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Deanna Hollrath 10/2/03
Operator's Signature Date

2003 HOUSE HUMAN SERVICES

HB 1175

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1175**

House Human Services Committee

☐ Conference Committee

Hearing Date **January 13, 2003**

Tape Number	Side A	Side B	Meter #
1	x		0.6-9.6
1	x		46.8-55.5
1		x	0.1-11.7
Committee Clerk Signature	Sharon Renfrew		

Minutes:

Rep. Ekstrom appeared as prime sponsor in support of the bill with written testimony, as well as copies of the statue and its provisions. Also attached is documentation from Birch Burdick, who is the Cass County State's Attorney. Rep. Ekstrom states that this bill rescinds Century Code Section 12.1-20-10 which deals with Unlawful Cohabitation and that no has been charged with a violation since 1938.

Discussion was made as to population of who might be living together, ex. senior citizens because of social security laws and financial reasons and; in reference to the Supreme Court decision if this is in regards to someone not wanting to rent to an individual that is not married. It was noted that this bill does not affect that previous statute.

No one more appeared in favor of this bill and no one appeared in opposition.

Rep Potter wondered why we need this if the law is fairly unenforceable, as well as Rep. Weisz being concerned with this changing how the courts deal with landlords that do not want to rent to unmarried couples.

Discussion was also made in reference to the bill Rep. Kasper sponsored last session and if this was addressing that, and that this bill does affect disabled people living together because of SSI (Social Security Income), they can't afford not to.

Rep. Niemeier made a motion of **DO PASS**, seconded by Rep. Potter. Vote of 12-yes, 1-no, 0-absent. Rep. Niemeier will carry the bill.

Judy Roberts, the Human Services Intern gave explanation of the bill which talks about renting and landlords rights where they added subsection 4 where nothing in this chapter prevents a person from refusing to rent a dwelling to 2 unrelated individuals of opposite sex and who are not married to each other.

Further discussion and comments on when did the court make a ruling that connected renting and cohabitation, this being an unenforceable statute, the fines, concerns of this bill passing that the issue of the rental would or could be challenged and defeated, with a possibility of taking this to court and challenge it based on the fact that we removed the cohabitation issue, or the fact that if they were of the same sex, they couldn't be denied but if the opposite sex, they could be.

Rep. Neimeier noted that she doesn't see the clear intent of these 2 things, and wants to know where the clear intent is that says we did not address the cohabitation in the last session.

Rep. Price notes that we are considering two separate issues and that our intent is not in the landlord rights area as we are only looking at the cohabitation area.

Rep Uglem asked if it would be best if it becomes a problem to address it in the rental section of the law instead of here anyway? or is that not an option while we discuss this.

Discussion of Legislative intent and the committee's intent, proper protocol and wondered if the Supreme Court took this into consideration, the rental property rights if we put our intent in the minutes.

Rep. Pollert noted that he wanted to make sure that the rental property rights were still in place and if not, then he would want to make further discussion to change it.

Rep. Weisz had a concern with the fact that if we repeal this, that's the question that would maybe come before the court. Did that then give clear intent that we intended to eliminate the clarification part and maybe use it concerning rental. Because if they use it now, feels it should be eliminated. Concerns of making it clear legislative intent.

Judy Roberts, Intern stated that subsection 4 will hold clear unless challenged.

Date: 1-13-03

Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1175

House HUMAN SERVICES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Niemeier Seconded By Potter

	Representatives	Yes	No	Representatives	Yes	No
✓	Rep. Clara Sue Price - Chair	✓		Rep. Sally Sandvig ✓	✓	
✓	Rep. Bill Devlin, Vice-Chair	✓		Rep. Bill Amerman ✓	✓	
	Rep. Robin Weisz		✓	Rep. Carol Niemeier ✓	✓	
✓	Rep. Vonnie Pietsch	✓		Rep. Louise Potter ✓	✓	
✓	Rep. Gerald Uglem	✓				
✓	Rep. Chet Pollert	✓				
✓	Rep. Todd Porter	✓				
✓	Rep. Gary Kreidt	✓				
✓	Rep. Alon Wieland	✓				

Total (Yes) 12 No 1

Absent 0

Floor Assignment Rep. Niemeier.

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

REPORT OF STANDING COMMITTEE (410)
January 13, 2003 11:32 a.m.

Module No: HR-05-0470
Carrier: Niemeier
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1175: Human Services Committee (Rep. Price, Chairman) recommends DO PASS (12 YEAS, 01 NAY, 0 ABSENT AND NOT VOTING). HB 1175 was placed on the Eleventh order on the calendar.

2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1175

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1175**

Senate Government and Veteran's Affairs Committee

☐ Conference Committee

Hearing Date 03/07/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		0-4530

Committee Clerk Signature Lisa Thyon

Minutes:

Senator Karen Krebsbach, Chairman opens HB 1175. Senator Fairfield is absent.

Representative Mary Eckstrom introduces bill (Testimony attached)

Senator Dever: On May 19th my wife and I will celebrate 25 years of marriage. Marriage is a commitment. Children with them bring on a obligation. The best way to meet the obligation is to honor the commitment. Vital Statistics gave me some numbers, in 1985 114 of every 1000 births in ND were out of wedlock. In 2001 that rose to 278. I guess my question is do you share my concern that the repeal of the cohabitation law will denigrate the institution of marriage by legitimizing relationships.

Eckstrom: I too just celebrated 25 years of marriage. My children have all married. I am pleased about that. I so think that represents the strong bond that we all provide. My point of removing this from statue is not to denigrate marriage or the value of marriage. The problem is we have a statue that is not viable. It makes these people criminals. You have college students sharing

apartments, they do that for a variety of reasons, mostly economics. Unless you are going to create a whole new section of police force this is not something you can prove. Even if there is children you would have to prove they are living as man and wife. People may want to get a loan, etc. We can't be stopped by the fact that we are not married. They have not been anyone convicted of this for decades.

Senator Dever: Do we by repealing this law legitimize the relationship?

Eckstrom: I dont' believe erode marriage in anyway by taking the law of the books.

Senator Brown: to me it seems like an answer looking for a question. Why now after all these years?

Eckstrom: Because of 2 separate incidences, there are inmates who for some reason has not divorced there husband or wife. They have found out that their spouse has gone off and ended up living with someone else. They in turn are jealous and try to get them convicted of this crime.

Senator Brown: I spoke to an attorney regarding this and he seemed to have thought this would be unconstitutional to have this law.

Eckstrom: Even if it was declared unconstitutional, we would still have to take it off the books.

Senator Nelson: Define "notoriously"

Eckstrom: If you are living notoriously with someone else you then are not hiding it and everyone else knows it.

Senator Dever: My concern is the children that result from a relationship with or without a marriage, in a termination of the relationship. With cohabitation all it is a matter of someone walking out the door.

Eckstrom: I served on family law. We spent a lot of time on the supportive parent. You obviously know who mom is but father can be a question. With our child support systems we are insuring as much as we can that they have to be provided by both spouses.

Senator Krebsbach: Basically our law would allow people of opposite sex to live together is they are not cohabiting?

Eckstrom: That is correct. If they are not having intimate relations they are free to live together by today's law. The problem is we have to prove that they are having intimate relations in order to prosecute this law.

Senator Nelson: this is under the sexual offenses section? So these 11,379 people, it would be interesting to know how many are my age and older, because they are living together so they don't lose their social security checks, protection,etc.

Carol Two Eagles, in support, They are a number of reasons to not get married, and my grandmother lived with someone and always told me what happens in her house is "none of my business."

Opposition

Representative Margaret Sitte, (Testimony attached)

Senator Brown: Why did this pass the house?

Sitte: I believe it was an overlook by a lot of people and by the time it was up it was to late.

Representative Pat Galvin: This bill slipped through the house with very little comment. I feel a little guilty about not speaking up about this. I think there is something wrong with the word cohabitation. Some tuning up of the bill may work but I do not want to see this repealed. I am worries about the direction we a setting if we repeal this.

Senator Krebsbach: Do you think words retained in here are going to take care of the problem or somewhere else in society that will take care of it.

Galvin: After listening to Rep. Eckstrom I can see where this law does almost nothing. But it does retain some stigma. Until we find something else to replace it I think we should leave it there.

Senator Krebsbach: What about same sex cohabitation?

Galvin: I guess I am old fashioned enough to not understand that.

Closed HB 1175

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1175**

Senate Government and Veterans Affairs Committee

❑ Conference Committee

Hearing Date 03/27/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		3350-4540
Committee Clerk Signature			

Minutes:

Senator Karen Krebsbach, Chairman reopens HB 1175. All senators present.

Senator Wardner moves for a Do Not Pass

Senator Dever 2nd

Senator Nelson: There are 11,000 people living in this state that would be guilty of this and about have of my constituents.

Senator Dever: It is obviously not been enforced but I feel there is a place for this bill.

Senator Nelson: We are not just talking about young people but old ones too.

If it is going to exist I don't think it should be in this chapter of sexual assault.

Vote: 3 Yes 3 No

Senator Krebsbach: We talk about people not wearing seat belts, but they are prosecuted for that. This is unenforceable and we are wasting court time trying to prosecute them. I think the morality does not belong in the books it belongs in our religion and society in general.

Senator Dever: I agree but some people look to our law for that.

Senator Nelson moves for a Do pass

Senator Fairfield 2nd

3 Yes 3 No

Senator Dever moves for a no recommendation

Senator Wardner 2nd

6 Yes 0 No

Carrier : Senator Dever

Date: 3/27
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1175

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number ~~Do Not Pass~~

Action Taken Do Not Pass

Motion Made By Wardner Seconded By Dever

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.		✓	Senator April Fairfield		✓
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson		✓
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 3 No 3

Absent

Floor Assignment

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

Date: 3/27
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1175

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Nelson Seconded By Fairfield

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield	✓	
Senator Dick Dever, Vice Chr.		✓	Senator Carolyn Nelson	✓	
Senator Richard Brown		✓			
Senator Rich Wardner		✓			

Total (Yes) 3 No 3

Absent

Floor Assignment

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

Date: 3/27
Roll Call Vote #: 3

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1175

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Recommendation

Motion Made By Dever Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield	✓	
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson	✓	
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Dever

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

REPORT OF STANDING COMMITTEE (410)
March 27, 2003 10:14 a.m.

Module No: SR-55-5891
Carrier: Dever
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1175: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends **BE PLACED ON THE CALENDAR WITHOUT RECOMMENDATION** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1175 was placed on the Fourteenth order on the calendar.

2003 TESTIMONY

HB 1175

HB 1175 Unlawful Cohabitation
ND House / Human Services Committee
Fort Union Room / Chair Clara Sue Price
January 13, 2003

Good Morning, I am Representative Mary Ekstrom from District 11 in Fargo. Madame Chair and Members of the Human Services Committee, I am here to introduce HB 1175 for your consideration.

HB 1175 rescinds Century Code Section 12.1-20-10 which deals with Unlawful Cohabitation. I have provided you with copies of the statute and its provisions.

In my discussions with my State's Attorney in Cass County and others in the State, it is clear that this law is unenforceable and should be removed from the code. I have included the documentation from Birch Burdick in your packet.

No one has been charged with a violation since 1938. According to the 2000 Census, there are 11,379 citizens who indicated that they are living with an unmarried partner here in North Dakota.

I don't believe, however, that this is a question of morality. Rather it is abridgement of the implied freedom of association protected the First Amendment of the U.S. Constitution. The first amendment allows us to freely associate with anyone as long as you are not involved in criminal activity.

I would request that give a DO PASS to House Bill 1175. I would be happy to answer any of your questions.

or wife, the general criminal procedure of the court was invoked, and the husband or wife had no further control of the prosecution. State v. Beck, 52 N.D. 391, 202 N.W. 857 (1925).

Definition.
The term adultery had no technical meaning in law distinct from its significance in its ordinary and popular sense. State v. Hart, 30 N.D. 368, 152 N.W. 672 (1915).

