

MICROFILM DIVIDER

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ROLL NUMBER

DESCRIPTION

2138

2007 SENATE JUDICIARY

SB 2138

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 17, 2007

Recorder Job Number: 1282

Committee Clerk Signature

Mona L. Solberg

Minutes: Relating to sexual offense medical testing to repeal section relating to individuals living arrangements.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Tracy Potter, Dist. #35, Introduced bill (meter 0:30) Gave Testimony Att. #1

Sen. Fiebiger asked how many cases have the Attorney General's office prosecuted? The last one was in 1938.

Sen. Nelson, Dist. #21 (meter 7:18) Gave Testimony – Att. #2

Rep. Delmore, Dist. #43 (meter 13:20) Sited that this bill has been "miss addressed". This is not about the stigma surrounding the "sin" of the living arrangements rather in some areas it is about safety.

Testimony in Opposition of the Bill:

Tom Freier, ND Family Alliance (meter 14:34) Gave Testimony – Att #3a, discussed hand outs – Att. 3b 3c & 3d.

Sen. Nething sited how impressive the statistics are.

Sen. Nelson questioned the age of the people in the study? (meter 22:46) Probably 40 and younger-discussion.

Sen. Nething stated the deception part of the bill is already in Century Code (meter 25:28) Perhaps we should transfer this to the section under Fraud. Discussion of this.

Sen. Nelson discussed the (meter 27:10) this offence should not be criminal.

Mr. Freier stated (meter 28:00) as a state, is this the image we want to give the nation.

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

Sen. Nething asked the intern, Brad Wiederholt, to research what other states have done with this type of legislation.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3046

Committee Clerk Signature

Mona Solley

Minutes: Relating to sexual offense medical testing to repeal section relating to individuals living arrangements.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Nething introduced an amendment – Att. #1 Reviewed (meter :43) amendment with the committee. Sen. Nething stated that at one time a discussion of a provision to cover apartment owner who did not want to rent to an unwed couple, but this is already in law. This amendment gets the law out of the sexual offence section and places it in the Fraud section. Discussion of the above and fraud by deception not being covered in current law under this context and this amendment would make it clearly. Committee spoke of who would consider it “fraud”, a nosey neighbor? Discussion of grandma living with another elderly person and a situation of collage age kids. **Sen. Fiebinger** stated that no one has prosecuted for this since 1938. **Sen. Lyson** stated that that was not so. He has prosecuted three individuals on this law but it did not go to the supreme court. Discussion of discretion of the prosecuting attorney and the law being worded that it was not a mandate.

Senator David Nething, Chairman closed the hearing.

Sen. Lyson made the motion to Do Pass Amendment #1 dated 2/7 and **Sen. Olafson** seconded the motion. All members were in favor, except for **Sen Fiebiger** and **Sen. Nelson** the motion still passes.

Sen. Lyson made the motion to Do Pass as Amended SB 2138 and **Sen. Olafson** seconded the motion. All members were in favor, except for **Sen. Fiebiger** and **Sen. Marcellais** motion passes.

Carrier: **Sen. Nething**

Senator David Nething, Chairman closed the hearing.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2138

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to false representation of marital status; and"

Page 1, after line 5, insert:

"**SECTION 1.** A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

False representation of marital status. An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other."

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2138: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2138 was placed on the Sixth order on the calendar.

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 12.1-31 of the North Dakota Century Code, relating to false representation of marital status;"

Page 1, line 2, remove "and"

Page 1, line 3, after "arrangements" insert "; and to provide a penalty"

Page 1, after line 5, insert:

"SECTION 1. A new section to chapter 12.1-31 of the North Dakota Century Code is created and enacted as follows:

False representation of marital status. An individual is guilty of a class B misdemeanor if the individual lives openly and notoriously with an individual of the opposite sex as a married couple without being married to the other individual and falsely represents the couple's status as being married to each other."

Renumber accordingly

2007 HOUSE JUDICIARY

SB 2138

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2138

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/27/07

Recorder Job Number: 3960

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2138.

Sen. Tracy Potter: Sponsor, explained the bill (see attached testimony).

Rep. Koppelman: You made a comment about the 2001 legislature and how it allowed discrimination in housing. Is that statement opinion or fact and are you implying that it is inappropriate that that is the case. We discriminate against people who have bad financial history, can't pay their rent.

