

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Monday, August 7, 2006
Harvest Room, State Capitol
Bismarck, North Dakota

Representative Lois Delmore, Chairman, called the meeting to order at 10:00 a.m.

Members present: Representatives Lois Delmore, Bill Amerman, Lawrence R. Klemin, Kim Koppelman, William E. Kretschmar; Senators Dick Dever, Stanley W. Lyson, John T. Traynor, Thomas L. Trenbeath

Member absent: Senator Carolyn Nelson

Others present: See attached appendix

It was moved by Senator Dever, seconded by Representative Klemin, and carried on a voice vote that the minutes of the March 20, 2006, meeting be approved.

UNIFORM LAWS

Chairman Delmore called on Mr. Jay E. Buringrud, Secretary, North Dakota Commission on Uniform State Laws, for information regarding the recommendations of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the North Dakota Commission on Uniform State Laws. Mr. Buringrud said NCCUSL held its annual meeting in July 2006 in South Carolina. He said NCCUSL approved for recommendation to the states the Uniform Anatomical Gift Act, Uniform Child Abduction Prevention Act, Uniform Prudent Management of Institutional Funds Act, Uniform Power of Attorney Act, Uniform Limited Liability Compact Act, Uniform Representation of Children in Abuse and Neglect and Custody Proceedings Act, and the Model Registered Agents Act. He said the Acts that are possibilities for recommendation by the North Dakota Commission on Uniform State Laws are Uniform Commercial Code Revised Article 1 and the Uniform Trust Code, both of which are being studied by the interim Judiciary Committee; the Uniform Anatomical Gift Act; the Uniform Environmental Covenants Act; and amendments to the Uniform Disclaimer of Property Interests Act. He said the 1987 version of the Uniform Anatomical Gift Act was adopted in North Dakota in 1989. He said the revised Act has added people, in priority order, who can authorize the anatomical gift. He said the revised Act also clarifies that those same people do not have the authority to revoke a gift.

Representative Kretschmar said one of the more controversial Acts discussed at the annual meeting was the Uniform Emergency Volunteer Healthcare

Practitioners Act. He said the need for this Act was the result of the need for emergency workers following hurricanes. He said issues have arisen regarding the licensing requirements of other states when a health care practitioner is called in to help in an emergency situation in another state. He said this Act would provide for a quick procedure to deal with the licensing issues. He said this Act also addresses issues relating to insurance and workers' compensation for emergency workers from other states. He also said NCCUSL is encouraging North Dakota to pass Uniform Commercial Code Revised Article 1 and the Uniform Trust Code.

Senator Trenbeath said there was a lengthy debate on the Uniform Emergency Volunteer Healthcare Practitioners Act. He said the North Dakota delegation of commissioners did not support this Act in its present form.

UNIFORM TRUST CODE STUDY

Chairman Delmore called on Ms. Melissa Hauer, Department of Human Services, for testimony regarding the status of the Uniform Trust Code Task Force. Ms. Hauer said the task force has been meeting monthly since the fall of 2005 but has stepped up its meetings to twice a month since June 2006. She said the task force continues to review not only the entire Uniform Trust Code as recommended by NCCUSL, but also the modifications to each section of the Uniform Trust Code which have been enacted by other states. She said the task force is doing a section-by-section review of the Uniform Trust Code. She said the task force has completed its review of Articles 1 through 5 and is nearly finished with Article 6. She said the task force will continue to meet and forward proposed changes to the Legislative Council for inclusion in the Uniform Trust Code bill draft. She submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Traynor, Representative Klemin said the task force is conducting a very close review of the Uniform Trust Code. He said about 20 states have adopted the Uniform Trust Code. He said the review has been very thorough and exhaustive. He said the members of the task force have been in agreement to the proposed changes.

At the request of Chairman Delmore, committee counsel presented a bill draft relating to the Uniform Trust Code. [70143.0100] She said the bill draft is substantially similar to the version considered by the Legislative Assembly in 2005. She said the bill draft includes those changes recommended by the Uniform Trust Code Task Force.

In response to a question from Senator Traynor, committee counsel said the task force made several changes relating to the spendthrift provision in the Act. Senator Traynor said the changes are an improvement over the current version.

