

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

14999

2005 HOUSE JUDICIARY

HB 1499

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1499

House Judiciary Committee

Conference Committee

Hearing Date 2/2/05

Tape Number	Side A	Side B	Meter #
3	xx		22.2-38.9
Committee Clerk Signature <i>Dawn Penrose</i>			

Minutes: 13 members present, 1 member absent (Rep. Maragos).

**Chairman DeKrey:** We will open the hearing on HB 1499.

**Kim Rau, ND Collectors Association:** Explained the bill (see written testimony).

**Chairman DeKrey:** Basically, what happens is that a husband and wife go live separate from each other, never do anything to be legally separated and then don't pay their bills.

**Kim Rau:** That is correct.

**Chairman DeKrey:** The idea is to say that unless you have a court order that you are legally separated, you're not, that's the bill.

**Kim Rau:** Very true.

**Representative Klemin:** Let's talk about #3, in lines 21-24, it says they're jointly and severally liable for the debts contracted while living together. If you take that language out, they could be separated, not living together, although not "legally" separated, which is a legal process that you have to go through. It's almost similar to divorce, some people can't get divorced for religious

reasons, or something. But they may be apart for many, many years, and one spouse could run up quite a big debt for all these things that are included here, medical care, operation, etc. So what your bill would do is to say that under that circumstance, the husband who had this kind of big medical bill that he couldn't pay for, even though they had been living apart and had their own lives for many years, you could now go after the wife for that even though you can't under existing law.

**Kim Rau:** Yes, that is correct. Why would they remain separated for a number of years, if they know there is going to be a liability, because the way the law has always been interpreted, up until the last couple of years, until they are legally separated or divorced, they are responsible for each other. I've been in the industry for many years and we've dealt with husband and wife issues since forever. I don't believe the intent of the law was to say that they're only living together. I think the intent was to say, that if they're not living together, therefore they must be divorced, but that isn't what's happening. What happened in a court case in Bismarck, because the judge had to make a ruling against a spouse who simply moved out for a period of time, the wife had medical treatment, he said I don't have to pay it, because I wasn't physically living in that house. The judge had to rule in his favor, so the wife got stuck with it; they subsequently got divorced.

**Representative Klemm:** The example you gave sounded like they were potentially using this to get around that particular debt, one of the spouses was, even though they got divorced later, what you're saying is that under the example that I gave, where they may have been living apart for many years, even in other states, you could go after that other spouse for this debt and get a judgment against her here in ND and transfer it to California where she's been for the last 20

years and try to collect it from her there, though she might not have talked to her husband for 20 years. Is that right.

**Kim Rau:** Yes.

**Rep. C. B. Haas:** I am a sponsor of this bill. I support it.

**Chairman DeKrey:** Thank you.

**Representative Delmore:** When you have a domestic violence action where the wife actually moves into a shelter and hasn't filed for a separation for anything, she is under a protection order. Something happens to her husband, this bill would say that the liability would be there as well.

**Kim Rau:** Yes, that is my understanding.

**Todd Kranda, ND Collectors Association, attorney:** I think that your point is well taken.

There are situations where spouses leave, separate without the legal separation proceeding similar to what Representative Klemin said there is a legal process, for the judge to declare a legal separation. What the ND Collectors Association is concerned about, the situation has come up in the courts recently and defendants attempting to get through the loophole. We are attempting to find a way to fill that, but recognizing these scenarios are a problem on the other side to filling those loopholes, because you catch a few more people that may not be intended or unfairly caught in that scenario. It had not been a problem before in enforcing responsibilities upon a marital couple, but there have been some changes in the interpretation and lawyers are getting a little crafty and figured out other arguments.

**Representative Delmore:** I'm just wondering if there is some other way, I understand what you're trying to get at in this bill, but there are a lot of loopholes. You have a lot of people who separate, but don't believe in divorce, they are strong Catholics, things aren't working out, they

don't want to separate or divorce. Again, they go out there with their own lives, they're really not responsible for each other in any way. I can come up with too many scenarios to make this not work. If there's another way to write this, or another process to use, I would certainly understand that but I think you are going to catch a lot of legitimate people in the cracks that don't belong there.

**Todd Kranda:** I don't think this a bill that you're going to be pushing out real fast, I know there is a little bit of time, there isn't a fiscal note impact, we would be more than happy to look into that and maybe work with you or Representative Klemin or just generally present some possible options looking into these concerns.

**Chairman DeKrey:** Maybe we could find some sort of language that wasn't either so black or white so that there would be evidence. Maybe find some other language.

**Representative Bernstein:** What if the couple separates, go to an attorney, and have papers drawn up saying who does what and when, who takes care of the kids, who gets the house, what do you do with joint property. It was signed by both of them, would that be a legal separation.

**Todd Kranda:** I do a number of family law cases, so I'm fairly familiar with that process. Under ND law, there is a provision for legal separation which is along the same lines as Representative Klemin was suggesting a divorce. A formal proceeding where they declare rights and responsibilities, parties may agree to something under a written document, stipulation or agreement, or they may just go to the divorce and be done with everything and divide it all out for the property. This net tries to cure the problem that's been created by lawyers interpreting it differently and with the judge's blessings, and yet we're too wide a sweep. I think the liability would still be there, the court would or the parties could assign or assume the responsibilities for

whatever the necessity of debts are, but as a creditor both under this law, could be held liable, it's just between them, they have a contractual agreement approved by a judge, whether it's a legal separation approving who's responsible or a divorce judge saying you have to pay that debt.