Information Sufficient.
In an information charging the crime of adultery it was not necessary to allege that

Adultery ⇐ 1 et seq.
2 Am. Jur. 2d, Adultery and Fornication, § 1 et seq.
2 C.J.S. Adultery, § 1 et seq.
Mistaken belief in existence, validity, or effect of divorce or separation as defense to prosecution for adultery, 56 A.L.R.2d 915.
Reversal of divorce decree: cohabitation under marriage contracted after divorce decree as adultery, where decree is later reversed, or set aside, 63 A.L.R.2d 816.
Validity of statute making adultery and fornication criminal offense, 41 A.L.R.2d 1338.

12.1-20-10. Unlawful cohabitation. A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.

Source: S.L. 1973, ch. 117, § 1.

DECISIONS UNDER PRIOR LAW

"Open and Notorious."
In a prosecution for openly and notoriously living and cohabiting together as husband and wife, without being married, it was not necessary that the living together should be more open and notorious than the living together of a married couple, but it should have partaken of the same quality. State v. Hoffman, 68 N.D. 610, 282 N.W. 407 (1938).
The terms "open" and "openly" meant undisguised and unconcealed as opposed to hidden and secret; the term "notoriously" meant generally known, as a matter of common knowledge in the community where the defendants were living; and the term "cohabit as husband and wife" merely meant having intercourse with each other the same as husband and wife would have. State v. Hoffman, 68 N.D. 610, 282 N.W. 407 (1938).

Under a charge of cohabitation, the state had to prove the parties were not married to each other, but this could be proved by circumstantial evidence. State v. Hoffman, 68 N.D. 610, 282 N.W. 407 (1938).

Collateral References.
Fornication ⇐ 1 et seq.; Lewdness ⇐ 1 et seq.
2 Am. Jur. 2d, Adultery and Fornication, § 1 et seq.
37 C.J.S. Fornication, § 1 et seq.; 53 C.J.S. Lewdness, § 1 et seq.
Mistaken belief in existence, validity, or effect of divorce or separation as defense to prosecution for unlawful cohabitation, 56 A.L.R.2d 915.
Validity of statute making adultery and fornication criminal offense, 41 A.L.R.2d 1338.

12.1-20-11. Incest. A person who intermarries, cohabits, or engages in a sexual act with another person related to him within a degree of consanguinity within which marriages are declared incestuous and void by section 14-03-03, knowing such other person to be within said degree of relationship, is guilty of a class C felony.

CASS COUNTY GOVERNMENT

State's Attorney

Birch P. Burdick

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January 12, 2003

Rep. Mary Ekstrom
ND State Legislature
Bismarck, ND

Re: House Bill No. 1175

Dear Rep. Ekstrom:

I have had an opportunity to review the referenced legislation which proposes to repeal N.D.C.C. §12.1-20-10 (unlawful cohabitation). The existing statute makes it a criminal act for a person to live "openly and notoriously" with someone of the opposite sex "as a married couple" without being married.

I offer herein no comment on cohabitation as a moral issue. However, I will share some information I have reviewed on cohabitation as a criminal issue. While that review may not have been exhaustive in scope, I believe it is a fair reflection of the matter in North Dakota law.

- Almost all the reported legal cases referencing cohabitation relate to its impact on family law matters or "fair housing", not as a crime. The only reported appellate case arising from a criminal trial for cohabitation dates from 1938. State v. Hoffman, 282 N.W.407.

- The North Dakota Supreme Court recognizes that while a prosecutor may exercise great discretion in initiating prosecutions, there are some limits on that discretion. Olsen v. Koppy, 1999 ND 87. In Olsen, the Supreme Court found that a prosecutor was not required to charge an alleged cohabitation based upon the facts of that case, but referenced a 1902 case in saying that prosecutors may not categorically refuse to prosecute one kind of crime, such as cohabitation. However, the North Dakota Supreme Court also acknowledges there is a "near universal" lack of enforcement of cohabitation laws. Baker v. Baker, 1997 ND 135.

- The Supreme Court in Baker goes on to say in a footnote that the U.S. Bureau of the Census (1996) reported that

within the U.S. in 1970 there were 523,000 unmarried couples of the opposite sex sharing the same household, compared to 44,598,000 married couples. By 1995 the number of unmarried couples increased more than 700% to 3,668,000 while married couples increased "barely 23%" to 54,937,000.

From my quick review of the U.S. Census data for 2000, it appears there are 11,379 "unmarried partners" living together in North Dakota (copy attached). I have not reviewed any analysis of those numbers. While I assume not all of those people would be in violation of the cohabitation law, I would guess a great percentage of them may well be. (Note: The North Dakota data is very consistent, as a percentage of the state's population, with the national data (copy attached).)

This information is provided as a general background to help inform your ongoing discussions of the referenced legislation.

Yours truly,

Birch P. Burdick
Cass County State's Attorney

Encl.: as stated

Table DP-1. Profile of General Demographic Characteristics: 2000

Geographic Area: North Dakota

[For information on confidentiality protection, nonsampling error, and definitions, see text]

Subject	Number	Percent
Total population	642,200	100.0
SEX AND AGE		
Male	320,524	49.9
Female	321,676	50.1
Under 5 years	39,400	6.1
5 to 9 years	42,982	6.7
10 to 14 years	47,464	7.4
15 to 19 years	53,618	8.3
20 to 24 years	50,503	7.9
25 to 34 years	76,867	12.0
35 to 44 years	98,004	15.3
45 to 54 years	85,431	13.3
55 to 59 years	28,928	4.5
60 to 64 years	24,507	3.8
65 to 74 years	45,901	7.1
75 to 84 years	33,851	5.3
85 years and over	14,726	2.3
Median age (years)	36.2	(X)
18 years and over	481,361	75.0
Male	237,953	37.1
Female	243,398	37.9
21 years and over	447,103	69.6
62 years and over	109,097	17.0
65 years and over	94,478	14.7
Male	39,881	6.2
Female	54,597	8.5
RACE		
One race	634,802	98.8
White	593,161	92.4
Black or African American	3,916	0.6
American Indian and Alaska Native	31,329	4.9
Asian	3,606	0.6
Asian Indian	822	0.1
Chinese	806	0.1
Filipino	643	0.1
Japanese	186	-
Korean	411	0.1
Vietnamese	478	0.1
Other Asian [1]	460	0.1
Native Hawaiian and Other Pacific Islander	230	-
Native Hawaiian	52	-
Guamanian or Chamorro	30	-
Samoan	52	-
Other Pacific Islander [2]	96	-
Some other race	2,540	0.4
Two or more races	7,398	1.2
Race alone or in combination with one or more other races: [3]		
White	599,918	93.4
Black or African American	5,372	0.8
American Indian and Alaska Native	35,228	5.5
Asian	4,997	0.8
Native Hawaiian and Other Pacific Islander	475	0.1
Some other race	4,042	0.6

Subject	Number	Percent
HISPANIC OR LATINO AND RACE		
Total population	642,200	100.0
Hispanic or Latino (of any race)	7,786	1.2
Mexican	4,286	0.7
Puerto Rican	507	0.1
Cuban	250	-
Other Hispanic or Latino	2,734	0.4
Not Hispanic or Latino	634,414	98.8
White alone	588,149	91.7
RELATIONSHIP		
Total population	642,200	100.0
In households	618,580	96.3
Householder	257,152	40.0
Spouse	137,433	21.4
Child	182,394	28.4
Own child under 18 years	152,563	23.8
Other relatives	12,947	2.0
Under 18 years	4,980	0.8
Nonrelatives	28,643	4.5
Unmarried partner	11,379	1.8
In group quarters	23,631	3.7
Institutionalized population	9,688	1.5
Noninstitutionalized population	13,943	2.2
HOUSEHOLD BY TYPE		
Total households	257,152	100.0
Family households (families)	166,150	64.6
With own children under 18 years	80,453	31.3
Married-couple family	137,433	53.4
With own children under 18 years	62,002	24.1
Female householder, no husband present	20,148	7.8
With own children under 18 years	13,639	5.3
Nonfamily households	91,002	35.4
Householder living alone	75,420	29.3
Householder 65 years and over	29,487	11.5
Households with individuals under 18 years	83,975	32.7
Households with individuals 65 years and over	63,607	24.7
Average household size	2.41	(X)
Average family size	3.00	(X)
HOUSING OCCUPANCY		
Total housing units	299,677	100.0
Occupied housing units	257,152	85.8
Vacant housing units	32,525	11.2
For seasonal, recreational, or occasional use	8,340	2.9
Homeowner vacancy rate (percent)	2.7	(X)
Rental vacancy rate (percent)	8.2	(X)
HOUSING TENURE		
Occupied housing units	257,152	100.0
Owner-occupied housing units	171,299	66.6
Renter-occupied housing units	85,853	33.4
Average household size of owner-occupied units	2.60	(X)
Average household size of renter-occupied units	2.02	(X)

- Represents zero or rounds to zero. (X) Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] In combination with one or more of the other races listed. The six numbers may add to more than the total population and the six percentages may add to more than 100 percent because individuals may report more than one race.

Source: U.S. Census Bureau, Census 2000.

Table DP-1. Profile of General Demographic Characteristics: 2000

Geographic Area: United States

[For information on confidentiality protection, nonsampling error, and definitions, see text]

Subject	Number	Percent
Total population	281,421,906	100.0
SEX AND AGE		
Male	138,053,563	49.1
Female	143,368,343	50.9
Under 5 years	19,175,798	6.8
5 to 9 years	20,549,505	7.3
10 to 14 years	20,528,072	7.3
15 to 19 years	20,219,890	7.2
20 to 24 years	18,964,001	6.7
25 to 34 years	39,891,724	14.2
35 to 44 years	45,148,527	16.0
45 to 54 years	37,677,952	13.4
55 to 59 years	13,469,237	4.8
60 to 64 years	10,805,447	3.8
65 to 74 years	18,390,986	6.5
75 to 84 years	12,361,180	4.4
85 years and over	4,239,597	1.5
Median age (years)	36.3	(X)
18 years and over	209,128,094	74.3
Male	100,994,367	35.9
Female	108,133,727	38.4
21 years and over	198,899,193	70.0
62 years and over	41,256,029	14.7
65 years and over	34,991,753	12.4
Male	14,409,625	5.1
Female	20,582,128	7.3
RACE		
One race	274,595,678	97.6
White	211,460,626	75.1
Black or African American	34,658,190	12.3
American Indian and Alaska Native	2,475,956	0.9
Asian	10,242,998	3.6
Asian Indian	1,678,765	0.6
Chinese	2,432,585	0.9
Filipino	1,850,314	0.7
Japanese	796,700	0.3
Korean	1,076,872	0.4
Vietnamese	1,122,528	0.4
Other Asian [1]	1,285,234	0.5
Native Hawaiian and Other Pacific Islander	398,836	0.1
Native Hawaiian	140,652	-
Guamanian or Chamorro	58,240	-
Samoan	91,029	-
Other Pacific Islander [2]	108,914	-
Some other race	15,356,073	5.5
Two or more races	6,826,228	2.4
Race alone or in combination with one or more other races: [3]		
White	216,930,975	77.1
Black or African American	36,419,434	12.9
American Indian and Alaska Native	4,119,301	1.5
Asian	11,898,828	4.2
Native Hawaiian and Other Pacific Islander	874,414	0.3
Some other race	18,521,486	6.6

Subject	Number	Percent
HISPANIC OR LATINO AND RACE		
Total population	281,421,906	100.0
Hispanic or Latino (of any race)	35,305,818	12.5
Mexican	20,640,711	7.3
Puerto Rican	3,406,178	1.2
Cuban	1,241,685	0.4
Other Hispanic or Latino	10,017,244	3.6
Not Hispanic or Latino	246,116,088	87.5
White alone	194,552,774	69.1
RELATIONSHIP		
Total population	281,421,906	100.0
In households	273,643,273	97.2
Householder	105,480,101	37.5
Spouse	54,493,232	19.4
Child	83,393,382	29.6
Own child under 18 years	64,494,537	22.9
Other relatives	15,684,318	5.6
Under 18 years	6,042,435	2.1
Nonrelatives	14,592,230	5.2
Unmarried partner	5,475,788	1.9
In group quarters	7,778,633	2.8
Institutionalized population	4,059,039	1.4
Noninstitutionalized population	3,719,594	1.3
HOUSEHOLD BY TYPE		
Total households	105,480,101	100.0
Family households (families)	71,787,347	68.1
With own children under 18 years	34,588,388	32.8
Married-couple family	54,493,232	51.7
With own children under 18 years	24,836,505	23.5
Female householder, no husband present	12,900,103	12.2
With own children under 18 years	7,561,874	7.2
Nonfamily households	33,692,754	31.9
Householder living alone	27,230,075	25.8
Householder 65 years and over	9,722,857	9.2
Households with individuals under 18 years	38,022,115	36.0
Households with individuals 65 years and over	24,672,706	23.4
Average household size	2.59	(X)
Average family size	3.14	(X)
HOUSING OCCUPANCY		
Total housing units	115,904,641	100.0
Occupied housing units	105,480,101	91.0
Vacant housing units	10,424,540	9.0
For seasonal, recreational, or occasional use	3,578,718	3.1
Homeowner vacancy rate (percent)	1.7	(X)
Rental vacancy rate (percent)	6.8	(X)
HOUSING TENURE		
Occupied housing units	105,480,101	100.0
Owner-occupied housing units	69,815,753	66.2
Renter-occupied housing units	35,664,348	33.8
Average household size of owner-occupied units	2.69	(X)
Average household size of renter-occupied units	2.40	(X)

- Represents zero or rounds to zero. (X) Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] In combination with one or more of the other races listed. The six numbers may add to more than the total population and the six percentages may add to more than 100 percent because individuals may report more than one race.

