

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1343

2005 HOUSE NATURAL RESOURCES

HB 1343

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1343

House Natural Resources Committee

☐ Conference Committee

Hearing Date: January 21, 2005

Tape Number	Side A	Side B	Meter #
1	x		890-End
1		x	0-800
Committee Clerk Signature <i>Karen Bonnet</i>			

**Chr. Nelson:** I will open the hearing on HB 1343 and ask the clerk to read the title.

**Rep. Rod Froelich, Dist. 31:** (Written testimony, attachments, and amendment attached.) I

ask you to adopt my amendment to H.B. 1343 and urge a do pass.

**Chr. Nelson:** Are there questions of Mr. Froelich? Thank you.

**Rep. Porter:** Just so I'm clear on the amendment, it's specific to the Governor and Game & Fish Dept. What happens if the Dept. of Tourism puts out a publication or another state agency puts out a publication. You're basically tying the hands of the governor himself. What happens if the governor's office or someone in his cabinet puts out a publication?

**Rep. Froelich:** This could be amended in here very easily. We don't to go that far and tie everybody's hands. The governor runs the executive branch. That's why we didn't tie his hands and the Attorney General or the Judicial Branch.

**Porter:** In your first paragraph, you quote Craig Bihle of the ND Game & Fish Dept.. But in your testimony on page five, it's different. The article was written by him, but the actual quote was from Gary Melba, a landowner.

**Froelich:** If we want, we can go back to the court proceedings from the summer and the quote Melba made goes back to Mr. Craig Bihrlle. If you want, I'll dig that up and get you a copy. This is not a quote by Mr. Melby, it's a quote by Craig Bihrlle. Court documents will prove that.

**Porter:** O.K.

**Chr. Nelson:** Further questions of Rep. Froelich?

**Rep. Nottestad:** Looking at the last part of your testimony, you state that the Game & Fish Dept. Cannot/should not make statements that is legal..etc., then you go on to state, "they do not have the authority to do so, and by doing so, they are subject to the public common law..." " If they don't have the authority to do it why don't you take this as a legal situation rather than ask us to pass legislation on it?

**Froelich:** We could go into court on this. As you know this past summer the case was not tried on these merits. The ruling from Judge Haggerty discussed the case on other grounds, not on these grounds. You know who sets policy in the state of ND, not the governor, not the Game & Fish Dept. The State Legislature sets the policy and that's why this needs to be set into policy. Does that help clarify your question?

**Chr. Nelson:** Are there further questions of Rep. Froelich?

**Rep. Hanson:** It looks like you're putting a gag order on these certain people. I thought we had freedom of speech in the United States.

**Froelich:** By leaving it go as we are today with the Game & Fish Dept. publicizing or giving oral testimony someplace, that it's *legal* to go on unposted private property, they are subjecting the people of ND or anybody to civil trespass charges. That's what this is all about. The Game & Fish Dept. cannot take my civil rights away. But they are stating that it is o.k. to go on private

property when in fact, when they do that, they can't give away my right to civil trespass charges against that person. You can't be subject to criminal charges, but you can and will be subject to civil trespass charges.

**Rep. Hanson:** Why don't you list that *nobody* can say that land is open to public hunting if it's not public rather than pick out just the Dept. and the governor.

**Froelich:** If you want to amend that in there, go ahead, but the Attorney General cannot have his hands tied. How far do we go? The ND Game & Fish Dept. supposedly speaks on hunting regulations. This is not a regulation, this is statement by the Game & Fish Department. Show me something in law or policy and I would be glad to drop this bill.

**Chr. Nelson:** Are there further questions of Rep. Froelich? Seeing none, thank you. Is there further testimony in favor of HB 1343?

**Chuck Damschen, Dist. 10:** Urges do pass. (Written testimony attached)

**Chr. Nelson:** Are there questions of Rep. Damschen? Seeing none, thank you. Is there further testimony in favor of HB 1343?

