

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE BILL NO. 1319
SENATE HUMAN SERVICES COMMITTEE
MARCH 17, 2021

Members of the Senate Human Services Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of HB 1319 and to introduce the bill to you. HB 1319 relates to the obligation to pay spousal debts. There are others who will follow me who will testify in more detail about the reason for this bill.

As you know, American jurisprudence is mainly derived from the English common law that developed over the course of many centuries. It was brought here by the colonists who originally settled in this country. When you study the history of law, you become aware that much of the common law was about finding loopholes in the law as established by the English Kings. Although we have statutory law in North Dakota, supplemented by our own common law as developed in the courts, things haven't changed all that much from ancient times. People are still looking for loopholes in our laws for ways to get around obligations. The Kings tried to close those loopholes through additional statutes, but then more loopholes were found, and so it goes.

HB 1319 is about closing a loophole in the North Dakota law relating to the obligation to pay spousal debts. In Section 1 of the bill, under North Dakota law in subsection 3 of Section 14-07-08, a husband and wife are jointly and severally liable for any debts contracted by either "while living together" for necessary food, clothing, medical care, and shelter. The loophole is the phrase "while living together".

This loophole is now affecting long term care facilities in North Dakota when one spouse is living in a nursing home and the other spouse is living in what was the marital home. The situation arises when there is no insurance or government program coverage for the spouse in the nursing home, who is in a private pay status. The spouse living in what was the marital home may have sufficient assets to pay for the care of the other spouse living in the nursing home but refuses to pay for the care because they are technically not "living together". This causes a major problem for our long term care facilities, which are tasked with the duty to care for the spouse in the nursing home without being compensated.

Section 1 of HB 1319 closes that loophole by removing the "while living together" phrase, subject to the abandoned spouse statute in Section 14-07-11.

Section 2 of the bill amends Section 14-07-11, which contains an exception for the liability of one spouse to support the other when there has been an abandonment. If a spouse has truly been abandoned by the other spouse, the exception still applies. However, the amendment to this section provides that a spouse is not deemed to have been abandoned merely because the spouse is residing in a nursing home for medical or behavioral health treatment.

The people who will follow my testimony will describe to you a real life situation where a wife, who is residing in what was the marital home, is claiming through her attorney that she is not liable for the cost of her husband's care in a nursing home because they are not "living together". If she and her attorney are technically correct, then this loophole will also be used by others who may be similarly situated when word gets around through legal channels. The long term care facilities could spend a lot in attorney fees contesting this claim in court, but they might lose if the courts agree that the wife and her attorney are technically correct.

Consequently, the long term care facilities are here asking you to close this loophole. It's really a matter of fundamental fairness. If a spouse has the resources to pay for the care of the other spouse in a nursing home, then why shouldn't she do it? Why should the nursing homes bear the cost? I encourage you to recommend "do pass" on HB 1319.

I am available to answer your questions, but those who follow me will have the answers. Thank you.

Rep. Lawrence R. Klemin
Chairman, House Judiciary Committee
District 47, Bismarck