

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1165

2005 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1165

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1165

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 1/14/05

Tape Number	Side A	Side B	Meter #
1	X		24.9-54.3
		X	54.3-18.9

Committee Clerk Signature

Minutes: HB 1165 Licensing persons engaged in private investigative service or private security service. 13 members present, 1 absent.

Chairman Haas: We will open the hearing on HB 1165.

Russell Hons, Chairman, North Dakota Private Investigation and Security Board-For-See Attached Testimony.

Chairman Haas: How many members are on your board right now?

Russell: Seven members.

Rep. Klemin: The definition of employee, page 1, this definition is not exactly the same as the definition that is traditionally used, the usual definition of employee in other sections of the law, on the end of line 12 and pay some taxes on behalf of the employees, I am not sure that the employer is paying taxes on behalf of the employee, as much as with holding taxes and transmitting it, it is not the employer paying it, the other kind of thing we call payroll taxes aren't really taxes when we look at it, they are contributions or some other kind of thing or social

security, those kind of things. I am thinking that the term pays some taxes on behalf of the employees may be a little bit ambiguous and maybe that could be, using the traditional definition of employee as we use in other sections may take care of that. On line 13, you say term employee may not be construed to include independent contractors, that word employer is that suppose to be employee?

Russell: That could very well be and I think our attorney can make sure our definitions with employee and everything are fixed, if there are any issues.

Chairman Haas: Mr. Erickson, can you respond to that please?

Edward Erickson: This was copied from another state wrong and we can work on some of the changes. The board is going to be presenting a one word amendment to another section, Russell explained that. We can incorporate some changes.

Rep. Amerman: Under section 2, under state wsi, for example, when they hire investigators, according to section 2, they don't have to be licensed with your board. What criteria does wsi use to ensure the public against the investigator if they were doing something wrong and if these investigators didn't act in a professional manner and weren't doing things right what kind of recourse would the general public have?

Russell: Right now Wsi is probably a bad example, because Wsi does require their investigators to be licensed by the State. Legally they don't have to, but they chose too. I just talked to company the other day from New York or some place that is going to contracting security work with the Minot Air Force Base and they are inquiring whether they have to be licensed. At this point they are exempt from our licensing laws, which means we have nothing to do with them, if they contract with the Minot Air Force Base and they can hire who ever they want or sub contract

with who ever they want to do that work and our board will have no idea what kind insurance this company will have or what kind of standards they may have or they made background checks on their employees or whether they hire some contractors that come out of the State Pen, we don't know, we have no way of knowing that, because we have no authority over that issue

Chairman Haas: Didn't you tell us in the last bill, those sub contractors, those individuals who might have been sub contracted were not exempt.

Russell: Currently they are exempt, the current law.

Chairman Haas: The change that you are proposing, changes that, OK.

Russell: This bill we are proposing will change that.

Rep. Boehning: You are talking about unclaimed property, you said that we can't get the names of the people that have unclaimed property, you can go on the web site and get the list of all of them, gives the name and the former address of it, basically that wouldn't apply to this. We as legislatures, would we be exempt from this law if we were to go through the list and find some constituents we know and send them an e-mail or send them a letter say quote, your unclaimed property, would we be exempt and if somebody goes in there and see their neighbor is in there, would they be in violation of this law.

Russell: They would be exempt. This is strictly for a fee. That is kind of the indicator with all of this activity and if you look in the definition, it says, for a fee, reward, or other consideration under taking these measures, so as a representative, if you see somebody's name, by all means let them know you have some money with the state.

Rep. Boehning: Has to be a fee, say I am getting a divorce, which I am not married or anything, but if I am getting a divorce and I want to check on my wife and I have a brother-in-law, which I

don't have, I could have brother go out and spy on my soon to be ex-wife and that would be legal, correct.

Russell: Yes, that is legal, if they are not doing it for a fee.

Rep. Boehning: So basically, we are allowing people to do things for free, but if we pay them, they are in violation of the law.

Russell: That is basically correct, yes if they are out there collecting money from the public to perform these services, then we feel they should be licensed and fall under our board, if they are doing it for free, then there is nothing we can do about it.

Chairman Haas: That was a lot of hypothetical, are you looking to change some of these hypothesis?

Rep. Froseth: I have one question, on exemptions, on page 4, number 8, I don't know what all these other guys do, but technical surveillance counter measures, what is that?

Russell: Apparently, referred to as tcs, these are individuals that come in with highly specialized equipment, search rooms for listening devices and cameras, a lot of that type of stuff. I think Mr. Butcher knows a lot more about that issue than I do. Checking for bugs and listening devices and things like that and helping companies that feel like there is some espionage going out, its a very highly specialized industry, with very expensive equipment to do the job.

Rep. Klemin: You just called that tcs, in hear it is technical surveillance counter measure, which would be tcs, which way is it?

Russell: I miss spoke sir.

Rep. Potter: On this sub contracting you mentioned what was going on with the Minot Air Force Base, do you know other examples that this has been a problem in the past or is that kind of a new thing coming up?

Russell: That has been an issue in a lot of different things, I think a couple of years ago we went back and forth here for quite some time and I believe there is some opposition here today as well. There are companies that contract with the federal government and then sub contract with other individuals that go out to apartments and they attempt to rent apartments or they pretend they are renting apartments to see whether there are violations in the fair housing laws and so on. There are a lot of different examples of places where the subcontractors and personally I don't like this exemption at all, I wish everyone would have a contract with the government or joe blow were licensed by the state. Unfortunately that is too much to bite off. It is not going to happen to be able to do that, with TSA and their contracts and that type of stuff, but I feel if you go down the ladder and they're subcontracting and all of sudden we have all these people out doing these things and there is no requirement for background checks, no anything, we don't even know they are there, until there is a problem and somebody calls our board and says hey this person was out here and did this and our board says they are not licensed by us, we can send them a letter and tell them not to do this anymore, that is about all we can do.

Russell: I have one more issue, the amendment attached to my testimony, the law enforcement had contacted to us prior to testifying, on page 2, line 15, the definition of investigating, the identity and apprehension of persons of crimes in the wrong doing, we have proposed an amendment to change apprehension to location.

**Gary Prezler-Commissioner for the North Dakota State Land Department-Secretary of the
Board of University and School Lands-For-Attached Testimony**

**Amy Schauer Nelson-Executive Director of the North Dakota Fair Housing
Council-Against-Testimony Attached.**

Rep. Kasper: On the first page of your testimony, you talk about your volunteers. Can you tell me how you determine your qualifications for your volunteers, do you any background checks on the volunteers, on the whole process taking the volunteer and saying yes, you are one we will use.