**Sen. Robert Erbele, Dist. 28:** As a senator representing a relatively large land mass in the south central part of the state of ND, I support this bill and I do support the testimony of Rep. Froelich as he has presented it this morning. One constituent has contacted me and told me of a situation in his area. He does not post his land but yet by proclamation you can drive out on private lands to set decoys. He had a situation where a trail was made across stubble ground which was his winter wheat, which created severe compaction problem on his winter wheat. This law would address that sort of thing, too, because it wasn't signed, but they had the right to put the decoys

there. Having not asked, they could not tell how much wheat was in the stubble and it created a problem for him. I am in support of the bill.

**Chr. Nelson:** Thank you, Sen. Erberle. Are there questions?

**Rep. James Kerzman, Dist. 31:** I have to applaud Rep. Froelich. He spent a lot of time and resources to try to address this problem. It's been festering for a long time in rural ND and I want to be one of the ones who help foster good relationships between hunters and landowners. This is one issue that has been a burr under the saddle for years. I think we finally have to address it. I think we should do it before there is some civil action that will hurt not only a citizen of ND but ND itself. I ask you to look favorably on this.

**Chr. Nelson:** Any questions for Rep. Kerzman? Seeing none, thank you. Is there further testimony in favor of HB 1343?

**Dennis Miller, LAND:** I'm here to represent the president of LAND, Don Berge, who was unable to be here today. It's been my experience and that of many farmers that there has been a growing antagonism and almost an attitude that hunters have when they come on your land that they've got a right to be there and if a farmer disagrees with them, we're at fault, not the hunter. I think this bill would clear up a lot of the antagonism. LAND supports this as well as I do.

**Chr. Nelson:** Are there any questions of Mr. Miller? Is there further testimony in support of HB 1343?

**Brian Kramer, ND Farm Bureau:** Urges do pass. (Written testimony attached)

**Chr. Nelson:** Are there questions of Brian?

**Rep. Nottestad:** You represent 27, 500 members. Are all your members farm operators or owners?

**Kramer:** No, a number are associate members.

**Nottestad:** Are these included in the associate members. Have you polled your members for a response to this bill?

**Kramer:** Yes, the associate members are included. The house delegates have taken this position. They are made up of the voting members of our organization

**Nottestad:** Are the delegates also represented in proportion by the associate members?

**Kramer:** Our associate members do not have voting privileges.

**Nottestad:** So they are members, but they have no rights as far as influencing your testimony?

**Kramer:** I guess I would say that is correct.

**Chr. Nelson:** Since the last Legislative Session, you've been fairly aggressive in pursuing litigation on property rights issues. How does passage of this bill affect your organization and the possibilities of continuing that action?

**Kramer:** I believe passage of the next bill, 1338, would take care of a lot of the problems. This goes part of a step, but 1338 is really the bill that would take care of the situation as we see it.

**Chr. Nelson:** O.K., but specifically, respond to HB 1343.

**Kramer:** As I stated in my testimony, 1343, will stop encouraging trespass on lands by saying it is open to trespass. We feel that would alleviate some of the problems. If this bill is passed, you will have less of the conflict that is there. Does it take care of the problem, "No." 1338 will take care of the problem.

**Chr. Nelson:** Thank you. Further questions for Mr. Kramer? Seeing none, thank you, Brian.  
Further support for HB 1343?

**Wade Moser, ND Stockmen's Association:** We support HB 1343 mainly for the reason that it will send a signal regardless of posting. I know there are examples where people had their land posted but for whatever reason, the signs were removed. It was assumed that once there was no signage it was allowed free access. I think in most cases property owners want to know who's on their property, common courtesy. If that is made fairly clear through the policy makers then I don't think we will have as many landowner/sportsmen problems. I'm not familiar with all of the amendments, whether they clear it up entirely or not. We support the legislation.

