

**2019 SENATE JUDICIARY COMMITTEE**

**SB 2303**

# 2019 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee  
Fort Lincoln Room, State Capitol

SB 2303  
1/23/2019  
#31280 (1:38:30)

- Subcommittee  
 Conference Committee

Committee Clerk: Meghan Pegel

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

A BILL for an Act to amend and reenact sections 14-02.4-01, 14-02.4-02, 14-02.4-03, 14-02.4-04, 14-02.4-05, 14-02.4-06, 14-02.4-08, and 14-02.4-09, subsections 1 and 2 of section 14-02.5-02, sections 14-02.5-03, 14-02.5-04, 14-02.5-05, 14-02.5-07, and 14-02.5-08 of the North Dakota Century Code, relating to prohibition of discrimination on the basis of sexual orientation.

## Minutes:

13 Attachments

**Chair Larson** opens the hearing on SB 2303.

### **JoNell Bakke, District Senator, testifies in favor of bill (see attachment #1)**

**Senator Bakke:** Looking at North Dakota's Century Code, we have no category known as civil rights or human rights in our books- it's embedded in other sections of our law. We don't clearly define anywhere what the civil and human rights are for the people of North Dakota.

### **(4:30) Elizabeth Loos, ND Human Rights Coalition Legislative Coordinator, testifies in favor of bill (see attachment #2)**

**Vice Chairman Dwyer:** What does the Q stand for?

**Loos:** Queer.

### **(7:39) Waylon Hedegaard, President of the ND AFL-CIO, testifies in the favor of the bill (see attachment #3)**

### **(11:44) Kimberly Needham, concerned citizen, testifies in favor (see attachment #4)**

### **(14:29) Kevin R Tengesdal, concerned citizen, testifies in favor (see attachment #5)**

### **(20:10) Pastor Joe Larson, St. Mark's Lutheran Church Fargo, testifies in favor (see attachment #6)**

**Pastor Larson:** One thing I want to note is that this legislation does exempt churches and religious organizations.

**Senator Luick:** Why are the churches not included in this?

**Pastor Larson:** I think some churches don't support LGBT issues. A lot of legislation nationwide doesn't include religious organizations for that reason. I think churches should be supportive, but in terms of this specific law it's only including non-religious organizations.

**(29:15) Rev. Gretchen Deeg, concerned citizen, testifies in favor (see attachment #7)**

**(33:45) Reilly Hedegaard, concerned citizen, testifies in favor**

**Hedegaard:** I am a queer person. I'm interested in men, women and everything in between. I identify as non-binary which means I don't consider myself male or female. That would fall under gender identity and with the 2 bills on this topic currently before the Senate, this is the only one supporting gender identity. As a member of the queer community let me tell you, we need legislation like this. Queer people shouldn't have to hide who we are in order to secure our job and housing and we shouldn't have to worry about losing these things when we finally find the strength to come out. The lack of this kind of legislation is hurting North Dakota citizens and it is the job of the government to protect and serve its citizens. I urge you to pass this bill.

**(35:13) Vallie Needham, concerned citizen, testifies in favor (see attachment #8)**

**Needham:** I am the daughter of a Baptist pastor who lives in Pembina, North Dakota and who pastors across the border in Emerson, Manitoba. I have not received the support of my family even in my straight marriage or in my bisexuality. It has been a very traumatizing experience.

**Vice Chairman Dwyer:** Why did you have to leave your home?

**Needham:** To attempt to summarize generations of family violence in my family, my parents and I had a fight that ended up in a physical altercation in which child protection services was called. My parents kicked me out at age 17 and I spent the last 4 years of my high school career living at a friend's house.

**(39:22) Kim Riedlinger Wassim, concerned citizen, testifies in favor**

**Wassim:** I am a state employee, however I'm here on an approved, annual leave. I'm testifying as a private citizen appearing on my own behalf in support of this bill. I am here as an ally to the LGBTQ+ community to speak out for those who are afraid to speak up. I am here as a life-long North Dakota resident who wants all of our citizens to feel welcomed and affirmed, as someone who cares deeply about ensuring basic human rights for all of our citizens. Finally, I am here as a mom.

I'd like to tell you about my son Daniel. He is a 2014 graduate of Century high school- a local, public high school here in Bismarck- graduating as the valedictorian. While in high school, he became an ordained deacon in our church, First Presbyterian. In May of last year, he graduated from Georgetown University in Washington, D.C. with highest honors. Currently he is volunteering for a year with AmeriCorps in Seattle. He believes strongly in the power of giving back to his community. This fall he will begin law school at Georgetown. Daniel also happens to be gay. Unfortunately, Daniel has no interest in returning to his home state when he completes his law degree because he finds North Dakota to be narrow-minded and lacking diversity. Many of his friends, both gay and straight, feel the same way. North Dakota needs young people like my son and his friends to return to North Dakota, bringing their education, experience, talents and creativity to boost our economy. That won't happen if North Dakota

continues to permit discrimination against any segment of our population, including the LGBTQ+ community. As his mom, I don't want Daniel living in a state where he could be evicted from an apartment or fired from a job just because he's gay. LGBTQ+ issues have an economic impact.

In a recent survey, the Society for Human Resource Management stated 68% of employers find it difficult to recruit qualified candidates. According to the U.S. Labor Department in September of 2018, the national unemployment rate fell to 3.7%, its lowest level since 1969. U.S. employers added 312,000 jobs in December 2018 for a total of 2.6M additional jobs in 2018 according to a report from the U.S. Bureau of Labor Statistics. A persistent work force shortage remains the primary barrier for economic growth in our state. North Dakota has thousands of open jobs and we cannot afford to lose a single person. How can we expect to attract and retain employees, if we are not a welcoming state to all? Most importantly, LGBTQ+ issues are human rights issues. All of our citizens should enjoy the same basic human rights. The Federal Civil Rights Act and the North Dakota Human Rights Act already protect groups of people based on race, religion, color, national origin, sex, age and disability. We need to add sexual orientation and gender identity to that list.

The world is changing and North Dakota must change too. I stand here today to fight for all of our citizens, including those in the LGBTQ+ community. They are our sons, daughters, brothers, sisters, mothers, fathers and friends. When a similar bill was defeated in 2017, a legislator stated, "I would hope if this bill was defeated that people don't think we are taking a welcome mat away from the border of our state". Unfortunately, my son's story illustrates that this is already the case. I urge you to stand on the right side of history and support SB 2303.

**(44:38) Jonathan Frye, concerned citizen, testifies in favor**

**Frye:** I'd like to speak to you not only as a life-long resident of Bismarck, but also as a member of the LGBTQ community and the secretary of the organization Dakota Outright. One of my great honors in this position is working with our youth. They're our greatest resource in this state, but unfortunately we are losing that resource. To echo my colleagues, allies and friends in the community, I will tell you right now that this is unacceptable. To have these young people live in a state where they feel oppressed, where they don't feel welcome, where they can't secure a job or housing without being who they are is unacceptable. We are losing these people.

My story echoes so many here- a story of oppression, fear, uncertainty and unacceptance in a state that I love. I have no plans to leave my home state; I want to stay here and continue to fight for equal rights for all my brothers and sisters in this community. But I also want to fight for the youth we are losing. We are taking away that welcome mat from our state and the equality we strive for. The young people and my Dakota Outright colleagues have told me many times that they don't feel welcome here and don't plan to remain here in a state where they feel equal, where they feel 2<sup>nd</sup> class and don't have the ability to openly love who they want. Sexual orientation and gender identity issues will never go away; they will be echoed time and time again. For this reason, I recommend that you pass this legislation. North Dakota has amazing qualities, but this is not one of them right now and it should be.

**Vice Chairman Dwyer:** What is Dakota Outright?

**Frye:** Dakota Outright is a charitable organization that serves the LGBTQ individuals in central North Dakota.

**Vice Chairman Dwyer:** What is the mission?

**Frye:** to strive for equality. Our mission is progression.

**(47:20) Cody Severson, concerned citizen, testifies in favor (see attachment #9)**

**Severson:** I've brought a letter from a friend, but I'm also here to speak in favor of this bill. In North Dakota it's difficult to ask people to stay in the state simply for the reason that there is no anti-discrimination legislation for individuals like us, speaking as a gay man in this state. There was a study submitted by the High Plains Fair Housing Center in Grand Forks. A small study, but they were able to test 80 transsexual individuals going into different renting facilities around North Dakota and found that they were shown inferior housing units as compared to their cisgender counterparts. In that way it's incredibly important for us to be able to put forth that sort of legislation.

**(49:35) Jay Scott, concerned citizen, testifies in favor**

**Scott:** I'm a master student at North Dakota State University for mechanical engineering. I was born in North Dakota and have lived here all my life and I'd like to stay in North Dakota. I can't tell you what it's like to live open and honestly as a gay or transgender person in this state, but I can tell you from my own experience and from a number of others I know what it is like to live in fear. I know some administrators of a clinic in Fargo who receive calls from families of gay and transgender individuals throughout the state asking what they should do or calling on their own behalf and asking what they should do, and the recommendation that that clinic gives at this time is to leave North Dakota because there are no resources and no protections here. You will have to live in hiding or else risk every day in your life experiencing negative outcomes in society as a result of people's ingrained prejudices against gay and transgender people. I will confess that I have recently come to Christ. Christ gave two commandments and two commandments only and from these all the law and prophets derive. They are Love thy god however you understand him and by whatever name you call him and love thy neighbor with all your heart, mind, soul and strength. It is not loving your neighbor to let your neighbor live in fear when you can do something about it.

**Vice Chairman Dwyer:** What clinic is this that you described?

**Scott:** Harper Health Clinic in Fargo, North Dakota. They serve transgender persons and are the only informed consent clinic in the state which means that they trust their patients, that their patients know that they're transgender and do not require a special letter to certify that the person is transgender before treating.

**(52:28) Eichel Messana testifies in favor (see attachment #10)**

**Vice Chairman Dwyer:** What is a cisgender?

**Messana:** That essentially means that I feel like a woman and I'm in the body of a woman. Trans means they don't feel that- they are in a body that does not feel like the proper gender, what I am.

**Senator Luick:** What is the plus?

**Messana:** The plus leaves space. The idea is that gender is not a binary-man or woman. It leaves space for anything else that might come along as we all grow and learn and understand.

**(59:52) Nicole Morsing, concerned citizen, testifies in favor**

**Morsing:** We're losing our youth in North Dakota and it's not just to Georgetown University, it's to suicide and it needs to stop. They need to believe they belong. I've tried to leave the state twice and family calls me back. I love my family and I wish I could love my state as much as I love my family. Please pass this and let them feel welcomed. Let them know they belong in North Dakota.

**(1:00:45) Emily Kimball, concerned citizen, testifies in favor**

**Kimball:** I'm an educator. I engage with children every single day. I taught 4<sup>th</sup> grade on the Spirit Lake reservation for the last 3 years here in North Dakota. Those years have blessed me with an abundance of friends and mentors along with being inspired by my students every day. Outside of North Dakota I also had an amazing experience teaching in London, England. Most of my students were first and second generation immigrants and refugees from all over the world, but mostly west African nations. Like my Dakota students, they also inspired me every day.

In addition to being a teacher, I am a bisexual woman. What does being a bisexual woman have to do with my job as a teacher? A lot. I have an extra dose of empathy for all of my students who have increased vulnerability in our society. When the media makes bisexual women appear hypersexualized, usually as objects for heterosexual men, this results in greater incidences of harassment, assault, rape, domestic violence and stalking against us in real life. So naturally I will take notice when my own students are also in situations beyond their control that put them in greater danger like homelessness, racism and food insecurity. I like many of us take my caregiver roles very seriously. Unfortunately, there are also people in this world who are supposed to be caregivers, but don't really have the heart for it.