Amy: We do require our investigators to certify or test to certify that they do not have a criminal background, we also do a check any in capabilities for them to be able to accurately gather the information, we also have them fill out a form to complete, if they were unable to gather accurate information.

Rep. Kasper: I am volunteer, I come to your organization and I say I want to be a tester. You give me some paper work to complete, which is one that I promise I don't have a criminal background and you accept that.

Amy: We would accept them, because we do require that they certify that they do not have that background.

Rep. Kasper: So if a person was untruthful on their application, you have no way of knowing that or not, do you.

Kay: At this time we wouldn't at that initial application, as time goes on, potentially we could find that out.

Rep. Kasper: How would you guys do that?

Kay: If it is brought to our attention, or if we have concerns regarding that persons ability.

Rep. Kasper: In the mean time that tester could have done irreparable damage to people by making false reports back to your organization, because they might have a criminal background or criminal intent, or just may have an ax to grind, would that be correct?

Kay: I don't feel that is correct, how do we know someone with a criminal record couldn't give accurate information, I think just throwing a person away in that respect would be incorrect, we require that our testers not have criminal background records, but I think that is unfair to say, just because someone does have a criminal record that they wouldn't be able to gather accurate information.

Rep. Kasper: I didn't mean to imply that, what I mean to imply is that you wouldn't know in advance that, that person had that record, you are just taking their word.

Kay: Yes, we take their word.

Rep. Horter: Just to clarify, volunteers are not paid?

Kay: At this time they are paid, which basically covers their mileage and phone calls, any where from \$12 to \$25.

Rep. Horter: Would that constitute the people that are doing this for a fee, so that be considered a fee, or would simply would the volunteer status of the testers exempt them?

Kay: Because of the new wording, if it is for fee or other consideration, we believe that statement would be covered there.

Chairman Haas: Miss Nelson did you have any conversation at all with Mr. Hahns, either about your concerns as the bill was being developed or subsequent to the bill being developed?

Kay: During the last session we had brought our concerns and also had brought forth an amendment at that time, during the interim session I was not aware legislation was going to be proposed again, so we didn't have conversations.

Chairman Haas: Do you think that it was the intent to cover testers with this bill?

Kay: It appears to be so, because Mr. Hons stated that earlier in his testimony.

Rep. Froseth: The term mystery shoppers, I think it kind of relates to a lot of other activities to, other than testers, I think testers come under this title. Could someone give us an explanation.

Kay: I put that language in, because most time fair housing testers are covered under the mystery shopper definition, again basically individuals who pose at perspective renters or go to a restaurant, or into a retail environment to check the quality of the customer service and record their experience.

Rep. Kasper: On page two of your testimony, you are concerned about confidentiality of your testers and mystery shoppers and then on the top of page two you are giving us an extra cost and time, one way to solve the confidentiality, would it not be if we would exempt those people from public record, so their identities would remain confidential to the public, but would be known to the board.

Kay: That could be an option to exempt, so that there isn't that confidentiality issue, but again it comes back, that they are required to be licensed private investigators, however, domestic budgets are going down, our budgets are going down, we don't have the funds to have people licensed as private investigators.

Rep. Kasper: Could you give us a little bit of detail on how you are funded?

Kay: About 90% of funding we receive is through the US Department of Housing and Urban Development fund, subcontracts that I spoke about earlier, the remaining funding is from community development block grants and private foundation.

Rep. Kasper: Do you solicit those sub contracts or do they find you or both?

Kay: We have to apply for all those funds and show that we do qualify

**Paul Carmichael-Owner of Quinn Marketing and Communications (QMC)-Bismarck,
ND-Against-See Attached Testimony**

Rep. Kasper: Do you feel that the mystery shoppers should be put on the record and have a background check done on them?

Paul: Mystery shoppers are used to evaluate the business, they do not need a background check, all they do is go into a business and see how if the employees are friendly and giving good service.

Rep. Kasper: You are hiring volunteers, pay very little and you don't know if they are honest when they come back with their report, they might not like that particular business, so you don't do a background check on them.

Paul: No background checks.

Rep. Haas: Businesses themselves ask you to do this, they contact you?

Paul: Yes, different businesses contact us.

Rep. Froseth: What if you hire a person and they don't like that person or business and they come back with a negative about the business, here this business gets a complaint and they don't deserve it, how do you handle that kind of situation.

Paul: We interview all our potential mystery shoppers, they are asked different questions, they have to answer a number of questions and we will go to the business when we get a negative and check it out ourselves.

Chairman Haas: You would like to exempt mystery shoppers from this bill?

Paul: That is correct.

Chairman Haas: Thank you very much. Any more questions?

The hearing will be closed on HB 1165.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1165

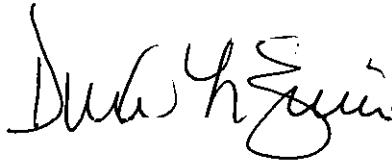
House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 1/28/05

Tape Number	Side A	Side B	Meter #
5	x		5.4-6.3

Committee Clerk Signature



Minutes: HB Licensing persons engaged in private investigative service or private security service.

14 members present, 0 absent.

Discussion and voting.

Chairman Haas: It was the bill that we were talking about a persons engaged in private investigative services, we want to put an exemption in the bill for mystery shoppers and then some qualifier statements that dealt with testers. Rep. Klemin and his sub committee meant and have an amendment.

Rep. Klemin: I move the amendment.

Chairman Haas: Rep. Klemin moves the amendment, is there a second to the amendment, seconded by Rep. Conrad. Any further discussion on the amendment. Thank you very much to the committee for doing an excellent job. Any discussion on the amendments, if not we will have a voice vote on the amendment, all in favor say I, all oppose no, amendment carried. We now

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1165

Hearing Date 1/28/05

have the amended bill before us, is there a motion. Rep. Klemin moves a Do Pass as amended, is there a second, seconded by Rep. Horter. Any discussion, if not we will have the clerk take the roll on a DO PASS as Amended on HB 1165.

VOTE: YES 14 NO 0 ABSENT 0 DO PASS AS AMENDED ON HB 1165

REP. KLEMIN WILL CARRY THE BILL.