Source: U.S. Census Bureau, Census 2000.

625 N.W.2d 551
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(Cite as: 625 N.W.2d 551)

C

Supreme Court of North Dakota.

NORTH DAKOTA FAIR HOUSING COUNCIL, INC., Plaintiff and Appellant,
Robert Ray Kippen, and Patricia Yvonne Kippen, Plaintiffs,
v.
David PETERSON and Mary Peterson, Defendants and Appellees.
North Dakota Fair Housing Council, Inc., Plaintiff,
Robert Ray Kippen, and Patricia Yvonne Kippen, Plaintiffs and Appellants,
v.
David Peterson and Mary Peterson, Defendants and Appellees.

Nos. 20000130, 20000197.

May 1, 2001.

Unmarried prospective tenants and a nonprofit housing advocacy organization brought discriminatory housing action against landlords who refused to rent property to tenants because they were unmarried and seeking to unlawfully cohabit. After dismissing organization for lack of standing, the District Court, Cass County, East Central Judicial District, Ralph R. Erickson, J., granted landlords' motion for summary judgment. Prospective tenants appealed. The Supreme Court, Sandstrom, J., held that landlords' refusal to rent to unmarried couple seeking to cohabit did not violate Human Rights Act.

Affirmed.

Kapsner, J., filed a dissenting opinion.

West Headnotes

[1] Appeal and Error ⇐842(1)
30k842(1) Most Cited Cases

Question of statutory interpretation is a question of law, fully reviewable on appeal.

[2] Statutes ⇐158
361k158 Most Cited Cases

Repeal of a statute by implication is not favored.

[3] Statutes ⇐219(3)
361k219(3) Most Cited Cases

In interpreting a statute, longstanding administrative interpretations are given deference.

[4] Courts ⇐89
106k89 Most Cited Cases

[4] Statutes ⇐218
361k218 Most Cited Cases

[4] Statutes ⇐219(5)
361k219(5) Most Cited Cases

Attorney general's opinions and federal court decisions interpreting statutes are given deference if they are persuasive.

[5] Statutes ⇐188
361k188 Most Cited Cases

In ascertaining legislative intent, the court looks first to the words used in the statute, giving them their plain, ordinary, and commonly understood meaning.

[6] Statutes ⇐212.5
361k212.5 Most Cited Cases

In codification or recodification, the presumption is that no change in the law was intended, absent a clear legislative intent to the contrary.

[7] Marriage ⇐2
253k2 Most Cited Cases

Based on various versions that reiterated statute, Supreme Court would presume the legislature did not intend a change to the cohabitation law. NDCC 12.1-20-10.

[8] Adultery ⇐2
19k2 Most Cited Cases

[8] Bigamy ⇐2
55k2 Most Cited Cases

[8] Incest ⇐7
207k7 Most Cited Cases

[8] Lewdness ⚿2
236k2 Most Cited Cases

[8] Prostitution ⚿2
316k2 Most Cited Cases

Legislature has not decriminalized all sexual relations among consenting adults, as evidenced by the cohabitation statute as well as the criminal penalties for adultery, bigamy, prostitution, or incest, notwithstanding the consent of the parties. NDCC 12.1-20-09, 12.1-20-10, 12.1-20-11, 12.1-20-13, 12.1-29-03.

[9] Marriage ⚿2
253k2 Most Cited Cases

Recodification of cohabitation statute was not intended to retain the statute only as an antifraud provision; although the minutes of the interim committee clearly reflected one committee member would have preferred to retain only an antifraud prohibition, entire legislative history showed interim committee deleted antifraud language from section, and Senate Judiciary Committee was told the statute would "continue to prohibit unlawful cohabitation." NDCC 12.1-20-10.

[10] Civil Rights ⚿131
78k131 Most Cited Cases

Landlords' refusing to rent to an unmarried couple because they were seeking to cohabit did not violate the discriminatory housing practices provision of the Human Rights Act. NDCC 12.1-20-10; NDCC 14-02.4-12 (Repealed).

[11] Statutes ⚿142
361k142 Most Cited Cases

"Implied amendment" is an act which purports to be independent of, but which in substance alters, modifies, or adds to a prior act.

[12] Statutes ⚿140
361k140 Most Cited Cases

To be effective, an amendment of a prior act ordinarily must be expressed.

[13] Statutes ⚿142
361k142 Most Cited Cases

[13] Statutes ⚿158
361k158 Most Cited Cases

Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases.

[14] Statutes ⚿223.2(.5)
361k223.2(.5) Most Cited Cases

Statutes relating to the same subject matter shall be construed together and should be harmonized, if possible, to give meaningful effect to each, without rendering one or the other useless.

[15] Statutes ⚿223.2(1.1)
361k223.2(1.1) Most Cited Cases

Cohabitation statute and the discriminatory housing provision of the Human Rights Act are harmonized by recognizing that the cohabitation statute regulates conduct, not status. NDCC 12.1-20-10; NDCC 14-02.4-12 (Repealed).

[16] Civil Rights ⚿131
78k131 Most Cited Cases

While it is unlawful to openly and notoriously live together as husband and wife without being married and to deny housing based on a person's status with respect to marriage, it is not unlawful to deny housing to an unmarried couple seeking to openly and notoriously live together as husband and wife. NDCC 12.1-20-10; NDCC 14-02.4-12 (Repealed).

[17] Statutes ⚿219(5)
361k219(5) Most Cited Cases

Attorney General's opinions interpreting statutes guide state officers until superseded by judicial opinions.

[18] Statutes ⚿219(5)
361k219(5) Most Cited Cases

Although not binding upon the courts, an Attorney General's official opinion nonetheless has important bearing on the construction and interpretation of a statute.

[19] Statutes ⚿219(5)
361k219(5) Most Cited Cases

Official opinion of the Attorney General construing and interpreting a statute is especially persuasive when subsequent legislative action appears to confirm the opinion.

[20] Marriage ⇐2
253k2 Most Cited Cases

In light of five completed biennial legislative sessions and defeat of measure to repeal cohabitation statute, Legislature impliedly approved Attorney General's opinion that it is not an unlawful discriminatory practice to discriminate against two individuals who chose to cohabit together without being married, which implied approval gives even greater weight to construction of cohabitation statute and Attorney General's opinion. NDCC 14-02.4-12 (Repealed).

[21] Courts ⇐97(1)
106k97(1) Most Cited Cases

Federal court decision that refusal to rent to a couple seeking to cohabit is not a discriminatory practice was entitled to respect. NDCC 14-02.4-12 (Repealed).

*553 Edwin W.F. Dyer III, Dyer & Summers, P.C., Bismarck, ND, and Christopher Brancart (argued), Brancart & Brancart, Pescadero, CA, for plaintiffs and appellants.

Jack G. Marcil (argued) and Timothy G. Richard, Fargo, ND, for defendants and appellees.

SANDSTROM, Justice.

[¶ 1] In 1999, an unmarried couple tried to rent from David and Mary Peterson. The Petersons refused because the unmarried couple were seeking to cohabit. The North Dakota Fair Housing Council ("Housing Council") and Robert and Patricia Kippen--the unmarried couple, who had since married--sued, claiming housing discrimination in violation of the North Dakota Human Rights Act. They appeal the summary judgment dismissing their claims. We affirm, concluding the Petersons lawfully refused to rent to the unmarried couple seeking to cohabit.

[¶ 2] On March 8, 1999, Robert Kippen and Patricia DePoe tried to rent a house or duplex from the Petersons. The Petersons refused because the couple was unmarried and seeking to unlawfully cohabit. *554 In April 1999, the couple married. On August 26, 1999, the North Dakota Fair Housing Council, a nonprofit corporation, and the Kippens sued the Petersons, alleging housing discrimination in violation of N.D.C.C. ch. 14-02.4, the North Dakota Human Rights Act.

[¶ 3] The Petersons moved to dismiss the Housing Council for lack of standing, arguing the Housing Council was not an "aggrieved person" entitled to relief under the housing statute. The district court granted the motion, holding the Housing Council lacked standing under the North Dakota Human Rights Act and holding it was not a real party in interest. The Housing Council appealed from the dismissal, arguing it is an aggrieved party and has standing to sue the Petersons.

[¶ 4] Subsequent to the dismissal of the Housing Council, the district court dismissed the Kippens' claim by summary judgment. The district court granted summary judgment in favor of the Petersons, concluding no genuine issue of material fact existed, North Dakota public policy disfavored cohabitation, and, based on the North Dakota Human Rights Act and North Dakota's cohabitation statute, the Petersons were entitled to deny the Kippens housing. [FN1] The Kippens appealed, arguing the district court misinterpreted North Dakota law.

FN1. The dissent concludes the Petersons and the district court presumed the Kippens were cohabiting, because insufficient evidence existed to establish the Kippens' conduct amounted to cohabitation. Since the outset ofthis litigation, the Kippens have conceded they were cohabiting. In their complaint and in their first amended complaint, the Kippens alleged, "At all times relevant to this action, [the Kippens] were cohabitating [sic] as an unmarried couple." In their depositions, the Kippens acknowledged living together and having sex together at the time they sought housing from the Petersons. The dissent, at ¶ 57, says,

"The record does not contain evidence sufficient to show the Kippens committed unlawful cohabitation." Contrary to the dissent's conclusion, the district court did not *presume* the Kippens cohabited, but rather accepted the pleadings, depositions, and record evidence as required by our rules and cases. *See* N.D.R.Civ.P. 56(c) (summary judgment may be rendered based on the pleadings, depositions, answers to interrogatories, or other record evidence). By suggesting the district court was presumptuous in accepting the Kippens' concession, the dissent has misconceived the facts and our clearly announced standard for summary judgment. *Id.; see also Swenson v. Raumin*, 1998 ND 150, ¶ 8, 583 N.W.2d 102 (summary judgment is proper "if no dispute exists as to either the material facts or the inferences to be drawn from undisputed facts, or if resolving factual disputes would not alter the results").

[¶ 5] The Housing Council's and the Kippens' appeals were timely. The district court had jurisdiction under N.D.C.C. § 27-05-06. This Court has jurisdiction under N.D. Const. art. VI, § 6 , and N.D.C.C. § 28-27-01.

II

[1] [¶ 6] We are asked to decide whether refusing to rent to an unmarried couple because they are seeking to cohabit violates the discriminatory housing practices provision of the North Dakota Human Rights Act, N.D.C.C. § 14- 02.4-12. The question is one of statutory interpretation, a question of law, fully reviewable on appeal. *Gregory v. North Dakota Workers Comp. Bureau*, 1998 ND 94, ¶ 26, 578 N.W.2d 101.

[¶ 7] North Dakota Century Code § 12.1-20-10 provides:

> Unlawful cohabitation. A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.

