

# NORTH DAKOTA LEGISLATIVE COUNCIL

## Minutes of the

### JUDICIARY COMMITTEE

Tuesday, January 8, 2008  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Representative Lawrence R. Klemin, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Representatives Lawrence R. Klemin, Randy Boehning, Stacey Dahl, Lois Delmore, Brenda Heller, Joyce Kingsbury, Kim Koppelman, William E. Kretschmar, Jasper Schneider, Lisa Wolf; Senators Tom Fiebiger, Stanley W. Lyson, Carolyn Nelson, Dave Nething, Dave Oehlke, Curtis Olafson

**Others present:** See attached [appendix](#)

Representative Shirley Meyer, a member of the Legislative Council, was also in attendance.

**It was moved by Representative Delmore, seconded by Senator Nelson, and carried on a voice vote that the minutes of the September 18, 2007, meeting, be approved.**

#### GAMING COMMISSION STUDY

Chairman Klemin called on Mr. Randy Blaseg, Director, Racing Commission, for testimony regarding the gaming commission study. Mr. Blaseg said the Racing Commission is responsible for the licensing of simulcast sites, service providers, charitable racing associations, and simulcast employees. He said veterinarians, state stewards, and licensing staff are hired by contract each racing season for each of the two live race meets. He said pari-mutuel wagering from 1997 through 2006 generated approximately \$18 million for the state's general fund. He said in recent years the commission has been appropriated between \$120,000 and \$150,000 per biennium out of the general fund for administrative costs. He said those are the only general fund dollars that are used to fund the racing industry. He said the commission licensed a new service provider last year which, as a result, has generated about \$4.7 million in handle. He said since 2003 the source of income has diminished. He said the commission has tried to accommodate the requests of the racing and horsemen's associations while at the same time hold funds in reserve. He said given the resources available, the commission has attempted to keep racing in the state alive and well. He said the racing industry is unlike any other form of gaming in the state because the racing industry involves pari-mutuel wagering, whereas charitable gaming and the lottery do not. He said pari-mutuel wagering is regulated under its own set of rules that are interconnected throughout the country. He submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Senator Oehlke, Mr. Blaseg said pari-mutuel wagering is a betting system in which all bets are placed together in a pool. He said after state taxes are deducted, the amount paid out is based upon the number of horses and bettors.

In response to a question from Senator Lyson, Mr. Blaseg said the South Dakota Gaming Commission regulates the slot machines and table games conducted at Deadwood and the state's pari-mutuel racing. He said South Dakota's racing proceeds are not deposited in that state's general fund.

In response to a question from Representative Klemin, Mr. Blaseg said the changes to the Racing Commission's administrative rules went into effect on January 1, 2008.

In response to a question from Representative Meyer, Mr. Blaseg said the proposed changes to North Dakota Administrative Code Chapter 69.5-01-09 were not approved by the Administrative Rules Committee. He said all other proposed rules were adopted. He said Chapter 69.5-01-09 was referred back to the Racing Commission for reconsideration. He said he would provide information to the committee regarding the amount that was given to charities in 2007.

In response to a question from Representative Delmore, Mr. Blaseg said the racing industry is working to bring more major bettors back into the pool. He said he would provide to the committee at its next meeting a summary of the recent changes to the administrative rules.

In response to a question from Representative Kretschmar, Mr. Blaseg said racing simulcast sites are located in Belcourt, Bismarck, Fargo, Williston, and Grand Forks. He said the commission would like to add more simulcast sites.

At the request of Chairman Klemin, committee counsel distributed testimony provided by Mr. Chuck Keller, Director, North Dakota Lottery, regarding the regulatory differences among the different forms of gaming in the state. In his testimony, Mr. Keller said in principle, a single gaming commission has promise; however, based upon an analysis of the facts, the concept of such a commission is without merit. He said he recommends that the committee exclude the North Dakota Lottery from a combined commission for a number of reasons. He said the four gaming industries--lottery, charitable, horse racing, and tribal

casino--are fundamentally different in almost all aspects. He said there are few similarities between the lottery and the other three industries. He said the lottery is evaluated on critical success factors relevant onto its industry. He said a single gaming commission that regulates all types of gaming would struggle, at best, to attempt to thoroughly understand the intricacies of each unique industry; apply due diligence in decisionmaking; achieve responsive results; or fairly, efficiently, and competently regulate four gaming industries. He said the Lottery Advisory Commission serves as policy advisor to the Attorney General and director of the lottery. He said this advisory commission is directly involved in all substantive policies, plans, issues, contracts, timelines, and activities of the lottery; has been instrumental in the lottery's accomplishments and financial success; and understands the opportunities and challenges facing the lottery. He said the Legislative Assembly, in creating this commission, got it right the first time. He said the Legislative Assembly in 2003 entrusted the Attorney General with the responsibility to develop, implement, and administer the lottery. He said the Attorney General should continue to be ultimately responsible. He said for the lottery to be successful, the lottery must prosper, have a favorable public image, and players must be confident that games are fair and honest. He said based on the guidance of the Lottery Advisory Commission, the lottery is prosperous, enjoys a favorable public image, and its games are trusted as being fair and honest. As required, he said, the lottery provides the executive and legislative branches of our government a full accounting of the lottery's financial activity and operation. He said the lottery has not been the cause of any public or legislative alarm. He said if there is a particular gaming-related issue that the committee is attempting to address, he would recommend that it be addressed apart from the North Dakota Lottery. His testimony, together with information regarding the percent allocation of lottery ticket sales, the critical success factors of the North Dakota Lottery, and the regulatory differences of the four gaming industries, is on file in the Legislative Council office.