Sen. Tracy Potter: I'm not sure that I meant to imply anything by it, other than a straightforward definition. I think we would find the definition accurate. Of course, you're correct, your implication of discrimination has charged language. The fact is that we do allow landlords to choose not to rent to unmarried couples if they choose.

Rep. Koppelman: Are you aware of the history behind that bill.

Sen. Tracy Potter: I didn't follow it precisely what it was, but I looked at the 2001 Supreme Court case of Fair Housing Council vs. Peterson and that's what leads us to know what the Supreme Court says the current statute means, it means living together in a personal relationship, opposite sex couples. That is what they are saying is the crime, not the business of pretending to be married. Because in that case, the Petersons, the landlord refused to rent

to an unmarried couple, who had said that they were unmarried. At that time, NDCC had the human rights act specifically forbid discrimination against marital status in housing. Because of that hearing the repeal of the law, the legislature moved that.

Rep. Koppelman: Let me challenge one statement and ask a question. I don't believe that the Fair Housing Law prohibited discrimination prior to that based upon marital status. I believe it was the term familial status. Part of the court's finding was that to have a consistent interpretation of the law, familial status could not mean marital status because ND had a separate statute on the books outlawing cohabitation. Therefore, our Century Code would be inconsistent if familial status meant marital status and at the same time the legislature then said that cohabitation was against the law. I believe the common interpretation of that was, and has evolved to be that familial status means that you can't have a single room in an apartment building, you can't prohibit children, those kinds of things. It really doesn't deal with marital status, to reconcile those two provisions in the law. So that was the court's finding. It seems to me if we remove this, as this bill proposes to do, basically it would remove that underpinning from that legal opinion. I understand your point, because I was here in 2001 and that provision was added to the Fair Housing statute. The reason it was added, was to clarify and codify what the court already said. Yes, the court's interpretation of the law is what the legislature intended and to clarify that, we are going to add this language to the statute on Fair Housing. The question is, if we repeal this provision of the law, that court would may no longer have any standing in the law, if someone looks at this over a broader period of time, in another legislative session might say, that's pretty good argument for a session or two from now, coming back and saying that now that we've repealed, the underpinning of that court case, was the language clarifying and codifying what the court says; therefore, let's get rid of that too. That's a slippery slope.

Sen. Tracy Potter: Thank you for the history on that. I actually happen to have in my folder the Supreme Court decision on that. What they were ruling on specifically, they are citing NDCC on page 3 of their 27 page opinion, and what they are saying is, that NDCC, this is a discriminatory practice, that it is illegal to discriminate against a person in terms, conditions or privileges, because of race, color, religion, sex, national origin, age, physical or mental disability or status with respect to marriage for public assistance. It lists specific to marriage that they are talking about. The point you raise, is an excellent one, and I've wondered about it myself and that is if we remove this from the law, because what the Supreme Court was ruling was precisely that, they were saying that the Petersons did not have to rent to these people because they were lawbreakers, not because they were unmarried, but because they were breaking the law by being unmarried and living together. That's what the court case was. So the question is, will ND's current law allowing the Petersons to rent to anybody they want, or not to rent to people they don't want to based on marital status, would that still be constitutional. Would it stand the test. I contend that our cohabitation statute doesn't stand a chance of standing the test of constitutionality anyway. If the one is found unconstitutional, if the current law allowing people to choose not to rent, if that's unconstitutional, certainly the cohabitation statute is, I'm not saying because of one then the other. I'm saying that our statute is unconstitutional based on the TX case of a couple of years ago. Since then, NC's cohabitation statute has been found unconstitutional. Clearly, there are two ways to get rid of this law. We can have a state's attorney who wants to, prosecute somebody who is willing, and the law be thrown out just like that. This is an unconstitutional act, or the state legislature can take it upon themselves to recognize this and put this thing to rest.

Rep. Koppelman: Would the court not have had that opportunity, by the way my reference to the way you described it, was about I believe about a district court level case. Would the court

not have had that opportunity then, if they had before them the question at hand, and specifically referred to and commented on and if they wanted to find this unconstitutional, it seems to me that was a golden opportunity.

Sen. Tracy Potter: If they wanted to, they certainly could have. They certainly had that opportunity in front of them, but they also had that easy way out, saying that's not really the issue at hand here, it's against the law, that's what they chose to do.