*555 [¶ 8] The pertinent human rights statute in effect at the time of the alleged violation, North Dakota Century Code § 14-02.4-12 (1995), [FN2] provided:

> FN2. The provisions are now found at N.D.C.C. §§ 14-02.5-02 and 14-02.5-07.

> Discriminatory housing practices by owner or agent. It is a discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:
> 1. Refuse to transfer an interest in real property or housing accommodation to a person because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance;
> 2. Discriminate against a person in the terms, conditions, or privileges of the transfer of an interest in real property or housing accommodation because of race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance; or
> 3. Indicate or publicize that the transfer of an interest in real property or housing accommodation by persons is unwelcome, objectionable, not acceptable, or not solicited because of a particular race, color, religion, sex, national origin, age, physical or mental disability, or status with respect to marriage or public assistance.

A

[¶ 9] We have not previously addressed the relationship between N.D.C.C. §§ 12.1-20-10 and 14-02.4-12. The issue, however, has been addressed in a formal attorney general's opinion and in two federal district court opinions. We begin with a review of the history of the legislation.

1

[¶ 10] North Dakota has prohibited unlawful cohabitation since statehood. [FN3] 1890 N.D. Sess. Laws ch. 91, § 16. The provision, as codified in 1895, *see* N.D.P.C. ch. 28, § 7171 (1895), remained essentially unchanged until the 1970s:

FN3. Cohabitation was also prohibited in Dakota Territory. According to the Laws of Dakota, 1862-63, Criminal Code, Ch. 10 § 4:

If any man and woman not being married to each other, shall lewdly and lasciviously cohabit and associate together, or if any man or woman, married or unmarried, shall be guilty of open and gross lewdness or lascivious behaviour, every such person shall be punished, by fine not exceeding three hundred dollars, or by imprisonment in a county jail not exceeding three months.

Unlawful cohabitation--Punishment.--Every person who lives openly and notoriously and cohabits as husband or wife with a person of the opposite sex without being married to such person, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not less than thirty days nor more than one year, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

N.D.C.C. § 12-22-12 (1960).

2

[¶ 11] The 1971 legislative assembly provided for an interim committee to draft a new criminal code. 1971 N.D. Sess. Laws, H.C.R. 3050. The interim committee considered whether to recommend repeal of the prohibition on unlawful cohabitation. One member argued for keeping a prohibition to prevent fraud. *See Minutes of Interim Comm. on Judiciary "B"* 12 (July 20-21, 1972) (noting Rep. Hilleboe's belief the statute should be retained with emphasis on fraud). A proposed interim committee draft on unlawful cohabitation *556 contained a prohibition if the conduct was "with intent to defraud another or others of money or property," but that language was omitted from the committee's recommendation. *See Minutes of Interim Comm. on Judiciary "B"* 8 (Aug. 24-25, 1972) (noting alternative fraud language).

[¶ 12] Because sexual offenses were a controversial portion of the proposed new criminal code, alternative provisions were submitted to the 1973 legislature in three separate bills. All three bills contain the same language on unlawful cohabitation with the exception that one alternative would have made the offense a Class A misdemeanor instead of a Class B misdemeanor. *See A Hornbook to the North Dakota Criminal Code*, 50 N.D. L.Rev. 639, 742 (1974) (identifying the alternative bills: S.B.2047, S.B.2048, and S.B.2049). Testifying before the 1973 legislature, Professor Thomas Lockney, who had been a member of the interim committee, said:

All three alternatives continue to prohibit unlawful cohabitation. Under Alternative 1, the penalty is for a Class A misdemeanor; under 2 and 3 a Class B misdemeanor.

Hearing on S.B.2047, S.B.2048, and S.B.2049 Before the House Judiciary Comm., 43rd N.D. Legis. Sess. (Jan. 17, 1973) (testimony of Thomas M. Lockney, Attorney-at-Law). The new criminal code was approved by the 1973 legislature, with a delayed effective date of July 1, 1975. 1973 N.D. Sess. Laws chs. 116, 117; *see also A Hornbook to the North Dakota Criminal Code*, 50 N.D. L.Rev. 639 (1974).

3

[¶ 13] The 1983 legislature adopted the North Dakota Human Rights Act. 1983 N.D. Sess. Laws ch. 173. The legislative history reflects no discussion of the cohabitation statute.

4

[¶ 14] The issue of a claimed conflict between the cohabitation statute and the Human Rights Act was presented to the attorney general in 1990. In a formal opinion, the attorney general wrote:

N.D.C.C. § 14-02.4-12 provides, in part:

14-02.4-12. Discriminatory housing practices by owner or agent. It is discriminatory practice for an owner of rights to housing or real property or the owner's agent or a person acting under court order, deed or trust, or will to:

1. Refuse to transfer an interest in real property or *housing accommodation* to a person because of race, color, religion, sex, national origin, age, physical or mental handicap, or *status with respect to marriage or public assistance;*

(Emphasis supplied.) However, N.D.C.C. § 12.1-20-10 prohibits unmarried persons of the opposite sex from openly living together as a married couple. The North Dakota Supreme Court has not ruled on the apparent conflict between N.D.C.C. §§ 14-02.4-12's protection of a

person's right to housing notwithstanding the person's marital status, and N.D.C.C. § 12.1-20-10 's prohibition against allowing unmarried couples to live as a married couple. However, there has been similar litigation in other states whose laws prohibit both cohabitation and discriminatory housing practices based on marital statutes. In *McFadden v. Elma Country Club*, 26 Wash.App. 146 [195], 613 P.2d 146 (1980), the court held that, notwithstanding a statute prohibiting discrimination based upon marital status, a country club could refuse to admit to membership an unmarried woman cohabiting with a man. *Id.* at 152. The court's *557 holding was based upon the fact the statute prohibiting cohabitation was not repealed when the discrimination statute was enacted. This fact the court said "would vitiate any argument that the legislature intended 'marital status' discrimination to include discrimination on the basis of a couple's unwed cohabitation." *Id.* at 150.

As in the *McFadden* case, N.D.C.C. § 12.1-20-10 was not repealed when N.D.C.C. § 14-02.4-12 was enacted. Thus, the continuing existence of the unlawful cohabitation statute after the enactment of N.D.C.C. § 14-02.4-12 vitiates "any argument that the legislature intended 'marital status' discrimination to include discrimination on the basis of a couple's unwed cohabitation." *McFadden* at 150.

Additionally, where there is a conflict between two statutes, the particular provision will control the general so that effect can be given to both statutes. N.D.C.C. § 1-02-07. In this conflict N.D.C.C. § 12.1- 20-10 regulates one particular activity, unmarried cohabitation. N.D.C.C. § 14-2.4-12 on the other hand, regulates several bases for discrimination. Consequently, the conflict is resolved by applying the terms of N.D.C.C. § 12.1-20-10 to this situation.

Therefore, it is my opinion that it is not an unlawful discriminatory practice under N.D.C.C. § 14-02.4-12 to discriminate against two individuals who chose to cohabit together without being married.

Attorney General's Opinion 90-12 (1990).

5

[¶ 15] In 1991, House Bill 1403, a measure to repeal the cohabitation statute, was introduced, with the legislator who had requested the 1990 attorney general's opinion as the primary sponsor. She testified, "As you will see, the Attorney General's Opinion of May 7, 1990 found that it was not an unlawful discriminatory practice under N.D.C.C. 14-02.4-12 to refuse to rent housing to unmarried persons of the opposite sex who desire to live together." *Hearing on H.B. 1403 Before the House Judiciary Comm.*, 52nd N.D. Legis. Sess. (Jan. 22, 1991) (testimony of Judy L. DeMers, District 17-18 House Representative). Also contained in the legislative history of House Bill 1403 are copies of Attorney General's Opinion 90-12 and copies of the relevant statutes. The House of Representatives defeated the bill by a vote of 27 yeas and 78 nayes.

6

[¶ 16] In 1999, the United States District Court for North Dakota decided a case involving the alleged conflict between the cohabitation statute and the Human Rights Act and concluded it was not unlawful to refuse to rent to an unmarried couple seeking to cohabit:

> On May 7, 1990, the Office of the Attorney General for the State of North Dakota issued an opinion to State Representative Judy L. DeMers on the question of whether it is an unlawful discriminatory practice under N.D.Cent.Code § 14-02.4-12 to refuse to rent housing to unmarried persons of the opposite sex who desire to live together as a married couple in light of the prohibition against such cohabitation under N.D.Cent.Code § 12.1-20-10. *See* 1990 N.D. Op. Atty. Gen. 43. The Attorney General determined that such a refusal was not an unlawful discriminatory practice. *Id.*
>
> "The Supreme Court of North Dakota has held that an Attorney General's opinion has the force and effect of law until a contrary ruling by a court. That court has further held that opinions of an Attorney General are 'entitled to respect,' *558 and a court should follow them if 'they are persuasive.' " *Fargo Women's Health Organization, et al. v. Schafer, et al.*, 18 F.3d 526, 530 (8th Cir.1994) (citations omitted). In this case, the opinion is highly persuasive, and is consistent with an independent analysis of the question presented. Foremost for consideration is the fact that N.D.Cent.Code § 12.1-20-10 was not repealed when N.D.Cent.Code § 14-02.4- 12 was enacted in 1983; nor was it repealed in 1995 when the discriminatory housing practices statute

was last amended and reenacted, despite the issuance of the Attorney General's opinion in 1990. Additionally, when recently presented with the opportunity to speak to the "public policy/morality issue" of N.D.Cent.Code § 12.1-20-10, the North Dakota Supreme Court declined to address it. *See Cermak v. Cermak*, 569 N.W.2d 280, 285-86 (N.D.1997).
These statutes can be construed "... so that effect may be given to both provisions...." *See* N.D.Cent.Code § 1-02-07. The conflict between the two provisions is not irreconcilable because the statutes can be harmonized to provide an interpretation that gives effect to both provisions.
The phrase "status with respect to marriage" contained within N.D.Cent.Code § 14-02.4- 12 is not rendered meaningless by application of the language of the unlawful cohabitation statute to exclude unmarried, opposite sex cohabitators [sic]. The statute will still regulate against several discriminatory housing practices based on status with respect to marriage.
Accordingly, the court must find that the allegations of the plaintiffs in paragraphs 18 through 21 and 27 through 30 have failed to state a claim upon which relief can be granted with regard to plaintiffs' claims of discrimination based on status with respect to marriage contained in paragraphs 91(A), (B) & (C) of their complaint and said claims shall be dismissed to the extent they allege such discrimination.
North Dakota Fair Housing Council, Inc. v. Haider, No. A1-98-077 (D.N.D.1999).

7

[¶ 17] In 2000, the United States District Court for North Dakota decided a suit similar to this one brought by the Housing Council. *North Dakota Fair Housing Council v. Woeste*, No. A1-99-116 (D.N.D.2000). The federal court, analyzing North Dakota law and distinguishing federal cases relied on by the Housing Council, concluded the Housing Council lacked standing to sue under the North Dakota Human Rights Act.

8

[¶ 18] The District Court in this case considered the foregoing history and the plain wording of the statutes in deciding to dismiss the claims of the Housing Council and the Kippens.

B

[2][3][4] [¶ 19] With this historical background, we turn to the framework for analyzing statutes and claimed conflicts between statutes. Statutes are to be construed liberally to effectuate their purpose. N.D.C.C. § 1-02-01. When the words of a statute are clear, they cannot be ignored under the pretext of pursuing their spirit. N.D.C.C. § 1-02-05. The specific prevails over the general. N.D.C.C. § 1-02-07. Statutes are construed to give effect to each provision. N.D.C.C. § 1-02-07. Repeal by implication is not favored. *Tharaldson v. Unsatisfied Judgment Fund*, 225 N.W.2d 39, 45 (N.D.1974) (citing Sands' Sutherland Statutory Construction, Vol. 1A, § 22.13, at 139 and 149 (4th ed. 1972)). Longstanding*559 administrative interpretations are given deference. *Delorme v. North Dakota Dep't of Human Services*, 492 N.W.2d 585, 587(N.D.1992). Attorney general's opinions and federal court decisions are given deference if they are persuasive. *Werlinger v. Champion Healthcare Corp.*, 1999 ND 173, ¶ 47, 598 N.W.2d 820.