**Chr. Nelson:** Any questions for Mr. Moser? Seeing none, thank you. Further testimony in favor of HB 1343?

**Julie Krenz, Attorney General's Office:** We're not testifying in favor of the bill, but we the same concerns that Rep. Froelich made with regards to tying the Attorney General's hands. I'd like to pass out an amendment that we are prepared to address. I'm also handing out a copy of the statute that outlines the A.G.'s duties. **(Written testimony attached)**

**Chr. Nelson:** We will make sure that you will get a copy of the Froelich amendments so that you can review them. Are there questions for Miss Krenz? Seeing none, thank you for your testimony. If you have some information for us before we adjourn today, we'll accept it.

Further testimony in favor of HB 1343? Seeing none, I'll take opposing testimony to HB 1343.

**Dean Hildebrand, Dir., ND Game & Fish:** These two pieces of legislation that we will be dealing with today, 1338 and 1343 sort of run together. As the groundwork for this as Rep. Froelich pointed out is in Sec. 20.1-01-17 and 20.1-01.18 of the NDCC. **(Read from NDCC, Copies attached)** We do have some talented attorneys from the Attorney General's office if you may want to question them about my interpretation of these regulations. As long as I've been



director, this has been a bit of contention, in many forms. I'd like to distribute the results of the lawsuit Mr. Froelich brought against the governor of the state of ND and me. I would seriously encourage you to read this before you make your final decision on this bill. I have a keen feeling for the Legislative process and I hope that before the end of session this year, we would come to a conclusion for all of us to live together in harmony and to get along with hunter/landowner relationships. I have worked as hard as I know how during my tenure as Director to improve hunter/landowner relationships. We've formed a program a Landowner Appreciation. I asked Ray Goetz, the head of the program, "How can we improve hunter/landowner relationships?" We put together a packet and directed game wardens to visit land owners in their districts, call on them ahead of time and visit with them, then hand a packet to the landowners. It thanks them for raising game on their property. I know from experience (of farming), how much damage deer, waterfowl and other game animals can do. We offered them a free subscription to the *ND Outdoor* magazine. If they already had one, we extended it for a year. On the back of the application for the free subscription it's blank. I want that landowner to write their criticism of the G & F Dept. on the back of that and I will personally call the those people and talk to them. That program has been quite successful for us. We included the rules, regulations and guidelines that federal and state government dealing with farming in one concise packet so they could be knowledgeable about them. I have answered every letter and telephone call and met many speaking obligations dealing with hunter/landowner relationships. We also have 100 Landowner/Sportsmanship council that's formed by law. There are members that are farmers and ranchers and members that are sportsmen. We meet yearly, we appropriate dollars that come from the Game and Fish Dept. to put up the signs, "Ask and Maybe the Gates Will Open." We

put up safety messages, we buy advertisements in magazines touting the improvement of landowner/hunter relationships. We don't want a slob hunter out there, we don't want garbage on that land. I was at one of the landowner appreciation suppers in McClusky on Sunday evening. I never had one complaint about the Game & Fish Dept., and I estimated at least 50-60 people there. We underwrite the cost of suppers around the state. The support has been great, over 1,000 in the town of New Salem. Our interpretation of HB 1343 is based on what I read to you. If you choose to clear that up, we live by and enforce your law. I called South Dakota because they have their land automatically posted there. It did clarify the posting requirements, there is no doubt about it in SD, now. It did not seem to improve relationships between landowners, sportsmen, and the department. It did make it more difficult for sportsmen to obtain permission. There are fewer and fewer landowners living on or near the land. They found there were less apologies accepted and more prosecutions. So SD has a two-tiered trespass law. One, knowingly violating it was a higher penalty, and one unknowingly violating is a lesser penalty. So our interpretation in ND is that if land is not posted, you can hunt on it. Common courtesy is to ask. Landowners absolutely have the right to post their land if they wish. But the land that isn't posted is very valuable to those of us who hunt and can't always find the person who lives on that land, because so much land is owned in absentia. Now, as G & F Director, I am charged with managing the wildlife in the state. We have had an excess number of deer and we have been scrambling to keep up and keep those numbers under control. We've gone up to 145,250 deer licenses. I remember when we didn't have a deer hunting season. In order for me to manage that deer herd, it becomes untenable when the deer herds move on to posted land (and

continue to grow beyond our ability to control it). I need to be able to get on to that land to harvest those deer.