At the request of Chairman Klemin, committee counsel presented a bill draft [\[90024.0100\]](#) relating to the creation of a gaming advisory commission. Committee counsel said the bill draft would give the Attorney General the authority to adopt rules to administer and regulate the charitable gaming industry. She said the bill draft would create a gaming advisory commission composed of five members appointed by the Attorney General. She said the duties of the gaming advisory commission would be to advise the Attorney General on policy and general operation of charitable gaming. She said the bill draft would repeal North Dakota Century Code (NDCC) Section 53-06.1-01.1, which provides for the Gaming Commission.

In response to a question from Representative Delmore, Mr. Keith Lauer said the Gaming Commission is a part-time commission without any paid staff. He said the commission directs the staff of the Gaming Division to draft rules and conduct public hearings. He said the current practice could result in disagreement between the Gaming Division and the Gaming Commission on the rules that should be adopted.

Chairman Klemin called on Mr. John V. Emter for testimony regarding the gaming commission study. Mr. Emter expressed concerns about excessive gambling and drinking.

At the request of Chairman Klemin, committee counsel presented a bill draft [\[90025.0100\]](#) regarding the Racing Commission. Committee counsel said the bill draft would provide that the Racing Commission is subject to the supervision and direction of the Attorney General. She said the bill draft would restore the Attorney General's authority over the Racing Commission as it existed before the changes made by the Legislative Assembly in 2005.

Representative Koppelman expressed concerns about whether there would be a conflict of interest if the agency responsible for enforcing the gaming law--the Attorney General--were responsible for rulemaking. In response to a question from Representative Koppelman, Mr. Lauer said assistant attorneys general routinely advise agencies as well as draft rules for those same agencies.

## COMMITTEE DISCUSSION

Chairman Klemin said the committee would continue to review the two bill drafts at the next meeting.

Representative Delmore said the committee should receive information from Mr. Blaseg regarding the amount that has been paid by the Racing Commission to charitable organizations for 2005, 2006, and 2007.

Representative Wolf said the committee should receive information from Mr. Blaseg regarding the Racing Commission's biennial budget. She said there is some confusion as to that amount.

## AUCTIONEER PRACTICES AND LAWS STUDY

Chairman Klemin called on Ms. Susan K. Richter, Director, Licensing Division, Public Service Commission, for testimony regarding auctioneer licensing requirements. Ms. Richter said the division has had jurisdiction over auctioneer licensing since 1957. Before 1957, she said, auctioneers were licensed by the county treasurer of the county in which the auction sale was held. In 1975, she said, the Public Service Commission's responsibility was expanded to include the jurisdiction over auction clerks. She said while the auctioneer is responsible for selling or offering property for sale at public auction, the auction clerk is responsible for recording each item offered for sale, collecting all proceeds of

the sale, paying all expenses of the sale, and making settlement to parties.

Ms. Richter said an auctioneer must meet all license requirements before a license can be issued. She said an applicant must file an application form along with a \$35 license fee; two completed reference forms; a surety bond, with an attached power of attorney; and proof of satisfactory completion of an approved course of study relating to auctioneers or proof that the applicant has been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of application. She said the auction clerk also must meet license requirements before a license can be issued. She said although auction clerks do not have to complete an approved course of study relating to auctioneers, they are required to maintain a trust account for handling funds collected at auction sales. She said the auctioneer and auction clerk may not sell the property of others without a prior written contract containing specific items as provided in NDCC Section 51-05.1-04.1.

Ms. Richter said the Public Service Commission has used an electronic data base program to issue auctioneer and auction clerk licenses since 1992. She said the current data base program, developed in 1998, also monitors the status of auctioneer and auction clerk licenses. Since 1998, she said, the commission has revoked 10 auctioneer licenses and 6 auction clerk licenses for failure to maintain adequate bond. In 2004, she said, the commission revoked an auction clerk license after the licensee failed to pay a party for items sold at public auction. She said before a license may be issued, an applicant must file a surety bond. She said the bond must provide annual coverage of not less than \$5,000 for an auctioneer or \$10,000 for an auction clerk. Ms. Richter submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Kretschmar, Ms. Richter said there are two administrative rules for auctioneers. She said the first rule provides for the requirements for auction schools and the second rule provides for the closing requirements for auction clerks. She said the administrative rules do not address how auction sales are conducted. She said in the 2004 case, the auction clerk's bond was used to pay the claimant and the amount of the bond was adequate. She said the amount of the required bond has not changed since the 1980s.

At the request of Chairman Klemin, committee counsel reviewed a bill draft [\[90034.0100\]](#) relating to real estate auction procedures. Committee counsel said the bill draft would prohibit the use of a multiparcel bidding system or a choice of tract bidding system for real estate auctions.

Chairman Klemin called on Representative Duane L. DeKrey for testimony regarding the study and the bill draft. Representative DeKrey said if a landowner wants to sell real estate by auction, the auctioneer and the seller should decide how the

auction is to be conducted. He said the bill draft would take away the seller's rights and would interfere with the right to contract. He said the law should protect the seller from unqualified or dishonest auctioneers but should not interfere with the contract between the auctioneer and the seller. He said restrictions proposed in the bill draft are not needed.

In response to a question from Senator Olafson, Representative DeKrey said auctioneer fees are usually paid by the seller. He said if the seller's rights to decide how the auction must be conducted are taken away, perhaps the buyer should pay the auctioneer fees.

Senator Olafson said this is not an area in which there should be legislative involvement.

