

2015 HOUSE JUDICIARY

HB 1304

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1304

1/26/2015

22542

Subcommittee

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the presumption of an individual's legal date of birth.

Minutes:

Testimony #1

Vice Chairman Karls: Opened the hearing with testimony in support.

Rep. K.Koppelman: I introduced this bill on behalf of the Association of Counties and the States Attorneys and I am going to allow Mr. Birst to offer you most of the detailed testimony. It deals with how you determine a person's age for the purpose of this title of the code. Apparently there have been some cases in court where someone is apprehended for example and there is a question of whether they are a juvenile or not. So then they end up in adult court and grandpa comes and says oh no he was born during the rainy season and that was 17 years ago so he is 17. This bill would clarify that it is determined by the birth certificate or other appropriate documentation.

Rep. L. Klemin: A lot of times when we talk about identification we include tribal identification. Should that be something on here?

Rep. K. Koppelman: It may be.

Rep. Mary Johnson: I agree there has to be a starting point.

Aaron Birst, Association of Counties: (See testimony #1) (3:14-6:00) I would have not agreed to work on this if it wasn't a rebuttable presumption.

Rep. Mary Johnson: Is that the language the Supreme Court used was clear and convincing because that seems a little exacting when you said just the father's testimony was good enough?

Aaron Birst: No the Supreme Court did not put in a standard. It simply said we find the trial court was fine picking the father's suggestion of the date so we put it in there in order to find a standard so you know what you are arguing against.

Rep. Mary Johnson: Could the term be a little less exacting because I can foresee a court saying you know even though I have this certified birth certificate here from Somalia I question it's validly and it is not clear and convincing to me. Could it be something less?

Aaron Birst: Yes it could be something less. The court still would have to make the decision of what would be the standard.

Rep. L. Klemin: It doesn't refer to documents issued by a tribal government. Should that be included?

Aaron Birst: That seems reasonable.

Rep. L. Klemin: There are other documents too like a US passport or a passport issued by a foreign country. Wouldn't those also be sufficient for a presumption of age?

Aaron Birst: Passports would work too.

Rep. L. Klemin: Whether US or foreign? Certainly if there was a person here who was a resident alien maybe there are some other ones.

Aaron Birst: We could draft an amendment to include those again. The true spirit of this law to simply to say if the government has some sort of ID we can use that to further the case until such time as other information is brought forth to say this is not correct.

Rep. L. Klemin: So we could have a birth certificate from France. That is not included now. It is only state certificate.

Rep. K. Wallman: I suspect that states like Minnesota who have received new Americans longer than ND has and greater in number; have we looked at what other states attorneys have done?

Aaron Birst: The individuals who looked at this reviewed some other state laws. I personally did not.

Rep. K. Wallman: Is this similar to what other states are proposing or have in statue at this time?

Aaron Birst: I don't know how they have done in other states. I can get you some information on this.

Rep. Lois Delmore: If we put in the various forms; how could I as a father come in and say no he was born during the rainy season when his French passport said this is the official date. How do we come up with a clear and convincing to change something? Sometimes dates do get incorrectly recorded?

Aaron Birst: That is exactly what the prosecution found. At some point the court has to make a decision and at some point we need a standard to base that on. This would be something we could gage it with.

Rep. Kretschmar: Would it be possible to put paragraph 1 somewhere it says the determine and individuals age for the purpose of the ND Century Code. You just have it in the statue once. You are putting the same thing in three different places.

Aaron Birst: Originally we only wanted it in the criminal justice; which is the 12.1 and then the 37; juvenile court. Legislative counsel said there might be other places it applies. Our goal was just for the criminal justice system.

Opposition: None

Rep. G. Paur: Is Mr. Birst going to draw up the amendments for this bill?

Aaron Birst: I would be happy to do so.

Neutral: None

Hearing closed.

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1304
1/27/2015
22658

Subcommittee

Conference Committee

Committee Clerk Signature



Minutes:

Chairman K.Koppelman: Reopened the meeting on HB 1304. Rep. Klemin did you want to offer an amendment?

Rep. L. Klemin: We did talk about an amendment at this hearing relating to tribal documents and US or foreign passports. I thought maybe Mr. Birst was going to prepare an amendment but I haven't talked to him and I don't have the language at the top of my head.

Chairman K.Koppelman: We can hold the bill until we get that information. If Mr. Birst doesn't have something would you care to put something together that would encompass that.

Rep. L. Klemin: Certainly.

