

**2013 SENATE POLITICAL SUBDIVISIONS**

**SB 2130**

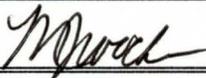
# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Political Subdivisions Committee  
Red River Room, State Capitol

SB 2130  
January 17, 2013  
17367

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to notice of the termination of a lease.

## Minutes:

You may make reference to "attached testimony."

Chairman Andrist opened the committee hearing for SB 2130.

**Senator Dwight Cook**, sponsor of this bill; in support of this bill. Senator Cook explained the history of this bill and what it is the bill is trying to accomplish. We're dealing with contract law between a lessee and a lessor as far as the notice they have to give when they are going to vacate the property they are renting. There was an agreement in subsection 4 of the current language on the bill. That simply states that if a landlord does have a 60 day termination requirement, that the renter has to be made aware of it and has to have a place where he can initial it right by the 60 day requirement. (Lengthy examples given) Mr. Dawson drafted a new piece of legislation and you will see the new section down in Subsection 6, that says notwithstanding is Subsection 4, 'a lease of real property for residential purposes who has resided on the property for more than 365 days may terminate the lease on the last day of the month with at least one calendar months' notice'. The intent was that if you have a 60 day requirement after one year, you can go month to month. We're all confused to what this means and you'll hear them testify too. The key word and the question is whether or not this 365 days applies only once to the entire time that individual has lived in that apartment or if it could be renewed and apply for another year. Mr. Dawson claims the word "the" before the lease is specific to that lease and that if the lease expires after one year the landlord could say if you want to stay here you got to sign another lease and get that 60 day requirement for another year. If it said "a" lease then it would be specific to the time that person was living in that particular residence. If in fact that it is against the law today, then Mr. Dawson is the person who should be asked that question or some other legal counsel, then this bill is not needed. If you don't think what I perceived as a problem is not a problem, then this bill is not needed.

**Chairman Andrist:** Could you clarify your line 6, the first word on the second page where the changes should be made?

**Senator Cook** replied, I didn't confuse you one bit. I think there is some merit to changing it to 'a'. I wear the hat of the person living in the apartment. They are going to talk to the importance of "the." That is an important question.

**Senator Judy Lee:** I've been a land lady and a tenant too, but anyway I am not sure that I always think we should pass a law because two people didn't read the lease. That's not my problem that the lessee didn't read the lease. A 45 to 60 day notice is pretty much standard where I am, for quite some time. This doesn't really address renewals of leases. I mean I just assume that somebody's in there, they are not going to renew the lease. That is a risk to them as well. The rent could go up every month if they don't have a renewed lease so I am little iffy about us getting too engaged in an item of commerce. That is whatever is negotiated between the property owner and Management Company and the tenant about what the risks and guarantees are on both sides.

**Senator Dwight Cook** replied, that he agrees. Example given.

**Senator Judy Lee:** It varies from one senior living facility to another certainly, but, there are facilities in which if someone is moving, from assisted living facility to a more restrictive level of care that kind of notice wouldn't be enforced. It isn't universal. I think that is something one has to know when he goes in and I've been there and done that, I get that situation. (Example given). I am not quite to the point where we ought to legislate that particular item, but we'll probably chat about that.

**Senator Dwight Cook** replied, once living with it with his mother-in-law really caused me concern because of the nature of going from an assisted living facility into a nursing home and then you reach certain improvements in that nursing home then you find yourself in a situation where because of the way bills are paid the nursing homes states you have to leave. Not only do you have to leave the nursing home, but find another place to live which means you sign another lease with another 60 day notice requirement where you might end up in the nursing home. To what degree do we try to help?

**Senator Judy Lee:** replied that gets complicated by the fact that there will be certain individuals who have assisted living which is private pay; but if they are moving into basic care which does have Medicaid support or if they are going into a long term care facility with Medicaid support they can't double dip so to speak. This gets complicated by considering what Medicaid reimbursement rules are there. If we're going to get into the Senior Living areas we're going to have to have the folks come down and talk to us from the Department of Human Services about what the time constraints are for payment and how moving from one facility to another works. That is very much a part of that conversation.

**Chairman Andrist** added I am rather surprised that there isn't something that protects people going into a more intense environment. It wouldn't provide them release from an assisted living lease? It is probably something else to visit someday. **Senator Judy Lee** replied maybe a joint hearing.