**Chr. Nelson:** I have a question specific to this bill. Do you as the Director of Game & Fish have a policy sensitive to that issue of promoting the trespass law in our state? A statement has been made this morning that you promulgated our law as far as allowing hunting on land that isn't posted. What is the department's position with the people you administrate?

**Hildebrand:** Mr. Froelich is correct. We gather and take a lot of time to write a proclamation. It's a difficult thing. We consciously look at what we're doing and our interpret is this, that land that is not posted is open to public hunting. I base that on those sections of law that I read to you. You've got some people here from the A.G.'s office, you can ask them. I handed out the court ruling. Judge Haggerty ruled on it, granting in favor of the state. I assume the plaintiff could appeal as far as the Supreme Court. We're at a point where I need a sense of direction. I would do anything possible to establish a good relationship with landowners and farmers in the state. I'm appealing to you for the resolution of this. I would ask that the resolution allow the land that is not posted to be open to hunting. Otherwise it will be much more difficult for me to try to manage the game in the state of ND as I see it.

**Chr. Nelson:** Any further questions for Dean? Seeing none, thank you.

**Rep. Keiser:** Is there representatives from the A.G.'s office still here? I'm not a lawyer, but as I interpret this the judge did issue a summary judgement not an exploratory judgement. So the judge is saying, based on the evidence that's been presented, I'm standing for the state, based on the legislation that has been enacted and she cites the two sections of the code. But it really has not answered the question which Rep. Froelich really wanted answered.

**Matt Sagsveen:** You are correct, the judge essentially said what Rep. Froelich was asking for was an advisory opinion. However, the judge did say "finding the governor and the director of the ND Game & Fish Department do not make the law, but I would conclude that they have correctly stated the law in this matter, if I was to reach that issue." I think that is a pretty important statement to take into consideration. Was it a judgement on it's merits? No, it probably was not.

**Chr. Nelson:** Further questions for Matt? Seeing none, thank you. Is there further opposition to HB 1343?

**Mike Donahue, United Sportsmen of ND and the ND Wildlife Federation:** We ask for a do not pass. (Written testimony attached)

**Chr. Nelson:** Are there questions of Mike? Further opposition to HB 1343?

**Dennis Daniel:** I'm against this bill. If we restrict one department for giving out information, why don't we do it for all? Curtail all of it and go back to the Stone Age and dissolve as a society. I can't believe some of the bills coming here.

**Chr. Nelson:** Is there further opposition to this bill?

**Mike McEnroe, The Wildlife Society:** (Written testimony attached.)

**Harold Neameyer, Cass County Wildlife Club:** (Written testimony attached.)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1343

House Natural Resources Committee

☐ Conference Committee

Hearing Date February 11, 2005

Tape Number	Side A	Side B	Meter #
2		x	2550-3830
Committee Clerk Signature <i>Karen Bonnet</i>			

Minutes:

**Chr. Jon O. Nelson:** We'll take up HB 1343.

**Rep. Duane DeKrey:** I move the amendment that Rep. Froehlich brought, .0302 dated January 21, be added to the bill.

**Rep. George J. Keiser:** Second.

**Chr. Nelson:** For the benefit of the committee, Rep. Porter, would you explain the amendment again.

**Rep. Todd Porter:** The original wording in the bill would encompass the attorney general and other agencies that did not need to be encompassed and it narrows the scope...

**DeKrey:** I remember, now. You should not disseminate this information, is what it really did. There was some questions under the original bill that the attorney general...

**Porter:** It takes those agencies out and leaves strictly the Game & Fish.

Page 2

House Natural Resources Committee

Bill/Resolution Number **HB 1343**

Hearing Date **February 11, 2005**

**Chr. Nelson:** That amendment is moved by Rep. DeKrey and seconded by Rep. Keiser. Any discussion on the amendment? Seeing none, I'll ask for a voice vote on the amendment. All those in favor signify by saying aye. Opposed, same sign. Motion carried.