2015 HOUSE STANDING COMMITTEE MINUTES

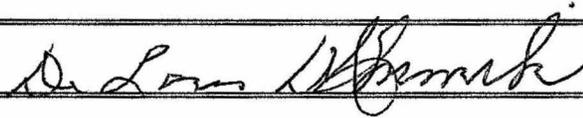
House Judiciary Committee
Prairie Room, State Capitol

HB 1304
2/2/2015
23086

Subcommittee

Conference Committee

Committee Clerk Signature



Minutes:

Proposed amendment #1

Chairman K. Koppelman: Meeting and action on HB 1304.

Rep. L. Klemin: I worked with Vonette Victor in Legislative Counsel to more extensively defining what would constitute evidence of place or date of birth. This was also sent to Aaron Burst with Assoc. of Counties and he reviewed it. (Proposed amendment #1)

Rep. L. Klemin moved the amendment; Seconded by Rep. K. Hawken

Voice vote carried.

Rep. L. Klemin moved a Do Pass As Amended on HB 1304; Seconded by Rep. Lois Delmore:

Discussion:

Rep. Kretschmar: Is there no way we could say this once in the Century Code and it would cover all the situations?

Roll Call Vote: 13 Yes 0 No 0 Absent Carrier: Rep. G. Paur

8/2
2-3-15
1/2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1304

Page 1, after line 7 insert "1."

Page 1, line 9, remove "the United States government or a state government in the form of a birth"

Page 1, line 10, replace "certificate, entry document, or state-issued identification" with "any of the following"

Page 1, line 11, replace ". This" with ":

- a. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth;
- b. A state government in the form of a birth certificate or other state-issued identification that includes the individual's date of birth; or
- c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth.

2. The"

Page 1, line 11, after "presumption" insert "in subsection 1"

Page 1, after line 15 insert "1."

Page 1, line 17, remove "the United States government or a state government in the form of a birth"

Page 1, line 18, replace "certificate, entry document, or state-issued identification" with "any of the following"

Page 1, line 19, replace ". This" with ":

- a. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth;
- b. A state government in the form of a birth certificate or other state-issued identification that includes the individual's date of birth; or
- c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth.

2. The"

2/2

Page 1, line 19, after "presumption" insert "in subsection 1"

Page 1, after line 23 insert "1."

Page 2, line 2, remove "the United States government or a state government in the form of a birth"

Page 2, line 3, replace "certificate, entry document, or state-issued identification" with "any of the following"

Page 2, line 3, replace ". This" with ":

- a. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth;
- b. A state government in the form of a birth certificate or other state-issued identification that includes the individual's date of birth; or
- c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth.

2. The"

Page 2, line 3, after "presumption" insert "in subsection 1"

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL NO. HB 1304**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0658.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Other Actions: Reconsider _____

Motion Made By Rep. L. Klemin: Seconded By Rep. K. Hawken:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment: _____

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

Voice vote carried.

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1304**

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: 15.0658.01001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations

Other Actions: Reconsider _____

Motion Made By Rep. L. Klemin: Seconded By Rep. Lois Delmore

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	X		Rep. Pamela Anderson	X	
Vice Chairman Karls	X		Rep. Delmore	X	
Rep. Brabandt	X		Rep. K. Wallman	X	
Rep. Hawken	X				
Rep. Mary Johnson	X				
Rep. Klemin	X				
Rep. Kretschmar	X				
Rep. D. Larson	X				
Rep. Maragos	X				
Rep. Paur	X				

Total (Yes) 13 No 0

Absent 0

Floor Assignment: Rep. G. Paur

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

REPORT OF STANDING COMMITTEE

HB 1304: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1304 was placed on the Sixth order on the calendar.

Page 1, after line 7 insert "1."

Page 1, line 9, remove "the United States government or a state government in the form of a birth"

Page 1, line 10, replace "certificate, entry document, or state-issued identification" with "any of the following"

Page 1, line 11, replace ". This" with ":

- a. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth;
- b. A state government in the form of a birth certificate or other state-issued identification that includes the individual's date of birth;
or
- c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth.

2. The"

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Page 1, after line 15 insert "1. "

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2. The"

Page 2, line 3, after "presumption" insert "in subsection 1"

Renumber accordingly

2015 SENATE JUDICIARY

HB 1304

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1304
3/10/2015
Job Number 24563

- Subcommittee
 Conference Committee

Committee Clerk Signature

Mary Jo Wocken

Minutes:

Chairman Hogue opened the Judiciary Committee for HB 1304. All senators were present.

