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Testimony on HB 1121
House Judiciary Committee
January 18, 2021

Chairman Klemin and Members of the Committee:

We, Sandra Kuntz and Christina Sambor, both family law attorneys in central and western North Dakota, submit this testimony in opposition to HB 1121. While this new legislation attempts to bring uniformity in the division and distribution of divorce estates, this bill will bring about unintended consequences for spouses across the state. The testimony of Ms. Pladson does an excellent job of laying out how the division of marital property is presently treated in ND. As is appropriate for the thousands of families impacted by divorce, courts and counsel currently look to equitably divide marital property, based on the facts and circumstances of each case. In contrast, HB 1121 creates rigid categories of property that cannot take into account facts of a particular case that would make application of those categories wholly unfair. Simply put, the law as it currently stands allows parties due process and the opportunity to argue before the court regarding how their assets can be fairly divided. The standard proposed by HB 1121 removes any standard of discretion or fairness.

In HB 1121, discretion is removed from the Court to balance in factors that have long standing recognition as bringing “value” to a marriage and the financial partnership involved. By example, the Ruff-Fisher factors, which Courts currently use to divide the marital estate, list the following to be considered: the respective ages of the parties, their earning ability, the duration of the marriage and conduct of the parties during the marriage, their station in life, the circumstances and necessities of each, their health and physical condition, their financial circumstances as shown by the property owned at the time, its value at the time, its income-producing capacity, if any, whether accumulated before or after the marriage, and such other matters as may be material.

This discretion traditionally held by the Court balances various scenarios of a North Dakota family, such as:

- The stay at home parent who provides daycare; home schooling; transportation of the family to school, medical appointments, shopping, etc;
- The stay at home spouse who provides household services such as cooking, cleaning, laundry, shopping for necessities, maintenance and repairs around the home;
- The spouse who contributes substantial labor and services to a business, farm, or ranch but was not the inheriting spouse.

Additionally, the significant change this new legislation will bring to the law will generate extensive litigation. For example, even the effective date of this law has potential to be challenged. A couple who may have married prior to the enactment of this new law may have relied upon the law in existence at the time of their marriage. If that law was a balancing of the factors under the Ruff-Fisher guidelines noted above, they may have a reliance claim as part of

the consideration for the marriage. Then does the law in effect at the time of entry into their marital contract become the binding law for their case and the new law applicable only to those who marry after the effective date of the new law? As another example of questions that could produce litigation: Does the language as written mean that there can be no "interim spousal support" ordered by the court because of the language of 1 b provides that income from all "excluded marital property" will no longer be available for distribution?

The language in HB 1121 will remove a Court's discretion to rule on property distribution through an examination of the facts and circumstances of the parties. This will undoubtedly result in grossly unfair outcomes for many divorcing parties, and those parties negatively effected will not even be given a chance to discuss their particular circumstances with the Court. The unfairness caused by the proposed changes would open up a Pandora's box of litigation challenging and clarifying the language in this bill. For those reasons, we respectfully ask that the Committee recommend a "do not pass" vote on HB 1121.