Marginalized people are often targeted as the first victims, including in the workplace. For example I've been sexually harassed by colleagues, one in each of the school settings I already mentioned. What these two situations had in common was that the schools served marginalized children- Dakota children in North Dakota and mostly west African immigrant children in London, England. This is a global problem. The two colleagues who harassed me were fellow teachers who thought they could get away with this terrible behavior towards me because as straight, white men, there's a lot in how their socialized that allows them to think that they can get away with some terrible decisions with no consequences.

Indigenous and migrant children worldwide have a lot stacked against them, but deserve to feel safe in school and people like me can protect these children better if we don't have to worry about getting fired for speaking up about harassment that might hint at mistreatment of children. Some people might say, "that's just harassment, at least it wasn't assault or rape", well yeah there's a spectrum, but these behaviors are symptoms of the same bigoted thinking. Having equal opportunity employment can set a healthier tone for a lot of us in the workplaces that many of us in the LGBT community are not going to experience elsewhere in other parts of our life.

For example, I dated someone in college who was abusive. He assaulted me more than once and I didn't feel safe to report my then boyfriend's behavior towards me. I have reason to believe he treated other partners in similar ways. He is a PhD candidate at a University. I can assume he teaches at least one class for undergraduate students including young women. I really hope he is better and treats people like human beings, but if he is still the same, I dearly hope his coworkers don't have to worry about getting fired when he treats any colleagues or students as less than him and they speak up about it.

I'd like to thank the Spirit Lake community for inspiring me to speak up today. European American communities that raised me usually defined marginalization by what people didn't have and taught me to stuff my trauma. In contrast the Dakota families I got to know, especially the strong, resilient, indigenous women, taught me better. For them, decolonizing means treating women as strong and sacred, understanding masculinity as complex and multifaceted, respecting all people regardless of sexual orientation and prioritizing the care of elders and children. For those of us who are European-American, we have a lot to learn from indigenous communities.

I'm currently working in Fargo in a middle school, and just last week a couple 7<sup>th</sup> grade boys were in art class and one of them was helping the other out then one of them put his arm around the other one just as a thank you, and then a third boy suddenly yelled "No homo" in class. The boys jumped apart and kept this solid space between them for the rest of class. My heart broke. Our children deserve better. They need to know that they can have intimate bonds with people and not be disrespected. Sometimes I feel bad for the straight, white dudes. We in the LGBTQ community love being role models we didn't necessarily have. Being masculine can include dancing and physical affection. Being feminine can include carrying duct tape in your purse- let me know if you need any. If we can raise our children to seek out real joy in life, they're going to grow up to become kinder human beings and not firing the LGBTQ community for being present and alive at their jobs is a baby step in this intersectional process. We are so excited to be here and be a part of this work.

**Vice Chairman Dwyer:** The last three years you worked at Spirit Lake?

**Kimball:** Correct. This current school year I'm in Fargo at a public school.

**--TESTIMONY IN OPPOSITION--**

**(1:09:00) Mark Jorritsma, ND Family Policy Alliance Executive Director, testifies in opposition of bill (see attachment #11)**

**(1:16:30) Vice Chairman Dwyer:** If I were to vote the way you're recommending, how do you reconcile the suggestion of all the previous witnesses that I would be a Pharisee and judgmental if I don't support this bill?

**Jorritsma:** I too, like many who testified, am Christian. My father was a pastor for 35 years and I identify with their personal belief in Christ. I think it's fabulous that I can speak along with fellow Christians even though we disagree on this particular thing. In the bible Christ says to a woman he meets "go and sin no more" but says it in love. Within the bible and Christ's words, you don't find that he does not identify a sin and call it out, but he says it in love. It's those two pieces together that need to work that way for him and for us if we're his followers.

**Vice Chairman Dwyer:** I have several relatives in this community. I love them the same as I love my wife. I wouldn't have to feel like I'm a Pharisee if I were to vote against this bill.

**Jorritsma:** No I do not believe you would. On the same note, I have friends who are gay. Every person in this room regardless of how they feel about this particular bill has worth and dignity. That is how I feel about it and that is frankly how the bible describes it.

**Senator Bakke:** I sense a fear you have that individuals in this community are going to commit criminal acts because of their sexual orientation, that they're a threat to other people in the community. Do you have data that shows this? I've never known a gay man who is a pedophile. Usually a pedophile is someone who is sexually deviant. Why do you feel they would be dangerous to individuals and particularly women? I'm disheartened and uncomfortable with this idea that we need to be afraid of someone because of who they are.

**Jorritsma:** I'm glad you raised that point. I, and our organization, is not in any way saying that members of the LGBT community should be feared. That's not the issue. The issue is the nature of this bill will create a preference and that preference will create an opportunity for individuals, LGBT or not, to take advantage of it, like going into a locker room and exposing themselves. This is not an attack at all to this community.

**Senator Bakke:** After hearing the stories of these individuals in this room, do you ever think anyone would intentionally put themselves through what they've gone through just so they could get into a locker room and watch a girl undress? I don't think that's who they are and yes you will have individuals that may do, but I think those are far and few in between. I'm more concerned about their rights.

**Vice Chairman Dwyer:** In the situations you mentioned, where private businesses could have gone to another business to get the services they wanted, why didn't they?

**Jorritsma:** I can't try to read into what their intentions may have been. It certainly in the case of Jack Phillips became a landmark decision. Unfortunately, it also destroyed his business; he's penniless now. I simply do not know.

**(1:24:25) Linda Thorson, State Director for Concerned Women for America of ND, testifies in opposition (see attachment #12)**

**(1:28:00) Christopher Dodson, Executive Director for ND Catholic Conference, testifies in opposition (see attachment #13)**

**Dodson:** There is discussion about whether this is just housing and employment or if the scope is broader. A further review of section 1 does say that it is the policy of the "state" and then adds sexual orientation. It doesn't say like we often see that is the purpose of this "act" which means that while we have substantive penalties in this legislation for housing and employment, it leaves to executive agencies all the boards and conditions, including the professional boards, the direction to create their own rules based on what you pass in section 1.

**Senator Myrdal:** If this legislation passes with the word "state" in there, what would be the practical effects on the states? Please expand on that.

**Dodson:** The problem is we don't know the practical consequences. The bill has the substantive things we would know about housing and employment. What we don't know is what direction this gives. When rules and policies are created or there is ambiguity, it is proper for the executive branch to look at what is the policy of the state when interpreting things and making their own rules such as the rules for social workers, psychologists, provision of services in the Department of Human Services and so on. We don't know what the consequences are when we add sexual orientation, especially when it's so poorly defined in this law, in this state policy statement.

**Senator Luick:** The identification of sexual orientation has got me puzzled myself. Who actually comes up with that definition? Where does that come from? It's a bit vague I guess.  
**Dodson:** We've been saying that for 10 years. It's the same language in every bill.

**Senator Myrdal:** Is there anywhere else that you know of in Century Code or in the Civil Rights Act where self-identification without anything else to substantiate that is a protected thing?

**Dodson:** An argument could be made that there are religious protections as self-identification. When they were originally passed, they had a different history and purpose.

**(1:34:56) Ellen Shulz, concerned citizen, testifies in opposition**

**Shulz:** God loves everyone equally in this room. He says he is the same yesterday, today and forever and we cannot change him and who he is. We all fall short of the glory of god; we all sin. He says that he will carry the sins of our forefathers to the 3<sup>rd</sup> and 4<sup>th</sup> generation. He loves all of us, but he doesn't love our sin. He says repent for the kingdom of heaven is here. He wants to set you free from your sin. There are deliverance ministers. As a Christian I stand before you and am opposed to this bill.

**Chair Larson closes the hearing on SB 2303.**

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Fort Lincoln Room, State Capitol

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- Subcommittee  
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## Minutes:

No Attachments
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**Chair Larson** calls the committee to order to discuss SB 2303.

**Senator Bakke:** There were several points that were brought up during the testimony that I would like to explore further with the people who brought it up for possible amendments. I prefer we not act on it at this point.

**Chair Larson:** We do have time to consider this. What is the feedback of the committee?

**Vice Chairman Dwyer:** The exemptions are completely inadequate in my opinion because all they do is say that you can't exercise discrimination if you're hiring a religious person. In Shiloh Christian school, we have 92 employees. If the only person you can apply that exemption to is the bible teacher, you could just as well not have the exemptions in there. The opposing testimony spoke to that as well. The exemptions provide no protection. As it is I couldn't support the bill because it's too broad.

**Senator Myrdal:** I agree with Vice Chairman Dwyer. I don't know what amendments could pass for me to agree to this. In essence it elevates a group of people above the rest of us when we're still all under equal rights. In the many years we've heard this, I've never heard anyone get fired or lose their housing. If that is the case, it has never come forward. Even if that did happen, there are laws and authorities that all of us can go to. I object to the premise of it. What disturbed me today during the testimony was that I felt like I was in a bible study. We were talking scriptures, assuming every one of us and our chamber are all Christians. Nobody talked about the bill frankly, on either side, until Mr. Dodson came up. I do not think it fulfills the definition of a civil rights act. I don't see any amendments that could have me vote in favor, but that's our process and I fully respect that.

**Chair Larson:** Are you thinking about anything in particular that you would want to amend?  
**Senator Bakke:** There were a couple places in the bill I was looking at, but I'm more interested in hearing what the other committee members feel.

**(5:20) Chair Larson:** I have nothing against this community and I don't think passing a volume of laws would fix the problem they are having of some people discriminating against them. We still have people discriminating against race, religion and others. Fair housing does not allow for discrimination on any basis. To specify one more thing to put into law, I think that the argument that that is elevating that particular group to a special status has some validity. We haven't heard any cases where this has happened actually to people, they just have a fear. I don't see that stopping with law. That has to be the people willing to be more accepting and loving of their fellow human beings. I feel in my heart I don't have a bias against them. I feel like they're trying to get something hoping that that might help, sort of similar with the marijuana bill. There are people that are hoping that if they get marijuana that that might help, but there is no evidence that it will.

I'm not going to support this in any form, but I don't want to disregard you as a committee member and say I don't want you to have your time for your due diligence. However, I don't know how we can amend this for me to want to support it. My concern is maybe somebody has a bad criminal background and they're gay and it's because of their criminal background that they're being excluded, but they may claim "it's because I'm gay" because it's protected status now. And I know that it goes on both sides of it because on one side I'm saying they're already protected then on the other side I'm saying they can use it inappropriately.

I told them in the hall that I was impressed with the respect they showed to our committee on both sides. Other than that I felt like everybody paid attention to try to keep their individual comments brief and to the point. I felt that it didn't get out of order and I was impressed with the decorum that they showed. I'm not unsympathetic, I just don't see this as a fix.

**(10:05) Senator Luick:** There were a couple of things that brought back memories from last session on this topic. My wife and I have a lesbian friend and she was here to testify 2 years ago on this bill. Once the testimony began she left the room and when I asked her what was the problem she told me "this isn't what we want". I told her what you have here is you are setting yourself up for an entirely separate class of people. Sexual orientation identification is very vague. She wouldn't testify because she said she couldn't support it herself. I cannot support this myself. I believe the legal conversation Chris Dodson had laid it out very well; I really appreciated that testimony. I have family members that fit into this group, I think we all have family or friends in this group. We have absolutely nothing against it, it's just that we need to make sure there truly is a problem before we try to fix a problem that isn't there.

**Chair Larson:** I don't doubt for one minute that people are being mistreated.

**(13:39) Senator Myrdal:** There already are processes for all of us equal under the law for those complaints regardless. I'm a staunch believer for this. I want to go on record and comment on the cordiality here today. I can't say we were afforded that last time in public after we voted outside of the committee and for months thereafter. I will be very loathed to see that happen again to anybody. Regardless of how we vote here today, we have to be

courteous about this and if some of the things that happened last time to me and my family because of my vote happen again, I will not be silent.

**(15:20) Vice Chairman Dwyer:** I have a mobile home court and we rent these 26 homes. I've never once asked a potential tenant anything other than if they'll keep it clean and pay their rent. It's never even occurred to me to ask what their sexual orientation is. However, I'm sure they do get mistreated here and there.