In response to a question from Representative Koppelman, Representative Klemin said within certain parameters, an individual is free to make the decisions on how a trust is set up. He also said the comments to the Uniform Trust Code are used as guidance to determine intent of the provisions of the Act.

In response to a question from Senator Traynor, Representative Klemin said the State Bar Association of North Dakota is in charge of and is very involved in the task force. He said the task force was not charged with educating the remainder of the bar on the changes being proposed. He said the task force members were chosen based upon their involvement with trusts.

In response to a question from Senator Dever, Ms. Marilyn Foss, North Dakota Bankers Association, said the Uniform Trust Code does provide for retroactive application and it will affect existing trusts. She said this is the reason the spendthrift provision is being carefully reviewed. She said the task force also reviewed carefully special needs trusts. She said every attempt was made to preserve the intent of currently existing trusts. She said the Uniform Trust Code is not a revision of an existing uniform law. She said there are certain trust topics on which the North Dakota Century Code is silent. She said the Uniform Trust Code will address those topics.

It was moved by Senator Traynor, seconded by Senator Trenbeath, and carried on a roll call vote that the bill draft relating to the Uniform Trust Code be approved and recommended to the Legislative Council. Representatives Delmore, Amerman, Klemin, Koppelman, and Kretschmar and Senators Dever, Lyson, Traynor, and Trenbeath voted "aye." No negative votes were cast.

Chairman Delmore said further changes to the Uniform Trust Code recommended by the task force should be presented to the Legislative Assembly as amendments. She said the task force should forward the additional changes to the Legislative Council to be prepared as amendments.

UNIFORM COMMERCIAL CODE ARTICLE 1 STUDY

At the request of Chairman Delmore, committee counsel presented a bill draft relating to Uniform

Commercial Code Revised Article 1. [70141.0100] She said the bill draft is substantially similar to the version considered by the Legislative Assembly in 2005. She said the bill draft includes the changes recommended by the Uniform Commercial Code Revised Article 1 Task Force. She said those changes included retaining North Dakota Century Code (NDCC) Section 41-01-05 instead of adopting revised Section 1-301; modifying revised Section 1-304, codified as NDCC Section 41-01-18, to provide that "[t]his section does not support an independent claim for relief for failure to perform or enforce in good faith, and does not create a separate duty of fairness and reasonableness which can be independently breached"; and amending the definition of good faith to clarify that the definition of good faith contained in Article 1 does not apply to Article 5.

In response to a question from Senator Traynor, Representative Klemin said revised Section 1-304 was amended to make it clear that the section was never intended to create an independent claim for relief.

Ms. Foss said the North Dakota Bankers Association participated in the task force. She said the association supports retaining current law with respect to territorial applicability.

It was moved by Senator Traynor, seconded by Senator Trenbeath, and carried on a roll call vote that the bill draft relating to Uniform Commercial Code Revised Article 1 be approved and recommended to the Legislative Council. Representatives Delmore, Amerman, Klemin, Koppelman, and Kretschmar and Senators Dever, Lyson, Traynor, and Trenbeath voted "aye." No negative votes were cast.

MARRIAGE LAWS STUDY

At the request of Chairman Delmore, committee counsel presented a bill draft [70149.0100] that reduces the marriage license fees for low-income individuals who complete premarital counseling. She said the bill draft provides for a voucher system that would be administered by the Department of Human Services. She said the bill draft contains an appropriation of \$35,000 from temporary assistance for needy families (TANF) funds for the program.

Chairman Delmore called on Mr. John Hougen, Department of Human Services, for comments regarding the bill draft. Mr. Hougen said TANF regulations permit the use of TANF funds for programs that encourage the maintenance of two-party families. He said it is not required that eligibility for these programs be based upon income. He said the program proposed in the bill draft would have some administrative costs. He said because TANF funds would be used for the marriage license fee reduction and not for marriage counseling, there does not appear to be a concern about using the funds for faith-based services.

In response to a question from Senator Lyson, Mr. Hougen said it is important to limit the number of agencies the couple must go to in order to receive the discount. He said the program would require staff time to establish and implement.

Senator Trenbeath said the committee should consider what the Legislative Assembly is attempting to accomplish with this bill draft, whether it should apply only to low-income individuals, and whether \$25 is enough incentive.