**Representative Charging:** Do you have a number, of how many cases where it's happened.

**Kim Rau:** We know of two cases in Burleigh County.

**Representative Charging:** Do you see problems coming.

**Kim Rau:** We see it as a growing problem, it's minor right now but in order to avoid it becoming a bigger issue, especially with the uninsured issue going on, a lot of people don't have health insurance. We don't want people to say, if you're married, I'm going to have major surgery, and have the major breadwinner move out, while I have this surgery, and now he's not responsible, you're not working, for a child is another issue.

**Chairman DeKrey:** We will have a subcommittee, Rep. Delmore, Rep. Klemin, and Rep. Kingsbury, report back next week. Further testimony on HB 1499. We will close the hearing.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1499

House Judiciary Committee

Conference Committee

Hearing Date 2/7/05

Tape Number	Side A	Side B	Meter #
1		xx	46.6-end
2	xx		0-1.8
Committee Clerk Signature <i>Aaron Penrose</i>			

Minutes: 11 members present, 3 members absent (Reps. Maragos, Galvin, Zaiser).

**Chairman DeKrey:** Let's take a look at HB 1499.

**Representative Klemin:** At the time of that hearing, Todd Kranda had said that he would be preparing an amendment to bring to the subcommittee and that was on February 2, we haven't got anything yet.

**Chairman DeKrey:** I'll contact him and tell him to get moving. We'll take this up later.

(Reopened later in the same day.)

**Chairman DeKrey:** Representative Delmore, I believe you have a motion.

**Representative Delmore:** I move a Do Not Pass on HB 1499.

**Representative Klemin:** Seconded.

**Chairman DeKrey:** This is the bill we had on the husband and wife's property, and the people who had that bill have decided that if we can't come up with language to fix it, they want to sit

on it for another two years, to see if they can come up with something on their own. The sponsors are okay with killing that bill. I suggest we get rid of it.

**Representative Delmore:** The cost of a legal separation is quite a bit, and the fact that domestic violence victims, we found a lot of loopholes that were in there, there have only been two cases, so they don't have real heartburn about killing it and just monitoring the situation.

**Chairman DeKrey:** Seeing no further discussion, the clerk will call the roll.

**11 YES 0 NO 3 ABSENT      DO NOT PASS      CARRIER: Rep. Charging**

Date: 2/7/05  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1499

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

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

Action Taken Do Not Pass

Motion Made By Rep. Delmore Seconded By Rep. Klemin

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	A		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	A	
Representative Charging	✓				
Representative Galvin	A				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 11 No 0

Absent 3

Floor Assignment Rep. Charging

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

**REPORT OF STANDING COMMITTEE (410)**  
February 8, 2005 7:47 a.m.

**Module No: HR-25-2065**  
**Carrier: Charging**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1499: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS**  
**(11 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1499 was placed on the**  
**Eleventh order on the calendar.**

**2005 TESTIMONY**

HB 1499



# North Dakota Collectors Association

an association of collection specialists

## Testimony in Support of

### **HOUSE BILL NO. 1499** **House Judiciary Committee** **February 2, 2005**

Chairman DeKrey and members of the House Judiciary Committee, my name is Kim Rau and I am representing the North Dakota Collectors Association (NDCA). Our Association includes 24 North Dakota owned collection agencies who assist with the recover of debts owed to a creditor.

HB 1499 is a necessary change to our current statute to clarify the law regarding the financial liabilities of a husband and wife. It is our belief that the intent of Sections 14-07-07 and 14-07-08 was to limit the liabilities of a husband and wife who were legally separated, not to limit the liabilities of a husband and wife who were simply not living in the same house for a period of time.

On page 1, at lines 9 & 10 of HB 1499, we eliminate the clause "The mutual consent of the parties is a sufficient consideration for such a separation agreement" and replace that clause with "A legal separation is required to affect third-party liability".

The reasoning behind this change is that just because a couple has reached an agreement between themselves on whether or not to be responsible for paying necessary items for each other, that does not and should not get them "off the hook" for paying for these necessary items. NDCA is asking that the law be clarified to reflect that the parties must be legally separated before they would not be responsible for the other spouse's debts for items of necessity.

On page 1, line 19, the words "living separate" has been replaced with "legally separated". And on page 1, line 22, we have stricken the clause "while living together".

These changes will clarify what we believe was originally intended at the time the law was written. These changes will eliminate the potential for spouses to negate their financial responsibility to each other except under a legal separation. If a couple took this section of law as written they could deduce that it would be in their best interest to have the breadwinner of the family move out temporarily while bills are being incurred in order to avoid being financially responsible.

This situation has not been an issue until lately. There are some attorney's who are using this section of law to negate their client's financial responsibility for their spouse when necessary expenses are incurred.

We ask that you favorable consider HB 1499 and give it a Do Pass Recommendation.