Rep. Kim Koppleman, sponsor and testified in support of HB 1304. This bill was the outgrowth of a discussion I had with Mr. Birst who is also here to testify on it and he requested that we introduce this. Apparently there has been an issue with regard in some court cases with regard to determining an individuals' age. This happens more often than not with perhaps immigrants, or people that don't have documentation that is generally understood for marking the time of birth. I know it becomes an issue for example between or among cases where were trying to decide does this go to juvenile court or does it go to adult court. I am told there are cases where for example an individual is asked how old he or she is when they arrested perhaps and they state an age, and then they get into court and Grandpa is there and he says, no, he was born during the rainy season. That was 16 years ago, not 18 years ago. So, how do you determine what someone's actual age is? What the House did with the bill is we actually expanded a little bit. We originally it talked about a birth certificate and we've expanded to include other generally accepted forms of legitimizing dates of birth and identification and so on. So, that is essentially the bill. I would urge your favorable consideration of HB 1304.

Senator Luick Do you know, or is this a big problem?

Rep. Kim Koppleman I don't know how wide-spread a problem it is but I think it is becoming a greater problem as our state both grows. You know we seen more population growth in the past few years than we have in probably any of our lifetimes in North Dakota. With our economic boom we are

attracting people from all over and sometimes when they run into the criminal justice system we don't know who they are, or where they are from, how old they are and so on; this just documents this is what they need to prove that. Mr. Birst may be able to tell you how frequent a problem this is, but I suspect it is a growing one.

Aaron Birst North Dakota Association of Counties in support. In particular our State's Attorneys were the driving factor behind this bill. I hope to be fairly brief. The bill actually generates out of a case that came out of the Supreme Court. It is called State vs. Arot, 2013 ND182. In that particular case there was a young individual who was non-born citizen. He conducted a fairly significant crime a GSI. He had his birthday listed as January 1. The law enforcement looked at it and said you are in adult court because you're over the age of 18, based on that date on your government documents. He went to adult court, then his father came in and said, no that date is not right. So, he actually got transferred back to Juvenile Court. The long and short of it, is the Supreme Court reviewed the case and actually this bill doesn't change the Supreme Courts case at all, it simply creates a procedure where when we are dealing with these type of cases, what is the procedure, what is the standard of proof, how do you go back and forth. So what the bill simply says is the government is allowed to use any government documents as the presumption of that's what their age is. So, when the government says I've got your driver's license or your birth certificate, here is what your age is; then the court can say okay, you met your level of proof on the age, but we also want to make sure the defendant had the opportunity to counter that. So, this says then the presumption which is created by the documents can be rebutted by clear and convincing. So the defendant has absolutely the right to say those documents are wrong. So again, we don't anticipate this being too controversial because you have that right to say the documents are wrong. It is more of a procedure when, when do prosecutors have to prove the age, generally age is not a factor. How often does this happen, not very often, but it is a potential growing issue.

Senator Luick So then the 18 year old that has a fake ID to go into the bar at 21, gets caught and they cannot use that drivers' license as a method of identifying age, they can still now go back and say no, my son is 18. Is that correct?

Aaron Birst Ultimately the court will decide what somebody's age is. This simply just says the government will come in with the documents and say the kid is this age. Then the defendant will come in and say, no that is wrong.

Then the court has to decide. So, could there still be a back and forth litigation, and discussion, yes. But that is what the court will have to figure out. This does not bind the court. Again they will have their own discretion to do whatever they need to do.

Senator Nelson So Aaron, cases of the kids from the Sudan, and those that came over and had absolutely no idea of how old they were, they just took a running guess. What do we do about those kids?

Aaron Birst Yes that is exactly right. This bill just simply puts in the process for how you could litigate their age. So, if they don't have any document whatsoever. Well generally if they are in the United States, they've signed some document. That is what they had in Cass County in this case I referenced. They had a document that Cass County gave them that said, hey the person is over age 18. Then he later said he was not and then later said he is not, and ultimately that prevailed but again this just solidifies some of the process to go through. So you're not arguing whether you have to prove the age beyond a reasonable doubt, or anything like that. It is right here.

Senator Armstrong It does a little more than that though, it sets the presumption, so if you have the situation and they have something that says they were born 18 years ago, and they say no they are only 16, they have to do a little more than just no I am only 16. Right.

Aaron Birst Yes, I should have been more clear on that. It creates the bar the defendant has to overcome, so, yes the presumption is favorable for the government, but then the defendant has now to overcome the clear, and convincing to say that the government document is wrong. In other words, if that rebuttable thing wasn't there, then the defendant is stuck with the presumption but in the other case, when there was no procedure, the individual just said no, it's not right and then the court struggled with what's the level and how do we overcome that.