C

[¶ 20] We now consider the meaning of the cohabitation statute and the meaning of the Human Rights Act discriminatory housing practices provision.

1

[¶ 21] The cohabitation statute was amended to its present form in 1973, effective in 1975. North Dakota's cohabitation statute, N.D.C.C. § 12.1-20-10, states:
A person is guilty of a class B misdemeanor if he or she lives openly and notoriously with a person of the opposite sex as a married couple without being married to the other person.
The 1973 amendment of the statute removed the language "cohabits as husband or wife" and added "lives openly and notoriously with a person of the opposite sex as a married couple." *See State v. Hoffman*, 68 N.D. 610, 282 N.W. 407 (1938) (detailing the pre-1973 statute).

[¶ 22] Varying definitions of cohabitation exist. The 1996 edition of Merriam Webster's Dictionary of Law defines cohabit as "to live together as a

married couple or in the manner of a married couple." The 1999 edition of Black's Law Dictionary, at page 254, defines cohabitation as "[t]he fact or state of living together, esp. as partners in life, usu. with the suggestion of sexual relations." Notorious cohabitation is the "act of a man and a woman openly living together under circumstances that make the arrangement illegal under statutes that are now rarely enforced." [FN4] *Id.* The Minnesota Supreme Court has defined "cohabit" as living "together in a sexual relationship when not legally married." *State by Cooper v. French*, 460 N.W.2d 2, 4 n. 1 (Minn.1990) (citing The American Heritage Dictionary of the English Language 259 (1980) (New College Dictionary)).

> FN4. Although it is argued cohabitation statutes are rarely enforced, this Court has held the lack of enforcement to be of no significance. *See State v. Gamble Skogmo, Inc.*, 144 N.W.2d 749, 765 (N.D.1966) (laxity in enforcement does not result in a denial of equal protection of the laws) (citations omitted).

[5] [¶ 23] "In ascertaining legislative intent, we look first to the words used in the statute, giving them their plain, ordinary, and commonly understood meaning." *Douville v. Pembina County Water Resource District*, 2000 ND 124, ¶ 9, 612 N.W.2d 270 (citations omitted). "When a statute is clear and unambiguous on its face, we will not disregard the letter of the statute under the pretext of pursuing its spirit, because the legislative intent is presumed clear from the face of the statute." *Id.* (citing N.D.C.C. § 1-02-05; *Lawrence v. North Dakota Workers Comp. Bureau*, 2000 ND 60, ¶ 19, 608 N.W.2d 254).

[6][7] [¶ 24] In codification or recodification, the presumption is that no change in the law was intended, absent a clear legislative intent to the contrary. *See Evanson v. Wigen*, 221 N.W.2d 648, 654 (N.D.1974) (a simple change in diction or phraseology--absent a clear legislative intent to the contrary--is presumed to be a change "for purpose of clarity rather than for a change in meaning") (quoting 50 Am.Jur. *Statutes* § 445). This Court has stated:

> *560 Usually a revision of statutes simply iterates the former declaration of legislative will. No presumption arises from changes of this character that the revisers or the legislature in adopting the revision intended to change the existing law; but the presumption is to the contrary, unless an intent to change it clearly appears.
> The general presumption obtains that the codifiers did not intend to change the law as it formerly existed. Changes made in the revision of statutes by alteration of the phraseology will not be regarded as altering the law unless there is a clear intent so to do.

State ex rel. Johnson v. Broderick, 75 N.D. 340, 27 N.W.2d 849, 864 (1947) (internal citations and quotations omitted). Therefore, we presume the legislature did not intend a change to the cohabitation law.

a

[8] [¶ 25] The Housing Council asserts that North Dakota has decriminalized all sexual relations among consenting adults. The assertion is contradicted by the cohabitation statute as well as the criminal penalties for adultery, bigamy, prostitution, or incest, notwithstanding the consent of the parties. N.D.C.C. §§ 12.1-20-09, 12.1-20-13, 12.1-29-03, 12.1-20-11.

b

[9] [¶ 26] The Housing Council and the Kippens argue the 1973 recodification of the cohabitation statute was intended to retain the statute only as an antifraud provision. Although the minutes of the interim committee clearly reflect that one member of the committee would have preferred to retain only an antifraud prohibition, the entire legislative history shows the interim committee deleted the antifraud language from the section, and the 1973 Senate Judiciary Committee was told the statute would "continue to prohibit unlawful cohabitation." *Hearing on S.B.2047, S.B.2048, and S.B.2049 Before the House Judiciary Comm.*, 43rd N.D. Legis. Sess. (Jan. 17, 1973) (testimony of Thomas M. Lockney, Attorney-at-Law).

2

[10] [¶ 27] At issue is the term "status with respect to marriage," which is undefined under the Human Rights Act. Analyzing other definitions

under North Dakota law, the district court concluded the "Legislature intended the phrase to mean being married, single, separated or divorced."

[¶ 28] The Housing Council and the Kippens argue "status with respect to marriage" is simple: a person is either married or not married. Although it is unlawful to deny housing based solely on whether a person is or is not married, the relevant inquiry is whether a person is divorced, widowed, or separated, rather than simply married or unmarried.

[¶ 29] The Petersons argue that although it is true that under the discriminatory housing provision a person cannot be discriminated against because of marital status, the Kippens were denied housing not because they were single, but because they were unmarried and were seeking to live together as if they were married. A review of the cohabitation statute evidences this point.

[¶ 30] Numerous courts have addressed language similar to "status with respect to marriage," the language at issue here. Those courts disagree regarding the appropriate weight to give to words with an import similar to "status with respect to marriage." In *McCready v. Hoffius*, 222 Mich.App. 210, 564 N.W.2d 493, 495-96 (1997), the court differentiated martial status from conduct by concluding the term "marital status" was legislatively intended *561 to prohibit discrimination "based on *whether* a person is married" (quoting *Miller v. C.A. Muer Corp.*, 420 Mich. 355, 362 N.W.2d 650 (1984)).

[¶ 31] The Wisconsin Supreme Court has also concluded refusal to rent to unmarried tenants who choose to live together is based on conduct rather than status. *See County of Dane v. Norman*, 174 Wis.2d 683, 497 N.W.2d 714 (1993). On the other hand, Alaska, Massachusetts, and California have concluded refusal to rent to unmarried cohabitants is based upon status rather than conduct. *See Smith v. Fair Employment & Housing Comm'n*, 12 Cal.4th 1143, 51 Cal.Rptr.2d 700, 913 P.2d 909 (1996), *cert. denied*, 521 U.S. 1129, 117 S.Ct. 2531, 138 L.Ed.2d 1031 (1997); *Swanner v. Anchorage Equal Rights Comm'n* 874 P.2d 274 (Alaska 1994), *cert. denied*, 513 U.S. 979, 115 S.Ct. 460, 130 L.Ed.2d 368 (1994); *Attorney General v. Desilets*, 418 Mass. 316, 636 N.E.2d 233 (1994).

3

[¶ 32] We seek to interpret our statutes with a goal of giving effect to each. N.D.C.C. § 1-02-07. Implied repeal is not favored. *Tharaldson v. Unsatisfied Judgment Fund*, 225 N.W.2d 39, 45 (N.D.1974).

[¶ 33] Statutes are to be liberally construed "with a view to effecting its objects and to promoting justice." N.D.C.C. § 1-02-01. The purpose of the North Dakota Human Rights Act is "to prohibit discrimination ... and to deter those who aid, abet, or induce discrimination or coerce others to discriminate." N.D.C.C. § 14-02.4-01. Criminal statutes are intended to vindicate public norms, to give fair warning of prohibited conduct, to prescribe penalties commensurate with the seriousness of the offense, and to effectuate other defined purposes. N.D.C.C. § 12.1-01-02.

[¶ 34] When the legislature enacted the Human Rights Act, it is presumed to have known of the existing criminal cohabitation statute. We have said, "The legislature will not be held to have changed a law it did not have under consideration while enacting a later law, unless the terms of the subsequent act are so inconsistent with the provisions of the prior law that they cannot stand together." *Birst v. Sanstead*, 493 N.W.2d 690, 694 (N.D.1992) (citing *Tharaldson v. Unsatisfied Judgment Fund*, 225 N.W.2d 39, 45 (N.D.1974)).

[11][12][13] [¶ 35] In essence, by suggesting the Human Rights Actrequires that housing be provided regardless of compliance with the criminal code, the Housing Council and the Kippens are asking us to repeal or to give new meaning to the cohabitation statute. We are then confronted with the well-established rule precluding amendment or repeal of legislation by implication. *Id.*

> An implied amendment is an act which purports to be independent of, but which in substance alters, modifies, or adds to a prior act. To be effective, an amendment of a prior act ordinarily must be expressed. Amendments by implication, like repeals by implication, are not favored and will not be upheld in doubtful cases.

Id. at 694-95 (citations omitted). In North Dakota, there is "an established presumption" against amending or repealing a piece of legislation by implication. *Id.* at 695 (citation omitted).

[14] [¶ 36] Coupled with the "presumption against repealing or amending legislation, we are ... to harmonize different statutes passed by the legislature and give them full effect." *Id.* (citing N.D.C.C. § 1-02- 07). "Statutes relating to the same subject matter shall be construed together and should be harmonized, if possible, to give meaningful effect to each, without rendering one or the other useless." *562 *Id.* (quoting *Westman v. North Dakota Workers Comp. Bureau*, 459 N.W.2d 540, 541 (N.D.1990)).

[15] [¶ 37] The cohabitation statute and the discriminatory housing provision are harmonized by recognizing that the cohabitation statute regulates conduct, not status. The opposite interpretation would render the prohibition against cohabitation meaningless.

[16] [¶ 38] Like Michigan, Wisconsin, and Minnesota, we conclude these two provisions may be harmonized while still giving each of them full effect. N.D.C.C. § 1-02-07. It is unlawful to openly and notoriously live together as husband and wife without being married. It is unlawful to deny housing based on a person's status with respect to marriage (i.e., married, single, divorced, widowed, or separated). It is not unlawful to deny housing to an unmarried couple seeking to openly and notoriously live together as husband and wife.

[¶ 39] In addition, where there is a conflict between two statutes, the particular provision will control the general so that effect can be given to both statutes. N.D.C.C. § 1-02-07. In this claimed conflict, N.D.C.C. § 12.1-20-10 regulates one particular activity, unmarried cohabitation. N.D.C.C. § 14-02.4-12, on the other hand, regulates several bases for discrimination. The terms of the more specific statute, N.D.C.C. § 12.1- 20-10, prevail.

D

[17] [¶ 40] Although we are not bound by attorney general's opinions interpreting statutes, we will follow them if they are persuasive. *Werlinger v. Champion Healthcare Corp.*, 1999 ND 173, ¶ 47, 598 N.W.2d 820 (citing *United Hospital v. D'Annunzio*, 514 N.W.2d 681, 685 (N.D.1994); *State v. Beilke*, 489 N.W.2d 589, 593 (N.D.1992)). We give "respectful attention to the attorney general's opinions and follow them when we find them persuasive." *Holmgren v. North Dakota Workers Comp. Bureau*, 455 N.W.2d 200, 204 (N.D.1990). Attorney general's opinions guide state officers until superseded by judicial opinions. *Werlinger*, 1999 ND 173, ¶ 47, 598 N.W.2d 820 (citing *State ex rel. Johnson v. Baker*, 74 N.D. 244, 259, 21 N.W.2d 355, 364 (1945)).

[¶ 41] The attorney general's opinion is supported by the legislative history of the two statutes and specifically addresses the conflict between them. Attorney General's Opinion 90-12 concluded:

> N.D.C.C. § 12.1-20-10 was not repealed when N.D.C.C. § 14-02.4-12 was enacted. Thus, the continuing existence of the unlawful cohabitation statute after the enactment of N.D.C.C. § 14-02.4-12 vitiates "any argument that the legislature intended 'marital status' discrimination to include discrimination on the basis of a couple's unwed cohabitation."

(Citation omitted).