Representative Koppelman said several bills in the last legislative session would have increased the marriage license fee but offered a reduced fee for those couples who complete premarital counseling. He said the bill that passed provided for an increased fee without the premarital counseling incentive.

Senator Dever said the testimony received by the committee at the March 2006 meeting indicated that legislation that offers an incentive for premarital counseling is more effective than legislation that punishes couples for failing to obtain premarital counseling.

Chairman Delmore called on Ms. Wanda Knutson, Clerk of District Court, Mercer County, for testimony regarding the bill draft. Ms. Knutson said 53 officials in the state who issue marriage licenses are strong supporters of measures that will better ensure a wise and knowledgeable approach to the decision of marriage. She said from the marriage license officials' perspective, the bill draft adds only a small administrative responsibility of receiving and submitting the vouchers provided by the Department of Human Services. She said the bill draft would be easy to implement because it does not require the marriage license officials to determine if individual couples are eligible for the discounted fee. She said the fact that the counties are not asked to fund the discount is greatly appreciated. She said the most significant impact of the bill draft is the necessary changes to the marriage license software. She said the state-hosted system is a joint effort of the State Department of Health and the counties. She said the change would require a programming change to accept the variation in the fee and for additional reporting if the Legislative Assembly wished to evaluate the use of the discount. She said if funding is not provided for the Information Technology Department (ITD) to make these changes, it would most likely impact the counties and quite possibly limit the use of the automated system for some time. She submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Ms. Knutson said in her experience first-time couples do not balk at the amount of the marriage license fee.

In response to a question from Senator Dever, Ms. Knutson said an estimated \$3,000 to \$5,000 would be needed for the programming changes to implement the program proposed in the bill draft.

In response to a question from Representative Koppelman, Mr. Terry Traynor, North Dakota Association of Counties, said before the 2005 legislative session the marriage license fee was \$6. Of that amount, he said, \$1 was earmarked for the automated system. He said the counties continue to earmark \$1 of each marriage license fee to fund the maintenance of the automated system. He said ITD charges a fee for hosting the system.

In response to a question from Senator Dever, Mr. Traynor said the \$24 increase in the marriage license fee which was passed in 2005 is used to fund the operation of the county office that issues the licenses.

Mr. Hougen said there may be a need to verify the quality of the premarital counseling. He said TANF audits would require that assurances are in place that the counseling services are actually being delivered.

Chairman Delmore called on Ms. Bonnie Palecek, North Dakota Council on Abused Women's Services, for testimony regarding the bill draft. Ms. Palecek said the process proposed in the bill draft seems cumbersome for the amount of the fee reduction. She said the bill draft would require a couple to verify income, go to the premarital counseling, go to the Department of Human Services to obtain a voucher, and then go to the county to obtain the license. She said the bill draft also sends a mixed message in that it encourages people to get married but results in imposing a waiting period. She said she is also concerned about the subjects required to be covered in the premarital counseling. She said she would like the bill draft to include language regarding the couple's sexual relationship and regarding equality in the relationship. She said the use of TANF funds for marriage promotion is a concern. She said most research on the effects of premarital counseling have been done on middle-class white families and not on low-income minority families. She said there is about \$100 million in federal government funds that have been earmarked for marriage promotion. She said there has not been a reduction in domestic violence in those states that have lowered marriage license fees for couples who complete premarital counseling.

In response to a question from Representative Koppelman, Ms. Palecek said there has not been a reduction in the number of domestic violence incidents in North Dakota, but there has been a reduction in the number of domestic violence homicides.

In response to a question from Senator Dever, Ms. Palecek said it is not the goal of the abused adult services programs to save the couple's relationship. She said the purpose of the programs is to provide safety and to give choices to the abused adult. She said marital counseling does help and has a role, especially in terms of the children's needs. She said it is important that children "unlearn" the behavior they have witnessed. She said 75 percent of people in relationships in which there is domestic violence will leave that relationship.

Representative Delmore said many of the churches in which couples plan to marry require premarital counseling sessions.

Representative Amerman said if the purpose of this bill draft is to encourage premarital counseling by reducing the marriage license fee, then this bill draft is not any different from the bills considered during the last session.

Representative Koppelman said the idea of the bill draft is to give some incentive to get premarital counseling.