Chairman Hogue In Subsection B, we provide for recognition of the birth certificate and I guess my question. If there is a conflict between my birth certificate and my passport I would expect that my birth certificate should have some precedence because I think usually they are the most reliable. I could make a mistake when I am applying for my passport and put in the wrong date of birth, or with tribal records or military ID same thing. So, do you know if the House or did your organization give any thought to saying okay if there's a conflict that birth certificate should prevail.

Aaron Birst Great question. Originally as introduced it was much narrower. I will say the same thing I told the House when the House said let's put more stuff in there. I said that is fine, we just want a process in place. How you want to prioritize it, or anything like that that is fine with us too. If this committee wants to say birth certificates are 100% presumptuous than the other ones or whatever, we're fine with doing that too. We just needed the process in place.

Chairman Hogue asked for opposition and neutral testimony.

Senator Nelson There are two sections to this, one dealing with 12.1 and the other one dealing with 27.20. Not being an attorney can you tell me what those sections are? It looks like we are doing parallel construction.

Aaron Birst The 12.1 is for the criminal code. So that would apply to all criminal offenses. The 14.10 is just the general minor provision. Quite frankly, I've never used that but I think it potentially used in social services and in divorces and custody and those kinds of things. Then finally the one I am familiar with is 27:20 which is the Juvenile Court code.

Chairman Hogue closed the hearing on HB 1304.

Senator Nelson If Aaron could spell the name of that lawsuit?

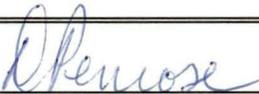
Aaron Birst State vs. Arot. The first name is Korsiba. Again this bill would not affect the case.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1304
3/11/2015
24622

- Subcommittee
 Conference Committee

Committee Clerk Signature 

Minutes:

1

Ch. Hogue: Let's take a look at HB 1304. I was thinking that what if there's a conflict between two government documents and my amendment (see attached #1) says that the birth certificate would take precedence over other issued forms; to include military records, passports, etc. I think that the place where a person is least likely to make a mistake about their date of birth and where they have no incentive to say a different date is the birth certificate because the person who is the subject of that birth certificate doesn't have any input. It's typically a healthcare professional that is filling out the form.

Sen. Nelson: I agree with you. I question why they put these in the order they are. I think (a) should be second and (b) should be first, so that it is the first thing to look at is the birth certificate. This should be changed in all three places.

Sen. Armstrong: That brings up another issue. Does it need to be a certified copy? I can tell you that a copy of the birth certificate is not taken seriously anywhere. It needs to be a certified copy or original. A certified copy is taken as an original. I think it's important because if you're foreign and you are trying to get a copy of the original birth certificate from London, England, they can send you a certified copy if they have one on file in whatever register they take, but they will not send out an original. Since you can't get the original and can only get the copy, it needs to be certified.

Ch. Hogue: Under (b) on line 16 which will now be (a), we will add "A state government in the form of a certified copy of a birth certificate or other state-issued identification.....". This will need to be changed in all three categories. We will have the intern put this together and look at it again next week.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1304
3/16/2015
24849

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

1, 2

Ch. Hogue: What are the committee's wishes in regard to HB 1304.

Sen Armstrong: As you had expressed concern earlier about birth certificates having priority on 1304 versus all other forms of identification (attached 1). I raised the other issue that oftentimes what you are going to deal with is a copy of the birth certificate and if you are going to deal with a copy it should be a certified copy; 95% of the cases dealing with this issue will need a certified copy. This amendment further reflects that. We followed Sen. Nelson's advice to move the order around. These will reflect the reality of what is accepted by the courts.

Sen. Grabinger: Why can't we just insert the word certified?

Sen. Armstrong: Because it needs to clarify that it is a copy; courts will go to the language and if you are not technically correct they will technically deny.

Sen. Luick: I would like to move the Armstrong amendments as amended (see attached 2).

Sen Casper: Second

Ch. Hogue: The motion is to accept Sen. Armstrong's verbal amendments to the written amendments to HB 1304.

Voice vote: motion carried.

Ch. Hogue: amendment is adopted

Sen Armstrong: Move Do Pass on HB 1304 as amended.