FISCAL NOTE
Requested by Legislative Council
01/03/2005

Bill/Resolution No.: HB 1165

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

None of these areas apply because we do not receive any funds or appropriations. We are a self-sufficient board that is solely supported by the industry we regulate. The fiscal impact does not apply. Therefore, there is no fiscal impact.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

Not applicable.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Not applicable.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Not applicable.

Name: Francine Johnson
Phone Number: 222-3063

Agency: NDPISB
Date Prepared: 01/07/2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1165

Page 2, line 15, replace "apprehension" with "location"

Renumber accordingly

VK
1/28/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1165 GVA 1/31/05

Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to exceptions to private investigative services licensing; to

Page 1, line 3, after "service" insert "; and to provide a penalty"

Page 1, line 10, replace "to be in an employer-employee relationship in which the" with "an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the "common law" test."

Page 1, remove lines 11 through 14

Page 2, line 15, replace "apprehension" with "location"

Page 4, after line 13, insert:

"10. A person providing mystery or secret shopping services, or providing a similar service, used for evaluating customer service, products, services, pricing, locations, or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.

SECTION 3. A new section to chapter 43-30 of the North Dakota Century Code is created and enacted as follows:

Fair housing law compliance - Exception - Penalty. This chapter does not apply to a person testing for fair housing law compliance who is employed by or volunteers with an organization recognized for this purpose under federal or state law and who meets the requirements, except for actual registration, of a registered private investigator established by the board. These requirements include a state and nationwide criminal history background check conducted by the bureau of criminal investigation and the federal bureau of investigation. The results of the state and nationwide criminal history background check must be on file with the organization. The board, at its request, may review the criminal history background check and other information related to any person conducting the compliance test. Any person who knowingly violates the requirements for an exception under this section is guilty of a class B misdemeanor."

Renumber accordingly

Date: 1/28/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1165

House . House Government and Veterans Affairs

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58091.0101

Action Taken

Do Pass As Amended

Motion Made By

Rep. Klemin

Seconded By Rep. Horter

Representatives	Yes	No	Representatives	Yes	No
Chairman C.B. Haas	✓		Rep. Bill Amerman	✓	
Bette B. Grande - Vice Chairman	✓		Rep. Kari Conrad	✓	
Rep. Randy Boehning	✓		Rep. Louise Potter	✓	
Rep. Glen Froseth	✓		Rep. Sally M. Sandvig	✓	
Rep. Pat Galvin	✓				
Rep. Stacey Horter	✓				
Rep. Jim Kasper	✓				
Rep. Lawrence R. Klemin	✓				
Rep. Lisa Meier	✓				
Rep. Margaret Sitte	✓				

Total (Yes)

14

No

0

Absent

0

Floor Assignment

Rep. Klemin

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

REPORT OF STANDING COMMITTEE

HB 1165: Government and Veterans Affairs Committee (Rep. Haas, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1165 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 43-30 of the North Dakota Century Code, relating to exceptions to private investigative services licensing; to

Page 1, line 3, after "service" insert "; and to provide a penalty"

Page 1, line 10, replace "to be in an employer-employee relationship in which the" with "an employee under a contract of employment as defined in chapter 34-01, and not an independent contractor as defined by the "common law" test."

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Renumber accordingly

2005 SENATE GOVERNMENT AND VETERANS AFFAIRS

HB 1165

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1165**

Senate Government and Veterans Affairs

Business and Conference Committee

Hearing Date February 25, 2005

Tape Number

1

Side A

x

Side B


x

Meter #

5427-6218

0-1969

Committee Clerk Signature



Chairman Krebsbach opens hearing on **HB 1165**

Relating to licensing persons engaged in private investigative service or private security service.

Russell Hons - See written testimony - In favor of do pass.

(end of tape, side A, meter #6218)

(side B, tape 1)

Hons - Continues with written testimony.

Senator Syverson - Said this seems to be a well thought out bill.

Senator Krebsbach - Asked what are the fees.

Hons - Replied they just lowered their fees, now its between 100-150 for applications.

Senator Syverson - Said that not all PI's carry weapons, if they do, do they go through concealed weapons permit.

Hons - Said that a concealed weapons permit is required for a PI, security people have to go through training and pass a weapons exam.

(meter #487)

Amy Schauer Nelson - Executive Director of ND Fair Housing Council - See written testimony.
In favor of do pass.

Linda Fisher - ND Unchained Properties Divisions Administrator - In favor of bill.

Senator Krebsbach - Asked if most of their information is on line.

Fisher - Replied yes all but the dollar amount. Also mentioned there is legislation coming eliminating all dollar amounts. Fraud is a huge problem in unclaimed property.

Senator Lee - Asked if someone had to be a PI to get the dollar amount information.

Fisher - Replied no, not if we know who we are talking to. It is better than just throwing information out there. Everything can be fabricated in fraud.

Senator Lee - Asked what the process is that you go through to determine that is the right person.

Fisher - Then described the process they go through. Larger claims require social security number. Court documents are required for the deceased.

(meter #1562)

Senator Krebsbach - Asked if fraud has become more prevalent in the last few years in unclaimed property or has it been there forever.

Fisher - Said it has been there but more now because of national attention.

Page 3

Senate Government and Veterans Affairs

Bill/Resolution Number **HB 1165**

Hearing Date February 25, 2005

Hon - Said this bill is only for those charging fee to claim unclaimed property.

Senator Lee - Still wanted to know if she came in would they give her the information.

Fisher - Said they will still ask the question on why we they should give you the information.

Senator Lee - Struggles with the amount not being available.

Senator Krebsbach - Differs with that. She asked who is liable if they give unclaimed property away to the wrong person.

Fisher - Said it would probably be their department.

Hon - Wanted to make it clear that the information we have heard on unclaimed property doesn't effect this bill.

(Tape 1, side B, meter #1969)

Close hearing on 1165.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1165**

Senate Government and Veterans Affairs

Business and Conference Committee

Hearing Date March 17 , 2005

Tape Number

1

Side A

Side B

x

Meter #

Blank tape

Committee Clerk Signature



Committee work on 1165

No discussion

Senator Brown moved for a do pass

Senator Nelson seconded

Passed

Senator Krebsbach will carry

Date: 3/17/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1165

Senate **Government and Veterans Affairs**

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass*

Motion Made By *Senator Brown* Seconded By *Senator Nelson*

Senators	Yes	No	Senators	Yes	No
Karen K. Krebsbach, Chairman	X		Carolyn Nelson	X	
Richard L. Brown, Vice Chairman	X				
Judy Lee	X				
John O. Syverson	X				

Total (Yes) 5 No 0

Absent 0

Floor Assignment *Senator Krebsbach*

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

REPORT OF STANDING COMMITTEE (410)
March 17, 2005 2:33 p.m.