**Senator Bakke:** The two areas I was looking at for amendments is changing line 10 on the first page from "state" to "act" and eliminate "sexual orientation" on line 11 then on page 4 line 25 taking out the words "or perceived". But what I'm hearing is that it won't change the landscape at all.

**Senator Luick:** Sexual orientation is mentioned throughout the bill though.

**Senator Bakke:** In that particular section, it goes beyond just the housing and employment. I think that was heartburn for some people.

**Chair Larson:** Joe, do you have any feedback?

**Joseph Jenson, UND Law Intern, neutral party**

**Jenson:** By changing the word "state" you would need to change the title to mirror that. "It is the policy of this act" would be awkward at best, so you would probably have to do some more work there. In terms of removing sexual orientation, I'd refer you to legislative council because I'm not sure how that would fit in with the rest of the bill. I don't feel qualified to answer that.

**(20:05) Vice Chairman Dwyer:** You couldn't make that change because it's state law already. You would create confusing. Are you changing current state law against discrimination on the basis of race, color, religion, sex, etc.?

**Senator Bakke:** I see what you're saying.

**Vice Chairman Dwyer:** You couldn't make that change but you could change the "perceived" one.

**Senator Bakke:** I don't think that will make a difference from what I'm hearing.

**Chair Larson:** What are the wishes of the committee?

**Senator Luick Moves a DO NOT PASS.**

**Senator Myrdal Seconds.**

**A Roll Call Vote Was Taken: 5 Yeas, 1 Nay, 0 Absent. Motion carries.**

**Senator Luick will carry the bill.**

**Chair Larson:** This was very difficult. We're all compassionate people and we don't like to think that our actions will hurt anybody. I don't think this does, but that's my own opinion. Thank you for your serious consideration of this legislation.

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## Minutes:

1 Attachment
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**Chair Larson:** As you know we passed this out of committee yesterday, Senator Bakke had talked about some possible amendments during the conversation, but she wasn't ready at the time. She has amendments ready for us to consider.

(see attachment #1)

**Senator Bakke:** I took into account some of the things that were mentioned by people that testified then met with legislative council and this is what we came up with- amendment 19.0992.02001. First we eliminated section 1 because section 1 mentions public accommodations which was not my intent to begin with. Next it would remove lines 7 through 17 on page 1 and "or perceived" on page 4 line 25. The reason perceived was in there to begin with was to protect people what are not gay, but apparently that was an issue. What this was saying is that someone couldn't be discriminated against because someone thought they were gay, whether they were or weren't. there was some concern about that phrase so I took it out. Then legislative council found a typo on page 6 line 6 they want to correct. Those are my amendments. I just want to make sure the bill is in the best form possible before we take it to the floor.

**Vice Chairman Dwyer: Moves to Reconsider.**

**Chair Larson: Seconds.**

**A Roll Call Vote Was Taken: 5 Yeas, 1 Nay, 0 Absent. Motion carries.**

**Senator Bakke: Moves to Adopt Amendment 19.0992.02001.**

**Vice Chairman Dwyer: Seconds.**

**Senator Myrdal:** It still doesn't take away my concern that I expressed yesterday of elevating one group of people above others who are equal under the law. I know it takes away some concerns of certain parties as far as the state goes, but I will still be a no vote on the amendment.

**Senator Luick:** I agree, I'm still not comfortable with the bill. What is section 14-02.4-01?

**Senator Bakke:** That is section 1 that we eliminated on the bottom.

**Chair Larson:** With these amendments, how close is this is with the House bill?

**Senator Bakke:** The bill in the House takes transgender out of the protection. It basically takes the LGBT community and breaks them into individual groups and eliminates transgender.

**Chair Larson:** I plan to resist this amendment as well. I don't think it does enough, but I appreciate you wanting to make it as good as you can.

**A Roll Call Vote Was Taken: 2 Yeas, 4 Nays, 0 Absent. The amendment fails.**

**Senator Luick: Moved a Do Not Pass.**

**Senator Myrdal: Seconded.**

**A Roll Call Vote Was Taken: 5 Yeas, 1 Nay, 0 Absent. Motion carries.**

**Senator Luick will carry the bill.**

January 23, 2019

PROPOSED AMENDMENTS TO SENATE BILL NO. 2303

Page 1, line 1, remove "14-02.4-01,"

Page 1, remove lines 7 through 17

Page 4, line 25, remove "or perceived"

Page 6, line 6, replace "for" with "from"

Renumber accordingly

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2303**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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 Senator Luick Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke		X
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Senator Luick

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

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2303**

Senate Judiciary \_\_\_\_\_ Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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 Vice Chairman Dwyer \_\_\_\_\_ Seconded By Chair Larson \_\_\_\_\_

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal		X			
Senator Osland	X				

Total    (Yes) 5 \_\_\_\_\_ No 1 \_\_\_\_\_

Absent 0 \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

**2019 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2303**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 19.0992.02001

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 Senator Bakke    Seconded By Vice Chairman Dwyer

Senators	Yes	No	Senators	Yes	No
Chair Larson		X	Senator Bakke	X	
Vice Chair Dwyer	X				
Senator Luick		X			
Senator Myrdal		X			
Senator Osland		X			

Total    (Yes) 2    No 4

Absent 0

Floor Assignment \_\_\_\_\_

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

**Removes and replaces language**

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2303**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

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 Senator Lui &                                    Seconded By Senator Myrdal

Senators	Yes	No	Senators	Yes	No
Chair Larson	X		Senator Bakke		X
Vice Chair Dwyer	X				
Senator Luick	X				
Senator Myrdal	X				
Senator Osland	X				

Total    (Yes) 5                                    No 1

Absent 0

Floor Assignment Senator Luick

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

**REPORT OF STANDING COMMITTEE**

**SB 2303: Judiciary Committee (Sen. D. Larson, Chairman) recommends DO NOT PASS (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2303 was placed on the Eleventh order on the calendar.**

**2019 TESTIMONY**

**SB 2303**

Chairman Larson and members of the Judiciary Committee. It is my pleasure to stand before you and introduce SB2303. This bill would ban discrimination due to sexual orientation in the areas of housing and employment.

When I was in the Senate in 2007 and 2009, bills that addressed this issue were presented. These previous bills had a much broader intent and sought to add LGBTQ individuals as a protected class. I want to make it perfectly clear, I still support that position. However, over the years, this bill has been rewritten in several forms and has still failed to be enacted by the North Dakota Legislature.

Sexual Orientation is the Civil Rights Issue of this generation of young people and they can't understand why we are okay with discrimination of people just based on their sexual orientation. Federal law does not currently provide protections for LGBT in the areas of employment and housing, however, there is a bill pending in Congress. For now, it is up to the states to decide whether to provide protection in these areas.

What are other states doing on the issue of Sexual Orientation?

- Currently, 17 states and Washington, D.C., have fully incorporated sexual orientation and gender identity into their employment discrimination statutes and prohibit sexual orientation and gender identity discrimination by both public and private employers.
- Five states and Puerto Rico prohibit just sexual orientation discrimination for public and private employers.
- Four states prohibit sexual orientation discrimination for public employers by executive order.
- Five states prohibit discrimination based on sexual orientation and gender identity by executive order.
- Missouri protects employees of the executive branch from sexual orientation discrimination.
- New York prohibits gender identity discrimination for public employers.

During the 2015 legislative session, 11 states proposed legislation to add protections against sexual orientation and gender identity discrimination to their civil rights statutes, six of which would include both public and private employers. New York has proposed legislation to add gender identity protections to its civil rights statute. Utah is the most recent state to add these protections to its employment discrimination statute in March of 2015.

It is my hope that this committee will support SB2303 and pass it on to the Senate with a do Pass recommendation. I will stand for questions.

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SB 2303  
1/23  
page 1

SB 2303 Testimony to Senate Judiciary Committee  
23 January 2019  
Elizabeth Loos, Legislative Coordinator  
North Dakota Human Rights Coalition

Chairwoman Larson and Members of the Committee:

My name is Elizabeth Loos, and I am the Legislative Coordinator for the North Dakota Human Rights Coalition.

The bill before you is very similar to bills that have been introduced in previous sessions, and it updates the ND Human Rights Act and the ND Fair Housing Act to ensure that North Dakotans are protected from discrimination based on sexual orientation and gender identity. This bill differs significantly from previous bills in that it applies only to employment and housing.

North Dakotans are hardworking, responsible people that take pride in providing for their families. All of us – including those who are lesbian, gay, bisexual or transgender – should be judged only on our qualifications and job performance - nothing more and nothing less. Nobody should have to live in fear of being fired for reasons that have nothing to do with their job performance.

Lesbian, gay, bisexual & transgender people need to be assured that they have the same access to housing as every other North Dakotan, that their sexual orientation or gender identity have no impact on their housing. I have provided the committee with testimony from Michelle Rydz, Executive Director of High Plains Fair Housing, about research they have done that documents the discrimination faced by LGBT people in our state.

I've also provided copies of testimony from several others, who could not be here today: Suzie Bartosh and James Guerrant, each describe personal experiences of discrimination in North Dakota. Bismarck resident Rachel Thomason, writes about her brother who is a talented and internationally recognized artist & has left the state because he is gay. Rev. Karen Van Fossan and Rev. Grace Murray both write passionately about their Christian faith and how that very faith calls them to support protections for lesbian, gay, bisexual and transgender people.

I also provided you with testimony from Kristie Wolff, Executive Director of the ND Women's Network, who writes about the importance of the principals of equality to the members of the Women's Network.

Chairwoman Larson, members of the committee, I urge a "Do Pass" recommendation. Thank you for your time. I will stand for any questions.

# 2

SB 2303

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North Dakota  
**Women's  
Network**

**Kristie Wolff – Executive Director, North Dakota Women’s Network  
Support for SB2303**

**North Dakota Senate Judiciary Committee**

January 23, 2019

Chairwoman Larson and members of the Senate Judiciary Committee, my name is Kristie Wolff, I am the Executive Director of the North Dakota Women’s Network.



North Dakota Women’s Network is a local non-profit with members from every corner of the state. Our core areas of focus speak to our values as an organization, they are leadership, opportunity and most importantly equality for all. Based on these areas of focus, I am here to testify in support of SB2303.

We are a state that takes great pride in family and community. Therefore, we cannot stand by and tolerate our friends, family and colleagues losing their home or employment due to discrimination based on their sexual orientation or gender identity. We cannot lose our young people because they do not feel protected. We need to look out for all North Dakotans. We need to encourage diversity and acceptance and create more inclusive, supportive communities across our state, simply because it’s the right thing to do.

Today I am asking for a Do Pass recommendation on SB2303.

Thank you,

Kristie Wolff  
[kristie@ndwomen.org](mailto:kristie@ndwomen.org)



January 23, 2019

Dear Chairwoman Larson and Members of the Senate Judiciary Committee:

My name is Rev. Karen Van Fossan, minister at the Unitarian Universalist Congregation in Bismarck, and I am honored to share testimony with you today regarding SB 2303, which would add sexual orientation and gender identity to the list of protected demographics in housing and employment.

Christianity, the most prominent religion in our state and our world, teaches that human beings are made in the image of God, are imbued with the spirit of life, and thus are responsible to uphold the dignity of one another, as we uphold the dignity of our Creator. In a beloved example, the commandment to "love your neighbor as yourself" does not come with contingencies such as "love your like-minded neighbor, your easy-to-understand neighbor, your absolutely favorite neighbor..." The reason we need this commandment is that it's frankly hard to do. Without the reminder, we might forget to include less common sexual orientations and gender identities in our protections.

To use the language of the legislature, we do not wait to determine whether we agree, whether we have the same practices, or whether we even like someone, before we extend the basic protections of the law.

Our congregation has been a Welcoming Congregation for about 30 years, which means we open our doors and hearts to people of all sexual orientations and gender identities. This has made us stronger, more compassionate, and a whole lot more creative.