[18][19] [¶ 42] Although not binding upon the courts, "an Attorney General's official opinion nonetheless has important bearing on the construction and interpretation of a statute." *Hughes v. State Farm Mut. Auto. Ins. Co.*, 236 N.W.2d 870, 876 (N.D.1975) (citing 2A Sutherland Statutory Construction § 49.05, p. 240; *Walker v. Wellenman*, 143 N.W.2d 689, 691 (N.D.1966)). "Such official opinion of the Attorney General is especially persuasive when subsequent legislative action appears to confirm the opinion." *Id.*

[¶ 43] Since the attorney general's opinion was published in 1990, the legislature completed five biennial sessions and at least once considered repealing the cohabitation statute. In 1991, a measure to repeal the cohabitation statute, House Bill 1403, was introduced, presented with the *563 Attorney General's opinion, and defeated. It is clear the legislature was aware of the alleged statutory conflict.

[20] [¶ 44] In light of the five completed biennial legislative sessions and the defeat of the measure to repeal the cohabitation statute, the legislature has impliedly approved the attorney general's opinion. The implied approval gives even greater weight to the construction of the cohabitation statute and the attorney general's opinion. *See Horst v. Guy*, 219

N.W.2d 153, 159-60 (N.D.1974); *Walker v. Wellenman*, 143 N.W.2d 689, 694 (N.D.1966); *State v. Equitable Life Assurance Soc'y*, 68 N.D. 641, 282 N.W. 411, 415-16 (1938).

E

[21] [¶ 45] A federal district court decision interpreting North Dakota law is not binding upon North Dakota courts. We will, however, respect a federal district court opinion if it is persuasive and based upon sound reasoning.

[¶ 46] Citing a 1990 North Dakota Attorney General's opinion and a federal court decision interpreting this issue, the district court concluded that refusing to rent to a couple seeking to cohabit is not a discriminatory practice. *See* Attorney General's Opinion 90-12 (1990); *North Dakota Fair Housing Council, Inc. v. Haider*, No. A1-98-077 (D.N.D.1999).

[¶ 47] The *Haider* court cited Attorney General Opinion 90-12 as "highly persuasive" and entitled to respect. Further, the court stated:

> Foremost for consideration is the fact that N.D. Cent.Code § 12.1-20-10 was not repealed when N.D. Cent.Code § 14-02.4-12 was enacted in 1983; nor was it repealed in 1995 when the discriminatory housing practices statute was last amended and reenacted, despite the issuance of the Attorney General's opinion in 1990. Additionally, when recently presented with the opportunity to speak to the "public policy/morality issue" of N.D. Cent.Code § 12.1-20- 10, the North Dakota Supreme Court declined to address it. *See Cermak v. Cermak*, 569 N.W.2d 280, 285-86 (N.D.1997).
>
> These statutes can be construed "... so that effect may be given to both provisions...." *See* N.D. Cent.Code § 1-02-07. The conflict between the two provisions is not irreconcilable because the statutes can be harmonized to provide an interpretation that gives effect to both provisions. The phrase "status with respect to marriage" contained within N.D. Cent.Code § 14-02.4- 12 is not rendered meaningless by application of the language of the unlawful cohabitation statute to exclude unmarried, opposite sex cohabitators [sic]. The statute will still regulate against several discriminatory housing practices based on status with respect to marriage.

North Dakota Fair Housing Council, Inc. v. Haider, No. A1-98-077, 7-8 (D.N.D.1999).

[¶ 48] The federal court decision is entitled to respect.

III

[¶ 49] Under the words of the statute, the rules of statutory construction, and the legislative, administrative, and judicial history, we conclude it is not an unlawful discriminatory practice under N.D.C.C. § 14-02.4-12 to refuse to rent to unmarried persons seeking to cohabit. Summary judgment was therefore appropriate. [FN5]

> FN5. The dissent is based on the flawed premise that the Petersons would have had to prove the Kippens guilty of unlawful cohabitation. The Kippens did not raise the argument and did not dispute the fact. The issue before us is not whether the Kippens could have been successfully prosecuted for the crime of unlawful cohabitation, but whether the legislature intended to prohibit landlords from refusing to rent to unmarried couples seeking to cohabit.

*564 [¶ 50] If we were to assume the Housing Council would have standing to contest the Petersons' actions, summary judgment would equally apply to dispose of the Housing Council's alleged claim. Because, as a matter of law, there is no issue of material fact in this case, we need not address the argument that the Housing Council would have standing. *See State v.Evans*, 1999 ND 70, ¶ 17, 593 N.W.2d 336 ("we need not consider questions, the answers to which are not necessary to the determination of an appeal").

IV

[¶ 51] The judgments of the district court are affirmed.

[¶ 52] VANDE WALLE, C.J., NEUMANN and MARING, JJ., concur.

KAPSNER, Justice, dissenting.

[¶ 53] Because the district court's award of summary judgment against the Kippens presumes, without adequate evidence, their conduct violated N.D.C.C. § 12.1-20-10, on the basis of their admission of intent to live together while unmarried, and because the district court erred under N.D.R.Civ.P. 12 and 17 in dismissing the Housing Council for lack of standing and as not a real party in interest, I respectfully dissent.

I

[¶ 54] The legislative history clearly evinces an intent that N.D.C.C. § 12.1-20-10, prohibiting unlawful cohabitation, should not be repealed, notwithstanding its potential conflict with the former North Dakota Human Rights Act ("NDHRA"), N.D.C.C. § 14-02.4-12, which prohibited housing discrimination on the basis of "status with respect to marriage." Since the statutes coexisted, they must be harmonized, if possible. *Birst v. Saustead*, 493 N.W.2d 690, 695 (N.D.1992) . The majority says the statutes are harmonized by recognizing that the cohabitation statute regulates conduct, not status. If that is so, then granting summary judgment under the record developed in this case is improper because there is insufficient evidence of conduct for which the Kippens could be prosecuted under § 12.1-20-10. The district court awarded summary judgment in favor of the Petersons despite the existence of a genuine issue of material fact that Kippens' conduct violated § 12.1-20-10. The Petersons presumed the Kippens were unlawfully cohabiting based on their marital status, and by granting summary judgment, the district court asks us to make the same presumption that the Kippens' conduct violated the cohabitation statute based only on their admission of intent to live together while unmarried.

A

[¶ 55] Summary judgment is appropriate for resolving a controversy without a trial only if the evidence shows there is no genuine issue as to any material fact, or the inferences to be drawn from undisputed material facts, and if the evidence shows a party is entitled to judgment as a matter of law. *Mandan Educ. Ass'n v. Mandan Pub. Sch. Dist. No. 1*, 2000 ND 92, ¶ 6, 610 N.W.2d 64; *see also* N.D.R.Civ.P. 56(c). The evidence presented must be viewed in the light most favorable to the party opposing the motion, who must be given the benefit of all favorable *565 inferences which reasonably can be drawn from the evidence. *Mandan*, at ¶ 6.

[¶ 56] In reviewing summary judgment decisions, we have emphasized that neither we nor the trial court are allowed to weigh evidence, determine credibility, or attempt to discern the truth of the matter. *Opp v. Source One Mgmt., Inc.*, 1999 ND 52, ¶ 16, 591 N.W.2d 101. Rather, the question for the court is whether a fact finder could return a verdict for the party bringing the motion on the evidence presented. *Wishnatsky v. Huey*, 1998 ND App 8, ¶ 5, 584 N.W.2d 859 (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). The mere existence of a scintilla of evidence in support of a party's position will be insufficient; there must be evidence on which the fact finder could reasonably find for the party. *Id.* Therefore, when determining if a genuine factual issue as to the alleged unlawful activity exists, the trial judge must bear in mind the actual quantum and quality of proof necessary to support liability. *Smith v. Land O'Lakes, Inc.*, 1998 ND 219, ¶ 12, 587 N.W.2d 173. Unless the evidence presented is of sufficient caliber or quantity to allow a rational finder of fact to find proof of the unlawful activity by the requisite burden of proof, there is no genuine issue of material fact regarding the illegal conduct. *Id.* (citing *Liberty Lobby*, at 254, 106 S.Ct. 2505).

[¶ 57] The record does not contain evidence sufficient to show the Kippens committed unlawful cohabitation. Therefore, the mere existence of the cohabitation statute is an insufficient basis for awarding summary judgment on the asserted grounds that the refusal to rent was not discrimination.

B

[¶ 58] Based on the legislative history, chronicled by the majority, I do not dispute the district court's conclusion that cohabitation is conduct rather than status. However, I take issue with the fact that both the Petersons and the district court have presumed Kippens' unlawful conduct based only on their unmarried status. According to the Kippens' Separate Statement of Material Facts not in Genuine

Dispute, which the District Court also found to be undisputed, the Kippens were living together and were not married at the time Robert Kippen called the Petersons to inquire about renting housing. When receiving calls inquiring about rental property, Mary Peterson had the regular practice of asking who would be occupying the property and of informing callers the Petersons would not rent to an unmarried cohabiting couple because of the North Dakota cohabitation law. When Robert Kippen spoke to Mary Peterson, he said he was interested in the rental property and he and his fiancee would be living there. Robert Kippen made no representation they were married. In reply, Mary Peterson told Robert Kippen that the Petersons would not be able to rent to him because he was cohabiting with his fiancee. Thus, from the mere fact that Robert Kippen admitted his intent to occupy an apartment with his fiancee, Mary Peterson concluded the Kippens intended to unlawfully cohabit, but there is insufficient evidence to conclude the Kippens could be prosecuted for unlawfully cohabiting.

[¶ 59] Under N.D.C.C. § 12.1-20-10, unlawful cohabitation is defined as "liv[ing] openly and notoriously with a person of the opposite sex as a married couple without being married to the other person." Mary Peterson had no evidence the Kippens would be living together "openly and notoriously," which this Court has defined to mean undisguised, unconcealed, and generally known or as a matter of common knowledge in the community. *See *566State v. Hoffman*, 68 N.D. 610, 612, 282N.W. 407, 409 (1938). Neither did Mary Peterson have proof that the Kippens would be living "as a married couple," which is a requirement of violating § 12.1-20-10. Rather, Mary Peterson presumed the Kippens' conduct was unlawful simply on the basis of their "status with respect to marriage." *See* N.D.C.C. § 14-02.4-12 (1995). Therefore, the district court erroneously granted summary judgment because there is a genuine issue as to material facts establishing that the Kippens actually were or would be unlawfully cohabiting. *See* N.D.R.Civ.P. 56(c) (rendering summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law").

[¶ 60] Although the plaintiffs' complaint stated, "At all times relevant to this action, [the Kippens] were cohabitating [sic] as an unmarried couple," nevertheless, there was still an issue in dispute whether they would be openly and notoriously living as a married couple, as proscribed under the unlawful cohabitation statute. As the majority concedes, "Varying definitions of cohabitation exist." The Petersons cannot presume the Kippens were planning to violate the unlawful cohabitation statute without evidence they were planning to "live[ ] openly and notoriously with a person of the opposite sex as a married couple without being married to the other person." *See* N.D.C.C. § 12.1-20.10. Mary Peterson had no evidence the Kippens would be violating the statute, but rather she presumed the Kippens' unlawful conduct simply from their unmarried status, and such presumption is discrimination based on "status with respect to marriage" within the meaning of former N.D.C.C. § 14-02.4-12.

[¶ 61] In awarding summary judgment against the Kippens, the district court discussed our definition of cohabitation in *Baker v. Baker*, 1997 ND 135, ¶ 13, 566 N.W.2d 806. In *Baker*, we stated cohabitation includes, "The mutual assumption of those marital rights, duties and obligations which are usually manifested by married people, including but not necessarily dependent on sexual relations." *Id.* On the basis of this definition, the plain language of N.D.C.C. § 12.1-20-10 prohibiting cohabitation, and the fact that Robert Kippen stated to Mary Peterson he would be living with his fiancee, the district court stated, "[I]t is clear that [the Kippens] would be in violation of N.D.C.C. § 12.1-20-10." The court further stated, "The Petersons refused to rent to [the Kippens] not because of their marital status but rather because [the Kippens] were planning on living together in violation of North Dakota law." However, Robert Kippens had not plainly admitted to Mary Peterson that he planned to violate all the elements of the cohabitation statute. *See In re Estate of Stanton*, 472 N.W.2d 741, 746 (N.D.1991) (stating summary judgment is only proper when a party fails to raise even a reasonable inference of the existence of an element essential to the party's claim and on which that party will bear the burden of proof at trial); *see also* N.D.C.C. § 12.1-20-10 (criminalizing openly and notoriously living with a person of the opposite sex as a married couple without being married to

the other person).