Module No: SR-49-5302
Carrier: Krebsbach
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1165, as engrossed: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman) recommends DO PASS (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1165 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1165



P.O. Box 159
Mandan, ND 58554
Office: (701) 250-8713
Fax: (701) 250-8715
Toll Free: (800) 570-4497

Chairman Haas and members of the Government and Veterans Affairs Committee

I am testifying regarding H.B.1165.

My name is Paul Carmichael, I am the owner of Quinn Marketing and Communications (QMC) located here in Bismarck, ND.

QMC is a 14 year old firm that provides quantitative and qualitative marketing research services to clients throughout the Midwest. One of these services – under the qualitative side of our research business – is Mystery Shopping. Mystery Shopping, simply put, is a type of service in which an individual is engaged to enter a business premises to evaluate specific aspects of the business environment in accordance with quality metrics that the business provides. This evaluation includes customer care, customer service, product or service quality, cleanliness levels, and value for price items, just to mention a few.

Unfortunately, House Bills 1165 and 1661, as currently written, would severely damage my business, as they would mandate that all Mystery Shoppers become licensed as private investigators. Currently over 800 individuals have signed up with QMC as mystery shoppers in ND. Should this bill pass – without being amended to remove Mystery Shoppers from its licensing requirements – I am afraid that my business will have no mystery shoppers left! The current language of this bill is far too ambiguous and all encompassing. I fear that this will lead to the demise of all consumer-lead marketing research in our state.

I strongly propose you to give this bill a *do not pass* recommendation, or add the following exclusionary language that would exclude this type of valuable market research.

This chapter does not apply to:

Mystery shopping services and secret shopping services – which consist of services that anonymously evaluate various types of products and/or services for consumer oriented quality assurance purposes, and include evaluations of customer service, operations, merchandising, product quality, availability and price, cleanliness of premises, employee courtesy, salesmanship, confidence, and/or communication ability levels.

I would welcome the opportunity to work with this Committee should it be required in resolution of this legislation. My contact information is as follows:

Paul Q. Carmichael
Quinn Marketing & Communications
PO Box 159 ■ Mandan, ND 58554
(701) 250-8713 Ext 104
paul@quinnmc.com

Thanks you hearing my testimony!

Sincerely,


Paul Q. Carmichael

House Bill 1165
Before the House Government and Veterans Affairs Committee
Russell Hons, Chairman, North Dakota Private Investigation & Security Board
January 14, 2003⁶

Members of Committee :

C. B. Haas— Chairman
Bette B. Grande— Vice Chairman
Bill Amerman
Randy Boehning
Kari Conrad
Glen Froseth
Pat Galvin
Stacey Horter
Jim Kasper
Lawrence R. Klemin
Lisa Meier
Louise Potter
Sally M. Sandvig
Margaret Sitte

Chairman Haas and members of the committee, I am Russell Hons, chairman of the North Dakota Private Investigation and Security Board and we introduced this bill to redefine and clarify the definitions of Private Investigations and Private Security, as well as clarify and change some exemptions to licensing. The Board asks for a "Do Pass" of this bill.

In the past, "Employee" was not clarified and was often used in loose terms to include employees and sub-contractors. This will clarify the definitions for each, and allows specific rules and regulations for each. Specifically, it will no longer exempt sub-contractors of companies holding contracts with government agencies. Currently, a private investigation or security company that has been hired by a government agency, is exempt from licensing by the State Board. They can then hire anyone as a subcontractor to complete the work, and they do not have to have a background check, be licensed or subjected to any scrutiny of the licensing board. This bill does continue to provide the licensing exclusion to a company working for a government agency, however limits that exclusion to that company, and not its' subcontractors.

This bill then changes the definition of Private Investigative Service. Currently the definition is "obtaining or furnishing information with reference to any act or individual". This bill more narrowly defines the practice of Private Investigative Services, and is modeled on the definitions from a large number of other states that license private investigators.

The next change we have proposed in this bill is the definition of Private Security Service. In our review of other states's definitions, we felt that our definitions needed to be more clear and specific as well. We also have had added the "Transportation of money or negotiable securities to or from a financial institution or between business locations on a regular or daily basis, except for mail delivery." Currently unlicensed courier companies can and are transporting negotiables on a daily basis with no form of protection, no requirements for background checks to prevent criminals or others from making these transports, and no requirements to insure the funds being transported.

In making these changes to the definitions, we have also had to make changes to the exemptions that correspond. Exemptions number 4 and 5 exempt credit reporting agencies and collections agencies. Exemption number 7 exempts those companies that solely collect and report records from public records, and conduct no other form of business. This does not include Heir Finders, who would be regulated under this bill. There maybe be some opposition to this, however even the State's unclaimed property division requires that a person must be a licensed PI to get a copy of the list, as they do not want unlicensed individuals out there trying to locate and contact these people.

Exemption 8 exempts specific experts working in their field of expertise, and exemption number 9 exempts the news media during their normal course of business.

One of the last items addressed in this bill is just a house keeping matter to more clearly define that one member of our board be "actively engaged in law enforcement".

For as long as I can remember we have always had one law enforcement representative on the board, but it is not specified in statute.

And finally, I have attached an amendment to this bill to make a slight change to the definition of private investigator so that it is not clouding the definition with law enforcements authority to apprehend individuals.

I thank you for your time today and ask again for a "Do Pass" vote on this bill. I would be happy to answer any questions you may have.

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**Testimony before the
Government & Veterans Affairs Committee
on House Bill 1165
January 14, 2005
by the
North Dakota Fair Housing Council**

Mr. Chairman, and members of the Committee, my name is Amy Schauer Nelson and I am the Executive Director of the North Dakota Fair Housing Council (NDFHC). The NDFHC is a non-profit agency who provides support, encouragement and assistance to those seeking equal opportunity in housing and works to eliminate discriminatory housing practices. The NDFHC opposes passage of House Bill 1165 without appropriate amendments. A similar bill was proposed in the 2003 Legislative Session and was defeated.