In response to a question from Senator Nething, Representative DeKrey said auctioneers announce the terms of the sale before the sale begins. He said the buyers are aware of the terms. He said the advertising for the sale usually includes the terms of the sale as well.

Chairman Klemin called on Mr. Steven Bitz for testimony regarding the study and the bill draft. Mr. Bitz said the proposed legislation is unnecessary, is not comprehensive, and will thwart the auctioneer's efforts to get the top price for sellers. He said auctioneers give appropriate disclosures both before and at the time of auction. He said auction posters provide potential buyers with notice of the terms on which an auction will be conducted on the sale date. He said the auctioneer also provides potential buyers with a full disclosure of the terms of the sale immediately before the bid opening begins. He said those terms include the names of the sellers; a statement of the legal description; financial terms; a statement as to how the title will be conveyed; a discussion of soil types and description of fixtures; a statement regarding evidence of title; and a disclosure of known defects, liens, and encumbrances. He said if real estate is being offered for sale in tracts and the seller elects to hold the bids open and tie the property together as one parcel, a description of the process is also given at that time.

Mr. Bitz said buyers are entitled to have agents and other representatives to represent them in the bidding process. He said as in any business affair, buyers are entitled to have professional representation at an auction sale, including attorneys, real estate brokers, appraisers, lenders, and other agents.

Mr. Bitz said sellers should be able to direct how the sale of their property will be conducted. He said the final decision as to how property will be split for sale should be for the seller to decide and sellers should be allowed to order their affairs as they see fit. He said legislation that seeks to put limitations on how real estate can be sold should not be exclusive to auctioneers but should have equal impact on real estate brokers, attorneys, and others who deal in the sale of real property. He said the proposed legislation is the beginning of a slippery slope. He said many

times personal property is offered for sale with bids being held open on the pieces and then tied together as a unit to see which method will yield the most money for the seller. He said real estate should not be any different from farm or other personal equipment. He said the price of farm equipment may exceed the price of real property in some cases. He said legislation requiring that property offered in tracts must be the subject of a separate sale would be harmful to sellers because buyers could agree that one party will not bid on a certain tract if another party does not bid on another tract. He said this would create an artificial price ceiling. He said there is no doubt that buyers can make such arrangements before an auction but the seller has an equal bargaining tool by having the power to hold the bids open and tie the tracts together as one. He submitted written testimony and a copy of an auction poster, copies of which are on file in the Legislative Council office.

In response to a question from Representative Dahl, Mr. Bitz said the state's interest in auctions should be to ensure that the transactions are fair. He said the state should not be interfering with private contracts.

In response to a question from Senator Oehlke, Mr. Bitz said issues, such as liens and mineral rights, are disclosed at the time of sale.

Chairman Klemin called on Mr. Pius Bitz, Bitz Auction and Clerking Service, for testimony regarding the study and the bill draft. Mr. Bitz said an auctioneer's duty is to represent the seller. He said how a sale is conducted is a contract between the seller and the auctioneer.

Chairman Klemin called on Mr. Cliff Orr for testimony regarding the study and the bill draft. Mr. Orr said North Dakota's laws regarding auctioneers are among the best in the nation. He said the seller's choice to decide how an auction is to be conducted should not be removed. He said as buyers we have choices in how we conduct business, such as at which restaurant we want to eat or at which hotel we want to stay. He said buyers at an auction also have the choice as to whether they want to bid and how much they want to bid. He said the buyers at an auction are made aware of the terms of the auction before the sale begins.

In response to a question from Representative Klemin, Mr. Orr said he did not know the reason for the South Dakota rule that provides that each tract must be the subject of a separate sale. He said it was probably based upon one complaint. He said North Dakota law works well. He said the Public Service Commission contacts the North Dakota Auctioneers Association if there is a problem. He said the buyer's premium of 8 percent has been approved by the Public Service Commission. He said his company is the only one to use the premium. Mr. Orr provided a copy of an auction manual, which is on file in the Legislative Council office.

Chairman Klemin called on Mr. Wayne Weishaar, Weishaar Auction Service, for testimony regarding the study and the bill draft. Mr. Weishaar said if this bill draft became law, the loser would be the seller. He said to remove the option of choice of tracts would hurt the seller.

In response to a question from Representative Wolf, Mr. Weishaar said when negotiating a contract with a seller, the seller usually asks for the auctioneer's recommendations as to how to conduct the auction. He said, however, the auctioneer will do whatever the seller wishes.

Chairman Klemin called on Mr. Albert Brendal for testimony regarding the study and the bill draft. Mr. Brendal said when he had an auction he worked with the auctioneer to determine the terms of the sale. He said as a seller he would like the auctioneer to be able to sell the property in a way that brings the most money for the seller.

## COMMITTEE DISCUSSION

Chairman Klemin read to the committee an e-mail message from Senator Randel Christmann. In the message Senator Christmann said during the 2007 legislative session he requested the study of a problem associated with certain practices involving real estate sales by auctioneers. He said he had been informed that there was strong support from an association of auctioneers for some type of regulation. Since that time, he said, the demand for intervention has ended. He said apparently the auctioneers no longer desire action on this subject from the Legislative Assembly. He said the discussion on this issue has been healthy and will lead to self-discipline within the industry. He said he believes the best course of action is to end this study. A copy of Senator Christmann's e-mail message is on file in the Legislative Council office.

**It was moved by Senator Nething, seconded by Senator Olafson, and carried on a roll call vote that the auctioneer practices study be concluded and that the committee make no recommendation as a result of the study.** Representatives Klemin, Boehning, Dahl, Delmore, Heller, Kingsbury, Koppelman, Kretschmar, Schneider, and Wolf and Senators Fiebiger, Lyson, Nelson, Nething, Oehlke, and Olafson voted "aye." No negative votes were cast.