[¶ 62] The district court's award of summary judgment is premature, as there was no evidence that the Kippens would be "living as a married couple," i.e., that they would be mutually assuming marital rights, duties and obligations usually manifested by married people, including but not necessarily dependent on sexual relations. *See Baker*, 1997 ND 135, ¶ 13, 566 N.W.2d 806. The standards for granting a summary *567 judgment do not permit the trial court to conclude the Petersons were making a decision based on conduct violating N.D.C.C. § 12.1-20-10. Therefore, I would reverse the summary judgment.

II

[¶ 63] The district court granted Petersons' motion to dismiss the Housing Council, under Rules 12 and 17, N.D.R.Civ.P., on the grounds that the Housing Council lacked standing to sue, under the former N.D.C.C. § 14-02.4-12, and is not a real party in interest. After a discussion of legislative history, the district court found the legislative intent "ambiguous and ambivalent" regarding whether the Housing Council is a person aggrieved by a discriminatory housing practice. Guided by our opinion in *Shark v. U.S. West Communications, Inc.*, 545 N.W.2d 194 (N.D.1996), the district court opined that "standing is dependent upon a truly independent claim," but the Housing Council's "entire claim ... is dependent upon alleged violations of [the Kippens'] rights." The district court found the Kippens are the real parties in interest, the Housing Council's claims of personal loss are actually derivative of Kippens' claims, and the Council's injuries based on its role of citizens' watchdog group are "entirely voluntarily assumed." The district court concluded the Housing Council "failed to establish that it has a real interest in the litigation that is not dependent upon the claims of injury by third persons" and thus has no personal right or interest violated and, under these circumstances, lacks standing to pursue a claim in their own name. However, the district court erred in dismissing the Housing Council under Rules 12 and 17, N.D.R.Civ.P., as the Housing Council alleged independent and legally cognizable injuries sufficient to withstand a motion to dismiss on the pleadings. The district court's reliance on *Shark* does not support the court's analysis underpinning its dismissal of the Housing Council.

A

[¶ 64] Pursuant to N.D.R.Civ.P. 12, the Petersons filed a motion with the district court for an order dismissing with prejudice the Housing Council and its cause of action "on the basis that [the Housing Council] does not have standing to maintain this action under [the former] N.D.C.C. § 14.02.4-19...." The former § 14.02.4-19 specified who may bring a civil action to enforce the former NDHRA: "Any person claiming to be aggrieved by a discriminatory practice in violation of this chapter with regard to housing or public accommodations or services may bring an action in the district court...." The former NDHRA defined "person" as follows: " 'Person' means an individual, partnership, association, corporation...." N.D.C.C. § 14-02.4-02(11). The district court found that the Housing Council is "a non-profit corporation"; thus, the Housing Council is a person within the meaning of § 14-02.4- 02(11). The Housing Council alleged in its first amended complaint that the Petersons' alleged discriminatory housing practices caused the Council to suffer injuries in the form of economic losses in staff pay for investigations and in the inability to undertake other efforts to end unlawful housing practices. The Council also alleged injury to its ability to carry out its purpose and to serve the public in its effort to eliminate housing discrimination, resolve fair housing disputes, find and make available decent rental housing for persons regardless of status with respect to marriage, and assure rights to the important social, professional, business, economic, and political benefits of associations that arise from living in a community where persons reside regardless of marital status.

*568 [¶ 65] Our seminal case on standing is *State v. Carpenter*, 301 N.W.2d 106, 107 (N.D.1980), in which a two-pronged test was established to determine whether a litigant has alleged such a personal stake in the outcome of the controversy as to justify the exercise of the court's remedial powers to decide the merits of the dispute. [FN6] First, the litigant must have suffered some threatened or actual injury resulting from the putatively illegal action. *Id.* (citing *Linda R.S. v. Richard D.*, 410 U.S. 614, 617, 93 S.Ct. 1146, 35 L.Ed.2d 536 (1973)). Second, the asserted harm must not be a generalized grievance shared by all or a large class

of citizens, that is, the litigant generally must assert his or her own legal rights and interests and cannot rest a claim to relief on the legal rights and interests of third parties. *Id.* (citing *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)). Litigants may assert only their own constitutional rights, unless they can present weighty countervailing policies. *Hovet v. Hebron Pub. Sch. Dist.*, 419 N.W.2d 189, 193 (N.D.1988).

FN6. *Compare Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (establishing the "irreducible constitutional minimum of standing" contains three elements: (1) the plaintiff must have suffered an injury in fact, an invasion of a legally protected interest which is concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) the injury must be causally connected to the complained-of conduct, that is, the injury must be fairly traceable to the challenged action of the defendant and not the result of an independent action of some third party who is not before the court; and (3) it must be likely, rather than merely speculative, that the injury will be redressed by a favorable decision).

[¶ 66] Previously, we have concluded a utility company had no standing to advance tribal sovereign rights of self-government for alleged unlawful interference with the tribe's interests. *In re Application of Otter Tail Power Co.*, 451 N.W.2d 95, 97 (N.D.1990); *see also Swanson v. N.D. Workers Comp. Bureau*, 553 N.W.2d 209, 212 (N.D.1996) (determining a claimant lacked standing to challenge the Bureau's alleged lack of a statutorily required peer review system for determining reasonableness of fees and payment denials for unjustified treatments, because under the statute only doctors or health care providers could appeal adverse Bureau decisions regarding fee reasonableness and payment denials); *State v. Tibor*, 373 N.W.2d 877, 880-81 (N.D.1985) (concluding a criminal defendant had no standing to raise a vagueness challenge to a criminal statute, because he did not demonstrate the statute was vague as applied to his own conduct). *But see State v. Hagerty*, 1998 ND 122, ¶ 10, 580 N.W.2d 139 (stating a counterclaim defendant had standing to challenge the authority of special assistant attorneys general, who were retained by the Attorney General and State entities under contingent fee agreements, to prosecute litigation against the counterclaim defendant).

[¶ 67] Our standing test in the administrative context differs from the standing test set out in *Carpenter*, 301 N.W.2d at 107, but sheds light on the meaning of "aggrieved." Our administrative standing inquiry was developed in the case of *In re Application of Bank of Rhame*, 231 N.W.2d 801, 806-08 (N.D.1975), because standing is necessary for judicial review through appeal of an administrative order. Faced with an issue of who was a proper party to seek review on appeal of an administrative decision, we expressly noted, "We should not and do not place a narrow or limited construction upon the appropriate statutory provisions governing who may be a party for purposes of appeal or *569 review. The law on standing developed by earlier case law which was narrow and limited has been severely criticized...." *Id.* at 806. We explained that former N.D.C.C. § 28-32-14 provided, "[A]ny party before an administrative agency who is aggrieved by the decision" may request a rehearing, and we defined "party aggrieved" as "one whose right has been directly and injuriously affected by action of court." *Rhame*, at 807-08. We specifically stated: "Any doubt on the question of standing involving a decision by administrative body should be resolved in favor of permitting the exercise of the right of appeal by any person aggrieved in fact." *Id.* at 808. Based on this expansive view of the standing doctrine, we enunciated our three-part standing test for administrative appeals: "[A]ny person who is directly interested in the proceedings before an administrative agency[,] who may be factually aggrieved by the decision of the agency, and who participates in the proceeding before such agency, is a 'party' to any proceedings for the purposes of taking an appeal from the d[e]cision." *Id.*

[¶ 68] Under this three-part analysis, we have denied standing when litigants were not aggrieved in fact. *Shark v. U.S. West Communications, Inc.*, 545 N.W.2d 194, 200 (N.D.1996). Shark appealed an administrative approval of the sale and transfer

of telephone exchanges by U.S. West to cooperative and independent telephone companies. *Id.* at 195. We denied standing to Shark because he was not factually aggrieved, since he was a customer of a telephone exchange which was not being transferred and did "not demonstrate how he will suffer economic injury or physical interference with his telephone service from this sale and transfer" of telephone exchanges of which he was not a customer. *Id.* at 195, 199-200. We reasoned, "The generalized interest [Shark] describes is shared with every other telephone customer anywhere, and any potential effect on him is so remote and speculative that there is no reasonable basis for judicial review of his claims." *Id.* at 200. Thus, we found Shark had not shown the personal stake required for the adversarial position necessary for an actual case or controversy, as he made no plausible argument how he will either gain or lose anything from the transfer of telephone exchanges that do not furnish his telephone service. *Id.; see also Vickery v. N.D. Workers Comp. Bureau,* 545 N.W.2d 781, 783-85 (N.D.1996) (denying standing to a claimant who alleged the potential of injury rather than injury in fact, as remote possibilities and speculation of harm were insufficient to establish that he was factually aggrieved, and a nominal, formal, or technical interest in the action will not suffice).

[¶ 69] Conversely, we have concluded parties did have standing to appeal administrative decisions upon proof they hurdled the three-part test and were factually aggrieved. *In re Juran & Moody, Inc.,* 2000 ND 136, ¶ 21, 613 N.W.2d 503; *see also Trinity Med. Ctr. v. N.D. Bd. of Nursing,* 399 N.W.2d 835, 836-38 (N.D.1987) (allowing nursing school operators to challenge the constitutionality of a statute and administrative rules granting authority to the nursing board to discontinue nursing programs, after finding that affidavits alleging injury from the rules were sufficient to withstand a motion to dismiss).

[¶ 70] The Housing Council has alleged a personal stake in the outcome and actual injuries in fact, concrete and particularized, not remote or speculative. The Housing Council supported their allegations by relying on *Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379, 102 S.Ct. 1114, 71 L.Ed.2d 214 (1982), which reversed the dismissal of housing discrimination claims by a similar fair housing council, explicitly *570 holding the council alleged an injury in fact sufficient to meet standing as an aggrieved person under the federal Fair Housing Act. In *Havens,* the housing council claimed they had been "frustrated by ... racial steering practices in its efforts to assist equal access to housing through counseling and other referral services ... [and] has had to devote significant resources to identify and counteract [these] racially discriminatory steering practices." *Id.* In view of these allegations, the Court stated, "[T]here can be no question that the organization has suffered injury in fact. Such concrete and demonstrable injury to the organization's activities--with the consequent drain on the organization's resources--constitutes far more than simply a setback to the organization's abstract social interests." *Id.* (citation omitted); *see also Cent. Ala. Fair Housing Ctr., Inc. v. Lowder Realty Co., Inc.,* 236 F.3d 629, 640 (11th Cir.2000) (noting a majority of circuits have concluded, based on *Havens,* that a fair housing organization may recover in its own right for the diversion of its resources to combat housing discrimination under federal legislation).

[¶ 71] Here, the district court distinguished its ruling from the broad reach of *Havens* based on the legislative intent of the United States Congress "to exercise jurisdiction under the Federal Fair Housing Act to the fullest extent allowable...." This is not a distinction. The express legislative intent under this state's Human Rights Act in effect at the time in question was "to prohibit discrimination on the basis of ... status with regard to marriage" and "to prevent and eliminate discrimination in ... housing." N.D.C.C. § 14-02.4-01. The Housing Council's allegations are very similar to those alleged in *Havens. See Havens,* 455 U.S. at 372, 102 S.Ct. 1114 (stating the housing council must allege a distinct and palpable injury resulting from the discriminatory conduct); *see also Carpenter,* 301 N.W.2d at 107 (conferring standing when litigants "have suffered some threatened or actual injury resulting from the putatively illegal action" and the harm must not be a generalized grievance shared by all or a large class of citizens). The Housing Council has alleged actual injuries, not a generalized grievance and not resting on rights and interests of third parties, by claiming the Petersons' discriminatory practices frustrated the Council's efforts and ability to pursue its mission and purposes to eliminate unlawful discrimination and forced the Council to devote significant resources to

counteract the discriminatory conduct. *See Shark*, 545 N.W.2d at 200 (requiring allegations of either gaining or losing something, in order to establish a personal stake in the controversy, rather than a generalized grievance).