This bill modifies the definition of a "private investigative service" under Section 43-30-01.5 to such an extent that it would require businesses, individuals and volunteers to be registered and licensed as a private investigator or a private investigation service if they attempt to gather most types of information, including public information. *The NDFHC receives subcontracts from the federal government to investigate allegations of housing discrimination and would be affected by this legislation.* The NDFHC uses volunteers, who are called testers, to uncover illegal acts of housing discrimination. Testing is a tool used by fair housing programs to determine whether or not a landlord discriminates in violation of State and Federal Fair Housing Laws. The practice of using testers to investigate allegations of housing discrimination has been approved by the United States Supreme Court and other federal and state courts. Testers pose as prospective renters and are trained to record their experiences. During any given time, the NDFHC maintains a *list of approximately 30 volunteers* who are willing to volunteer to conduct "tests".

I am aware of no other state where testers or volunteer activities are required to be licensed as this bill would require. The change in language under 43-30-02-Exemptions, number (1), would require the NDFHC volunteer testers to become licensed private investigators because they are not employees of the NDFHC.

The NDFHC's volunteer list is constantly being updated as new testers are trained and others discontinue testing. Typically, a person will volunteer as a tester for one to two years, and new testers are continuously being recruited to replace them. Although the amount of time each volunteer donates varies from tester to tester, it rarely exceeds 2-6 hours per month after their initial training. *To require our volunteers to become licensed private investigators would be an expensive, time consuming and unworkable process for the following reasons:*

- **Loss of an Investigative Tool by the North Dakota Department of Labor's Human Rights Division:** The Department relies on testing evidence to make determinations in housing discrimination cases and is very supportive of the NDFHC's testing program. Without this highly reliable testing evidence, the Department will be forced to expend additional resources to gather evidence and will have to make less informed determinations. Approximately 50% of the cases referred to the Department by the NDFHC are cases which include testing.



- **Time Consuming and Costly for Volunteers:** To require volunteer testers (who typically only volunteer 2-6 hours a month) to apply for licensure as private investigators (\$130 license+\$52 background check fee=\$182), take and pass the Board's examination (\$100 testing fee), work 2,000 hours for a detective agency, and pay the yearly license renewal fees (\$130), would deter any reasonable person from ever volunteering as a tester. The hours required to prepare for the private investigative test and work for the detective agency alone would deter a volunteer.
- **Financially Unfeasible for the NDFHC:** To conduct 90 tests (as required under the NDFHC's current HUD subcontract), it could cost over \$16,000 per year to license the NDFHC's current testing pool (30 testers) as private investigators and conduct the 90 tests (2 volunteers per test) versus \$4,500 if using volunteers. *That's if we could even find enough volunteers willing to go through the process of becoming a private investigator and willing/able to work 2,000 hours for an investigation agency which is extremely unlikely.* Another option is using professional investigators at an estimated \$50/hour cost. Under this option with a test taking 2-3 hours and two investigators needed per test, each test would cost \$300 (not including initial training costs) versus a current cost of \$50. To conduct 90 tests using professional investigators, it would cost an estimated \$27,000 plus training costs versus a current cost of \$4,500. The NDFHC's current yearly budget is just over \$150,000 per year so these options are not fiscally possible.
- **Lack of Diversity in Private Investigators:** Even if the NDFHC had the funding to hire private investigators, it is doubtful that North Dakota has a sufficient number of racially diverse men and women, with and without disabilities, located throughout North Dakota, who are licensed as private investigators and who could perform testing. Most of the tests conducted by NDFHC volunteers require testers to be women, Native Americans or people with disabilities. How many private investigators licensed in North Dakota are women, Native American or disabled?
- **Confidentiality:** State law requires that each investigator be registered with the Private Investigative and Security Board which is a matter of public record. For testing to be effective, a landlord who is the subject of a test must believe that the tester is a bona fide homeseeker, not an investigator, in order for the information gathered to be impartial. If would not take much effort for tester's names to be made known and distributed, thereby, making the test and information gathered useless.
- **Loss of Federal Funds to North Dakota:** Testing is the most common tool used in fair housing investigations. It has been supported by the United States Supreme Court as an effective means of uncovering illegal housing practices. The US Department of Housing & Urban Development (HUD) requires testing in federal subcontracts. Without the means to uncover acts of housing discrimination, the result would be a loss of substantial equivalency in North Dakota and a loss of federal funding to the Human Rights Division at the North Dakota Department of Labor. A loss of substantial equivalency would mean that complaints would have to be filed in state or federal court or with HUD's Denver Office instead of the North Dakota Department of Labor and an effective method for uncovering housing discrimination would be lost.

This legislation as currently drafted makes it impossible for the NDFHC to use volunteers to conduct testing which would result in a challenge to the state's substantially equivalent fair housing law. The North Dakota Fair Housing Council urges this Committee to keep the current statute language regarding the definition of a private investigative service and Exemption (1) as currently worded, thus allowing for an exemption for organizations and volunteers contracting/subcontracting with the government to uncover acts of illegal discrimination. The only other alternative is an amendment to create an exemption for mystery shoppers and fair housing testers.

The North Dakota Fair Housing Council recommends:

- Deletion of proposed language under 43-30-01 Definitions for "Private investigative service." (Page 1-Beginning Line 17 to Page 2-Line 16)
- Deletion of proposed additional language under 43-30-02 Exemptions stating "Subcontractors of agencies directly contracted with these entities are not exempted." (Page 3-Lines 10-11)

Or

- Addition of the following language under 43-30-02 Exemptions: "Any organization or person who conducts mystery shopping or fair housing testing."

I have also attached (back) a fact sheet further detailing the testing process for your information. Thank you for the opportunity to testify and please let me know if you have any questions.

WHAT IS TESTING?

This legislation would dramatically affect the North Dakota Fair Housing Council's (NDFHC) testing activities, so is important that the Committee be informed on what testing is.

What is a test? Each test consists of two paired testers who contact the same housing provider and report their experiences, which are compared to determine if differential treatment occurred. In each test, one tester (commonly referred to as the protected tester) is selected to match the personal characteristics of the complainant of housing discrimination. The personal characteristics of the other tester (commonly referred to as the control tester) are identical to those of the protected tester, except for the protected characteristic being tested. For example, if a black female complains to the NDFHC that she was denied housing because of race, the NDFHC would conduct a test using a black female as the protected tester and a white female as the control tester. Both women would otherwise have the same personal characteristics except for their race.