Sen Nelson: Second

No further discussion

Roll call vote was taken: Yes 6 No 0 Absent 0

Carrier: Sen. Armstrong

March 16, 2015

1-1
3/16/15
TD

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1304

- Page 1, line 11, remove "The United States government in the form of a tribal identification document."
- Page 1, remove lines 12 through 14
- Page 1, line 15, replace "birth" with "A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth"
- Page 1, line 16, remove "A state government in the form of a birth certificate or other state-issued"
- Page 1, line 17, replace "identification that includes the individual's date of birth" with "The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth"
- Page 1, line 19, after the underscored period insert "If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence."
- Page 2, line 5, remove "The United States government in the form of a tribal identification document."
- Page 2, remove lines 6 through 8
- Page 2, line 9, replace "birth" with "A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth"
- Page 2, line 10, remove "A state government in the form of a birth certificate or other state-issued"
- Page 2, line 11, replace "identification that includes the individual's date of birth" with "The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth"
- Page 2, line 13, after the underscored period insert "If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence."
- Page 2, line 22, remove "The United States government in the form of a tribal identification document."
- Page 2, remove lines 23 through 25
- Page 2, line 26, replace "birth" with "A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth"

1-2

Page 2, line 27, remove "A state government in the form of a birth certificate or other state-issued"

Page 2, line 28, replace "identification that includes the individual's date of birth" with "The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth"

Page 2, line 30, after the underscored period insert "If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence."

Renumber accordingly

HB 1304
3/16/15

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1304**

Senate _____ **Judiciary** _____ Committee

Subcommittee

Amendment LC# or Description: 15.0658.02001 03000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Sen. Luick Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. Nelson		
Sen. Casper					
Sen. Luick					
Voice Vote Carried					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Voice Vote - Carried

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1304**

Senate _____ Judiciary _____ Committee

Subcommittee

Amendment LC# or Description: 15.0658.02001 03000

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Sen. Armstrong Seconded By Sen. Nelson

Senators	Yes	No	Senators	Yes	No
Ch. Hogue	x		Sen. Grabinger	x	
Sen. Armstrong	x		Sen. Nelson	x	
Sen. Casper	x				
Sen. Luick	x				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

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

REPORT OF STANDING COMMITTEE

HB 1304, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1304 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "The United States government in the form of a tribal identification document."

Page 1, remove lines 12 through 14

Page 1, line 15, replace "birth" with "A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth"

Page 1, line 16, remove "A state government in the form of a birth certificate or other state-issued"

Page 1, line 17, replace "identification that includes the individual's date of birth" with "The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth"

Page 1, line 19, after the underscored period insert "If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence."

Page 2, line 5, remove "The United States government in the form of a tribal identification document."

Page 2, remove lines 6 through 8

Page 2, line 9, replace "birth" with "A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth"

Page 2, line 10, remove "A state government in the form of a birth certificate or other state-issued"

Page 2, line 11, replace "identification that includes the individual's date of birth" with "The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth"

Page 2, line 13, after the underscored period insert "If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence."

Page 2, line 22, remove "The United States government in the form of a tribal identification document."

Page 2, remove lines 23 through 25

Page 2, line 26, replace "birth" with "A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth"

Page 2, line 27, remove "A state government in the form of a birth certificate or other state-issued"

Page 2, line 28, replace "identification that includes the individual's date of birth" with "The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth"

Page 2, line 30, after the underscored period insert "If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence."

Renumber accordingly

2015 TESTIMONY

HB 1304

Testimony to the: **HOUSE JUDICIARY**
Prepared January 26, 2015 by the North Dakota Association of Counties
Aaron Birst, Legal Counsel

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HB1304
1-26-15
pg 1

CONCERNING SB 1304

Chairman Koppelman and members of the committee, my name is Aaron Birst and I am with the Association of Counties. HB 1304 is a bill that was requested on behalf of a number of prosecutors after a recent North Dakota Supreme Court case. This bill simply creates a process for the justice system to determine how a person's age should be litigated.

Generally, prosecutors never have to prove someone's age because rarely is age an essentially element of the offense for which they are charged. However, occasionally age plays a factor in where the individual should be charged. In *State v. Arot*, 2013 ND 182, a young man was charged with three counts of gross sexual imposition that occurred in the summer of 2011. The individual charged was originally not born in the United States. However, many of the documents that the individual had signed (or his parents signed) indicated he was over the age of 18 when the crimes were committed. Because of those documents the prosecutor charged the individual as an adult. Before trial the defendant submitted an affidavit from the father indicating the individual was actually not 18 as he was born in the rainy season. Ultimately, the North Dakota Supreme Court upheld the trial court's holding the State had not proved the date of birth and therefore the adult court did not have jurisdiction to hear the case.

This bill would not necessarily have changed the outcome of the above case. However, what this bill is intended to do is create a better understood process on how these cases should be handled. As you can see the bill creates a presumption of age based on official government documents. BUT the bill also allows for the defendant to overcome that burden if they can show by clear and convincing evidence the government documents are wrong.

Creating clearly defined standards of proof is another way to ensure the process is fair and understood by all the parties in the justice system. Because we believe this bill accomplishes some of those goals we ask for a do pass.

Thank you,

January 29, 2015

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2-2-15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1304

Page 1, after line 7 insert "1."