[¶ 72] The district court erred in relying on *Shark*, 545 N.W.2d at 198, to conclude the Housing Council's "entire claim ... is dependent upon alleged violations of other people[']s rights" and that without the Kippens the Housing Council would have only a theoretical claim of injury. Rather, *Shark* supports the Housing Council's claim of being aggrieved in fact by the Petersons' alleged housing discrimination. We determined Shark lacked standing because he failed to show he had suffered an actual and concrete injury, as opposed to an injury that is hypothetical, may occur in the future, and is contingent on other undetermined future events. *See Shark*, at 199- 200 (holding Shark did not demonstrate how he will suffer economic injury or physical interference, and his generalized interest is shared with every other telephone customer anywhere, and any potential effect on him is remote and speculative). By contrast, the Housing Council has alleged actual, demonstrable injury to the Council's financial and other interests.

*571 [¶ 73] The district court granted the motion to dismiss under Rule 12, not a motion for summary judgment. As the United States Supreme Court determined:

> At the pleading stage, general factual allegations of injury resulting from the defendant's conduct may suffice [for purposes of establishing standing], for on a motion to dismiss, we "presum[e] that general allegations embrace those specific facts that are necessary to support the claim." In response to a summary judgment motion, however, the plaintiff can no longer rest on such "mere allegations," but must "set forth" by affidavit or other evidence "specific facts,"which for purposes of the summary judgment motion will be taken to be true. And at the final stage, those facts (if controverted) must be "supported adequately by the evidence adduced at trial."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992) (citations omitted).

[¶ 74] In another housing discrimination case, the United States Court of Appeals for the Third Circuit noted the "critical distinction" between examining allegations in the context of a motion to dismiss for lack of standing versus in the context of a motion for summary judgment. *Fair Housing Council of Suburban Philadelphia v. Montgomery Newspapers*, 141 F.3d 71, 76 (3d Cir.1998). The Third Circuit affirmed summary judgment dismissing a fair housing council based on its failure to produce evidence to establish an actual injury: "While there is no dispute that the [Fair Housing Council's] damage allegations track the language in *Havens* and were *sufficient to withstand a motion to dismiss*, something more than these naked allegations was required at the summary judgment stage." *Montgomery Newspapers*, at 76 (emphasis added). Furthermore, the housing council in *Montgomery Newspapers* failed to show that any staff time at all was expended to investigate the alleged discriminatory newspaper advertisements and failed to prove a palpable, demonstrable injury to the council's activities. *Id.* at 78.

[¶ 75] Here, the Housing Council has alleged actual injuries, similar to those in *Havens*, and thus sufficient to survive a motion to dismiss under Rule 12. The litigation was not at the summary judgment stage, which would require "something more than these naked allegations." *See Montgomery Newspapers*, 141 F.3d at 76; *see also N.D. Fair Housing Council, Inc. v. Woeste*, Civ. No. A1-99-116 (D.N.D.2000) (stating allegations of an injury in fact are sufficient to survive a motion to dismiss under *Havens*, but "something more would be required to withstand a motion for summary judgment"); *Alexander v. Riga*, 208 F.3d 419, 427 n. 4 (3d Cir.2000) (holding a fair housing council was an aggrieved person and had standing when it alleged it conducted a prelitigation investigation including fair housing testing, stopped everything else and devoted all attention to this case, and diverted resources to investigate and to counter the discriminatory conduct); *Spann v. Colonial Village, Inc.*, 899 F.2d 24, 27-29 (D.C.Cir.1990) (upholding standing for a fair housing council that devoted resources to investigating housing discrimination, which also necessitated increased educational efforts to counteract, and stating, "Like the organization in *Havens*, [the fair housing council] must ultimately prove at trial that the defendants' illegal actions actually caused them to

suffer the alleged injuries before they will be entitled to judicial relief.").

[¶ 76] Because the Housing Council has alleged it has suffered actual injuries in fact resulting from the Petersons' asserted *572 illegal discrimination, and the injuries are not a generalized grievance but direct injuries to the Council's resources, the district court erred in dismissing the Council for lack of standing under Rule 12. The reasoning in *Rhame*, 231 N.W.2d at 808, remains unchanged: "Any doubt on the question of standing ... should be resolved in favor of ... any person aggrieved in fact" when deciding a motion brought under Rule 12, N.D.R.Civ.P.

B

[¶ 77] The district court also erred in concluding the Housing Council was not a real party in interest under N.D.R.Civ.P. 17(a), which provides:

> Every action must be prosecuted in the name of the real party in interest.... No action may be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after the objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest....

A real party in interest is one with a real, actual, material, or substantial interest in the subject of an action, as opposed to one who has only a nominal, formal, or technical interest in or connection with the action. *Froling v. Farrar*, 77 N.D. 639, 642-43, 44 N.W.2d 763, 765 (1950). In *Froling*, the plaintiff and her husband were jointly conducting a collection agency and were mutually interested in the profits arising from this enterprise and would share in any benefits from the plaintiff's lawsuit to recover damages on an account assigned to her. *Id.* at 764-65. Although the plaintiff's husband was not named as a party, we determined that he in fact was a real party in interest, as he had a substantial interest in the subject of the action and in obtaining recovery, and properly might have been joined as a party plaintiff. *Id.* at 765.

[¶ 78] The Housing Council is a real party in interest to this lawsuit in that it asserts Petersons' alleged discrimination caused the Council to devote resources to investigating and counteracting unlawful conduct and to divert resources from other educational and outreach activities. These direct injuries, if proven, would give the Housing Council a real, actual, material, or substantial interest in this action, not a mere nominal connection, as the Council is seeking recovery for its own injuries.

III

[¶ 79] The Petersons based their right to deny housing on the existence of the criminal statute dealing with unlawful cohabitation. The record is insufficient to apply that statute as a matter of law as the basis for the decision. I note the 2001 Legislative Assembly has passed a statute which, when it becomes effective, will deal directly with rental decisions like the one made by the Petersons. House Bill 1448 provides: "A new subsection to section 14- 02.5-02 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows: Nothing in this chapter [N.D.C.C. ch. 14-02.5, Housing Discrimination] prevents a person from refusing to rent a dwelling to two unrelated individuals of opposite gender who are not married to each other." H.B. 1448 (March 27, 2001). However, our review of this case must be based on the law in effect at the time the cause of action arose. For the reasons set forth above, I would reverse the summary judgment in favor of the Petersons and the dismissal of the Housing Council and remand for further proceedings.

[¶ 80] Carol Ronning Kapsner.

625 N.W.2d 551, 2001 ND 81

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NORTH DAKOTA HOUSE OF REPRESENTATIVES

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COMMITTEES:
Industry, Business and Labor
Political Subdivisions

HB 1175 Unlawful Cohabitation
ND Senate / Government and Veterans Affairs Committee
Missouri River Room / Chair Karen Krebsbach
March 7, 2003 / 9:00 AM

Good Morning, I am Representative Mary Ekstrom from District 11 in Fargo. Madame Chair and Members of the Government and Veterans Affairs Committee, I am here to introduce HB 1175 for your consideration.

HB 1175 rescinds Century Code Section 12.1-20-10 which deals with Unlawful Cohabitation. I have provided you with copies of the statute and its provisions.

No one has been charged with a violation since 1938. According to the 2000 Census, there are 11,379 citizens who indicated that they are living with an unmarried partner here in North Dakota.

In my discussions with my State's Attorney in Cass County and others in the State, it is clear that this law is unenforceable and should be removed from the code. I have included the documentation from Birch Burdick (Cass County's States Attorney) in your packet.

There are several reasons that the law is unenforceable. First, there is an implied right of freedom of association granted by the First Amendment of the U.S. Constitution. To paraphrase various court opinions: anyone may associate with anyone else as long as they are not engaged in criminal activity.

The Fair Lending Act of 1974 states that any two persons may apply jointly for a loan (including mortgages). The law further states that they may not be denied a loan based solely on their marital status. This law has been used and adopted nationally.

Just for a moment, consider whether the existing statute could be enforced? A man and a woman are living openly and notoriously while purporting to be husband and wife. They can get a mortgage together, buy a car and so forth.

Now just suppose, you wished to try to enforce the existing cohabitation law. How in the world, would you **prove** that they were having intimate relations? I don't think it can be done.

We have college students sharing apartments. We have seniors sharing living arrangements in order to hang onto their maximum social security benefits. Are these people criminals?

I would request that you give a DO PASS to HB 1175. I would be happy to answer any of your questions.

Testimony on HB 1175
Rep. Margaret Sitte, District 35, Bismarck

Madame Chairman and Members of the Committee.

HB 1175 will harm North Dakota's families, provide respectability to cohabitation, and denigrate marriage. Studies have shown that couples who cohabit have increased domestic violence, increased child abuse, and increased risk of divorce. Cohabitation ultimately results in more children being born out-of-wedlock, and because cohabiting couples are more likely to separate, more children are being raised in single-parent homes with increased economic costs to the state.

Last year Rutgers University in New Jersey compiled a plethora of information about the cost of cohabitation to the individuals involved and to society at large. Those who cohabit are 46 percent more likely to divorce than those who don't cohabit. Why? Marriage is held together by a strong ethic of committment; cohabiting, by its very nature, undercuts this ethic.

Cohabitation actually increases young people's acceptance of divorce. The more months couples cohabit, the less enthusiastic they are toward marriage and childbearing. Those who cohabit have three times the annual rate of depression compared to married people. Domestic violence is twice as common among cohabiting couples as in married relationships. Two studies found that women in cohabiting relationships are nine times more likly to be killed by their partners than are married women.

Throughout human history, marriage has also protected children. Let's look at the results of cohabitation on children. Fully three-fourths of children born to cohabiting couples will see their parents split up before their 16th birthdays, whereas only about one-third of children born in marriages will face that situation. The most unsafe environment for a child is to be raised is in a household where the mother is living with someone other than the child's biological father. The poverty rate for children living in cohabiting homes is 31 percent, far higher than the poverty rate of 6 percent in married families.

Prior to 1970, cohabitation was illegal in all states, and it still remains illegal in a number of states. Existing law affects those who "live openly and notoriously with a person of the opposite sex as a married couple without being married to the other person." This bill doesn't affect those who share apartments to control costs.

Some will say people are cohabiting anyway, and the law is not enforced, so why have it? Teenagers currently drink alcohol. Should we then legalize drinking for those under 21? People use meth. Should we legalize it? If senior citizens are cohabiting without marriage for economic reasons, let's change the laws that make marriage a hardship, not throw marriage out the window. If this legislative assembly no longer bans cohabitation, is it opening the door to cohabitation in dorms and to increased coercion to move in together?

In repealing this law, the legislature would be acting in an amoral manner, saying marriage doesn't really matter. But marriage does matter. Cohabiting unions weaken the institution of

marriage, and as they become more acceptable, marriage will become less desireable. Several states, notably with Oklahoma as one of the leaders, have launched marriage initiatives in an effort to build strong families.

From an economic standpoint, costs to the state of North Dakota in welfare, in abuse court cases, and in foster care are increasing as married families disintegrate. Regcognizing that marriage is the cornerstone of society, this body should do everything possible to keep marriage strong. What other issue is as important to society as the strength of the family?

If your children or grandchildren talked about living together, what would you recommend, marriage or cohabitation? Marriage facilitates long-term emotional investment, increases economic properity, improves the well-being of children, and provides for stronger connections in the community. Married couples have higher levels of happiness than those who cohabit.

Earlier this session, the House considered establishing an office for increasing the population of the state. Statistics show that those who marry rather than cohabit have more children and a more positive environment for raising those children. For the future growth and stability of our state, it is in North Dakota's best interest to foster long-term, committed relationships among child-rearing, married couples.

State law should not follow the pendulum of trends, but should set a standard for what is best for children, for men and women, and for society's best interest. This body should do everything possible to keep marriage strong. I urge a Do Not Pass on HB 1175.