Rep. Griffin: Do you see this law being enforced in any situations, can you give an example of a situation where it would be violated, how somebody could falsely represent that they were married.

Sen. Tracy Potter: If this passes, can I see this being enforced? Boy, I think the number of lawbreakers drops from 23,000 to 0. No, I don't see this being enforced, unless in fact, there is fraud being perpetrated. Unless someone is gaining some advantage by pretending to be married. Then yes, that's a crime and should be prosecuted. I don't see a lot of people out there who are breaking the law, as we will have changed it, should you adopt the work of the Senate Judiciary committee.

Rep. Koppelman: Part of your answer to Rep. Griffin's question, intrigued me, because on one hand you said we should repeal this law if it's not enforced, you shouldn't have a law on the books just because, etc. Then you said this new law, which you said was an improvement to your bill, would be wonderful, would never be enforced, why not.

Sen. Tracy Potter: I'm not saying it won't be enforced, because law enforcement choose not to enforce it. I'm saying it won't be enforced because nobody is violating it.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Mary Ekstrom: Support, co-sponsor. I am here to merely support this bill. I have used many arguments over the years with regard to whether this law is needed. We did try this as a

fraud statute once before and it failed in the House. This time it has a better chance. In response to a question, will this ever be enforced? Well, it could be. If someone went into a hospital and said they are husband and wife, because I want to get into that hospital room when my husband dying, they could in fact represent themselves as being married. Take it one step further, the individual dies. Of course, the hospital comes back after the spouse for payment and they aren't married. That's fraud. That should be prosecuted. There's a very good reason for putting this on for a fraud statute, not as a sex crime (cited example of older couple who weren't married and couldn't get the condo due to condo association rules).

Rep. Koppelman: In the example you gave, you talked about the couple denied the option to rent...

Rep. Mary Ekstrom: Not rent, buy.

Rep. Koppelman: So, we had the discussion about the idea that folks could still refuse to rent to people who are cohabitating because of the provision in the law a few years ago that this bill passed. Would it prohibit the kind of thing you are talking about though. Would that be illegal.

Rep. Mary Ekstrom: I think the condominium covenant was trying to cover all the bases. I think what they said was that is the law of ND, and therefore we are going to incorporate it into our rules. I think that would go away.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Kathy Hawken: Support. I am not a sponsor. One, our more senior constituents, those people care deeply that they are not following the law. It matters to them, and yet they aren't doing anything wrong. It's companionship for the most part, it may be because of some of our other laws so that they don't lose SS, or veteran benefits; because they need those monies to live. Yet we have put them in a place where they are law breakers. They know that and it

makes them uncomfortable. The second is a safety issue, having a young man living in the house/apartment with girls for safety. Third, just personal. I think that things like this make us a joke around the country.

Chairman DeKrey: Thank you. Further testimony in support.

Rep. Delmore: I am a sponsor. I have two quick points. I don't see a reason to keep a law on the books because it makes us feel good and we're more moral than other people. Second, it's about economics. A lot of the people in this state that choose to live together, and many of them have no relationship beyond companionship fall into two categories, senior citizens, people who can't afford those facilities by themselves and college students. It's a matter of economics. I understand the reality of what an apartment costs and how students can't do it by themselves. I like the comment about security, because in ND there could be a young man living with some young women that could end up saving lives. We've got some people here who aren't the best of critters either.

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

Tom Freier, ND Family Alliance: (see attached testimony).

Chairman DeKrey: Doesn't this violate our oath, when we take office we have to take an oath and raise our right hand, to say that we will protect the constitution and here we have a law that nobody has argued for the last three times we've heard the repealer, that it's constitutional. If we are to uphold the constitution, doesn't that also mean when we disagree with it.

Tom Freier: I believe we need to retrospectively look at what is the greater good and in essence, we need to determine what that is. I don't believe that the constitution has been violated. I don't believe that if someone who had felt strongly in that regard, why it has not

been brought forward to be reviewed, so that the courts can make a decision on this. I am pretty comfortable with where we are.

Rep. Dahl: I don't disagree with you that's in the best interest of the state to encourage the institution of marriage. I'm not sure how much we are really encouraging marriage with a statute that's not enforced and police has no interest in enforcing that statute. I think, we passed a tax break for married people a few weeks ago, which encourages marriage. I understand the statistics. I'm not sure that this encourages marriage.