Page 1, line 9, remove "United States government or a state government in the form of a birth"

Page 1, line 10, replace "certificate, entry document, or state-issued identification" with "any of the following"

Page 1, line 11, replace ". This" with ":

- a. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth;
- b. A state government in the form of a birth certificate or other state-issued identification that includes the individual's date of birth; or
- c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth.

2. The"

Page 1, line 11, after "presumption" insert "in subsection 1"

Page 1, after line 15 insert "1."

Page 1, line 17, after "by" insert "any of"

Page 1, line 17, remove "United States government or a state government in the form of a birth"

Page 1, line 18, replace "certificate, entry document, or state-issued identification" with "following"

Page 1, line 19, replace ". This" with ":

- a. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth;
- b. A state government in the form of a birth certificate or other state-issued identification that includes the individual's date of birth; or
- c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth.

2. The"

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Page 1, line 19, after "presumption" insert "in subsection 1"

Page 1, after line 23 insert "1."

Page 2, line 2, after "by" insert "any of"

Page 2, line 2, remove "United States government or a state government in the form of a birth"

Page 2, line 3, replace "certificate, entry document, or state-issued identification" with "following"

Page 2, line 3, replace ". This" with ":

- a. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth;
- b. A state government in the form of a birth certificate or other state-issued identification that includes the individual's date of birth; or
- c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth.

2. The"

Page 2, line 3, after "presumption" insert "in subsection 1"

Renumber accordingly

PROPOSED AMENDMENTS TO HB 1304

1 A BILL for an Act create and enact a new section to chapter 12.1-01, a new
2 section to chapter 14-10, and a new section to chapter 27-20 of the North Dakota
3 Century Code, relating to the presumption of an individual's legal date of birth.

4 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

5 SECTION 1. A new section to chapter 12.1-01 of the North Dakota Century Code
6 is created and enacted as follows:

7 Presumption of age.

8 1. In determining an individual's age for purposes of this title, the individual's
9 date of birth as provided by the any of the following is presumed to be the
10 individual's legal date of birth :

11 B a. The United States government in the form of a tribal identification
12 document, military identification, passport, passport card,
13 permanent resident card, certificate of United States citizenship,
14 certificate of naturalization, border crossing card, visa, or other
15 entry document that includes the individual's date of birth;

16 A b. A state government in the form of a ^{certified copy of} birth certificate or other state -
17 issued identification that includes the individual's date of birth; or

18 c. A foreign government in the form of a passport, driver's license, or
19 other foreign government-issued identity document that includes
20 the individual's date of birth. If there is a conflict between

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1 government issued forms, a government issued birth certificate
2 takes precedence.

3 2. The presumption in subsection 1 may be rebutted by clear and
4 convincing evidence to the contrary.

5 **SECTION 2.** A new section to chapter 14-10 of the North Dakota Century Code
6 is created and enacted as follows:

7 **Presumption of age.**

8 1. In determining an individual's age for purposes of this chapter, the
9 individual's date of birth as provided by any of the following is presumed to
10 be the individual's legal date of birth:

11 *B* a. The United States government in the form of a tribal identification
12 document, military identification, passport, passport card,
13 permanent resident card, certificate of United States citizenship,
14 certificate of naturalization, border crossing card, visa, or other
15 entry document that includes the individual's date of birth;

16 *A* b. A state government in the form of a ^{certified copy of} birth certificate or other state -
17 issued identification that includes the individual's date of birth; or

18 c. A foreign government in the form of a passport, driver's license, or
19 other foreign government-issued identity document that includes
20 the individual's date of birth.

21 2. The presumption in subsection 1 may be rebutted by clear and
21 convincing evidence to the contrary. If there is a conflict between
22 government issued forms, a government issued birth certificate

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1 takes precedence.

2 **SECTION 3.** A new section to chapter 27-20 of the North Dakota Century Code
3 is created and enacted as follows:

4 **Presumption of age.**

5 1. In determining an individual's age for purposes of this chapter, the
6 individual's date of birth as provided by any of the following is presumed to
7 be the individual's legal date of birth :

8 a. The United States government in the form of a tribal identification
9 document, military identification, passport, passport card,
10 permanent resident card, certificate of United States citizenship,
11 certificate of naturalization, border crossing card, visa, or other
12 entry document that includes the individual's date of birth;

13 b. A state government in the form of a ^{certified copy of} birth certificate or other state -
14 issued identification that includes the individual's date of birth; or

15 c. A foreign government in the form of a passport, driver's license, or
16 other foreign government-issued identity document that includes
17 the individual's date of birth.