**Rep. Porter: I move a do not pass as amended on HB 1343.**

**Rep. Keiser: Second.**

**Chr. Nelson:** Is there further committee discussion?

**Rep. Darrell D. Nottestad:** Call for the question.

**Chr. Nelson:** Question has been called on a do not pass as amended motion. I ask the clerk to call the roll:

**Do not pass as amended, Vote:**

**10-Ayes; 1-Nay; 3-Absent; CARRIER: Johnson**

VR  
2/11/05

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1343

Page 1, line 6, replace "state, department," with "governor, game and fish department, and game and fish department employees and representatives may not disseminate information in any form, including oral, written, published, or electronic form, or advise any member of the public that it is legal to hunt or trespass on nonposted private land. The department and the department's employees and representatives may advise members of the public that entering nonposted private land may subject them to civil trespass and any associated civil liability and penalties."

Page 1, remove lines 7 through 9

Renumber accordingly

Date: 2/11  
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1343 - hunting non-posted land ✓

House NATURAL RESOURCES Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number : 50429.0302 Title: 0400

Action Taken : No Not Pass as Amend

Motion Made By : Porter Seconded By : Keiser

Representatives	Yes	No	Representatives	Yes	No
Chairman - Rep. Jon O. Nelson	✓		Rep. Lyle Hanson	✓	
Vice Chairman - Todd Porter	✓		Rep. Bob Hunsakor	✓	
Rep. Dawn Marie Charging	<u>Absent</u>		Rep. Scot Kelsh	<u>Absent</u>	
Rep. Donald L. Clark	✓		Rep. Dorvan Solberg	✓	
Rep. Duane DeKrey		✓			
Rep. David Drovdal	✓				
Rep. Dennis Johnson	✓				
Rep. George J. Keiser	✓				
Rep. Mike Norland	<u>Absent</u>				
Rep. Darrell D. Nottestad	✓				

Total (Yes) 10 No 1

Absent 3

Floor Assignment Johnson ✓

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



**REPORT OF STANDING COMMITTEE**

**HB 1343: Natural Resources Committee (Rep. Nelson, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (10 YEAS, 1 NAY, 3 ABSENT AND NOT VOTING). HB 1343 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "state, department," with "governor, game and fish department, and game and fish department employees and representatives may not disseminate information in any form, including oral, written, published, or electronic form, or advise any member of the public that it is legal to hunt or trespass on nonposted private land. The department and the department's employees and representatives may advise members of the public that entering nonposted private land may subject them to civil trespass and any associated civil liability and penalties."

Page 1, remove lines 7 through 9

Renumber accordingly

**2005 TESTIMONY**

**HB 1343**

By: Rep. Froelich  
1/27/05

## HOUSE BILL NO. 1343

Introduced by

Representatives, Froelich, Damschen, DeKrey, Kerzman

Senators Erbele, Taylor

A BILL for an Act to create and enact a new section to chapter 20.1-01 of the North Dakota Century Code, relating to hunting on nonposted land.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 20.1-01 of the North Dakota Century Code is created and enacted as follows:

**Hunting on nonposted land-Advising public prohibited.** The Governor, the North Dakota Game and Fish Department and the department's employees and representatives **shall not** disseminate information in any form, including oral, written, published or electronic, or advise any member of the public that it is legal to hunt or trespass on nonposted private land, the department may advise the public that entering nonposted private land may subject them to civil trespass and any penalties therein.

### Testimony for H.B. 1343

Chairman Nelson member of Natural Resource Committee: I bring to you H.B. 1343. I am handing out amendments to H.B. 1343 to help clarify 1343.

What has prompted this piece of legislation? The ND Game and Fish Department has in the past published and disseminated to the public the following, In the Aug 2002 issue of the ND Outdoors – a publication of the ND Game and Fish Department. In ND since it is legal to enter unposted land without permission, many hunters do just that. In a quote by Mr. Craig Bihrlé of the ND Game Fish Department.

