someone who is awarded that through the state could potentially sign off on this type of thing. I understand why the bill was put in as having both parents sign off because, it has also happened in my situation where the other parent comes out of nowhere and all of a sudden has legal action. I think this is kind of where Senator Veeda was trying to protect everyone here because there are the good dads who are going to support and be there and share the custody, but there is the other side where the other parent isn't going to be involved, but when something major happens they are going to show up. Especially if there is a potential for a dollar amount. I feel like if you need to change this to the primary parent or however you word it has the right to make these decisions should be able to sign off with permission. I don't want children to miss out on opportunities because they don't have both parents in their lives to do so. The ratios that Senator K. Roers spoke about, preferably under the age of 10 or 7 or 8. I feel the little ones need the higher supervision ratios and that's where I think this swimming bill will help. If you have a 10-year-old that can swim, I think that determines how many adults need to be with them as well.

Senator K. Roers: This bill doesn't state it but something that you said really does resonate with me is that parent making sure to notify that daycare provider of their swimming ability. I think that really does change what that supervision requirement requires. If it was an 8-year-old that has never swam compared to a child that has been swimming for years, you have two totally different needs there.

Madam Chair Lee: I have a granddaughter that when she was barely 2 was terrific in the water because she was going to swim meets watching her older siblings do this forever and she's just a natural in the water and swims and dives, but that doesn't mean that every kid does. The other thing is that pools are not responsible for groups like this, they have strict laws too about the number of people that must be staffing it. All the states have requirements but they can't be responsible for large groups that come in like that.

Senator Anderson: I'm not sure that what you said was accurate, the pool lifeguards are responsible for everybody in there and they certainly have the right to limit them, but I have been in pools with groups of scouts and those lifeguards don't want you interceding into what they are doing. I've been hollered at more than once for doing that at pools where the lifeguards are there and we have our responsible adults and we have our kids that are lifeguard trained, but the pool doesn't want you interfering.

Madam Chair Lee: Yes, we want the kids protected and the pools are in charge, but they do have limitations if the pool is full on a hot day and if your bringing in 17 kids you need to watch what is going on.

(16:52-18:01) Amanda Carlson, Early Childhood Services Administrator with the Department of Human Services. Offering neutral testimony on SB 2287. Testimony is as follows.

Amanda Carlson: We do not have anything specifically in century code regarding aquatic activities however, we do have an administrative rule for all child care providers so this would include self-declaration, in-home, and all licensed providers that there is a requirement for written parental permission to participate in aquatic activities that those providers have policies to indicate what type of activities they are going to participate in. The staff to child ratios do to include being appropriate to the ages and the abilities of the children in relation to the activity. That language is all mirrored in our early childhood services policies.

Senator Hogan: Do you happen to know when those rules went into effect?

Amanda Carlson: Unfortunately, just being 5 months in my position I don't, but I can get you that information.

Senator Hogan: I know.

Madam Chair Lee: Well then you tell us.

Senator Hogan: Because those went into effect after Lynne Reiseanuer' s situation. They were a direct result of it and we struggled when we wrote the bill drafts as to what should go into administrative rules and what should go into law so this is a direct result of Lynne's testimony.

Senator O. Larsen: As I'm struggling with a couple of these bills I feel that some of them should be in rules and you've just said that we are melding them in rules so if they don't follow the rules they lose their license I'm hoping. If it's a bill and they don't follow the rules something should happen. I guess I would feel more comfortable with some of this like the fencing and the ratio thing but those should be rule and they should lose their license if they aren't following the rules. It shouldn't be a bill. Would you agree with that?

Amanda Carlson: Anything that is in Admin. Rule we abide by because it has the backing in century code and we would exactly as you said, we would issue a correction order if the provider was found to be non-compliant, if it did present imminent danger to children's safety then we would take further action or if that correction order was not corrected within the timeline again we would take corrective action which could be a revocation, suspension, etc. Those timelines are laid out for us in administrative rule because we have the backing in century code to do so.

Madam Chair Lee: Closes the hearing on SB 2287

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2287
2/12/2019
Job # 32579 (00:00-08:00)

- Subcommittee
 Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to early childhood services program participation in aquatic activities.

Minutes:

Attachment #1

Madam Chair Lee opens the discussion on SB 2287.

