

My Chairman and members of the committee. HB 1454 is in regard to codifying common law held by the North Dakota Supreme Court and provides a specific application as to online relationships.

I am sure you are all familiar with common law but I wanted to provide a very brief description as to the relation between common law and statute.

Common law comprises of law established by courts in the competent jurisdiction and of precedent established by higher courts. Common law began to be developed in approximately the 11th century. All US states follow common law - with a partial exception for Louisiana. The US Supreme Court and the North Dakota Supreme Court both establish what is referred to as common law. Many times through out the history of the state and the United States common law has become codified in statute.

Today, this bill looks to codify the North Dakota Supreme Court's common law related to Tortious Interference of contract and Tortious Interference of potential business relationship. The language for the bill itself was pulled from the case *Trade 'N Post v World Duty Free Americas* by the North Supreme Court in 2001. The court in the case stated quote "There is a great disparity in the language used by courts to describe the various elements of the tort." So the court moved to set the record as to what qualifies. The court then stated: "We hold that, in order to prevail on a claim for unlawful interference with business, a plaintiff must prove the following essential elements: (1) the existence of a valid business relationship or expectancy; (2) knowledge by the interferer of the relationship or expectancy; (3) an independently tortious or otherwise unlawful act of interference by the interferer; (4) proof that the interference caused the harm sustained; and (5) actual damages to the party whose relationship or expectancy was disrupted."

The court in this case further stated that when the tort applies to Tortious Interference of a potential business relationship, quote "a plaintiff must prove that the defendant's conduct was independently tortious or wrongful." So there are two standards set out, one if there is actually a contract then the standard is knowingly interfering in a relationship. If there isn't an actual contract, the standard is the interference must be independently tortious or wrongful. An example of such would be threatening assault or breach of contract.

Now I know there is a fair amount of nuance in the previously stated legal arguments. But this bill does not change any of the current common law. It simply codifies current common law.

What this bill does address that isn't yet established in North Dakota common law is the inclusion of defining an online relationship in the commercial setting as a potential business relationship for the sake of this tort. An example of this would include, if a business maintained a facebook business profile on which reviews were placed. If a competing business began offering a multitude of reviews in an effort to interfere with potential customers, this would be considered tortious interference of a potential

business relationship. Placing 1 star reviews by itself is not defamation yet it is still an effort to negatively impact potential business relationships.

In the event the activity itself rises to the level of bad faith and collusion with other actors to negatively interfere with another's commercial operation, the penalty would arise to a misdemeanor.

Thank you and I am willing to answer questions.