## ABSTRACTERS, TITLE OPINIONS, AND TITLE INSURANCE STUDY

Chairman Klemin called on Ms. Ann Johnsrud, McKenzie County Recorder, for testimony regarding the North Dakota Recorders Information Network (NDRIN). Ms. Johnsrud said in the aftermath of the flooding in the Red River Valley in 1997, discussions began about the need for preservation and technology enhancements for the state. She said committees were formed and with the assistance of Cass County and the Federal Emergency Management Agency

(FEMA) a workable plan was developed and implemented to microfilm all real estate records in all 53 counties and to provide storage of that film in a secure, offsite location. She said a grant from FEMA for \$1.2 million was received which allowed all counties in the state to develop methods to ensure that valuable records can be replaced in the event of a disaster. She said the grant also allowed a central repository to be built for storage of electronic records. She said this computerized central repository has become a reality and is known as the North Dakota Recorders Information Network. She said the system not only provides another means of safeguarding the recorders records but also delivers to users access to public records via the Internet.

Ms. Johnsrud said NDRIN operates under a joint powers agreement from each participating county. She said all counties except Divide, Renville, Grand Forks, Traill, Grant, Emmons, Logan, and Dickey participate in NDRIN in some way. She said NDRIN has a subscriber-based web site for access to images and information. She said there is a \$100 one-time setup fee and a \$25 per month access fee for all the information on NDRIN. She said to date there are 2,656 subscribers, including oil and gas companies, landowners, attorneys, realtors, abstracters, credit bureaus, state offices, banks, appraisers, and private individuals. She provided county-by-county information regarding the document start dates and written testimony and other information regarding NDRIN, copies of which are on file in the Legislative Council office.

In response to a question from Representative Delmore, Ms. Johnsrud said Grand Forks County has developed its own computerized central repository system. She said subscribers who subscribe to NDRIN do not have access to the Grand Forks County records. She said the high cost of doing the transfers is the reason all records have not been transferred to this system.

In response to a question from Representative Wolf, Ms. Johnsrud said only subscribers have access to NDRIN.

In response to a question from Representative Boehning, Ms. Johnsrud said one of the requirements of the FEMA grant was that records must be microfilmed and be kept offsite. She said microfilming is the only recognized form of archiving. She said all backup records are kept at an underground storage facility in Hutchinson, Kansas.

Chairman Klemin called on Ms. Sue Cosgriff, President, Abstracters' Board of Examiners, for testimony regarding the statutory requirements of abstracters. Ms. Cosgriff said the Abstracters' Board of Examiners receives its authority from NDCC Chapter 43-01. She said the board issues and oversees two types of certificates. The first, she said, the certificate of registration, is awarded to an individual. The second, she said, is a certificate of authority, which is granted to an abstract plant after meeting certain statutory criteria. She said to receive

a certificate of authority, certain requirements must be met, including having and maintaining in the abstracter business a complete tract index and a copy of all instruments of record from the recorder's office in the county in which the entity is engaged in business; file a bond or abstracter's liability policy; have in charge an individual who holds a certificate of registration; and pay the certificate and examination fee. She said the board may schedule a hearing and examination of the plant records. She said notice of the examination is given in the county newspaper.

Ms. Cosgriff said to receive a certificate of registration, the individual must pass an examination that is written and administered by the board. She said upon passage of the examination, the individual must pay a certificate fee and must complete 18 hours of continuing education credits every three years to maintain the certificate. She said an individual issued a certificate of registration does not have the authority to issue abstracts of title. She said abstracts of title may only be issued by entities holding a certificate of authority, also known as the "plant license," and one of the conditions that must be met to obtain the certificate of authority is the need to employ at least one individual holding a certificate of registration. She said the board has the authority to deny a certificate application or discipline a certificate holder for certain reasons.

Ms. Cosgriff said the board may inspect an abstracter's records at any time to determine if the abstracter is complying with the board's rules. She said a timeliness standard of three weeks has been used to determine whether the abstracter is operating in a timely manner. She said a logbook is required to be maintained by an abstracter. She said the logbook provides the data necessary to determine if the three-week standard is being met. She said disciplinary measures the board may take include canceling or suspending a certificate of authority or certificate of registration, requiring additional education, establishing a mentor or monitor, restricting practice parameters, or imposing a fine of up to \$500 per violation. Until 2005, she said, the board did not have the authority to bring in a temporary abstracter when an abstract company or an individual abstracter lost a certificate due to a violation of the rules. She said the change to NDCC Section 43-01-23 grants the board the authority to issue a temporary certificate for someone willing to come in and perform the work in the affected county. She said the board may not charge a fee for the temporary license; however, the board may require additional security. She said the 2005 change also allows the board to establish a fund to provide for payment of additional expenses to an abstracter operating under a temporary certificate of authority. She said the board may use this fund to pay the expenses, including mileage, meals, and lodging, of an abstracter operating under a temporary certificate of authority. She said under Section 43-01-18, the maximum fees an abstracter may charge are \$10 per entry, \$5 per name certification,

\$10 if certifying lands in excess of one quarter section in the same abstract, and \$10 if certifying premises in more than one block in a subdivision in the same abstract. She said a person who violates Chapter 43-01 is guilty of a Class B misdemeanor. She submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Delmore, Ms. Cosgriff said the fund to cover expenses for a temporary certificate holder is funded by a one-time \$25 fee for each holder of a certificate of registration. She said the balance in the fund may not exceed \$5,000. She said if the fund is depleted, another assessment will be done. She said there is currently about \$3,400 in the fund. She said there are 123 certificates of registration. She said the fund has not yet been used.