In the Sunday Dec. 26, 2004 issue of the Bismarck Tribune by Mr. Roger Rostvet. Of the ND Game and Fish Department, he states the following: "ND law now bans hunters from going onto private land if the property owner has posted signs saying that hunting is not allowed, ND Game and Fish Department interprets that to mean if no signs are posted, hunters may assume the property is open for hunting and may go onto the land without permission". The ND Game and Fish Department has made many such statements.

Mr. Chairman and members of the committee there is no statute to support these interpretations. In the absence of statutory law, Common Law states: A trespass is entering the property of another without the property owner's permission or without some other right or privilege (right or privilege is subjugated to state law enforcement).

Mr. Chairman and committee members I want to read to you the recent constitutional amendment.

*Hunting, trapping and fishing and the taking of game and fish are a valued part of our heritage and will be forever preserved by law and regulated for the public good.*

Governor John Hoven is quoted in the Minot Daily News Sept. 29, 2000 " the amendment would not affect private property rights". Some will say it is the "custom" to hunt and fish on private property without permission.

Mr. Chairman and members of the committee custom is not an expression of ND law. In *Rutten vs Wood* the ND Supreme Court recognized that a hunting license does not create a privilege to hunt on private land 79 ND 436, 57 NW 2d 112, 114 (1953) A public's right to hunt on another's private land cannot be established through custom – *Sanches vs. Taylor* 377 F2d 733, 738 (10th Cir 1967)

The state has conceded that the public has no constitutional "right " to enter unposted land of another. *Hector vs. Metro Centers Inc.* 498 NW. 2d 113,116 (ND 1993)

In *Hector vs. Metro* – *Hector* provides conclusive evidence that the common law tort of civil trespass is a recognized remedy under the laws of ND. There is no statute to decriminalize civil trespass.

The ND legislature did not address unposted private land, because it intended only to criminalize hunter's entry on posted private property without consent.

The Governor and the ND Game & Fish Department are without authority to alter civil trespass remedies. The state's construction or interpretation of the criminal trespass provisions in 20.1-01-07 and 20.1-01-18 does not impair any civil trespass remedies.

In a recent court case *Froelich vs. John Hoven*, Governor and Dean Hildebrand Director of Game and Fish dated May 3, 2004 Judge Gail Hagerty stated in her opinion: If there is a common law action for civil trespass, the Governor and the Director of the

Game & Fish department can not take the claim away from the Froelichs, although the legislature may have done so in enacting sections 20.1-07-17 and 20.1-01-18. The states construction or interpretation of section 20.1-07-17 and 20.1-07-18 does not impair any civil trespass remedies that may be available to the Froelichs.

Members of the Natural Resource Committee the Governor and the ND Game and Fish Department cannot and should not make the statement that it is legal to go onto another person's private property if it is not posted. They do not have the authority to do so and by doing so they are subjecting the public to common law civil trespass and thus encure penalties.

In closing Mr. Chairman I ask that you adapt my amendments to H.B. 1343 and give H.B. 1343 a do pass.

## Trespass

1. to go beyond the limits of what is considered right or moral; do wrong; transgress
2. to go on another's land or property without permission or right
3. to intrude or encroach [*to trespass on one's time*]
4. *Law* to commit a trespass; the act or an instance of trespassing: *specific*:
  - a) a moral offense; transgression
  - b) an encroachment or intrusion
  - c) *Law* an illegal act done forcefully against another's person, rights, or property; also, legal action for damages resulting from this--- trespasser.
5. **trespass** implies an unlawful or unwarranted entrance upon the property, rights, etc. of another [*to trespass on a private beach*]; **encroach** is to make such inroads by stealth or gradual advances [*squatters encroaching on our lands*]; **infringe** implies an encroachment that breaks a law or agreement or violates the rights of others [*to infringe on a patent*]; **intrude** implies a thrusting oneself into company, situations, etc., without being asked or wanted [*to intrude on one's privacy*]; **invade** implies a forcible or hostile entrance into the territory or rights of others [*to invade a neighboring state*].

polite of people as I've ever met." Letm  
"I've never turned down anybody  
came and asked to hunt. The reason I  
so I know who's out there."