**Rocky Gordon,** Lobbyist for the North Dakota Apartment Association. See written testimony. He is opposed to SB 2130.

**Senator Jim Dotzenrod:** In Section 4 under current law, lines 19-24, I would've thought that we already would be preventing the kind of situation that we're trying to deal with in the new Section 6, does this work? Is Section 4 operating out there and you're representing the apartment owners, are people complying with it or are there some problems where people don't initial? I imagine when people are presented with a lease, they initial by it as required in here? It actually isn't required, it says they are supposed to initialize it and if they don't initialize it then they have the option to terminate with one month instead of 60 days. But I would've thought this provision would've covered the problem?

**Rocky Gordon** replied, it is working well from our point of view and we think it does what its set out to do, which is number one, make sure that residents know what the requirement is and by initializing it there is no question about that. I did tell Senator Cook when his situation came up he should've called me and I would've told him that it is illegal what they were asking him to do.

**Jeremy Petron**, Area Manager, Goldmark Property Management spoke in opposition to SB 2130. See written testimony.

**Senator Jim Dotzenrod:** If the legislature were to pass this and if the governor signed it and it became law, this is what you had to do and comply as a property manager what would be the consequence from your point of view? What would you have to change? Would you have to charge a fee that you don't charge now, or would you have to modify some of the lease agreement with putting some options in there that would have to have it they would have to pay for it? How would a law like this change your business?

**Jeremy Petron** responded, essentially what I fore see is what is already in practice in our company. We charge a higher rent rate for that privilege of only having to give a one month notice, so that could potentially then revert to all leases having high rent rates. Again, it comes down to supply and demand as far as what residences are willing to pay as opposed to going to another property management company or another apartment. That could essentially then in the industry as a whole bump that up much further to offset some of that rent where that apartment could sit vacant for a awhile because of that prep time.

**Senator Howard Anderson:** What you're basically saying is that section is confusing and if we want to limit leases to a 30 day notice period, we should say that, if the legislature wants to do that. You might oppose that too. But you're saying if you want to limit them to 30 days don't put in that confusing language.

**Jeremy Petron** responded that is correct. If it were passed, it would be interpreted incorrectly depending on how it played out in court and also if it did come as a bill demanding specifically, 30 day notices. I would be in opposition to that as well because to me it's not unconscionable to have those again. As I say, a lot of time residents start looking that far in advance and want to know if we're shortening that window. That could have affects in the market as well.

**Senator Judy Lee:** I don't have any problem with the longer notice. I am just asking because one of the issues Sr. Cook brought up whether or not you have exceptions to this 60 day notice requirement if somebody died while they were in attendance. I would expect them to pay the balance of the month's rent obviously, or if somebody ended up having some health issues that required them to be transferred to a skilled care facility.

**Jeremy Petron** replied that he believes that it is in law already where if a person is deceased that it only requires a one month notice then and the lease is then terminated regardless if they are in a fixed term. As far as our company practice, we don't have a specific policy and procedure written out if somebody is going to be going to a nursing care facility or assisted living but just as a general practice for my region and Goldmark, we offer that. It is not specifically written in the lease but just as a courtesy. If they can give us documentation to say they are moving to assisted care facility we're going to let them out with a one month notice.

Chairman Andrist closed the hearing on SB 2130.

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17370

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## Explanation or reason for introduction of bill/resolution:

Relating to notice of the termination of a lease.

## Minutes:

You may make reference to "attached testimony."

Chairman Andrist asked the committee to visit SB 2130. All senators were present.

Senator John Grabinger made a motion for do not pass.  
2<sup>nd</sup>: Senator Howard Anderson

Roll Call Vote: 6 Yea, 0 No, 0 Absent

Carrier: Senator John Grabinger

Chairman Andrist closed the hearing for the week.



**REPORT OF STANDING COMMITTEE**

**SB 2130: Political Subdivisions Committee (Sen. Andrist, Chairman) recommends DO NOT PASS (0 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). SB 2130 was placed on the Eleventh order on the calendar.**

**2013 TESTIMONY**

**SB 2130**

\* when your in that kind of room  
Bathroom is unless you need to use the bathroom  
Senate Bill 2130

Mr. Chairman & members of the committee  
my name is Rocky Gordon a lobbyist for the  
North Dakota Apartment Association

We stand in opposition to ~~the~~ <sup>the</sup> addition to section  
47-16-15 of the ND Century code because  
we are confused by it.