In response to a question from Representative Meyer, Ms. Cosgriff said the board can review the abstracter's logbooks at any time. She said she is unsure if a logbook is a public record.

Chairman Klemin called on Ms. Laurie A. Wolf, Director of Licensing and Investigations, Insurance Department, for testimony regarding title insurance and the licensing of title insurance agents. Ms. Wolf said an applicant who is applying for a license for title insurance in North Dakota is exempt from the examination requirements if the applicant is a licensed abstracter or attorney or if the applicant has at least 80 hours of training provided by an insurance company licensed in the line of title insurance. She said there are statutory continuing education requirements for any person who is licensed in the lines of property, casualty, life and annuity, accident and health, personal lines, or crop insurance. She said a person who is licensed only for the line of title insurance is exempt from any ongoing continuing education requirements specific to insurance agents. She said, however, since many title agents are licensed as attorneys, they are subject to continuing education requirements to maintain their professional license as an attorney. She said there are about 400 title agents licensed by the state. She said about half of those are residents. She said the 200 licensed nonresidents are licensed under a reciprocal agreement with another state. She submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Wolf, Ms. Wolf said title agents are not required to post a bond. She said the federal Gramm-Leach-Bliley Act of 1999 changed the bonding requirements for the licensing of agents.

In response to a question from Representative Klemin, Ms. Wolf said limited line agents are exempt from continuing education requirements. She said major line agents, such as health and life insurance agents, are required to have 24 hours of continuing education. She said the insurance company often requires and provides continuing education to its agents.

Chairman Klemin called on Mr. Robert L. Stroup for testimony regarding the abstracters, title opinions, and title insurance study. Mr. Stroup said changes should be made to North Dakota's plant law--NDCC Section 26.1-20-05--to clarify that a certified abstract is required before title insurance may be issued. He said the plant law is needed to protect the residents of the state. He said North Dakota has the lowest title insurance rates because of this plant law. He said there also should be a change in the penalty provision of that section. He said the section requires the certificate of authority of the corporation to be revoked for a violation of the section. He said this section should refer to the agent to lose his or her license, not the corporation.

Mr. Stroup said there should be an examination of ways to regulate, control, and tax out-of-state companies that are making loans in North Dakota. He said these companies are not following North Dakota laws and the companies are charging for the work being done in connection with their loans. He said they are taking a lot of income out of North Dakota without paying any taxes. He said closing their loans here; collecting fees for services supposedly performed here, such as title searches; and writing title insurance on property in the state should be enough to require those companies to register in North Dakota, file reports with the state, and pay income taxes on the income they generate from the ancillary services.

In response to a question from Senator Nething, Mr. Stroup said the out-of-state companies are meeting the evidence of title requirement but may not be getting an abstract. He said it is dangerous to base title insurance on evidence other than an abstract. He said these companies are charging the purchaser a search fee that is about the same amount as an abstract update but without the accuracy of an abstract.

In response to a question from Representative Klemin, Mr. Stroup said NDCC Section 26.1-20-05 requires that the evidence of title must be examined by an attorney before the title insurance may be issued. He said some title insurance agents do not believe that the evidence of title must be an abstract, but rather can be any evidence of title. He said he would recommend that to remove this ambiguity, the section should be clarified to require a certified abstract to the current date. Regarding the title insurance agent issue, he said, Section 26.1-20-05 should be changed to provide for the individual agent's license for a violation, not the certificate of authority for the entire title insurance company. He said out-of-state companies should be required to file annual reports with some agency, such as the Attorney General, the Secretary of State, the Tax Department, or the Insurance Department, regarding the transactions conducted in the state.

In response to a question from Representative Klemin, Ms. Wolf said a company selling title insurance in the state without a certificate of authority

would be dealt with by the Insurance Department. She said there is no evidence of any title insurance companies doing business without the required certificate.

In response to a question from Representative Delmore, Mr. Stroup said South Dakota requires that the title insurance policy must be countersigned by an abstractor. He said Montana has similar requirements. He said Minnesota attorneys have told him that they wished Minnesota had North Dakota's system. He said because the abstract is updated with every transaction, the North Dakota system allows for defects to be corrected.

In response to a question from Senator Nething, Mr. Stroup said when the abstract step is not done, it is much more likely that there will be defects in the title. He said in these cases, a quiet title action is necessary.

Chairman Klemin called on Mr. Claus Lembke, Government Affairs Director, North Dakota Association of Realtors, for testimony regarding the study. Mr. Lembke said in the 1960s when loans were retained in-house by the lenders, every transaction required an updated abstract and title opinion before a loan would be approved. He said in the 1980s lenders started to sell the loans on the secondary market. In these cases, he said, the abstract was literally shipped to the new loan holder. He said about 95 percent of loans are being sold on the secondary market. He said the secondary market loan holders are dictating what is required and these loan holders want title insurance, not abstracts. He said there are two forms of title insurance--one type is for the lender and the other is for the homeowner. He said a duplication of fees should not happen. He said real estate agents in the state do not allow out-of-state lenders to charge duplicate fees. He said the current system should be kept as it is. He said the one change that should be made is that there should not be a duplication of fees.

In response to a question from Representative Delmore, Mr. Lembke said out-of-state lender scams should be reported to the Department of Financial Institutions.

In response to a question from Senator Nething, Mr. Lembke said the best way for a buyer to be protected in a real estate transaction is to use a professional, such as an attorney or a real estate agent.