I'm ready, like the people of North Dakota, for a stronger, more compassionate, more creative North Dakota, too.

I urge your DO PASS recommendation on SB 2303.

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From: **Rebel Marie** rebelmarie701@gmail.com  
Subject: Trying again  
Date: January 23, 2019 at 8:35 AM  
To: elizloos@gmail.com

Recently I was a part of small group of people that tested for housing discrimination when transgender people try to rent within our great state of North Dakota. I was inspired to do this testing because I love North Dakota. I was born here however, I moved out of state in 2012 but moved back to be with my family. Outside of being a proud North Dakotan, I am also a provider of mental health services and have done various projects and research behind addiction services and suicide prevention within the LGBT population. As the hype began on to grow around transgender individuals, I found navigating my home to be increasingly nerve-wracking.

One of the methods that North Dakota uses in order to prevent relapse is a housing first model which gets clients out of temporary living arrangements and into permanent living arrangements. It is absolutely essential for folks to have a home. Many LGBT individuals are cut off from their family between the ages of 16 and 25. Currently, North Dakota does not gather information on how many of our homeless youth are LGBT. There is not a lot of data on LGBT individuals in North Dakota, and as a result the High Plains Fair Housing and I thought it would be justified to do an audit to see if discrimination against trans people existed.

The majority of discrimination we faced was not being showed the same number of units as our cisgender counterparts. When we looked at the data we saw that 80% of the time we weren't shown the same rental properties despite having putting in the same budget and move in date on the application. I felt like when I was testing in Jamestown I was given one quality apartment to look at which was well over the budget of my initial request. My cisgender counterpart saw a host of apartments different than me. This bothered me a lot because I was born in Jamestown and felt like I could never move there. As long as North Dakotans struggle to find a place to live permanently and a place to call home we will have gaps in our addiction recovery and homelessness in this amazing state.

There is a lot of misinformation right now about what it means to be a transgender person. However medical professionals, mental health practitioners, and various organizations that promote well-being have dedicated several decades into transgender research. They found that transition is the proper treatment the people who are experiencing a gender incongruence. Also health professionals are advocating a housing first model for well being. Our wellness is tied up with our transgender identity as much of the current medical research suggests. So many trans people are left having to decide between housing or wellness in North Dakota. The current system can't have one or the other, we need both in order to lead healthy lives. We can see this in a few tragic examples though folks who sought mental health services and were denied either a living arrangement because they were trans or were given and living arrangements but had were told not to express their transgender identity. These examples ended with families asking why people would deny their loved ones the option to be themselves.

Passing a law that protects the ability to have a roof above our head will strengthen health care in North Dakota and allow the whole community to become stronger together.

Rebel Marie Fargo, ND

January 21, 2019

Judiciary Committee Members,

My name is James Guerrant and I am writing in support of SB 2303, anti-discrimination in housing and employment of members in the LGBTQAA++ community of North Dakota. Recently it has come to my attention that North Dakota does not provide protections for LGBTQAA++ community in housing and employment. I ask that the community support this important piece of legislation, SB 2303 that will provide the LGBTQAA+ community with the necessary protections that we need.

As younger man, I have been faced with discrimination in housing and employment related to my sexual orientation. In one apartment that I rented, I was blatantly told that I could not move another person of the same gender as myself. In another apartment my partner and I inquired about, we were denied the housing because we were a same sex couple. In a number of jobs, I was denied promotions because of my sexual orientation and was told "I did not fit into the box." A more recent example of discrimination, my employment was involuntarily terminated due to my sexual orientation. In other jobs I have not been treated fairly by members of the management team or my fellow co-workers because of my sexual orientation. As an example, I was spoken to harshly, intimidated and harassed because of my sexual orientation.

North Dakota is a great state to live, work and raise a family. I have been accepted by many members in my neighborhood, I attend church amongst people who are accepting, and this state offers great opportunities for employment, a good example of what members of the LGBTQAA++ community look for in a community. I feel at home in Bismarck, ND. Members of the LGBTQAA++ community could contribute greatly to the communities of North Dakota adding to the already great reasons in which to live and work here. However, we need the protections in employment and housing that SB 2303 supports to help us live happy and productive lives other North Dakotans.

Thank you for time and attention to this matter,

James Guerrant

From: **Suzie Q** [suzieq\\_1821@hotmail.com](mailto:suzieq_1821@hotmail.com)  
Subject: **Testimony**  
Date: **January 22, 2019 at 8:09 PM**  
To: [elizloos@gmail.com](mailto:elizloos@gmail.com)

Hello committee members. My name is Suzie Bartosh and I am a resident of Bismarck. I am also a board member for Dakota Outright, a member of the local LGBT community, a member of the faith community and also a member of the recovery community. I am in support of SB 2303 and am asking for a Do Pass recommendation.

I have testified before about being discriminated against at Teen Challenge, who was ordering that I participate in a therapy that would make me straight in order to graduate their program that is supposed to be for recovery and showed that the state was providing funding to this entity. Today I have a new plea as our legislature has shown they just don't seem to have enough proof this needs to become a law.

I have my own personal experience of after last session, since the bill was not passed, my employer removed sexual orientation and gender identity from our workplace policy and watched a coworker resign out of fear. When we were looking for a place to rent, my girlfriend was denied after she told the landlord that her girlfriend and her child would be living there with her. I have a close friend who extremely talented, gifted, and smart who is attending graduate school but will have to look for work in another state as they will not be protected if they are out and would need to go back in closet. They had to go back into the closet to make sure they get a good recommendation from the school supervisors.

How is that the all people, including people of different genders, can marry either sex now yet we can discriminate against them by denying them housing and not hiring because an employer or renter has a personal problem with their identity or orientation. What harm does someone's sexual orientation and identity cause others? Nowhere in the Bible does it say you are sinning for providing services to LGBT. I co-facilitated a three part learning series on God, Homosexuality and the Bible where it was covered in length that same sex consenting love between two adults is nowhere discussed in the Bible and that people take the verses out of context to push their own beliefs, as such has historically been down with the Bible, including slavery and considering women as property. Jesus was the greatest teacher of love and treating people like human beings, especially those who have been condemned and shunned by society. I am so thankful to be apart of church that practices what Jesus taught.

Passing this bill would be a much needed step forward for this state. I grew up next door to Dick Dever. I asked him to vote yes on the bill last session and he did and also told me it was because of my email. So when voting on this, what if your next door neighbor was gay or maybe you have a coworker who is gender nonconforming, or maybe even your child is gay and hasn't come out yet due to fear, are you going to be able to look them in the eye and tell them why you felt you thought it was right to vote the way you did? Please vote a Do Pass recommendation and vote yes on this bill. Thank you for your time and consideration.

Suzie Bartosh  
2601 N 4th St.  
Bismarck, ND 58503

I come from a family of 5. Each of us was born and raised in rural North Dakota. All remained here to attend school in North Dakota, work in North Dakota, and raise families in North Dakota. All except my brother.

My brother is gay; he didn't feel welcome in North Dakota, and it's no wonder. He faced judgment and hostility in North Dakota in the eyes of his peers throughout his young life. He experienced discrimination both from those with whom he went to high school and their parents. He was verbally abused by students and teachers alike. He once sat through a lecture in high school Biology class where his teacher insisted that homosexuality was unnatural. Growing up, the priests in our parish took an interest in my brother beginning at a very young age, before my brother even knew himself, to ensure that he wouldn't lead the path of a "sinful" life as a gay man, instead encouraging him to become a priest himself.

My brother has struggled for a long time as a result of these abuses, and it breaks my heart to see what the people of North Dakota have done to him. Of course he's had support and love from his family and true friends, but the toll that 18 years of abuse has on a person is immeasurable. Like so many of my LGBTQ+ friends and family who have moved elsewhere because they feel the same, he simply did not—and still does not—feel welcome, accepted, or protected.

North Dakota is missing out; it could really use my brother. He is an immensely talented artist, with his work displayed internationally and throughout the United States. He has won grants and awards for his amazing work. I am more proud of him than I could ever possibly say, and I am in awe of his talent, strength, and perseverance every day. Now imagine what his talent would bring to the State of North Dakota. Imagine what he and others could be giving back to North Dakota if North Dakota welcomed them as it should.

It is this legislature's responsibility to protect the LGBTQ+ community. It is North Dakota's responsibility to grow in diversity, love, and acceptance. North Dakota's treatment of others tells a different story, however. I personally know at least 5 incredibly talented and bright LGBTQ+ individuals—artists, farmers, florists, and tech and P.R. gurus—who grew up in North Dakota but have moved to different areas of the United States because they did not feel welcome here. If I alone know this many people who have left North Dakota because of this problem, how many have left in total and leave every year? How much talent is North Dakota losing?

To believe that these individuals do not face discrimination in North Dakota is to turn a blind eye. To not pass this incredibly important legislation is to continually tell them that we don't care. It's time to let them know that we do care, and that we want them here.

Rachel Thomason  
District 35  
720 W Ave. C  
Bismarck, ND 58501  
701-202-9306



## High Plains Fair Housing Center

January 22, 2019

Judiciary Committee  
Senate  
North Dakota Legislature  
Bismarck, ND 58506

Dear Senator Diane Larson and members of the Judiciary Committee,

My name is Michelle Rydz and I am the Executive Director of High Plains Fair Housing Center. We are the only organization in the state of North Dakota whose mission **is strengthen communities and to ensure equal access to fair housing** in the region through training, education, enforcement and advocacy. Fair Housing is a right protected by federal and state laws. I speak to the housing aspect of this bill.

I write with a do-pass recommendation on SB 2303

The Fair Housing Act was passed on April 11, 1968 it was passed exactly a week after the assassination of the Rev. Dr. Martin Luther King, Jr. as a tribute to him and the work he did to challenge residential segregation. Since that time, the Fair Housing Act has been amended on several occasions to address housing discrimination based on sex (1974) and against people with disabilities and families with children (1988). Since 1999, when the North Dakota Housing Discrimination Act became effective, discrimination in housing has also been prohibited by state law. The Housing Discrimination Act provides the same protections against discrimination as the federal Fair Housing Act, plus three more protected categories.

The fair housing act recognizes the concept of home as a basic right. Everyone has the right to live where they want safe and free from hate and discriminatory behavior.

Past legislative sessions attempted to pass legislation to establish LGBT as a protected class and they failed in part because legislators asked for more definitive evidence that discrimination is occurring in North Dakota.

High Plains applied for funding from the Consensus Council to complete a series of housing discrimination testing based on transgender or gender non-conforming individuals. This audit is not intended to be a scientific study- rather an objective snapshot of experiences that transgender and gender non-conforming people experience in the housing context.

Fair Housing Testing is tool used in fair housing investigations that measures the quality, quantity, content of information and customer service given to potential renters or home buyers by a housing provider. Testers pose as individuals seeking housing by contacting housing providers to inquire about available units. In a rental test scenario, test coordinators select testers who are as similar as possible in all ways except the protected class (or in this case, potential protected class) involved. Based on the test scenario, testers separately visit the site of a housing provider (within an appointed time period) and inquire about the availability of housing. Afterwards, the testers objectively record everything that happened during the test — what are the terms and conditions, what units the testers were shown, what price was quoted for an available apartment, how the tester was greeted and treated, etc. The test coordinator then compares the testers' objective reports to determine whether a difference in treatment based on the protected class occurred. Fair housing testing is **legal and has been upheld** by the US Supreme Court as the only truly objective way to identify if there is discrimination.

In this audit, we used matched-pair testing which allows for the comparison of how people are treated differently during the housing search process. One essential facet of testing is to ensure pairs are well matched on all variables except the one variable or characteristic to be tested—this procedure ensures that test results are unambiguous. The matched characteristics of the tester pairs in this audit included race, age range, education, employment, household size, and income. The single variable that differed between matched testers was comparing gender (transgender vs. non-transgender (cisgender)).

