

NORTH DAKOTA LEGISLATIVE COUNCIL

Minutes of the

JUDICIARY COMMITTEE

Monday, September 12, 2005
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; Senators Dick Dever, Carolyn Nelson, John T. Traynor, Thomas L. Trenbeath

Members absent: Representative William E. Kretschmar; Senator Stanley W. Lyson

Others present: See attached appendix

At the request of Chairman Delmore, Mr. John D. Olsrud, Director, Legislative Council, reviewed the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Council](#).

UNIFORM TRUST CODE STUDY

At the request of Chairman Delmore, committee counsel presented a memorandum entitled [Uniform Trust Code - Background Memorandum](#). In response to a question from Senator Traynor, committee counsel said Ms. Michelle Clayton, Legislative Counsel, National Conference of Commissioners on Uniform State Laws (NCCUSL), has offered to attend the next meeting of the committee to provide additional information regarding the Uniform Trust Code. She said Ms. Clayton would provide information on those states that have introduced but failed to enact the Uniform Trust Code.

Committee counsel also distributed information provided by the NCCUSL regarding the Uniform Trust Code. This information included a summary of the Uniform Trust Code and a comparison of the Uniform Trust Code with North Dakota law. A copy of these documents is on file in the Legislative Council office.

In response to a question from Senator Nelson, Senator Trenbeath said there have been several amendments to the Uniform Trust Code since it was recommended in 2002. He said each jurisdiction must decide whether to adopt the amendments. He said if the goal is to make a state's trust law uniform with other states, then it would make sense to approve the amendments.

The committee viewed videotape on the Uniform Trust Code (2002) which was provided to the committee by NCCUSL. The videotape discussed the provisions of the Uniform Trust Code, including the advantages of having coordinated provisions in multistate trust instances. The presentation on the

videotape also provided information on trustee reporting requirements, spendthrift clauses, trustees' powers and duties, and retroactivity. The presentation concluded that the Uniform Trust Code promotes and retains uniformity, simplifies the law, and provides an updated approach to trust law.

In response to a question from Senator Traynor, Representative Klemin said the Uniform Trust Code provides default rules for those areas in which a trust is silent. Representative Klemin said the committee should receive a copy of the comments to the Uniform Trust Code.

In response to a question from Representative Koppelman, Senator Trenbeath said choice of laws is based more upon the location of the corpus of the trust than it is with the actual residence of the beneficiary.

In response to a question from Senator Nelson, Representative Klemin said a will or a trust that is valid in North Dakota generally will be valid in another state.

Chairman Delmore called on Mr. John Val Emter for comments regarding the Uniform Trust Code. Mr. Emter said challenges to a trust should not be permitted. He said permitting a trust to be challenged defeats the purpose of setting up the trust.

Chairman Delmore called on Ms. Marilyn Foss, North Dakota Bankers Association, for testimony regarding the Uniform Trust Code. Ms. Foss said the Uniform Trust Code has been reviewed by a number of entities, including the State Bar Association of North Dakota and the trust division of the North Dakota Bankers Association. She said these entities have concluded that there is no impetus for adopting this Act in North Dakota. She said the states that have adopted the Uniform Trust Code have done so with substantive amendments to the Act. She said there are concerns about the implementation of a new trust code. She said the Bankers Association would be available to assist the committee in its study. Regarding retroactive application of this Act, she said it would be difficult to amend trusts if the beneficiary is deceased.

In response to a question from Representative Delmore, Ms. Foss said she would provide the committee with information regarding the changes states have made when enacting the Uniform Trust

Code and whether any portions of the Uniform Trust Code would benefit North Dakota trust law.

In response to a question from Senator Traynor, Ms. Foss said she would also provide information on how other states have addressed the retroactive application issue.

In response to a question from Representative Koppelman, Ms. Foss said the fees for administering a trust must be reasonable. She said the amount of allowable fees can be addressed in the trust instrument.

Representative Klemin said the Department of Human Services may want to comment on whether the adoption of the Uniform Trust Code would affect the department. Ms. Melissa Hauer, Department of Human Services, who was in attendance, said she would provide comments on the issue at the committee's next meeting.

UNIFORM COMMERCIAL CODE REVISED ARTICLE 1 STUDY

At the request of Chairman Delmore, committee counsel presented a background memorandum entitled [Uniform Commercial Code - Background Memorandum](#).