Tom Freier: That's a basic question and one that all of us need to take into consideration including ourselves. I come back to what is the greater good. When you, as a legislature, pass bills on a daily basis, you influence our society. You influence what the people in our state are going to do. You influence them by the messages you send. I believe that by repealing this, or by changing the language to the point that it may deteriorate that intent even further, we will be sending the message to the people of ND. I don't believe that is the correct message. I don't know that it concerns me a great deal for someone to look at ND as being a joke. I don't see that. I think when we stand up for our principles and standards, I think that's something to be admired as opposed to being ridiculed. I don't think that the folks that would ridicule us are doing so in a manner that they don't respect us. I think they are saying that you aren't being progressive. I receive 25-30 emails from out of state folks the last time this was heard on the Senate side, and that was the nature of those emails. It was ridicule but it didn't really take into account that we were trying to uphold our beliefs.

Rep. Meyer: When you look at the statistics of how fast our population is aging and just how many of us are over the age of 65, and I have to weigh in with Rep. Hawken and Rep.

Delmore's question about the economic factor. The one segment of our society that this law bothers terribly is our elderly. I don't believe our young college kids are bothered by this. I do

believe the elderly feel this terribly and yet at the same time, you are trying to promote families and strong alliances, when or if they would marry, and it cost them their benefits, when they are living on a fixed income and we have many elderly that barely get by on fixed incomes. How do you reconcile that with your family values.

Tom Freier: I don't debate that there are certain situations and folks that have a financial or economic problem. I would say that we need to address those problems, those issues. I think we need to specifically deal with those and that is the legislation that should be brought forward as opposed to saying this removal of this or moving it to another section, would actually create other opportunities to pass bills into laws that would eventually help those folks.

Rep. Meyer: So you're saying that you are fine with the provisions of this law, where you can enforce it at whim. It is being moved to a section where if you are perpetrating a fraud that's fine. But that's a whole problem, your last statement, you really can't have a law on the books where you can enforce it in one segment and not in another.

Tom Freier: No, I didn't intend to say that it should be enforced one time and not another. I think we're in a public place and on the record, and I know it's very difficult for us to say that we have something that is in statute right now, but is not enforced. But that is the situation. As I mentioned, by reversing ourselves, by removing it, or even putting it in another section, which the more I look at it, the more doubts I have as to what that might lead to and how that could affect other laws that we already have on the books and even federal. I think that the issue we have before us, is how people are being affected today in a negative way. You mentioned some of the incidents. That is what we need to zero in on and take care of those folks as opposed to affecting the entire population. I was amazed when I did the research and found what I did about the overall statistics. I think everyday in this body, we are very cognizant of the plight of women and abused children, and these statistics really do lend themselves to

saying that's where the abuse is greatest. That's where the problems are the greatest. So how can we overlook something that's taken place there, just to maybe feel good about it, that we don't have a law on the books that isn't being enforced. That's a difficult question.

Rep. Meyer: Is it your position that you want this law to start being enforced.

Tom Freier: It's my position that you should not remove this section from the code because it will do greater harm than the fact that it is not being enforced right now.

Rep. Meyer: Do you want this law enforced.

Tom Freier: I would like this law to be enforced in the situations that will carry out the intent of it. Right now I don't think that it's being enforced and we are having the best of both worlds. We are having the fact that it's there and it's sending a message, and it's not being enforced all the time and we are continuing to send that message.

Rep. Delmore: I work a lot with statistics, and it's interesting when we talk about this issue, we bring in AZ, we bring in all other kinds of states. Some of them are interesting, I would like to see some of the sources for that. But we're the only state that has a statute but we don't have any statistics for ND that I have ever seen on what difference it makes as far as relationships. I firmly believe in marriage, been married for 30+ years. However, I want to go back to the question that we asked earlier, and that's the idea that there is an assumption in this state, that all of these people who are living together have a sexual relationship. I think in a majority of cases in this state, people are living together for economic reasons, they live together for many other reasons other than the fact that they want to pretend like they are a married couple and try out marriage. I don't think it's fair for us to look at this statute only in that regard. Would you agree.

Tom Freier: I can't bring myself to say that in very limited specific cases that we should try to address those by passing the bill that removes the overall language. Because it may approach

dealing with those folks, but what we do is affect everyone. I don't know if the legislature does that all the time, that is to specifically deal with an issue here by passing something that is overreaching and affects everyone.