## **Findings**

Matched paired tests were completed in Grand Forks, Fargo, Valley City and Jamestown. There were 15 matched pair tests (30 test parts).

Overall, 70% of the trans/gender non-conforming testers experienced subtle forms of discrimination; no eye contact, no hand shake, refusal to use proper pronoun even after the tester informed property manager of preferred pronoun.

Additionally, 80% of the trans/gender non-conforming testers experienced discrimination by not being shown the same number of units or showing them inferior units.

Other instances of discrimination; such as rushing through the showings, not providing detailed information or being abrupt occurred in 50% of the cases for the trans/gender non-conforming testers.

Finally, in 60% of the cases trans/gender non-conforming testers were asked prying questions that the control testers were not asked such as, "Do you have a job? What is your level of education? Are you married? Do you have kids?"

These patterns are consistent with the calls that we receive from our hotline for victims of housing discrimination. From calls that we receive, we have learned LGBT individuals and families in North Dakota are often met with antagonism and hostility from landlords and property managers. Sometimes this is in the outright denial of a unit or contract and other times it is retaliatory or hostile behavior, such as not responding to maintenance calls or being "pushed out". Yet when these actions occur, these individuals and families do not have recourse.

While we are unable to file formal discrimination complaints with HUD or the North Dakota Department of Labor and Human Rights we track the calls and note the incidents, but this provides little relief for the victims of this discriminatory behavior. The fact that High Plains Fair Housing Center and the Department of Labor and Human Rights receive any calls is remarkable, because there are no LGBT protections, no recourse and no outreach and still people who experience LGBT discrimination reach out and try to find help.

Passage of SB 2303 is also in keeping with HUD's regulations which require HUD funded housing and for mortgages insured by the Federal Housing Administration (FHA) to be made available without regard to actual or perceived sexual orientation, gender identity, or marital status. HUD also clarifies that the terms "family" and "household," as used in HUD programs, include persons regardless of actual or perceived sexual orientation, gender identity, or marital status. Finally, HUD prohibits FHA lenders from taking into account actual or perceived sexual orientation or gender identity in determining the adequacy of a potential borrower's income.

Passage of SB 2303 would help stem any discriminatory behavior in housing and send a clear message that all people are welcome in North Dakota.

Please feel free to contact me, if you have any questions.

Sincerely,  
/s/  
Michelle Rydz  
Executive Director

# 3  
SB 2303  
1/23

**Testimony for 2019 SB-2303**  
**Senate Judiciary Committee**  
**Presented by Waylon Hedegaard**  
**President of the North Dakota AFL-CIO**  
**January 23rd**

Chair, Members of the Committee:

My name is Waylon Hedegaard, and I'm the President of the North Dakota AFL-CIO. I stand in support of SB-2303

I could talk about this from the point of Labor and jobs or from the side of fairness. I could talk about the need to diversify our economy. Being on the Workforce Development Council, I know that the need to attract and retain young people is a serious issue. I could talk about how hard it's going to be to diversify our economy if we don't tolerate the diversity in the educated workforce that these jobs will need to attract.

But I feel I need to testify as Waylon Hedegaard, an aging citizen of North Dakota who's just trying to do the right thing.

I grew up in a very conservative, Christian family. Gay and lesbian people were looked down on with disgust as if they were evil or inhuman. It's what I was taught. It's what my parents were taught, and it's what we knew.

I remember a time when our neighbors came to visit. They were Democrats. Liberals even. Who knew what crazy thing they'd come up with? Well, during this visit, a discussion arose over what should be done about gays and lesbians. The neighbors being a decent sort, thought people should be left alone to live their lives, but my family thought the very existence of gay people was wrong. As the discussion warmed up, one of the neighbors turned to us and asked, "Well, what do you think should be done?"

And I, trying to be stupidly funny like only a 15-year-old boy can be, made a gunshot sound.

And people laughed. I was 15 years old, and I joked about killing people I had never met, who I didn't know just for being who they are, and people laughed.

That memory remains crystal clear to me decades later. To me life is about choices, and I chose very poorly. I was a stupid kid who thought he was being funny, But I knew it was terrible thing to do. That's why I remember it so well. It has taken me much of the last 37 years to dig many of those little nuggets of hatred out of my soul, and I remain a work in progress.

So why do I support SB-2303? Because I want my grandchildren and all children to grow up in a better world than I did. I want them to grow up in a world where they judge others by the good they do and the person they are, not who they are born as. I want them all to be a better person than I am.

For this, I ask this committee to vote yes on SB-2303.

Thank you for hearing me, and I would stand for any questions.

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SB 2303  
Kimberly Needham  
831 ½ N 16th St  
Bismarck. ND 58503  
701-595-4615

Good morning, Senator Hogue and members of the committee. My name is Kimmie Needham and I live in district 30 here in Bismarck. I am here today to ask for a DO PASS recommendation on SB 2303.

The Declaration of Independence reads "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." I believe that the right to get and keep a job and the right to have a roof over one's head, unless inhibited by one's own self-sabotaging behavior, is included in our unalienable right to the pursuit of Happiness.

I am a lifelong conservative and am an avid supporter of President Trump, and even so, I do not understand why we are having this conversation in 2019. It is obvious that the morally right thing to do is allow people to have the same equality of opportunity that exemplifies the American Dream regardless of their sexual orientation or gender identity. One thing that influences my political identity is my belief that America is meant to be a great nation. It is meant to be a nation where any person who applies him or herself can achieve their goals. It is meant to be a nation of equal opportunity. This should not be a nation where people have to fight to have their rights due to who they love or how they identify themselves.

There is no moral justification for opposing this bill, and in doing so, one would spit in the face of the Declaration of Independence, the Constitution and the founders that built this great nation.

It is because of my love for, and belief in the United States of America that I ask that you give SB 2303 a DO PASS recommendation.

Thank you for allowing me to speak to you today.

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**SENATE JUDICIARY COMMITTEE, WEDNESDAY, JANUARY 23, 2019**

**SUPPORTING SB 2303: Relating to prohibition of employment and housing discrimination on the basis of sexual orientation**

**Please include with the Committee Hearing testimony journal for public record**

Chair Diane Larson, Vice Chair Michael Dwyer, Members of the 2019 Senate Judiciary Committee, and fellow citizens of North Dakota, Greetings. My name is Kevin R. Tengesdal from here in Bismarck. As a citizen of North Dakota, I resolutely request a unanimous DO PASS on Senate Bill 2303 as presented.

Since 2009, in front of Legislative committees, people of all social classes have pursued fair labor and housing protections for our LGBT citizens in North Dakota. I include a table summarizing the number of testimonies spoken. For the record, committee members heard 170 testimonies: 72% supporting, 24% opposing, and 4% neutral.

Despite the majority testifying in support, the bill has never reached the Governor's desk. Each time the bill moves to Chambers, Legislators state they heard little support or need for this bill. For a majority in North Dakota, discrimination is not their lived reality, and are unable to understand the judgement, scorn, and scrutiny for who you love.

To be personal, here are my experiences of repercussions for being gay. In 1988, the Navy discharged me as a homosexual after I reported being sexually assaulted. In 1996, Wycliffe Bible Translators ended my application to serve with them as a missionary, because I am gay.

Returning to North Dakota in 1998, I knew to keep my "secret" quiet, by trusting only a few. What would an employer, or a property owner do, if they found out I was gay? In 2004, with North Dakota voters deciding the definition of marriage, I stepped forward with a letter to the editor titled "Where's the threat?" I concluded it with, "As a Bible-believing, born-again Christian who is gay..." Now I was fully out of the closet, not sure what would come. Gratefully, life has been favorable.

In 2017 my 14-year, good-standing position as a graphic designer was eliminated due to budget cuts. Back in the job market, it was time to update my resume. A few employment counselors strongly recommended to not list my board membership with the North Dakota Human Rights Coalition. Why? Here in North Dakota, when most people hear the phrase "human rights" they at once assume only "liberal gay rights" and give judgement.

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You can ask, why do you not just keep it to yourself. First, how do you as a straight person hide your sexuality when you apply for a job, or housing? Do you hide your wedding band? Do you never make any mention of your significant other? Secondly, we live in North Dakota, where gossip and rumors run amok, especially in our more rural regions. No matter how much you try to hide, or act straight, people assume they know, and cast scrutiny.

Should North Dakota remain a state where our citizens condition themselves to lie about who they are? Should North Dakota be known as a state that chooses to terminate employment, or issue eviction notices just because of who the applicant loves? People do make a choice whether to leave North Dakota, or even locate here, based upon fair labor and housing practices for LGBT citizens. We cannot afford the economic impact of young, skilled workers choosing to leave our state, as they do not have legal protections, and feel shunned. We cannot impede the forward progress of North Dakota by continuing this harmful bias.

We, your LGBT friends and family are not seeking special status or privilege. Discrimination itself is a self-identifying choice; one's sexual orientation is not. We are seeking the same respect, dignity, and legal protections afforded to the people of North Dakota. I implore you as you consider this legislation: remind yourself to treat your neighbor, as you want your neighbor to treat you. Do not decide LGBT persons should remain second-class citizens undeserving of legal protections.

It is my anticipation you, and the members of the 2019 North Dakota Legislative Assembly, will choose to stand on the honorable side of history. Representatives, and fellow citizens of North Dakota, let me close by simply saying we, the LGBT citizens of North Dakota, are as much a part of this state as you, and we wish to remain united in community with you.

Thank you for your time and your consideration.

Kevin R. Tengesdal, District 35

2025 North 16th Street, Apt 4; Bismarck, North Dakota 58501

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LEGISLATION REGARDING PROHIBITION OF DISCRIMINATION BASED ON SEXUAL ORIENTATION

NUMBER OF TESTIMONIES SHARED AT HEARINGS

	Support	Oppose	Neutral	TOTAL*	Percent of Total
<b>2009 SB2278</b>					
Senate	10	4	2	16	
House	19	9	0	28	
Session Total	29	13	2	44	
<b>2013 SB2252</b>					
Senate	24	9	1	34	
House					
Session Total	24	9	1	34	
<b>2015 SB2279**</b>					
Senate	18	5	1	24	
House	25	9	1	35	
Session Total	43	14	2	59	
<b>2017 HB1386</b>					
Senate					
House	27	5	1	33	
Session Total	27	5	1	33	
<b>GRAND TOTAL*</b>	<b>123</b>	<b>41</b>	<b>6</b>	<b>170</b>	
<b>AVERAGES</b>	<b>31</b>	<b>10</b>	<b>2</b>	<b>43</b>	

\* Total number of testimonies shared before committee hearings, not including those submitted via postal, e-mail, etc.

\*\* In 2015, approximately 1000 letters of support were filed with the clerk.

My name is Joseph Larson, and I serve as pastor of St. Mark's Lutheran Church in Fargo, ND. I'd like to begin by reading a statement from Bishop Terry Brandt, who is the Bishop of the Eastern North Dakota Synod, which includes over 200 Lutheran congregations in the eastern half of our state. Bishop Brandt has authorized me to read this statement, which reads as follows:

**In light of today's discussion regarding the North Dakota Senate bill 2303, it is important to remember the Evangelical Lutheran Church in America (ELCA) rejects all forms of hatred or discrimination. This includes employment and housing discrimination against LGBT individuals.**

**The ELCA has repeatedly spoken against discrimination in law or policy related to sexual orientation or gender identity. In 2013, our Churchwide Assembly—the highest legislative body of our denomination—voted to encourage all ELCA synods, congregations, and members to add their voices in support of legislation that prohibits employment discrimination on the basis of sexual orientation or gender identity. According to the "Human Sexuality: Gift and Trust" Social Statement, the ELCA "supports legislation and policies to protect civil rights and to prohibit discrimination in housing, employment, and public services."**

**As Bishop of the Eastern North Dakota Synod, I believe that our church and society have a place for everyone. The call of Christ's people today is to celebrate the diversity of God's creative work and embrace all people in the spirit of love, regardless of race or ethnicity, economic status, sexual orientation or gender identity; and to speak with a prophetic voice against all forms of hatred, bigotry and discrimination.**

**I therefore support the passage of this bill, and legal protection against employment and housing discrimination for LGBT individuals in our state.**

**In Christ,**

**Bishop Terry A. Brandt  
Eastern North Dakota Synod  
Evangelical Lutheran Church in America**

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**As pastor of St. Mark's Lutheran Church in Fargo, I am also currently the only openly gay, married ELCA pastor called by a Lutheran congregation in the state of North Dakota. I serve a Lutheran congregation that voted to become welcoming towards LGBTQ individuals and their families 28 years ago.**

**I also grew up in Dassel, Minnesota, south of St. Cloud. So, I am at heart a small-town boy. I know how people who live in Midwest rural areas look at issues like the one we are discussing today.**

**As a gay pastor, I do not expect that some Christians are going to dramatically change their position on gay issues any time soon. But as a pastor and theologian, I believe that it is critical that we as Christians learn to separate our religious beliefs and theological issues from basic legal protections that should be afforded to everyone.**

For example, I shouldn't have to worry when if my husband could lose his job because his employer finds out that he is gay. Or when we moved here last year, I should not have been concerned about being denied housing in North Dakota because I'm gay.