Jonathan Alm, Attorney with the Department of Human Services: We can start with SB 2287. In discussion with SB 2287 that is dealing with the aquatic activities. After a couple of incidences, the department saw regarding pool related accidents, the department passed out administrative rules regarding aquatic activities, I included in that handout that I handed out to you regarding the actual rule itself that is placed in administrative code. For that specific reason we feel that SB 2287 does not need to be instituted into state law. **(Please see Attachment #1 for administrative rules)**

Madam Chair Lee: Any questions for Mr. Alm about that?

Senator Hogan: One of the questions we debated in this hearing was the fact that this proposed bill says both parents and right now in administrative rule it only requires a parent.

Jonathan Alm: That is correct.

Senator Hogan: Do you have feelings about it needing to be particular when there are non-custodial parents, both parents need to have that permission or did you have that discussion?

Jonathan Alm: I think we have internally had that discussion when we were creating the rules that it would make it very difficult especially for kids that have foster parent situations or an absent or two absent parents.

Madam Chair Lee: Any further questions for Mr. Alm?

Senator Hogan: The other thing that we talked about was the ratio issue needing to be higher in aquatic events and how is that currently working?

Jonathan Alm: So right now what the administrative rules talks about is the providers are going to have to have the policies that are in place regarding the child ratios that are appropriate to the ages because you might have some relatively young infants that are participating in the water, so you might have a 1:2 or 1:3 ratios. You might have 10 year olds that are also in the daycare that might not be 1:3 ratios, they might be 1:10 because of their swimming capabilities.

Senator Hogan: But there aren't any higher ratios for aquatic activities than normal activities in a child care facility.

Jonathan Alm: That is correct, this administrative rule says that you have to set what those ratios are going to be based on the age of the child.

Senator Hogan: But basic standards for all child care facilities regardless of the water activity.

Jonathan Alm: Yes, they have ratios.

Madam Chair Lee: Are there any that would be fewer for the smallest and least able to thrive in the water any of that would be below that 1:3 or higher I should say I guess. Less restrictive would be a better way to put it.

Jonathan Alm: The least restrictive might be if you have the 10 year olds that are in an after school program or during the summer when they can have a 1:8 or 1:10 might be appropriate.

Madam Chair Lee: The smaller children, 1:3 ratios would be the lowest?

Jonathan Alm: With how the administrative rules are, it really allows the provider with the parent to figure out what is the best and appropriate mechanism for swimming and of course the parent doesn't have to agree to the swimming aquatic activities.

Senator Hogan: So she was asking this to be a state standard and currently it is a provider standard?

Jonathan Alm: As far as the ratio, yes.

Madam Chair Lee: Any further questions on SB 2287? If not then lets move on to the next one.

Senator K. Roers: I move a **DO NOT PASS**
Seconded by Senator O. Larsen

Senator Hogan: I might vote no, because I think it might be a state standard rather than a provider standard but that is just philosophical.

Madam Chair Lee: Any further discussion? Im just thinking its kind of hard to set a state standard.

Senator K. Roers: So many variables.

Senator Hogan: I understand that.

Madam Chair Lee: We all want kids to be safe in the water but you know three inches of water is too much for a child who is not in the right place. Any further discussion?

ROLL CALL VOTE TAKEN

5 YEA, 1 NAY, 0 ABSENT

MOTION CARRIES DO NOT PASS

Senator K. Roers will carry SB 2287 to the floor.

Madam Chair Lee and the committee moves on to discuss SB 2294.

**2019 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2267**

Senate Human Services Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Sen. K. Roers Seconded By Sen. D. Larson

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|---------------|-----|----|
| Chair Lee | X | | Senator Hogan | | X |
| Vice Chair Larsen | X | | | | |
| Senator Anderson | X | | | | |
| Senator Clemens | X | | | | |
| Senator Roers | X | | | | |
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Total (Yes) 5 No 1

Absent 0

Floor Assignment Sen. K. Roers

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

REPORT OF STANDING COMMITTEE

SB 2287: Human Services Committee (Sen. J. Lee, Chairman) recommends **DO NOT PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2287 was placed on the Eleventh order on the calendar.

2019 TESTIMONY

SB 2287

January 18, 2019

I would like to first start out by introducing myself. My name is Lynne Reiseanuer, I am Gracelyn's mother. You may have heard of Gracelyn's story and if you have not, I would like to take a moment to share with everyone.