Rep. Delmore: The laws we pass should affect everyone who breaks it. The highway patrol does not give me a free card when I am driving down the highway because I have dark hair and somebody else is blond. Our laws have to be enforced for everybody. That's the reason that they are passed. Do you have the whole AZ study where these statistics were reached and can you tell me, who actually did the study and if they went to every couple that happened to live together or if they were selective in deciding, how long did they follow them after the cohabitation.

Tom Freier: The main study I want to share is the Rutger's study, but there were two or three other studies that I went to and I found the same sort of information and that's why I stopped. I will find the specific AZ study and will give you that information. As an aside, you mentioned the highway patrol, the highway patrol does not stop everybody who breaks the law.

Rep. Delmore: Do you have any statistics at all for ND, have you ever tried to get statistics on people who were cohabitating since we are the only state that has the statute.

Tom Freier: No, I do not.

Rep. Koppelman: As a former representative, you know that we have laws on the books that we don't enforce. We also have selected enforcement going on in the way cases are prosecuted. Prosecutors, in some jurisdictions, have trouble with them not prosecuting bad check writers. I can think of one statute that, in fact, we had an opportunity to repeal this as well, as we declined. We had a statute in ND that said you can't campaign on election day.

To say that we have an election and you can't run a radio ad and can't campaign, I know there are people in other states where they can hardly get to the polls because there are so many

signs and campaign workers and candidates themselves glad handing as they are walking to the polling place. In ND, made a policy decision to say it may be overturned, if there is a challenge, but we declined as a legislature to repeal it, we know it is unenforceable and perhaps it could attempt to be enforced and probably would be overturned if challenged in court, but we felt it was a good standard and everybody who is honorable has observed it. It's not a bad thing to have on the books. I see this as something fairly similar.

Tom Freier: I know that none of us would like to think that we have laws on the books that aren't enforced, or are selectively enforced. You're right, I know of some too, in a former life in the DOT, I know there are certain ones that were not. One that comes to mind, when you purchase a vehicle, you put down you paid for the vehicle. There are a lot of folks that can't remember how much they paid for some reason and it gets to the point where not everyone of those can be prosecuted, even though it's probably pretty obvious a situation. I'm just saying that the greater good is served by having this continue.

Rep. Koppelman: Along those lines, the greater good issue, your testimony as I've listened and reread segments, you talked about the ripple effects, of the message that this sends. I can think of when this was being deliberated two years ago, one example that was brought up was that a particular woman called into a radio program and said I just got divorced, and I am extremely thankful that ND, has on its books, a law against cohabitation, because that's why my children live with me today. Because in my case, the judge was looking at the custody issue, and my attorney was able to successfully point out that my former husband was cohabitating and that was illegal in ND so that the court could not make a moral judgment but that it was illegal. He said you may be a more fit parent because you're not. We can argue all day long whether that was appropriate or inappropriate. But the point is that these kinds of things, even if they aren't being enforced on the face, you talked about the housing issue

before, and I think there are things that go on in the state that we don't always know about. Is that what you're trying to get at when you talk about the greater good.

Tom Freier: I think there are countless anecdotal situations where that is the case. That case brings to life the situation of the children and that's what came out very strong in this particular study by Rutgers. In those cases, especially where you have reoccurring cohabitations, those children will have such a greater propensity for being abused. Another issue was, what legal status does some of those children have in those situations, where if you have a situation of multiple fathers.

Rep. Wolf: You said that you would like to see it enforced. Who is going to make that decision, you, the state's attorney or who and who decides.

Tom Freier: In the instances, that if it comes to a legal status in litigation that occurred, then they can go to this law and use that as legal background for them to use in that case. I'm not going to when this might be enforced or when someone might use this law.

Rep. Wolf: Can you give me an example of when you think this should be enforced.

Tom Freier: I think Rep. Koppelman alluded to that in the situation of a custody situation. That might have an influence on the judge when that judge reaches a decision about the custody.

Rep. Wolf: Should that be charged as a criminal offense then too.

Tom Freier: I don't know if that particular person was charged or not. I think that really gave them background to utilize something that was in our century code.

Rep. Wolf: On the last page of your testimony, third paragraph from the bottom, "studies indicate that the longer couples cohabit the more likely their commitment will be weak..." do you have a copy of that study.

Tom Freier: That is the copy I will leave with you.