18 2. The presumption in subsection 1 may be rebutted by clear and convincing
19 evidence to the contrary. If there is a conflict between government issued
20 forms, a government issued birth certificate takes precedence.

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PROPOSED AMENDMENTS TO HB 1304

1 A BILL for an Act create and enact a new section to chapter 12.1-01, a new
2 section to chapter 14-10, and a new section to chapter 27-20 of the North Dakota
3 Century Code, relating to the presumption of an individual's legal date of birth.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 12.1-01 of the North Dakota Century Code
6 is created and enacted as follows:

7 **Presumption of age.**

8 1. In determining an individual's age for purposes of this title, the individual's
9 date of birth as provided by the any of the following is presumed to be the
10 individual's legal date of birth :

11 a. The United States government in the form of a tribal identification
12 document, military identification, passport, passport card,
13 permanent resident card, certificate of United States citizenship,
14 certificate of naturalization, border crossing card, visa, or other
15 entry document that includes the individual's date of birth; A state
16 government in the form of a birth certificate, ~~or~~ other state -
17 issued identification, or a certified copy of a birth certificate that
18 includes the individual's date of birth; ~~or~~

19 b. A state government in the form of a birth certificate or other state -
20 issued identification that includes the individual's date of birth; or

1-2

1 The United States government in the form of a tribal identification
2 document, military identification, passport, passport card,
3 permanent resident card, certificate of United States citizenship,
4 certificate of naturalization, border crossing card, visa, or other
5 entry document that includes the individual's date of birth; or

6 c. A foreign government in the form of a passport, driver's license, or
7 other foreign government-issued identity document that includes
8 the individual's date of birth. If there is a conflict between
9 government issued forms, a government issued birth certificate
10 takes precedence.

11 2. The presumption in subsection 1 may be rebutted by clear and
12 convincing evidence to the contrary.

13 **SECTION 2.** A new section to chapter 14-10 of the North Dakota Century Code
14 is created and enacted as follows:

15 **Presumption of age.**

16 1. In determining an individual's age for purposes of this chapter, the
17 individual's date of birth as provided by any of the following is presumed to
18 be the individual's legal date of birth:

19 a. The United States government in the form of a tribal identification
20 document, military identification, passport, passport card,
21 permanent resident card, certificate of United States citizenship,
22 certificate of naturalization, border crossing card, visa, or other
23 entry document that includes the individual's date of birth; A state

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1 government in the form of a birth certificate, ~~or~~ other state -
2 issued identification, or a certified copy of a birth certificate that
3 includes the individual's date of birth; ~~or~~

4 b. ~~A state government in the form of a birth certificate or other state -~~
5 ~~issued identification that includes the individual's date of birth; or~~

6 The United States government in the form of a tribal identification
7 document, military identification, passport, passport card,
8 permanent resident card, certificate of United States citizenship,
9 certificate of naturalization, border crossing card, visa, or other
10 entry document that includes the individual's date of birth; or

11 c. A foreign government in the form of a passport, driver's license, or
12 other foreign government-issued identity document that includes
13 the individual's date of birth.

14 2. The presumption in subsection 1 may be rebutted by clear and
15 convincing evidence to the contrary. If there is a conflict between
16 government issued forms, a government issued birth certificate
17 takes precedence.

18 **SECTION 3.** A new section to chapter 27-20 of the North Dakota Century Code
19 is created and enacted as follows:

20 **Presumption of age.**

21 1. In determining an individual's age for purposes of this chapter, the
22 individual's date of birth as provided by any of the following is presumed to
23 be the individual's legal date of birth :

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- 1 a. The United States government in the form of a tribal identification
2 document, military identification, passport, passport card,
3 permanent resident card, certificate of United States citizenship,
4 certificate of naturalization, border crossing card, visa, or other
5 entry document that includes the individual's date of birth; A state
6 government in the form of a birth certificate, ~~or~~ other state -
7 issued identification, or a certified copy of a birth certificate that
8 includes the individual's date of birth; ~~or~~
9 b. A state government in the form of a birth certificate or other state-
10 issued identification that includes the individual's date of birth; or
11 The United States government in the form of a tribal identification
12 document, military identification, passport, passport card,
13 permanent resident card, certificate of United States citizenship,
14 certificate of naturalization, border crossing card, visa, or other
15 entry document that includes the individual's date of birth; or
16 c. A foreign government in the form of a passport, driver's license, or
17 other foreign government-issued identity document that includes
18 the individual's date of birth.
19 2. The presumption in subsection 1 may be rebutted by clear and convincing
20 evidence to the contrary. If there is a conflict between government issued
21 forms, a government issued birth certificate takes precedence.