Chairman Delmore called on Ms. Foss for testimony regarding the Uniform Commercial Code Revised Article 1 study. Ms. Foss said the North Dakota Bankers Association opposed the adoption of Revised Article 1 in the 2003 and 2005 legislative sessions. She said the primary objections to Revised Article 1 are the choice of law provisions of the Act and how the definition of "good faith" and "fair dealings" would apply. She said every state that has adopted Revised Article 1 has removed the choice of law provision. She said Revised Article 1 has been adopted in less than one-third of the states and those that have adopted it have done so with substantive changes. She said the adoption of Revised Article 1 is not essential for continuing commerce.

In response to a question from Representative Koppelman, Ms. Foss said the Uniform Commercial Code definition of "good faith" has not changed. She said what is different is the placement of the definition in Article 1 of the Uniform Commercial Code. She said by doing this, the definition would apply to the entire Uniform Commercial Code, not just specific articles of the code.

In response to a question from Representative Koppelman, Senator Traynor said parties to a contract typically include choice of law provisions in the contract. He said the choice of law provision in the Uniform Commercial Code is a default provision if the choice of law is not specified in the contract.

Ms. Foss said the choice of law provision in Revised Article 1 puts uncertainty in the choice of law issue. She said Revised Article 1 raises questions as to the enforceability of the choice of law provision in a contract.

Senator Traynor said it would be helpful for the committee to receive testimony regarding both uniform Acts from the State Bar Association and the North Dakota Credit Union League.

Representative Delmore said Mr. William Guy III would also be able to provide helpful information regarding the uniform Acts.

MARRIAGE LAWS STUDY

At the request of Chairman Delmore, committee counsel presented a background memorandum entitled [North Dakota Marriage Laws - Background Memorandum](#).

Representative Koppelman said the committee should receive information on the marriage license fees of other states.

Representative Klemin said the committee should review the requirement of premarital blood tests and why they are used.

Senator Dever said the medical records privacy requirements of federal law may limit the state's ability to mandate blood tests.

In response to a question from Senator Nelson, Senator Dever said Senate Bill No. 2361 (2005) increased the fee for a marriage license from \$6 to up to \$30. He said the bill also increased the portion of the marriage license fee deposited in the domestic violence prevention fund from \$29 to \$35. He said all counties in the state are charging \$65 for a marriage license.

Representative Koppelman said Senate Bill No. 2361, as passed, was significantly different from what was intended in the original bill. He said the bill, as introduced, would have increased the marriage license fee, but the couple would be able to get a reduced fee if they had completed 12 hours of premarital counseling.

Senator Dever said the committee should hear testimony from the North Dakota Family Alliance, the Bismarck-Mandan Ministerial Association, the North Dakota Catholic Conference, county recorders, family and marriage therapists, and counseling sources. He said the state has an interest in strengthening marriage. He said statistics indicate that premarital counseling reduces the rate of divorce.

Representative Delmore said the question of whether premarital counseling makes a difference in a marriage should be addressed.

Senator Nelson said marriage, by definition, is a contract based upon a private agreement between two people. She said the state should limit its interference with the marriage contract. She said the number of divorces since 1997 has decreased dramatically in the state. She said when the state mandates premarital counseling, it is important to realize that not everyone is a Christian, that there are cultural differences, not everyone speaks the same language, and not every culture has the same customs. She said the answer to strengthening

marriage is not going back to the way things were done before 1983.

Representative Klemin said the committee should look more closely at marriage fees.

Chairman Delmore called on Mr. Terry Traynor, North Dakota Association of Counties, for testimony regarding the marriage fee increase. He said the county recorders passed a resolution urging county recorders to ask their county commissioners to raise the marriage license fee to \$30. He said this was done because of a computer issue. He said the State Department of Health has a computer program for the issuing of marriage licenses. He said the program only allows for one fee. He said a uniform fee prevents couples from shopping around from county to county for a lower fee. He said the uniform fee also eliminates the need for a major computer

programming change to allow for different fees for different counties. He said the last increase in the state's marriage license fee was in the 1970s.

In response to a question from Representative Klemin, Mr. Traynor said the marriage license fee is deposited in the county general fund.

No further business appearing, Chairman Delmore adjourned the meeting at 2:00 p.m.

Vonette J. Richter
Committee Counsel

[ATTACH:1](#)