Representative Amerman said premarital counseling is available to those couples who want it. He said the state does not need to be involved in this process.

In response to a question from Representative Delmore, Mr. Hougen said because TANF caseloads are down, there are funds available to fund the voucher system proposed in the bill draft.

Representative Koppelman said eligibility to obtain a voucher should not be income-based but rather should be available to any couple willing to participate in premarital counseling. He said if this requirement is changed, there would need to be a change in the amount of the appropriation in the bill draft.

It was moved by Representative Koppelman, seconded by Senator Dever, and carried on a roll call vote that the bill draft relating to a reduced marriage license fee for premarital counseling be amended to remove the reference to low income, that the amount of the appropriation be adjusted accordingly, and that the bill draft, as amended, be approved and recommended to the Legislative Council. Representatives Klemin, Koppelman, and Kretschmar and Senators Dever and Traynor voted "aye." Representatives Delmore and Amerman and Senators Lyson and Trenbeath voted "nay."

DEPARTMENT OF HUMAN SERVICES REPORT

Chairman Delmore called on Mr. Hougen to present a report regarding the alternatives-to-abortion services program provided for in 2005 Senate Bill No. 2409. Mr. Hougen said this bill gave the Department of Human Services the responsibility to establish the program in North Dakota and directed the department to seek funds from the federal office of faith-based and community initiatives for this purpose. He said because funds from that source are not available, funds from the TANF block grant are being used to fund this effort. He said TANF "charitable choice" regulations govern the administration of this program.

Mr. Hougen said the department provides alternatives-to-abortion services by making vouchers available to individuals needing the service. He said those individuals use the vouchers to access the service and the service provider uses the voucher to bill the department. He said this method allows the

department to pay all interested providers for these services. He said the department contacted all agencies that now provide alternatives-to-abortion services. He said these agencies became partners in developing this program and are receiving payment through the program for their services. He said the eight agencies currently providing these services are Catholic Charities of North Dakota, Christian Family Life Services, First Choice Clinic, the Perry Center, the St. Gianna's Maternity Home, the Village Family Service Center, the Women's Pregnancy Center, and the YFC Teen Moms. He said the Mental Health Association in North Dakota is also a partner by allowing use of the 211 hotline to direct referrals to the alternatives-to-abortion program. He said the department is developing a script for the Mental Health Association staff to use when they get a 211 call regarding an unplanned pregnancy. He said included in the script will be a question about where the caller lives, thus allowing the staff to direct the caller to an alternatives-to-abortion provider in her area.

Mr. Hougen said the program became operational shortly before the beginning of 2006. He said the eight service providers all have submitted claims and all have been paid or approved for payment. He said that amount, as of July 31, 2006, is \$43,555. He said the total of all clients served and billed for all months since the program began is 556 as of July 31, 2006. He said the voucher process is proving to be an effective way to deliver this service and the current rate of spending suggested that the \$500,000 appropriated in Senate Bill No. 2409 is sufficient for the intended purpose. He submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Mr. Hougen said the program funds cannot be used to provide medical services. He said all funding must be used for offering alternatives-to-abortion services. He said the options of keeping the child and adoption are discussed with the woman. He said the department is looking at the qualifications of the people providing the counseling. He said the bill did not address the issue of preventing pregnancy but there are providers that address this issue. He said the department will have more data on the results and effectiveness of the program for the Legislative Assembly during the upcoming session.

COMMITTEE DISCUSSION

Chairman Delmore thanked the committee and committee counsel for all of their hard work and dedication during the interim.

It was moved by Senator Traynor, seconded by Representative Klemin, and carried on a roll call vote that the chairman and the staff of the Legislative Council be requested to prepare a report and the bill drafts recommended by the

committee and to present the report and the recommended bill drafts to the Legislative Council. Representatives Delmore, Amerman, Klemin, Koppelman, and Kretschmar and Senators Dever, Lyson, Traynor, and Trenbeath voted "aye." No negative votes were cast.

It was moved by Senator Traynor, seconded by Senator Lyson, and carried on a voice vote that the meeting be adjourned sine die.

No additional business pending, Chairman Delmore adjourned the meeting sine die at 2:00 p.m.

Vonette J. Richter
Committee Counsel

[ATTACH:1](#)