- **Testers are not investigators.** Testers go to open, commercial establishments and shop. They pose as shoppers and record their experiences. They do not interview subjects about persons or events, as an investigator does. They do not hold themselves out as investigators. The closest analogy to a tester would be a restaurant critic; both entered an open, commercial establishment, pose as ordinary customers, and record their experiences.
- **Testing is the most common tool used in housing discrimination investigations.** Testers have been described by the United States Supreme Court as "individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purposes of collecting evidence of unlawful...practices." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). The practice of using testers to investigate allegations of housing discrimination has been approved by the United States Supreme Court and other federal courts. See e.g., *City of Chicago v. Matchmaker Real Estate Sales Center*, 982 F.2d 1086, 1089-93 (7th Cir. 1992); *Heights Community Congress v. Hilltop Realty, Inc.*, 774 F.2d 135, 138-41 (6th Cir. 1985). The North Dakota Department of Labor's Human Rights Division relies on testing to make determinations on housing discrimination cases.
- **Who are testers?** They are volunteers. They are teachers, housewives, students, government workers, police officers, and many other professionals. The requirements for qualification as a tester are that a person may not have a criminal record, must complete a tester training and certify that their testing reports are accurate. They are given a small stipend for each test conducted, typically \$12-25 per test, which covers time spent conducting the test and completing a tester report form.

NORTH DAKOTA FAIR HOUSING COUNCIL, INC.
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TESTER'S PERSONAL DATA FORM

Note to Applicant: Part of the purpose of this form is to provide information regarding your abilities to serve as a volunteer and to assist us in pairing you with another tester with similar characteristics. The information requested is personal, and it will be kept confidential. If you have any questions or need in an alternative format, please ask.

Name:

Address:

City: _____ **State:** _____ **Zip Code:** _____

Telephone: (home) _____ (work) _____

If no phone, is there someone with whom we can leave a message?

Name: _____ **Phone:** _____

Name, address and telephone number of someone who will always be able to reach you.

Name: _____ **Phone:** _____

Address:

City: _____ **State:** _____

Zip Code:

PERSONAL:

Race: _____ **Gender:** _____ **DOB:** _____

Marital Status: (Single/Married/Partner)

Name of Spouse:

Household members: (Please indicate if any of them work for or are/have been affiliated with the North Dakota Fair Housing Council, Inc.)

Name	Race	Gender	Birth Date	Marital Status	Relationship
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YOUR EDUCATION:

High School Grades Completed: _____

Years of College or other Post High School Education: _____

Certificates/Degrees Earned: _____

INCOME & EMPLOYMENT DATA:

Are you currently employed? Yes_____ No_____

If yes, what is your occupation? _____

If no, what is your source of income? _____

What is your approximate monthly income? _____

Do you currently or have you ever rented a property (apartment/home/real estate) to another individual? Yes_____ No_____

TRANSPORTATION:

Do you own or have access to a car that you can use for testing?
Yes_____ No_____

Do you have a valid driver's license? Yes_____ No_____ If yes, list expiration date: _____

Do you have auto insurance? Yes_____ No_____

WHAT IS YOUR PRESENT HOUSING SITUATION?

Rent_____ Own_____ Apartment_____ Single Family Home_____

Mobile Home_____

How long have you lived there?

Are you planning to move out of state? Yes_____ No_____

Are you currently looking to rent/own an apartment/home? Yes_____ No_____

If yes, please specify which:

PREVIOUS TESTING OR WITNESS EXPERIENCE:

Have you previously been a real estate tester or auditor? Yes_____ No_____

If yes, please describe:

Have you previously been a witness, defendant or plaintiff in a court case?

Yes_____ No_____

If yes, please describe:

Please indicate the hours when you are most likely to be available for testing.

	SUN	MON	TUE	WED	THU	FRI	SAT
MORNING							
8 - 12							
AFTERNOON							
12 - 5							
EVENING							
5 - 9							

OTHER REQUIRED INFORMATION:

- (1) Have you ever been convicted of a felony and/or convicted of crimes involving fraud or perjury? Yes___ No___

If yes, please describe:

- (2) Have you ever had any counseling or treatment for alcohol or drug dependency? Yes___ No___

If yes, please describe:

- (3) Have you ever filed a housing or employment discrimination complaint?

Yes___ No___ If yes, please describe:

FOR DIFFERENTLY ABLED: PLEASE STATE THE NATURE OF YOUR DISABILITY:

Do you know of any other person who might be interested in testing? If so, please list their names and phone numbers so that we can contact them directly. Thank you.

Name:

Address:

Phone Number:

Please keep in mind, that in volunteering as a tester, you may eventually be called as a witness in administrative and/or court proceedings.

I would like to volunteer to participate as a tester for the North Dakota Fair Housing Council. In agreeing to participate as a tester, I am committing to attend necessary trainings. I understand it may be necessary to participate in further investigative and/or legal procedures beyond testing and/or complaint procedures. I also agree to make the North Dakota Fair Housing Council aware of any circumstances that:

- May involve my testing a unit that I may have an economic interest in the outcome of the test;
- May involve my being related to any party that may be participating in the case;
- May involve my testing an agency, individual, business, or organization that I have had any affiliation with and/or were employed within one year of the date of the test;
- May involve my being a competitor of any entity being tested.

I further agree that I will keep any information that I obtain as a result of a test, administrative or court proceeding completely confidential.

Signature

Signature of NDFHC staff

Date signed

Date Received or Reviewed

Approved or rejected and reason(s) why:

TESTER TRAINING:

Dates Attended:

T025

**NORTH DAKOTA
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Web: www.ndfhc.org • Email: ndfhc2@btinet.net

FAX COVER PAGE

This fax is intended for distribution to the recipient only and is confidential. If you receive this fax in error, please contact 701/221-2530.

Number of pages including cover: 5

DATE: January 19, 2005

TO: Representative Randy Boehning, 328-1271

FROM: Amy Schauer Nelson, Executive Director

RE: HUD Testing Requirements

Per your request, attached is what HUD requires in regard to testing in our grant agreements.

Let me know if you have any questions.

A001

Awardee: North Dakota Fair Housing Council, Inc
Grant #: FH700G04046
Initiative/Component: PEI

Attachment B

**ADDENDUM
(TO THE SCHEDULE OF ARTICLES)
FY 2004 PEI and FHOI Awards**

GRANT AGREEMENT/REVISIONS

Grantee will perform project activities in accordance with its application, attached hereto by reference, its negotiated Statement of Work (SOW), and the associated, final budget. If the grantee changes its name, merges with another organization, or plans any major organizational changes during the course of this grant, the Grantee **must** give advance notice to the Hub Director (Grant Officer) of any such proposed mergers, name changes, or other major organizational changes that affect the implementation of this grant. Any changes in key personnel may be provided to the Hub Director (Grant Officer) immediately. Where necessary, the Hub Director (Grant Officer) will immediately inform LOCCS Security of the change.