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PROPOSED AMENDMENTS TO HB 1304

1 A BILL for an Act create and enact a new section to chapter 12.1-01, a new
2 section to chapter 14-10, and a new section to chapter 27-20 of the North Dakota
3 Century Code, relating to the presumption of an individual's legal date of birth.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** A new section to chapter 12.1-01 of the North Dakota Century Code
6 is created and enacted as follows:

7 **Presumption of age.**

8 1. In determining an individual's age for purposes of this title, the individual's
9 date of birth as provided by the any of the following is presumed to be the
10 individual's legal date of birth :

11 a. The United States government in the form of a tribal identification
12 document, military identification, passport, passport card,
13 permanent resident card, certificate of United States citizenship,
14 certificate of naturalization, border crossing card, visa, or other
15 entry document that includes the individual's date of birth; A state
16 government in the form of a birth certificate, ~~or~~ other state -
17 issued identification, or a certified copy of a birth certificate that
18 includes the individual's date of birth; ~~or~~

19 b. A state government in the form of a birth certificate or other state -
20 issued identification that includes the individual's date of birth; or

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1 The United States government in the form of a tribal identification
2 document, military identification, passport, passport card,
3 permanent resident card, certificate of United States citizenship,
4 certificate of naturalization, border crossing card, visa, or other
5 entry document that includes the individual's date of birth; or

6 c. A foreign government in the form of a passport, driver's license, or
7 other foreign government-issued identity document that includes
8 the individual's date of birth. If there is a conflict between
9 government issued forms, a government issued birth certificate
10 or a certified copy of a birth certificate takes precedence.

11 2. The presumption in subsection 1 may be rebutted by clear and
12 convincing evidence to the contrary.

13 **SECTION 2.** A new section to chapter 14-10 of the North Dakota Century Code
14 is created and enacted as follows:

15 **Presumption of age.**

16 1. In determining an individual's age for purposes of this chapter, the
17 individual's date of birth as provided by any of the following is presumed to
18 be the individual's legal date of birth:

19 a. ~~The United States government in the form of a tribal identification~~
20 ~~document, military identification, passport, passport card,~~
21 ~~permanent resident card, certificate of United States citizenship,~~
22 ~~certificate of naturalization, border crossing card, visa, or other~~
23 ~~entry document that includes the individual's date of birth; A state~~

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1 government in the form of a birth certificate, ~~or~~ other state -
2 issued identification, or a certified copy of a birth certificate that
3 includes the individual's date of birth; ~~or~~

4 b. ~~A state government in the form of a birth certificate or other state -~~
5 ~~issued identification that includes the individual's date of birth; or~~

6 The United States government in the form of a tribal identification
7 document, military identification, passport, passport card,
8 permanent resident card, certificate of United States citizenship,
9 certificate of naturalization, border crossing card, visa, or other
10 entry document that includes the individual's date of birth; or

11 c. A foreign government in the form of a passport, driver's license, or
12 other foreign government-issued identity document that includes
13 the individual's date of birth.

14 2. The presumption in subsection 1 may be rebutted by clear and
15 convincing evidence to the contrary. If there is a conflict between
16 government issued forms, a government issued birth certificate
17 or a certified copy of a birth certificate takes precedence.

18 **SECTION 3.** A new section to chapter 27-20 of the North Dakota Century Code
19 is created and enacted as follows:

20 **Presumption of age.**

21 1. In determining an individual's age for purposes of this chapter, the
22 individual's date of birth as provided by any of the following is presumed to
23 be the individual's legal date of birth :

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1 a. The United States government in the form of a tribal identification
2 document, military identification, passport, passport card,
3 permanent resident card, certificate of United States citizenship,
4 certificate of naturalization, border crossing card, visa, or other
5 entry document that includes the individual's date of birth; A state
6 government in the form of a birth certificate, ~~or~~ other state -
7 issued identification, or a certified copy of a birth certificate that
8 includes the individual's date of birth; ~~or~~

9 b. A state government in the form of a birth certificate or other state-
10 issued identification that includes the individual's date of birth; or

11 The United States government in the form of a tribal identification
12 document, military identification, passport, passport card,
13 permanent resident card, certificate of United States citizenship,
14 certificate of naturalization, border crossing card, visa, or other
15 entry document that includes the individual's date of birth; or

16 c. A foreign government in the form of a passport, driver's license, or
17 other foreign government-issued identity document that includes
18 the individual's date of birth.

19 2. The presumption in subsection 1 may be rebutted by clear and convincing
20 evidence to the contrary. If there is a conflict between government issued
21 forms, a government issued birth certificate or a certified copy of a birth
22 certificate takes precedence.

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