My daughter Gracelyn was five years old when she passed away on July 1, 2015 from injuries sustained while in the care of KidQuarters daycare in Velva, ND. June 8, 2015, I received a call from the daycare owner stating "they found Gracelyn unresponsive in the pool". I did not understand so I asked what do you mean, where are you? That is when the daycare owner explained they were at the Velva Public Pool. I hung up the phone because my mind was going a million miles a minute. I got into my car and I drove as fast as I could to the Velva public pool. Upon arriving, one of the first things I noticed was how packed the pool was, I rushed in to find my lifeless five-year-old daughter laying on the pool deck as first responders were trying to revive her. I remember dropping to my knees screaming, praying she would take a breath. They loaded her into the ambulance and I remember begging them to let me ride with. I was unable to ride with her in the ambulance. I arrived at Trinity Hospital in Minot, ND a few minutes before the ambulance and I remember running through the ER doors as they were transporting her inside. Once, she was in a room being looked after, I recall one of the volunteers from the Velva ambulance coming up to me, giving me a hug and telling me its going to be okay "we were able to revive her on the drive in." A part of me, breathed a sigh of relief, but was quickly brought back to reality when I was informed that she was not ok. Gracelyn and I were then transported by plane to Fargo, ND under the care of Sanford Children's hospital. For the next three weeks I laid next to my daughter who was now in a coma. I did not leave her side. I prayed all day long that God would grant her a miracle. I just wanted her to wake up. I wanted my daughter back. In the morning hours of July 1, 2015 my daughter took her last breath. I held her for 4 hours rocking her back and fourth because I could not comprehend what just happened. Gracelyn was my only child and I could not leave her side. We have been a team since the day she was born.

Following her death, I spent two years in and out of court rooms. I appreciate the opportunity to share our story in hopes that laws will be changed in order to protect any future children and families from having to endure what I have. As a grieving mother being dragged through our court system is something, I do not wish on anyone. I do not wish, even on my worst enemy to ever lose a child. I will be honest; most court days are a blur, justice was not served criminally or civilly. I understand that no amount of justice will ever bring my daughter back, however I should have never lost my daughter or even been in those courtrooms. Her death was 100% preventable.

I would like to begin by addressing the proposed bills SB2163, SB2287, and SB2294.

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#1 pg. 2

SB2287- Aquatic activities

I am asking that rules be put into place as far as aquatic activities are concerned while under the care of a licensed daycare. I am proposing the minimum requirements be as follows:

1. A child may not participate in an aquatic activity unless both parents of the child have given written permission, and the parents have disclosed the child's swimming ability.
2. Provide enhanced supervision ratios, with no fewer than one adult per three children.

This bill is very important to me. My child was taken by KidQuarters to the Velva public pool without my knowledge, without my consent. The daycare owner was aware of Gracelyn's swimming abilities as I had just discussed with her the Friday before that beginning in a few weeks I would be picking Gracelyn up early to take her to swimming lessons as she does not know how to swim. My child was taken on June 8, 2015 with 17 other children to a public pool. Where she was not being looked after. The daycare owner openly stated she allowed Gracelyn to go to the "big kid" side of the pool. It was at that point there was no supervision. My child ended up drowning. I still do not have answers, I still do not understand how this happened. How can 1 adult supervise 17 children at a public pool? How many children would you be comfortable with taking to a public pool alone?

This is not the first time near-drowning has taken place while under the care of a daycare in ND. November of 2014, two four-year old boys from Casselton, ND were on a trip with their local daycare. They both had a near-drowning experience in the hotel pool.

This bill's intention is also to protect the daycare workers/owners responsible for taking children of a young age to potentially dangerous aquatic activities, from having an accident occur due to lack of supervision or the high increase of distractions taking place.



Pre-school graduation. She was 1 month away from starting Kindergarten.

DEPARTMENT OF HUMAN SERVICES
ADMINISTRATIVE RULES PROVISIONS

Senate Bill No. 2163

Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center

Ensure that liability insurance against bodily injury and property damage for the preschool is carried

Shall ensure that the school-age child care program carries liability insurance against bodily injury and property damage

Senate Bill No. 2287

"Aquatic activity" means an activity in or on a body of water, either natural or manmade, including rivers, lakes, streams, swimming pools, and water slides.

Aquatic activities:

- a. The provider shall have policies that ensure the health and safety of children in care while participating in aquatic activities, including types of aquatic activities the program may participate in, staff-to-child ratios appropriate to the ages and swimming ability of children participating in aquatic activities, and additional safety precautions to be taken.
- b. The provider may not permit any child to participate in an aquatic activity without written parental permission, which includes parent disclosure of the child's swimming ability.

Senate Bill No. 2294

Minimum Standards:

1. 16 pages of law and
2. 151 pages of administrative code.

Fencing for licensed providers:

The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas are contained or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.