Chairman Klemin called on Mr. Howard L. Malloy, Secretary, North Dakota Land Title Association, for testimony regarding the study. Mr. Malloy said the North Dakota Land Title Association, by a vote of its general membership at its January 13, 2007, meeting, opposed the use of the term "abstract of title" in place of "title evidence" in 2007 Senate Bill No. 2218. He said the association recommended the use of the term "certified title evidence." Senate Bill No. 2218 failed to pass the Senate. Mr. Malloy provided written testimony, a copy of which is on file in the Legislative Council office.

Chairman Klemin called on Mr. Dean Rindy for testimony regarding the study. Mr. Rindy said the purpose of the abstract and title opinion requirements is to protect the consumer. He said a stronger plant law leads to stronger enforcement of the title in the state. He said he would recommend certain changes to NDCC Section 26.1-20-05. He said the term "domestic corporation" should be changed to "person." He said title insurance should be referred to as "commitment to insure" and the term "title evidence" should be changed to "a certified abstract of title continued to the date on the commitment to insure." He said this would leave no room for interpretation and would give the most consumer protection. He said a violation of the section should apply to the individual violator, not the entire company. He said the Insurance Department should be given some discretion in revoking a license. In North Dakota, he said, the attorney issuing the title opinion is covered by malpractice insurance. In Minnesota, he said, the consumer may not have the protection of the attorney's malpractice insurance because the title opinion is not always done by an attorney. Mr. Rindy submitted a proposal for changes to Section 26.1-20-05, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Koppelman, Mr. Rindy said when determining liability for a loss, the policyholder may look to both the agent and the principal for the loss. He said he would not want to preclude holding the company liable. He said the use of the word abstract does not necessarily only refer to a physical paper document. He said the abstract can be in an electronic format.

In response to a question from Representative Klemin, Ms. Wolf said the title insurance company is issued a certificate of authority, whereas an agent is issued a license.

In response to a question from Representative Boehning, Mr. Rindy said master copies of abstracts are burned on tape that is housed offsite.

Chairman Klemin called on Mr. Steve Tomac, Farm Credit Services, for testimony regarding the study. Mr. Tomac said although North Dakota may have the lowest rates in the country for title insurance, when the additional cost of the abstract and the title opinion are included, the total cost to the consumer is no longer the lowest in the country. He said those total costs in Montana and South Dakota are substantially lower than in North Dakota. He said North Dakota is the only state that has the abstract and title opinion requirement for title insurance. He said this state's process results in a duplication of costs. He said consumers are not a driving force in getting this changed because the average consumer seldom needs these services. He said there is a need for the clarification of what title evidence means. He said consumers do not have a choice between abstracting and title insurance.

## COMMITTEE DISCUSSION

Representative Meyer said the committee should receive information regarding whether the logbooks of abstracters are an open record.

Representative Delmore said the committee should receive more information regarding the abstract fees and title insurance rates of Montana, South Dakota, and Minnesota and how those fees and rates compare to North Dakota.

Representative Wolf said the committee should receive information from the Department of Financial Institutions regarding the regulation of out-of-state lenders.

## STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM STUDY

Chairman Klemin called on Ms. Pam Schafer, Information Technology Department, for testimony regarding the statewide automated victim information and notification (SAVIN) system study. In December 2006, Ms. Schafer said the Information Technology Department submitted an application to the federal Bureau of Justice Assistance for a federal grant for a statewide automated information and notification system. In October 2007, she said, she received notification that North Dakota had been awarded the grant. She said at the October 30, 2007, meeting of the Budget Section, the Information Technology Department, on behalf of the Criminal Justice Information Sharing (CJIS) Initiative, requested authorization for an increase of \$1.4 million in federal spending authority. She said the Budget Section requested that CJIS refine the future costs of implementing a SAVIN system. She said the Budget Section also delayed the authorization of the spending authority until the Judiciary Committee had the opportunity to make a recommendation regarding SAVIN. She said she is looking for support from the Judiciary Committee to take forward to the Budget Section.

Ms. Schafer said CJIS has gathered information necessary to have a preliminary cost proposal to implement a SAVIN system. She said the awarding of the grant is conditioned upon a dollar-for-dollar match. She said the update to the Supreme Court's USIS system qualifies as an in-kind match. She said the Supreme Court received an appropriation in the 2007 legislative session to update the USIS system.

Ms. Schafer said the ongoing costs of the program are \$423,998 per year or \$847,996 for a biennium. She said the project has a proposed starting date of mid-March 2008. She said the initiation and planning phase of the project will start in mid-March if spending authority is approved by the Budget Section. She said the project is expected to have a two-year implementation cycle. She said grant funds must be expended by June 2009 with the potential for a one-year extension. She submitted information regarding

the grant application, a copy of which is on file in the Legislative Council office.