Any future revisions to the SOW and final detailed budget must be incorporated by amendment to the grant agreement, except when changes impact or involve less than 10 percent of the final budget. Attachment B, Schedule of Articles, also will be revised to reflect any future modifications to the drawdown payment schedule, should changes be necessary due to amendments to the basic grant.

Failure of the Grantee to make reasonable efforts to complete the activities to finalize the project within the timeframes set forth in the SOW may result in the termination of the grant agreement. In this event, no further drawdowns will be made under the terms of the award. Also, complaints by third parties against the Grantee alleging violations of the FHIP statute, regulation, or any of the terms of the grant agreement, will be forwarded to the Hub Director (Grant Officer) for resolution, who will review the allegations and take appropriate action in accordance with 24 CFR 84.62, or other applicable program policy.

All projects must be broad-based (not limited to a single fair housing issue). Although the Grantee's project can have a special focus, all FHIP-funded projects **must** include the following enforcement related activities in the project application: interviewing potential victims of discrimination, analyzing housing-related issues, conducting mediation, litigation or referral to administrative enforcement agencies, and disseminating information about fair housing laws.

Although the Grantee's project can have a special focus, all FHIP-funded projects **must** address housing discrimination on all bases, i.e., race, color, religion, sex, disability, familial status, and national origin.

HUD Grant Section Related to Testing

TESTERS

Testers in testing activities funded under the Fair Housing Initiatives Program funds must not have prior felony convictions or convictions of crimes involving fraud or perjury, and they must receive training or have demonstrated experience in testing procedures and techniques.

LENDER/INSURANCE TESTER TRAINING FEES

A \$75/day rate for 2 days (\$150 maximum) has been approved for lender/insurance tester training fees. Grantee must provide documentation to the GTR during the term of this

award that each tester completing the training has conducted a minimum of two tests or provide reasonable justification for the inability of any tester to meet this requirement.

The Grantee agrees to include the following language in the agreement entered into with lending/insurance testers:

"I have completed lender and/or insurance tester training provided by
.* It is my intention to make myself reasonably
available when requested to conduct tests during the next ***

*Insert Grantee name.

**Insert grant duration or number of months testing will occur during grant.

APPROVAL OF TESTING METHODOLOGY AND TESTER TRAINING

For all testing other than rental or accessibility testing, the Grantee agrees to submit to the GTR for review and approval the testing methodology and tester training to be used in tests funded under the grant. The methodology and training are tasks under the Statement of Work and no payment for tests will be authorized until they receive Departmental (HUD) review and approval. The documents which must be submitted for review are the testing manual, the tester training manual and all testing materials, including the blank test book. The methodology should include a general description of the procedures for testing, including any plans for multi-variable testing and the reasons for such testing [when is a test used, when is further investigation appropriate, and an estimate of the numbers of tests and test types (sales, insurance, lending, etc.)]; the basis or protected class of tests to be conducted (e.g., race, religion, familial status, etc.); the criteria for selecting testers for each type of test to be conducted; areas of tester training to be provided to testers under the grant; criteria for selecting subjects of the tests; factors to be examined in analyzing test results; and, types of actions that may be taken based on test results.

The testing methodologies and procedures will be protected to the extent that any information is proprietary, confidential, a trade secret, copyrighted, patented subject to trademark restrictions, or in any other way inappropriate for disclosure. The Grantee as originator of the information will make this initial determination and will conspicuously notify the Department (HUD) that the information is subject to a specific protection against disclosure by a method reasonably calculated to give adequate notice. To the extent that the information is requested via the Freedom of Information Act, the Privacy Act, or any other legal mechanism, Departmental (HUD) legal counsel will review, and base any determination concerning the release of the information on the recommendation of the grantee in accordance with submitter notice requirements.

GRANTEE/TESTER ECONOMIC INTERESTS

Grantee agrees that it and testers will not have an economic interest in the outcome of any test, directly or indirectly, without prejudice to the right of any person or entity to recover damages for any cognizable injury. Furthermore, the Grantee nor any of its personnel, testers and the organizations conducting tests, when different from the Grantee, may not (1) be a relative by adoption, blood, or marriage of any party in a case, (2) have had any employment or other affiliation, within one year before or after the test, with the person or organization to be tested, or (3) be a licensed competitor of the person or organization to be tested in the listing, rental, sale, or financing of real estate.

RETALIATION - TARGETING NON-COMPLAINT BASED TESTS

The Grantee agrees that refusal by a person or organization to enter into an agreement that brings economic benefit to the Grantee may not be used as a criterion for targeting non-complaint based testing.

#1165
House Bill 1165
Before the Senate Government and Veterans Affairs Committee
Russell Hons, Chairman, North Dakota Private Investigation & Security Board
February 25, 2008

Members of Committee :

Karen Krebsbach— Chairman
Richard Brown— Vice Chairman
Judy Lee
Carolyn Nelson
John O. Syverson

Chairman Krebsbach and members of the committee, I am Russell Hons, chairman of the North Dakota Private Investigation and Security Board and we introduced this bill to redefine and clarify the definitions of Private Investigations and Private Security, as well as clarify and change some exemptions to licensing. The Board asks for a "Do Pass" of this bill. The House Government and Veteran's Affairs Committee voted 14-0 recommending a Do-Pass on this bill as Amended. The House voted 88-0 to pass this bill.

In the past, "Employee" was not clarified and was often used in loose terms to include employees and sub-contractors. This will clarify the definitions for each, and allows specific rules and regulations for each. Specifically, it will no longer exempt sub-contractors of companies holding contracts with government agencies. Currently, a private investigation or security company that has been hired by a government agency is exempt from licensing by the State Board. They can then hire anyone as a subcontractor to complete the work, and they do not have to have a background check, be licensed or subjected to any scrutiny of the licensing board. This bill does continue to provide the licensing exclusion to a company working for a government agency, however limits that exclusion to that company, and not its' subcontractors.

This bill then changes the definition of Private Investigative Service. Currently the definition is "obtaining or furnishing information with reference to any act or individual". This bill more narrowly defines the practice of Private Investigative Services,

and is modeled on the definitions from a large number of other states that license private investigators.

The next change we have proposed in this bill is the definition of Private Security Service. In our review of other state's definitions, we felt that our definitions needed to be more clear and specific as well. We also have had added the "Transportation of money or negotiable securities to or from a financial institution or between business locations on a regular or daily basis, except for mail delivery." Currently unlicensed courier companies can and are transporting negotiables on a daily basis with no form of protection, no requirements for background checks to prevent criminals or others from making these transports, and no requirements to insure the funds being transported.