Similarly, if I am applying for a job at a hospital or restaurant or the neighborhood store, I should not be denied a job because of the person I love. I should be hired and employed because of my education, my professional skills, and my previous work experience. I have known many people who have not disclosed that they were gay, lesbian, bisexual or transgender on the job because of their fears of being treated unfairly or of losing their job because of their gender or sexual orientation.

Regrettably, some Christians have justified unfair treatment or discriminatory policies in the name of Christ. For me, as a lifelong Christian and pastor, this runs completely contrary to the message of the Gospel.

Today, our Church is facing a crisis never seen before. Younger Americans are abandoning organized religion. One-third of Millennials say that the church's treatment of gay people is a main reason for that. They find it too difficult to participate in an organization or group of people that is supporting efforts that make life worse for their LGBTQ friends and family members.

If North Dakota wants to continue and retain young, talented professionals to our state, we need to create communities that are inclusive and welcoming to people from all sorts of diverse communities and backgrounds.

Perhaps the saddest thing for me is to hear Christians say things about gay people that simply not fit what Jesus taught and died for. In the Gospels, we read about how Jesus spent his time ministering to those rejected by their faith communities—lepers, tax collectors, prostitutes and foreigners.

In the Gospels, it says that Jesus began his career as a carpenter. In my wildest imagination, I cannot imagine Jesus—if he needed to hire an assistant for his carpentry shop—as someone who would not hire someone if they were gay or lesbian. In fact, I'm quite sure that Jesus would not only hire them to build a table, but also sit down and share a meal with that person. And he would invite the rest of us to dine with them.

Today, it's time for those of us who call ourselves Christians to follow Christ's example by looking past the politics and doctrines to see the dignity, humanity and needs of real people. As the prophet Micah once said, "What does the LORD require of you, but to do justice, to love kindness, and to walk humbly with your God?" (Micah 6:8)

You may ask how Christians, even from non-affirming congregations, can better demonstrate love to the LGBTQ community? — They can do so by helping to ensure that we have access to a job and a roof over our head. By joining with us to prevent bullying of gay and transgender youth. By treating all people with the same dignity, love and respect that Jesus did.

If Christians can't work to safeguard gay, lesbian and transgender people from bullying, physical attacks and other forms of discrimination, I'm afraid we've traded the true gospel of Jesus for a form of Christianity that is devoid of grace and compassion, at a time when the world is desperately in need of both. I urge all people of faith here in North Dakota to support this bill to protect against employment and housing discrimination for LGBTQ individuals and their families.

To: Senator Diane Larson, chair, Senate Judiciary Committee  
Re: SB 2303 - Relating to prohibition of discrimination on the basis of sexual orientation

January 23, 2019

Senator Larson and Committee Members,

Thank you for your public service to the people of North Dakota and your time today. I am Rev. Gretchen Deeg and am here representing myself. I am an ordained minister in the United Church of Christ serving in Bismarck and am in support of a "Do Pass" recommendation for SB2303.

Bills like SB2303 have been brought to the ND Senate and House multiple times. It continues to be brought forward because discrimination against North Dakotans on the basis of sexual orientation or suspected sexual orientation has and continues to be a very real problem in North Dakota.

A large portion of being a pastor is listening to people and being a witness to their lives. So while preparing my testimony for today, I asked a sampling of my parishioners for their feedback on this issue. Some of them were unaware that North Dakota does not currently protect LGBTQ from discrimination and all were appalled to learn that North Dakotans can be kicked out of their housing or fired from their employment because of their sexual orientation. Some of these parishioners are in this room today and many others are unable to be here because of other commitments. These are your constituents who are appalled that laws against discrimination on the basis of sexual orientation is not already on the books. People of faith will back you and I and other North Dakota clergy will back you in recommending a "Do Pass" on SB2303.

I have also provided the committee with the testimony of my colleague, Rev. Grace Murray, Pastor of People's United Church of Christ in Fargo as just one other example of the many clergy who are in support of this bill.

It is time to put in place policies to end housing and workplace discrimination against people based on their sexual orientation.

I had one individual living with their partner tell me that they were terrified their landlord would find out they were in a committed relationship, because they didn't know where they would live if they were evicted from their home.

Another individual told me that knowing that there are no protections in the workplace on the basis of sexual orientation causes them a great deal of stress for not only themselves, but for others.

On multiple occasions, I have talked with out-of-state individuals who have moved out of North Dakota or who refuse to move to North Dakota because they know that they or their friends could be actively discriminated against because of their sexual orientation.

I had an individual make incorrect assumptions about my convictions as a religious leader and recommend a particular landlord in Bismarck because this landlord, and I quote, "does not allow anyone who is gay to rent from him." Discrimination against people based on their sexual orientation is actively being practiced by landlords here in North Dakota.

You will not find complete statistics about the number of individuals who live in fear of having their sexual orientation being discovered in this state. Fear is a powerful motivator to keep silent,

especially when speaking up could put a person's housing and job in jeopardy. It is highly likely that every single one of us in this room knows someone who lives in fear because they do not have equal protections under North Dakota law.

In the past, I have heard mumblings that this bill cannot be supported because of personal faith beliefs. As a theologian and a Christian leader, I want you to be aware that there are no religious rights within Christianity that permit the discrimination or judging of others. On the contrary, the core of Christianity requires that its followers refrain from the judgment of others and that they treat all people with the same respect and love as they themselves would desire. Extending the same legal protections to others is a Christian value.

It is my hope that you will speak out in support of North Dakotans and recommend a "Do Pass" on SB2303. Thank you.

Rev. Gretchen Deeg  
917 N 5th St  
Bismarck, ND 58501  
701-347-1235 cell

To Senator Diane Larson, Chair, Senate Judiciary Committee  
Re: SB 2303 – Prohibiting Employment and Housing Discrimination based on Sexual Orientation &  
Gender Identity  
January 22, 2019

Thank you, Senator Larson and members of the Senate Judiciary Committee for receiving this testimony regarding the necessity of protections in employment and housing for persons based on sexual orientation and gender identity.

This legislation is long overdue in North Dakota. Members of the LGBTQ community are active, vibrant members of North Dakota communities. Members of the LGBTQ are our siblings, our children, our life partners, and our parents. Like any other human being, LGBTQ persons, by virtue of their humanity, deserve the basic rights of housing and employment.

The protections of SB2303 will ensure that people will be protected from discrimination based on sexual orientation or gender identity. These protections are necessary in a state where the perception that a person is gay, lesbian, bisexual or transgender is frequently the only criteria for refusing employment or housing. In fact, persons who support LGBTQ persons are often subject to such discrimination.

I am a pastor in the United Church of Christ. In June 2017, with a small group of people, planted People's United Church of Christ. People's UCC formed with the intention that all people are welcome into this place of worship. We are people who are straight, gay, cisgender, transgender. I understand that, of course, this bill does not address discrimination in religious communities. Today, religious freedom allows churches to refuse employment to a wide range of people on the basis of sex, religion, sexual orientation, and sexual identity. The purpose of this testimony is not to ask you to interfere with religious practices within faith communities.

However, it has often been stated as this legislation has come up in previous legislative sessions that such protections are not necessary. There is an unfounded belief that such discrimination does not happen. It does, not only to LGBTQ people, but also to their allies.

I was fired from my previous pastoral call in part due to my welcome of LGBTQ persons into the life of the church. The fact of the matter is that the United Church of Christ, as a denomination, welcomes LGBTQ persons into the full life of the church, from membership to ordination. Yet this North Dakota congregation fired me for encouraging the full inclusion of gay, lesbian, bisexual and transgender persons within our church.

I understand as a pastor, I do not have any of the protections afforded to people in other types of employment. My testimony is not to ask for such protections. My testimony is to show that discrimination against LGBTQ people is real. It is such a problem that a straight, cisgender person lost employment for her support of this community.

Additionally, LGBTQ people face discrimination and harassment in a number of areas. They are harassed in public places, including the workplace. They are disowned by families. People have been beaten and killed due to perceived sexual orientation and gender identity. These situations are not addressed in this legislation. But surely, addressing housing and employment is an important step forward in bringing dignity to our siblings.

You will hear testimony from others today, testimony from people who have been denied employment or housing due to their sexual orientation or gender identity. People who simply want to live their lives as any of us do, feeding our families, providing them with shelter. Every human being has the right to these basic protections. When they are denied to people based on sexuality or gender identity, North Dakota has a responsibility to give those discriminated against a legal remedy. In the cause of justice, I urge you to offer our siblings this dignity, by recommending SB 2303 for passage

Thank you for your attention and thoughtful consideration.

Rev. Grace Murray  
Pastor, People's United Church of Christ, Fargo  
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701-630-9776  
pastor@peoplesucc.com

# 8

SB 2303

1/23

Vallie Needham  
940 W. Turnpike Ave Apt 202  
Bismarck, ND 58501  
(701) 934-5356  
District 47

### Testimony in Support of SB2303

Good morning, Chairman Larson and members of the committee. My name is Vallie Needham and I live in District 47 here in Bismarck, and I am here today to ask for a DO PASS on SB2303. To be honest, I am very frustrated that we are all in this room today. For the past six years, we have brought this bill before similar committees, and over and over again it has been rejected.

Two years ago, I stood in a very similar hearing in the House Human Services Committee in front of Chairman Robin Weisz for HB1836. Four years ago, many other North Dakotans testified in support of SB2279. Six years ago, North Dakotans gathered to testify in favor of SB2252. In 2017, I was one of dozens of people to testify in support in front of a committee hearing that was over three hours in total. In contrast, the opposition only had three people testify, which mirrored the floor debate with only one legislator speaking in opposition and three legislators speaking in favor.

I don't know what else I can say to try to convince this body to accept what North Dakotans want. In 2015, ThinkND, an independent non-partisan organization conducted a poll in which 73% of North Dakotans supported anti-discrimination legislation. By not passing this bill repeatedly, the North Dakota Legislature is ignoring the will of the people they are supposed to represent.

As a bisexual woman who is married to a man, this continued fight is exhausting, and I can't even grasp how exhausting and frustrating it is for my brothers and sisters who can't hide as easily as I can. We should not have to hide. We should not have to conceal our significant others for fear that we will lose our jobs or our homes. As someone who was forced to leave my home on December 29, 2012, I know what it's like to lose a home overnight. I know the utter terror of not having a roof over my head in the middle of a North Dakota winter. Even though my situation was not over my sexual orientation, it's easy for me to put myself in the shoes of my LGBTQ family who have experienced something similar.

I am asking you to please recommend a DO PASS on SB2303 for our families, for our friends, for those we work with every day, and for our fellow North Dakotans.

Thank you, and I will stand for questions.