Chairman Klemin called on Mr. Troy Fleck, Burleigh County Sheriff's Department, for testimony regarding the SAVIN system. Mr. Fleck said he works with victims of domestic violence. He said he serves protection orders and investigates personal crimes, such as domestic assaults and violations of protection orders. He said he understands the value of a SAVIN system. He said law enforcement spends a great deal of time notifying domestic violence victims about the status of an abuser or offender. He said the status notification includes notifying the victim when protection orders have been served and when an abuser is released from jail. He said these services can be streamlined in an automated system. He said 47 other states use an automated system. He said an automated system would allow law enforcement and detention staff to better use their time in providing emergency services, serving protection orders, investigating crime, and attending to the ever-growing jail population. He said the information provided to a victim is not only a right, but it also may be the only thing that keeps a victim feeling safe and able to continue with everyday life. He said the SAVIN system will require the victim to take an active role in obtaining information about a case. He submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Klemin called on Ms. Shelley Carlson, North Dakota Council on Abused Women's Services/North Dakota Coalition Against Sexual Assault, for testimony regarding the SAVIN system. Ms. Carlson said she has worked with North Dakota law enforcement to develop a model domestic violence policy in the state and that she has helped establish domestic violence safety and accountability audit sites throughout the state. She said her professional experience has helped her gain firsthand knowledge of the need victims have to be kept informed of the criminal case involving their victimization. She said for victims of domestic violence and sexual assault, their safety and security depend on access to timely information of the criminal case proceeding and the service of protection orders. In 2006, she said, domestic violence advocacy programs assisted 754 individuals in seeking emergency protection orders. She said when a victim seeks a protection order, advocates work with the victim to develop a safety plan that is primarily based on the victim's past experience with the offender but also seeks to predict how the offender may react when served with the order. She said it is imperative for a victim to know when the protection order was served and how the offender reacted in order for the victim to determine which safety plan option to implement, such as go to a shelter or stay in the residence. She said the protection order victim notification is necessary for the safety and security of not only domestic violence victims but for all victims. She said information gathered through the enhanced

communication between the criminal justice system and victims will lead to the establishment of better rapport with victims, an increased level of trust in the criminal justice system, and the ability for victims to be empowered through knowledge. She said a SAVIN system will empower victims with knowledge and allow victims to better determine their needs in regard to the safety and security of their lives. She submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Klemin called on Ms. Deborah Tibiatowski, Victim Witness Coordinator, Cass County State's Attorney's office, for testimony regarding SAVIN. Ms. Tibiatowski said she supports a SAVIN system. She said many victims are not notified of any criminal procedures and may not be aware that their offender has been charged with a crime. She said many rural counties do not have the resources to provide services to victims. She said in Cass County, two victim witness coordinators work almost exclusively with personal crimes. She said with the SAVIN system, prompt notification of release can be made. She said this will give victims some sense of security and control over their lives. She said the system would also provide a way to track victims for statistical purposes. She said a SAVIN system would help ensure that counties are following the fair treatment standards for victims and witnesses set forth by NDCC Section 12.1-34-02. She submitted written testimony, a copy of which is on file in the Legislative Council office.

In response to a question from Representative Meyer, Ms. Tibiatowski said in 2007 in Cass County there were about 650 domestic violence cases and about 1,200 other personal crimes.

In response to a question from Representative Klemin, Ms. Tibiatowski said she notifies victims of court proceedings. She said with the SAVIN system, the process will be faster and more timely.

Chairman Klemin called on Ms. Sharon Collins Schmidt for testimony regarding a SAVIN system. Ms. Schmidt said her daughter, Sherri Collins, was shot and killed in Bismarck nearly 28 years ago. She said the man responsible for her daughter's death, Dennis Houle, is in the State Penitentiary. She said when Mr. Houle escaped from prison in 1982, she first heard about the escape on the radio. She said she was never notified by the prison staff. She said Mr. Houle escaped again in 1996. She said her mother saw the story about the escape on television. She said she was never contacted by the prison staff about the second escape. She said when Mr. Houle violated his parole in 2006, she was notified by Ms. Amy Vorachek of the Victim Services Division of the Department of Corrections and Rehabilitation. She said she was very grateful for that call. She said Mr. Houle has appeared before the Parole and Pardon Board more than 20 times. She said each time this occurs there should be a notification of the upcoming appearance and a notification of the outcome. She said the victim has the right to be the

first to be notified when there is any information about the criminal. She said there were many times she picked up the morning paper to read something about Mr. Houle about which she had not been informed. She said a SAVIN system could prevent this from happening. She said victim service providers cannot be working around the clock. She said the notification system would allow victim service providers to spend more time on providing other victims' services. She said the state needs to move in a more positive direction to help crime victims. She said the victim should be embraced and brought "into the loop." She said this system would enable a victim to feel more in control of the situation which would help alleviate some of the victim's frustration. She said the state spends a lot of money on the offender. She said the offenders seem to have an endless number of rights; the victims have very few. She said this system would be a great tool in supporting crime victims' rights. She submitted written testimony, a copy of which is on file in the Legislative Council office.

Chairman Klemin called on Ms. Vorachek for testimony regarding the implementation of a SAVIN system. Ms. Vorachek said the department serves about 1,200 persons per year who are the victims of personal and property crimes. She said many victim service programs are funded by grants. She said with a SAVIN system, victim service providers would have more time to provide more direct services to victims. She said offenders go through many status changes, such as charges, hearings, trials, sentencing, parole, probation, and work release. She said a SAVIN system would provide the victim with information about these status changes.

In response to a question from Senator Nelson, Ms. Schafer said CJIS would contract with a vendor for the SAVIN services. She said the research indicates that there is only one vendor--Appriss, Inc.--capable of providing the services needed. She said Appriss, Inc., is the only company with an existing service that meets the federal grant requirements and provides victim notification services in 44 states. She said it is likely that CJIS would attempt to negotiate a two-year to five-year contract with this company. She said the estimated yearly cost of the vendor is \$311,150. She said Appriss, Inc., has worked hand in hand with the federal Bureau of Justice in establishing SAVIN systems. She said the estimate is comparable to an estimate given to the Department of Corrections and Rehabilitation several years ago when the department was considering the establishment of an automated system. She said the company provides 24-hour support services.

In response to a question from Representative Wolf, Ms. Schafer said one of the factors considered in the estimate is the number of protection orders issued in the state. She said those numbers have been fairly consistent over the past six or seven years.