In making these changes to the definitions, we have also had to make changes to the exemptions that correspond. Exemptions number 4 and 5 exempt credit reporting agencies and collections agencies. Exemption number 7 exempts those companies that solely collect and report records from public records, and conduct no other form of business. This does not include Heir Finders, who would be regulated under this bill. The State's unclaimed property division requires that a person must be a licensed PI to get a copy of the list, as they do not want unlicensed individuals out there trying to locate and contact these people, this law would clarify this requirement.

Exemption 8 exempts specific experts working in their field of expertise, and exemption number 9 exempts the news media during their normal course of business.

Exemption number 10 is an amendment to this bill drawn up while in the House committee. This will exempt "mystery shoppers" and others who are only doing consumer research and not looking into matters that could require litigation or violations of law.

The next item addressed in this bill is an Exemption for Fair Housing Law Compliance investigators. This bill would exempt them from being licensed by our

board, provided that the company they work for insures that they meet the same requirements that our board requires of a registered investigator. This includes making sure they are over 18 years of age, have a high school education, and pass a state and federal background check. Our state board would then have access to this information to review, to make sure they are complying with these requirements. This bill makes it a class B misdemeanor to violate this provision of the law. As noted above, this section is an amendment to the bill worked out in the House Committee.

The final matter addressed in this bill is just a house keeping matter to more clearly define that one member of our board is "actively engaged in law enforcement". For as long as I can remember we have always had one law enforcement representative on the board, but it is not specified in statute.

I thank you for your time today and ask again for a "Do Pass" vote on this bill. I would be happy to answer any questions you may have.

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**Testimony before the
Government & Veterans Affairs Committee
on House Bill 1165
February 25, 2005
by the North Dakota Fair Housing Council**

Madame Chair and members of the Committee, my name is Amy Schauer Nelson and I am the Executive Director of the North Dakota Fair Housing Council (NDFHC). The NDFHC is a non-profit agency who provides support, encouragement and assistance to those seeking equal opportunity in housing and works to eliminate discriminatory housing practices. The NDFHC supports passage of HB 1165 because it provides an exemption for fair housing testers and organizations like the NDFHC.

The NDFHC receives subcontracts from the federal government to investigate allegations of housing discrimination. The NDFHC uses volunteers, who are called testers, to uncover illegal acts of housing discrimination. The US Department of Housing & Urban Development (HUD) requires testing in federal subcontracts to assist in the elimination of housing discrimination. Testing is a tool used by fair housing programs subcontracting through HUD to determine whether or not a landlord discriminates in violation of State and Federal Fair Housing Laws. The practice of using testers to investigate allegations of housing discrimination has been approved by the United States Supreme Court and other federal and state courts. Testers pose as prospective renters and are trained to record their experiences. During any given time, the NDFHC maintains a list of approximately 30 volunteers who are willing to volunteer to conduct "tests". Testers are paid a small stipend for their time and are looked upon as volunteers, not employees, because of the small stipend given. The NDFHC's volunteer list is constantly being updated as new testers are trained and others discontinue testing. Typically, a person will volunteer as a tester for one to two years, and new testers are continuously being recruited to replace them. Although the amount of time each volunteer donates varies from tester to tester, it rarely exceeds 2-6 hours per month after their initial training.

The North Dakota Department of Labor relies on testing evidence to make determinations in housing discrimination cases and is very supportive of the NDFHC's testing program. Without this highly reliable testing evidence, the Department would be forced to expend additional resources to gather evidence and will have to make less informed determinations. Approximately 50% of the cases referred to the Department by the NDFHC are cases which include testing. Without the means to uncover acts of housing discrimination, the result would also be a loss of substantial equivalency in North Dakota and a loss of federal funding to the Human Rights Division at the North Dakota Department of Labor. A loss of substantial equivalency would mean that complaints would have to be filed in state or federal court or with HUD's Denver Office instead of the North Dakota Department of Labor and an effective method for uncovering housing discrimination would be lost.

The North Dakota Fair Housing Council urges this Committee to keep the current exemption for fair housing testers and organizations as worded. I have also attached (back) a fact sheet further detailing the testing process for your information. Thank you for the opportunity to testify and please let me know if you have any questions.



WHAT IS TESTING?

This legislation would affect the North Dakota Fair Housing Council's (NDFHC) testing activities, so is important that the Committee be informed on what testing is.

What is a test? Each test consists of two paired testers who contact the same housing provider and report their experiences, which are compared to determine if differential treatment occurred. In each test, one tester (commonly referred to as the protected tester) is selected to match the personal characteristics of the complainant of housing discrimination. The personal characteristics of the other tester (commonly referred to as the control tester) are identical to those of the protected tester, except for the protected characteristic being tested. For example, if a black female complains to the NDFHC that she was denied housing because of race, the NDFHC would conduct a test using a black female as the protected tester and a white female as the control tester. Both women would otherwise have the same personal characteristics except for their race.

- **Testers are not investigators.** Testers go to open, commercial establishments and shop. They pose as shoppers and record their experiences. They do not interview subjects about persons or events, as an investigator does. They do not hold themselves out as investigators. The closest analogy to a tester would be a restaurant critic; both entered an open, commercial establishment, pose as ordinary customers, and record their experiences.
- **Testing is the most common tool used in housing discrimination investigations.** Testers have been described by the United States Supreme Court as "individuals who, without an intent to rent or purchase a home or apartment, pose as renters or purchasers for the purposes of collecting evidence of unlawful...practices." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). The practice of using testers to investigate allegations of housing discrimination has been approved by the United States Supreme Court and other federal courts. See e.g., *City of Chicago v. Matchmaker Real Estate Sales Center*, 982 F.2d 1086, 1089-93 (7th Cir. 1992); *Heights Community Congress v. Hilltop Realty, Inc.*, 774 F.2d 135, 138-41 (6th Cir. 1985). The North Dakota Department of Labor's Human Rights Division relies on testing to make determinations on housing discrimination cases.
- **Who are testers?** They are volunteers. They are teachers, housewives, students, government workers, police officers, and many other professionals. The requirements for qualification as a tester are that a person may not have a criminal record, must complete a tester training and certify that their testing reports are accurate. They are given a small stipend for each test conducted, typically \$12-25 per test, which covers time spent conducting the test and completing a tester report form.