## **A Letter from Faye Seidler, Transgender Activist and Community Leader**

There are few others in this state who are as familiar as I am with the general hopelessness our LGBTQ+ youth feel. They are growing up in a state where our government has spent the better part of a decade telling the LGBTQ+ community to our face that discrimination doesn't happen and our stories don't matter.

Our LGBTQ+ youth have a very hard time surviving this state and many move to places where they can thrive and be happy. Unfortunately for this state, some of them will be leaving with tremendous talent and skill. Even people who aren't LGBTQ+ will move to more progressive areas, because they don't want to support a state that does nothing for their partner or family or because they fear for the safety of their queer child.

During these last few years, anti-discrimination bills have failed to pass by our North Dakota government. We are told not enough cases of discrimination happen to justify the policy. Which is similar to throwing people into the ocean and waiting for someone to drown before considering life jackets. Discrimination is unfortunately not always overt. Even in the protected categories of race and sex, we rarely have cut and dry cases of discrimination and claims can take years of delegation and investigation to get any results.

The point being, we have enough information from other states and testimony from our own state to develop good policy and action without risking the emotional or physical wellbeing of the people in our state.

Over the last decade the LGBTQ+ anti-discrimination bills have been criticized for being introduced with roughly the same language each time. This language has largely been copied from twenty states who have passed similar bills, including when our neighbor Minnesota passed theirs twenty six years ago in 1993.

It is a bit curious, because if no discrimination actually happened in our state, then passing an LGBTQ+ anti-discrimination bill would have no consequence. At the very least it would send a message that our state cared about its LGBTQ+ population. That we have protections if something does occur. Conversely, when we don't pass this bill, it sends the message that our state does not care. That it does not want us to have protections if discrimination occurs.

I implore everyone to consider supporting HB 2303. This state and our youth desperately need it.

## Articles For Consideration

Article on North Dakota Fair Housing Study:

<https://www.grandforksherald.com/news/government-and-politics/4543857-north-dakota-fair-housing-study-finds-discrimination-against>

Article on state of Queer Youth in North Dakota:

<http://hpr1.com/index.php/feature/culture/north-dakota-is-failing-our-queer-youth/>

Several Stories from professionals who have left our state because of lack of protections

<http://hpr1.com/index.php/feature/culture/north-dakota-a-hell-for-lgbtq/>

## LGBTQ+ Discrimination Data

### Youth

- Lesbian, Gay, and Bisexual (LGB) youth in North Dakota attempt suicide at a rate 58 times higher than the estimated national average for suicide attempts.
- Nearly half of North Dakota's LGB youth experienced bullying for their identity.
- One in eight students experience LGBTQ+ targeted bullying, regardless of their sexual orientation or Gender Identity.

*Data from the North Dakota Youth Risk Behavior Surveillance System that surveyed 10,000 highschool students within North Dakota.*

### Housing

- In a local study conducted by Grand Forks Fair Housing, the found that 80 percent of transgender testers were shown fewer housing units or inferior units than the control testers.

*Data from Grand Forks Fair Housing*

### Employment

- 19% of transgender individuals reported being fired, denied a promotion, or not being hired for a job they applied for because of their gender identity or expression.
- 15% of transgender individuals who had a job in the past year were verbally harassed, physically attacked, and/or sexually assaulted at work because of their gender identity or expression.
- 30% of transgender individuals who had a job in the past year reported being fired, denied a promotion, or experiencing some other form of mistreatment related to their gender identity or expression.
- 77% of respondents who had a job in the past year took steps to avoid mistreatment in the workplace, such as hiding or delaying their gender transition or quitting their job

*Data from 2015 Us Trans Survey questioned 28,000 trans individuals within the United States. They reported that In the past year*

Chairperson Larson  
Senate Judiciary Committee

Eichelle Messana  
Mandan, ND 58554  
701-989-416  
eichellethecreative@gmail.com

Wednesday January 23, 2019  
9:30 AM  
Fort Lincoln

I support and encourage a do pass recommendation for SB 2303

Hello Chairperson Larson and Committee Members,

Thank you for making space for this important discussion. My name is Eichelle. I am a CIS gender heterosexual woman. This means that I am lucky enough to not face the specific types of discrimination and judgement being discussed today. I am also a Christian.

Knowing that this is not the first or second bill of its kind submitted for several sessions now I am perplexed. I can't imagine that any of my North Dakota neighbors would root for discrimination. That's the cool thing about having a citizen legislature. We are all neighbors and we are all connected.

So, what might be the reason that this issue has not been able to move forward? I wonder if it might be an issue rooted in faith, rooted in Biblical teachings. I wonder if many sitting on the legislature are experiencing the great struggle of living within a world that challenges their faith. This is a struggle I understand intimately.

For a long time, I caused hurt and pain to members of the LGBTQ+ community. I was arrogant in my faith. I lacked humility and was not careful with my words. My intentions were never malicious, but I now know that doesn't change the consequences of my actions. It doesn't remove the hurt. In my arrogance I spoke my truth as though it would ring true to all those around me. Thinking about that version of myself I am ashamed.

The God I have read about in this Bible doesn't give room for me to judge my neighbor. In fact, this God encourages something quite different: love. Luckily this God also makes room for forgiveness. And I pray that those who were hurt by my words and lack of understanding may forgive me.

It was not one single action, story, or new friend that opened up my faith and allowed me to grow within it. Growing pains are painful and uncomfortable. Kind of like standing in room speaking to people in power trying not to cry.

So if per chance there might be someone who can hear me that is in the midst of this growing process. I feel you, its hard. And I think we can look to the place where God communicates directly to us for guidance.

There is a piece of scripture found in the book of Matthew, that comes to mind. The Pharisees had come to trick Jesus. He advises them to, "give to Caesar what is Caesar's, and to God what is God's." He doesn't advise them to force their belief of God on to Caesar so they might not have to pay the tax. So that you can get the full context I included a copy of the whole chapter as part of my written testimony.

I often think about Jesus' time on Earth. While he was here, he had very harsh words for the religious leaders of the time, who had been seduced by legalism. Whose hearts had grown so hard they missed the Messiah in front of them.

I don't want to be a modern-day Pharisee or Sadducee. Stuck in my ways with no room in my heart to grow. If you're not growing, you're dead. Jesus did not mince words with these groups. He called out their arrogance and misguided actions.

The only people during the time of the New Testament interested in legislating their faith were the religious leaders of the time. Jesus was too busy showing his love and teaching those that came to him.

So, I have to ask are we following the example of the Pharisees or of Jesus?

Thank you for your time. I say all of this to encourage you to please recommend a do pass on SB 2303.

Thank you

## Matthew Chapter 22 NIV

### The Parable of the Wedding Banquet

1 Jesus spoke to them again in parables, saying: 2 “The kingdom of heaven is like a king who prepared a wedding banquet for his son. 3 He sent his servants to those who had been invited to the banquet to tell them to come, but they refused to come.

4 “Then he sent some more servants and said, ‘Tell those who have been invited that I have prepared my dinner: My oxen and fattened cattle have been butchered, and everything is ready. Come to the wedding banquet.’

5 “But they paid no attention and went off—one to his field, another to his business. 6 The rest seized his servants, mistreated them and killed them. 7 The king was enraged. He sent his army and destroyed those murderers and burned their city.

8 “Then he said to his servants, ‘The wedding banquet is ready, but those I invited did not deserve to come. 9 So go to the street corners and invite to the banquet anyone you find.’ 10 So the servants went out into the streets and gathered all the people they could find, the bad as well as the good, and the wedding hall was filled with guests.

11 “But when the king came in to see the guests, he noticed a man there who was not wearing wedding clothes. 12 He asked, ‘How did you get in here without wedding clothes, friend?’ The man was speechless.

13 “Then the king told the attendants, ‘Tie his hand and foot, and throw him outside, into the darkness, where there will be weeping and gnashing of teeth.’

14 “For many are invited, but few are chosen.”

### Paying the Imperial Tax to Caesar

15 Then the Pharisees went out and laid plans to trap him in his words. 16 They sent their disciples to him along with the Herodians. “Teacher,” they said, “we know that you are a man of integrity and that you teach the way of God in accordance with the truth. You aren’t swayed by others, because you pay no attention to who they are. 17 Tell us then, what is your opinion? Is it right to pay the imperial tax<sup>[fn]</sup> to Caesar or not?”

18 But Jesus, knowing their evil intent, said, “You hypocrites, why are you trying to trap me? 19 Show me the coin used for paying the tax.” They brought him a denarius, 20 and he asked them, “Whose image is this? And whose inscription?”

21 “Caesar’s,” they replied.

**Then he said to them, “So give back to Caesar what is Caesar’s, and to God what is God’s.”**

22 When they heard this, they were amazed. So they left him and went away.

### Marriage at the Resurrection

23 That same day the Sadducees, who say there is no resurrection, came to him with a question. 24 “Teacher,” they said, “Moses told us that if a man dies without having children, his brother must marry the widow and raise up offspring for him. 25 Now there were seven brothers among us. The first one married and died, and since he had no children, he left his wife to his brother. 26 The same thing happened to the second and third brother, right on down to the seventh. 27 Finally, the woman died. 28 Now then, at the resurrection, whose wife will she be of the seven, since all of them were married to her?”

29 Jesus replied, “You are in error because you do not know the Scriptures or the power of God. 30 At the resurrection people will neither marry nor be given in marriage; they will be like the angels in heaven. 31 But about the resurrection of the dead—have you not read what God said to you, 32 ‘I am the God of Abraham, the God of Isaac, and the God of Jacob’[fn]? He is not the God of the dead but of the living.”

33 When the crowds heard this, they were astonished at his teaching.

### The Greatest Commandment

34 Hearing that Jesus had silenced the Sadducees, the Pharisees got together. 35 One of them, an expert in the law, tested him with this question: 36 “Teacher, which is the greatest commandment in the Law?”

**37 Jesus replied: “ ‘Love the Lord your God with all your heart and with all your soul and with all your mind.’[fn] 38 This is the first and greatest commandment. 39 And the second is like it: ‘Love your neighbor as yourself.’[fn] 40 All the Law and the Prophets hang on these two commandments.”**

### Whose Son Is the Messiah?

41 While the Pharisees were gathered together, Jesus asked them, 42 “What do you think about the Messiah? Whose son is he?”

“The son of David,” they replied.

43 He said to them, “How is it then that David, speaking by the Spirit, calls him ‘Lord’? For he says,

44 “ ‘The Lord said to my Lord:

“Sit at my right hand

until I put your enemies

under your feet.” ’[fn]

45 If then David calls him ‘Lord,’ how can he be his son?” 46 No one could say a word in reply, and from that day on no one dared to ask him any more questions.

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## Testimony Opposing Senate Bill 2303

Mark Jorritsma, Executive Director  
Family Policy Alliance of North Dakota  
January 23, 2019

Good morning Madam Chair Larson and honorable members of the Senate Judiciary Committee. My name is Mark Jorritsma and I am the Executive Director of Family Policy Alliance of North Dakota. I am testifying on behalf of our organization and the thousands of our constituents across our great state for you to please render a "DO NOT PASS" on Senate Bill 2303.

### INTRODUCTION

I would like to start by clarifying two points about this bill and what it actually seeks to do. First, as others have already testified, it is true that this bill seeks to enshrine sexual orientation as a preference with regard to employment and housing. However, it does not end there. To quote Section 1 of this bill, "It is the policy of this state to prohibit discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer; to prevent and eliminate discrimination in employment relations, public accommodations, housing, state and local government services, and credit transactions..."

Clearly, this bill is a far broader and sweeping change to our human rights protection portion of the North Dakota Century Code than one might first think. As a result, sexual orientation would be included as a protected class subject to the human rights statutes and thereby granting this classification the same protected status such as "race," "religion," or "physical disability." I would refer you to the last page of my testimony which is an appendix citing court cases and other chapters of the Century Code that clearly show that Section 1 would be interpreted and applied in this manner.