The section of the code is like a ~~house~~ <sup>house</sup> that  
has been built onto a number of times.  
Like that house it can be confusing and  
easy to get lost in.

The source of my confusion is the first word  
to the change. That word is Notwithstanding.  
In an effort to educate myself I consulted  
M. my Random House College Dictionary.  
It defines notwithstanding as in spite of,  
although, that something is true even though  
there are obstacles.

That didn't help me much.

If section 4 remains as it is. ~~What's~~  
The reason to add section 6? The notice  
requirements are ~~covered~~ <sup>covered</sup> in ~~it~~ <sup>sections</sup> thru 5  
very well.

If section 6 means everyone <sup>who</sup> has resided  
on the property for more than 305 ~~days~~  
may terminate by giving 30 days notice  
regardless of whether they have signed  
another lease for term that's hugely

problematic. Neither tenants or Landlord will like it

Landlords will no longer offer leases for term after 1 year. Why should they?  
A lease for term means a landlord will guarantee the rent for a period of time if the tenant agrees to stay for that period, that will no longer be true.

Tenants won't like it because they will lose the rent protection leases provide. Tenants have been asking leases to protect their rents like never before.

So either this section isn't necessary or it creates something nobody will like

I believe this section is aimed at 60 day notice provisions. My company being rather small does it <sup>ask for</sup> use 60 day notices. I asked my friend Jeremy Detron from Goldmark to discuss with you their need for 60 day notices

Thank you for your time and attention. I urge a no vote on the changes to 47-16-15. I would be happy to answer any questions you may have

January 17, 2013

Jeremy Petron  
Area Manager  
Goldmark Property Management

Re: Senate Bill 2130

As an employee of a property management company, I am in opposition to Senate Bill 2130.

The amendment as written is confusing and seems redundant with what is already in effect under section 47-16-15 of the North Dakota Century Code, where a resident does only have to give a 1-month notice to terminate a lease if they are on a month-to-month status, even if the original lease term is less than 1-year.

If the intent is to allow a resident to only have to give a 1-month notice after residing at a property for over a year regardless if they had renewed their lease for another fixed term, then this could potentially have unintended consequences and bring uncertainty to residents living in apartments. Essentially there would be no such thing as a renewal lease or renewal fixed term length, because all leases would revert to month-to-month status. In this scenario, landlords could option to raise rent multiple times with a 1-month notice to the resident. Residents prefer to have certainty on locking in rent rates for a fixed lease term length and knowing that their lease contract can't be revoked or be forced to move out during their fixed term. In our company, residents who opt to revert to a month-to-month basis after their initial lease term pay a higher rate as a benefit and convenience to have the 1-month Notice to vacate option. This also offsets some of the lost rent potential if the apartment sits vacant during a time to fully complete the renting process and restoration ready for a new resident to move in.

In speaking to the business merits as to why some property management companies prefer a 2-month notice to vacate is simply the coordination in preparation time to turn an apartment to be ready for the next resident wanting and waiting to move in. My staff and I oversee 1100 apartments in Bismarck. On average we turn 50% of those apartments in a calendar year, meaning that 550 apartments had residents moving in and out in a year, or roughly 45 apartment turns per month. In Fargo, there are property management companies that manage far more than this.

We operate under a tight turn schedule and coordinate to have an apartment ready for a new resident to move in the day after a resident moves out. Considering the many needs to turn an apartment, such as inspecting the pre-moveout condition, advertising for potential new residents, and scheduling multiple showings; in addition to the restoration processes of carpet cleaning or potential flooring replacement, repainting and maintenance needs, and potential apartment cleaning, these logistics need to be coordinated and scheduled well in advance with

vendors to reduce an apartment sitting vacant for several weeks after a resident has moved out. If an apartment is vacant due to extra prep time needed to get an apartment ready for a potential new resident, this apartment is out of the market and is restricting supply in the market.

In our situation, this coordination also offers a great service for potential new residents when looking for an apartment. Many prospects do start searching for an apartment 2 or more months in advance and want the certainty to know which apartment they are getting and when specifically they can move in. It is also our company practice to send a reminder letter to residents 75 days before the lease expiration reminding them of their renewal options and notice criteria if they are going to be choosing to vacate.