In response to a question from Senator Oehlke, Ms. Schafer said the law provides that the state is not liable for the failure to contact a victim. She said CJIS

would work with risk management regarding the contract with Appriss, Inc. She said Appriss, Inc., has not had a problem with claims of victim injury because of a failure of a victim to be contacted.

In response to a question from Representative Boehning, Ms. Schafer said under the SAVIN system, it would be the responsibility of the victim to sign up for the notification and to keep contact information updated. She said under a SAVIN system, the information would be updated on a daily basis. She said the system does not replace victim coordinators but rather it gives them another tool to assist victims.

In response to a question from Senator Fiebiger, Ms. Schafer said Appriss, Inc., has been in business since the late 1990s.

In response to a question from Representative Boehning, Ms. Vorachek said the system would not require the victims to periodically update their information. Rather, she said, it will be the responsibility of the victim to keep his or her information updated. She said some victims do not care if they are contacted. She said if a victim wants to be notified, the victim will keep his or her contact information current.

At the request of Chairman Klemin, committee counsel distributed a letter provided by Mr. Glen D. Ellingsberg, Cass County Jail Administrator. In his letter, Mr. Ellingsberg said a SAVIN system will provide local jurisdictions another means to notify victims of crimes as required under NDCC Chapters 12.1-34 and 12.1-35. Mr. Ellingsberg said the system would be extremely helpful to many of the local jails that do not have an automated notification process. He said other counties, such as Cass County, have an automated process in place and the SAVIN system will allow those to input information and provide a secondary means of notification. He said Cass County supports the implementation of a SAVIN system and said the state should accept the grant. A copy of Mr. Ellingsberg's letter is on file in the Legislative Council office.

At the request of Chairman Klemin, committee counsel distributed a letter from Mr. Bret L. Burkholder, Administrator, Grand Forks County Correctional Center. In his letter, Mr. Burkholder said before his employment with Grand Forks County, he was employed as the deputy administrator of Tri-County Community Corrections in Crookston, Minnesota. He said it was in this role that he became familiar with Appriss, Inc., and the company's victim information and notification system. He said he worked with Appriss, Inc., to develop an interface that would have the ability to pull specific information from the department's data base to the Appriss system. He said some of the advantages of the Appriss system are that there is no limit to the number of victims who can register to be notified, registration is simple and free, individuals can register multiple telephone numbers in the system, the system can differentiate between a live person and an answering machine and will continue to call attempting to reach a "live" person,

notification does not tie up staff time, and anyone can register as a victim to be notified. He said from the company's main office, Appriss, Inc., monitors the uploads from all facilities and when there is an unusual amount of time without any releases from a facility, the company calls to verify the system is operating properly. A copy of his testimony is on file in the Legislative Council office.

## COMMITTEE DISCUSSION

**It was moved by Senator Oehlke, seconded by Representative Dahl, and carried on a roll call vote that the Judiciary Committee recommend that the Budget Section authorize the Information Technology Department to accept the federal grant and to expend the funds in the grant for the SAVIN project.** Representatives Klemin, Boehning, Dahl, Delmore, Heller, Kingsbury, Kretschmar, Schneider, and Wolf and Senators Fiebiger, Nelson, Oehlke, and Olafson voted "aye." No negative votes were cast.

## CRIME VICTIMS COMPENSATION FUNDING STUDY

Chairman Klemin called on Mr. Charles Placek, Department of Corrections and Rehabilitation, for testimony regarding the crime victims compensation funding study. In 1993 Mr. Placek said the crime victims compensation program was moved from the Workers Compensation Bureau to the Department of Corrections and Rehabilitation. He said at that time, the program had a legislatively authorized appropriation of \$426,403. He said since 1993 increases in funding have been requested. He said in the 1995-97 biennium, the program implemented an 80 percent pay policy. He said under this policy, the program asks vendors to write off 20 percent of their medical bill and the program pays the remaining 80 percent. He said this policy has worked well and he commends the state's medical community in assisting victims. He said additional funding is needed for this program. He said medical costs have increased since 1993. He said the current funding source for the program is federal funds, gifts, donation, restitution, inmate industry salaries, offender supervision fees, and other correctional fees. He said all states have a crime victims compensation program. He said the states vary in the amount they pay victims and how they fund their programs. He said if the committee is looking at special funding for the program, he would suggest that consideration be given to the possibility of collecting a fee. He said states that have dedicated fees that do well are states that assess the fee to the largest number of people using the smallest fee possible to generate the income needed. He also provided information to the committee regarding the offender fee schedule and the number of victims who received the maximum amount of benefits. Copies of this information and his testimony are on file in the Legislative Council office.

In response to a question from Representative Koppelman, Mr. Placek said if the court orders restitution and the restitution is paid, that money is deposited into Crime Victims Gift Fund No. 372. He said the court order can state that the amount of the restitution is to be determined at a later date. He said many victims have no other source for payment than the crime victims compensation program. He said the program's funding level of \$426,403 has been the same since 1993. He said the program needs about \$900,000 per biennium. He said whatever amount is provided by the state is matched two years later by the federal grant.

### **COMMITTEE DISCUSSION**

In response to a question from Senator Fiebiger, Mr. Placek said he would provide to the committee information on what other states are doing to fund

their crime victims compensation programs. He said he would recommend a fee source to fund the program.

### **OTHER BUSINESS**

Chairman Klemin said the meeting of the committee which was scheduled for July 15, 2008, has been rescheduled for June 25, 2008.

No additional business appearing, Chairman Klemin adjourned the meeting at 3:45 p.m.

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Vonette J. Richter  
Committee Counsel

ATTACH:1