The second clarification I wish to note is that this bill actually addresses both sexual orientation and gender identity. Section 2 of the bill which contains definitions clearly states, "'Sexual orientation' means actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity." Since then we are actually dealing with both sexual orientation and gender identity, I will be addressing both in my remaining comments.

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## MAJOR IMPACTS

- This bill would not permit an employer to make a decision to hire/fire based upon an employee's or potential employee's sexual orientation or gender identity.
  - This would include even preschools, daycares, women's shelters, and athletic facilities, such as a gym or pool.
  - This means that a women's shelter could be forced to hire a male (who identifies as female), regardless of the impact this may have on the women.
  - It means that a preschool or afterschool program could be forced to hire a male (who identifies as female) regardless of parents' or children's concerns.
- The bill would likely force private businesses to provide services and participate in events with which they disagree because of their sincerely held beliefs.
  - There are examples of Human Rights Laws in other states that include "sexual orientation and gender identity" where those laws have been used to punish and even destroy family businesses, such as where, for example, the owners declined to serve a same-sex wedding because of their Christian beliefs—even when they referred the couple to another business that would serve them (e.g., CO, WA, NM, OR, KY, NY).
- There is a weak and poorly written exemption for religious organizations, associations, societies and nonprofits. A detailed read of this section reveals that:
  - Religious entities could be forced to hire someone who claims to ascribe to their faith, even if the individual is a male who identifies as female and wants to use the female restroom at the church, Christian school, or other ministry.
  - Further, the bill would likely put some ministries/churches in the awkward position of welcoming someone who claims to ascribe to their faith, even if the individual is a male who identifies as female and wants to use the female restroom at the church or Christian school. The church or school would have no recourse, because the individual is "of the same religion."
  - Even if this section of the bill was written in a substantive manner, exemptions do not convert an otherwise bad policy into a good one, and the result would not be fairness for all, but unfairness for many with an exemption for a fortunate few.

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- Would put state and local government entities at risk of being sued or increasing their citizens' risk for:
  - A violation of their privacy
  - Becoming a target for voyeurism charges
  - SB 2303 does not exempt schools. This bill would likely force public schools to permit men in girls' locker rooms, showers, and bathrooms—regardless of parent desires or children's right to privacy. This bill would put North Dakota public schools at risk of being sued or increasing their students' risk of privacy violations.
- Would force housing owners/directors to NOT consider gender identity when it comes to housing. This means women's shelters, homes for single moms, etc. would be forced to permit men—ignoring the past sexual or physical abuse some of these women have faced and the trauma a male presence may cause them.

## SUMMARY

- You can dress this bill up all you want or say it says something it doesn't, but the bottom line is it will still force women and girls to share bathrooms, locker rooms, and showers with men.
- No girl or woman should ever be forced to use the bathroom, shower, or undress next to a man in a public space.
- Family Policy Alliance of North Dakota supports the right to safety and privacy for all North Dakotans, especially women and girls.
- Some states have passed these types of policies without ever bothering to ask women and girls, who will be impacted most, how they feel. The privacy and safety of North Dakota women and girls must be respected, and their voices must be heard.
- Schools have a duty to protect the privacy, safety and dignity of all students.
- The bill would particularly fail North Dakota women and girls who have already been traumatized by sexual abuse.
- This bill, which would force women's shelters to cause potential harm to the women who come to them seeking refuge from their past experiences, defies common sense and fails North Dakota women and girls.
- Businesses and churches should be free to protect the privacy and safety of every North Dakotan who comes through their doors.

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- This bill could very well make North Dakota workplaces less safe and make employers much easier target for lawsuits.
- The primary duty of government is to protect its citizens—this bill would put North Dakotans at risk.
- All North Dakotans should be free to live and work according to their beliefs—this bill would gravely harm that freedom.
- Forcing North Dakotans to give up their faith in order to earn a living is not the type of state we want.
- Why should North Dakota bow to the “politically correct” pressure that other states have successfully resisted?

In conclusion, I respectfully ask that you please vote Senate Bill 2303 out of committee with a “DO NOT PASS” recommendation. I ask you as the Executive Director of Family Policy Alliance of North Dakota. I ask you as someone who values religious freedom. And, I ask you as a husband and father of a teenaged daughter.

Thank you for the opportunity to testify and I am now happy to stand for any questions.

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## APPENDIX

### Every Letter of the Century Code has the Force of Law:

- The North Dakota Century Code is very clear on how courts and state agencies **must** read, interpret, and understand a statute. There is no legal basis for an argument to be made that the construction of Section 1, if enacted, does not have the force of law.
- North Dakota’s own Century Code declares the **entirety of the code, every single letter of it must be regarded in the text and in spirit**. The spirit of section 1 is to ensure that sexual orientation and gender identity rises to the same level as other protected classes like race and religion in public accommodations.<sup>1</sup>
- It is of no effect that the Public Accommodations section of the Human Rights Chapter does not include the SOGI amended language. Section 1 says all that needs to be said. Yet again, the Century Code and the North Dakota Supreme Court have stated **when two provisions of the Code seem at odds, both are to be taken into account and the special provision “must prevail,”** as it manifests legislative intent. It is certainly the intent of this legislature, through the language of Section 1, to ensure that sexual orientation and gender identity are not only protected under public accommodations but raised to protected class status.<sup>2</sup> The North Dakota Supreme Court has ruled the entirety of the Century Code is a whole and must be harmonized to give *all* its provisions meaning.<sup>3</sup>
- IF Section 1 is in the preamble, this again doesn’t mean the language means less than the force of law. Again, the **Century Code speaks clearly on this point stating that the preamble is law and should be interpreted as such.** (N.D. Cent. Code. Sec. 1-02-39)

<sup>1</sup> The Rules of Construction of the entire Century Code is written in (**Chapter 1-02-01**) state:

The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be construed liberally, with a view to effecting its objects and to promoting justice.

Century Code Chapter **1-02-02** States: Words used in any statute are to be understood in their ordinary sense, unless a contrary intention plainly appears, but any words explained in this code are to be understood as thus explained.

Century Code **1-02-05**: When the wording of a statute is clear and free of all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.

<sup>2</sup> Century Code **1-02-07** Whenever a general provision in a statute is in conflict with a special provision in the same or in another statute, the two must be construed, if possible, so that effect may be given to both provisions, but if the conflict between the two provisions is irreconcilable the special provision must prevail and must be construed as an exception to the general provision, unless the general provision is enacted later and it is the manifest legislative intent that such general provision shall prevail.

<sup>3</sup> The ND Supreme Court has ruled:

Statutes are construed as a whole and harmonized to give meaning to related provisions. N.D.C.C. § 1-02-07. Statutes are construed to give effect to all of their provisions so no part of the statute is rendered inoperative or superfluous. N.D.C.C. § 1-02-38(2) [Conrad v. Wilkinson 2017 N.D. 212, Sup Ct August 29, 2017]

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January 23, 2019  
Senate Judiciary Committee  
Testimony in Opposition to SB 2303

Mr. Chairman and members of the committee, my name is Linda Thorson, and I am the State Director for Concerned Women for America (CWA) of North Dakota. We are the state's largest public policy women's organization and our country's largest public policy women's organization with over 500,000 members. We are here today on behalf of our North Dakota members in **opposition to SB 2303, relating to the prohibition of discrimination on the basis of sexual orientation.**

A choice has been put before you today – vote to defend traditional values held for hundreds of years or mollify activists by adopting a bill that would elevate “gender, gender identity & sexual orientation” to protected civil rights status.

CWA of North Dakota opposes SB 2303 for the following reasons:

- SB 2303 is not necessary because special rights have historically been afforded to certain groups in order to ensure that individuals are not discriminated against due to immutable characteristics. North Dakota law already protects these characteristics.
- SB 2303 creates discrimination, not eliminates it. In general, when “sexual orientation” or “gender identity” is added to legal or corporate nondiscrimination code, it is a giant step toward the adoption of policies that discriminate against people with traditional views.
- SB 2303 will create a hostile climate for many employees and citizens, and open businesses and individuals up to government intrusion and lawsuits. The LGBT movement's strategy has been to transform morality into a form of bigotry, and then use government power to eliminate that “bigotry.” SB 2303 will put the law on their side to carry this out.
- SB 2303 has limited exemptions for those with personal convictions, thus forcing individuals to accept and support sexual behaviors with which they have a moral disagreement. Those exemptions apply only to those associated with religious organizations or societies. Private businesses, organizations, and individuals that hold convictions outside of religious reasons are not exempt from being forced to follow this law.

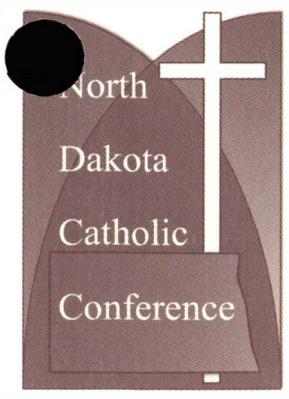
If we allow “sexual orientation” and “gender identity” to become a matter of law and policy, it will reach into our workplaces, our schools, and our families creating a society that no longer has “equal protection under the law.” This will surely challenge the common sense, strength of character and founding principles on which this great nation and state were built.

We urge your “Do Not Pass” vote on SB 2303. Your consideration of this request is appreciated.

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Representing the Diocese of Fargo and the Diocese of Bismarck

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**To:** Senate Judiciary  
**From:** Christopher T. Dodson, Executive Director  
**Subject:** Senate Bill 2303 - Discrimination on the Basis of Sexual Orientation and Gender Identity  
**Date:** January 23, 2019

The Catholic Church affirms the dignity of every human life and rejects unjust discrimination. Acts of violence, degradation, or diminishment toward any human person are contrary to the teachings of the Catholic Church. There is no place for arbitrary discrimination and prejudice against a person because of the person's sexual attraction or self-perceived gender identity.

This legislation, however, is not about how we feel about discrimination based on sexual orientation or gender identity. It is not about whether a nondiscrimination policy is good for business. It is not about whether we should be like other states. It is about this bill.

This bill gives individuals a right to sue - and some would say harass - based on a set of undefined or poorly defined phrases. This bill would create special protections for a certain class of activities and self-perceptions -- not individuals as individuals. Current law already protects lawful activities outside the place of employment.<sup>1</sup> Civil rights law should not become a vehicle to give elevated protection to sexual activities and self-perceptions.

This bill is also replete with infringements upon conscience and religious liberty. Do not be fooled by the bill's "religious exemptions." The problems with the purported exemptions are numerous. Here are just a few: The first exemption applies only to *employment* matters when hiring employees and volunteers for *religious* positions. As such, it does not provide anything that does not already exist under Supreme Court decisions. The second purported exemption also applies only to *employment* matters, but would require the religious organization to restrict its employment to people of the same religion, effectively scaling-back protections that exist in the current law. The third exemption states that a religious organization can limit admission to places of worship and parochial schools to people of the same religion. This is a right we already have and it has nothing to do with the type of discrimination this bill purports to reach.

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We realize this is an emotionally-charged issue. However, respect and cooperation, among people with legitimate differences of opinion is what makes North Dakota great. There is no place for hate, name-calling, or stereotyping by people on either side of this issue or this particular bill. Keeping those principles in mind we urge this committee to carefully review what this bill actually does and give it a **Do Not Pass** recommendation.

<sup>1</sup> N.D.C.C. sec. 14-02.4-03. "It is a discriminatory practice for an employer to fail or refuse to hire an individual; to discharge an employee; or to accord adverse or unequal treatment to an individual or employee with respect to application, hiring, training, apprenticeship, tenure, promotion, upgrading, compensation, layoff, or a term, privilege, or condition of employment, because of . . . participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer."

19.0992.02001  
Title.

Prepared by the Legislative Council staff for  
Senator Bakke

January 23, 2019

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2303

Page 1, line 1, remove "14-02.4-01,"

Page 1, remove lines 7 through 17

Page 4, line 25, remove "or perceived"

Page 6, line 6, replace "for" with "from"

Renumber accordingly