Landowners have any number of good  
reasons why a particular day or piece of  
land is not available. Perhaps friends or  
relatives are coming. Maybe the rancher  
is moving cattle in the area, or still har-  
vesting. Maybe the landowner wants to  
hunt himself. Don't worry about it.  
Westbrook suggests. Ask if another day  
or another area is possible. As a potential  
guest, hunters should expect to accommo-  
date the landowner's wishes, not the other  
way around.

Gary Melby agrees. Melby, along with  
his son, operates a grain farm near  
Bowbells in north central North Dakota, a  
popular waterfowl hunting area. He also  
serves on the North Dakota Game and  
Fish Department District Advisory Board  
and is an active hunter. "Some people get  
turned down one place and then they get  
sore and don't ask at the next place,"  
Melby said.

A more productive tact, he added,  
would be to allot enough time to allow  
for making more contacts. "You have to  
build acquaintances and it always works  
out," he said.

As a hunter, Melby has such an  
acquaintance in southwestern North  
Dakota, where he is able to hunt pheas-  
ants every year. A key to maintaining that  
relationship, he said, is to consult the  
landowner before the season to find out a  
convenient time to plan a trip, rather than  
just showing up on opening day, or the  
evening before opening day, and hoping  
the land is available as it has been in the  
past.

As landowners, Melby says he and his  
son don't post any of their land, which is  
mostly grain stubble that hunters use for  
decoying geese, and potholes that duck  
hunters use. The same is true for many

landowners in the area, he said, and even  
those who do post hardly ever turn any-  
one down, unless there's a special cir-

In North Dakota, since it is legal to  
enter unposted land without permission,  
many hunters do just that. Melby says

when hunters stop in to ask first. "It's just  
nice to know who's out there," he said.

If hunters can find the owners of  
unposted land, which is sometimes a  
challenge, asking first is a good way to  
establish one of those acquaintances  
Melby mentioned. Consider Martin  
Bovey's story referenced earlier. The  
farmer trusted Bovey to hunt on land he  
was going to post to everyone else,  
because Bovey had taken the time to  
stop, ask permission and become a famil-  
iar face when the land wasn't posted.

Similar situations exist today. Hunters  
who take the time to find landowners and  
ask permission to hunt on unposted land,  
will not be strangers if the landowner  
chooses to post the land in the future.

Along the same line, Melby said, word  
travels in small communities. Hunters  
who treat landowners with respect will  
develop a reliable reputation and may  
eventually find other open doors.

"Treat others the way you want to be  
treated," it's that simple, Westbrook  
added. "Treat them (landowners) right  
and you'll have a place to go hunting."

That's an easy enough concept to  
understand and put into practice, but  
hunters need to realize that not every par-  
cel of private land is available to those  
who ask. Potential for access depends on  
timing during the season, and species. A  
landowner who charges a fee for pheasant  
hunting on opening weekend might wel-  
come a turkey hunter later in the year.  
Someone who posts land for the tradition-  
al family deer hunt on opening weekend  
might allow guests later in the season.

Finding the right place at the right time  
is seldom easy. Eric Odegaard, Enderlin,  
likes to hunt ducks and geese in the  
southeast and near his hometown of  
Rugby in north central North Dakota.

Odegaard is like a lot of North Dakota  
hunters who move around looking for  
opportunities, rather than always hunting  
the same ground. He often searches for  
isolated pockets of undisturbed birds, a  
strategy that sometimes leads to excep-  
tional hunts. It also means contacts with  
numerous landowners, and potential com-  
petition with other hunters looking for the  
same thing.

In recent years, Odegaard says, the  
competition has increased and it's more  
difficult to find those out-of-the-way  
spots that no one has yet discovered.  
They do exist, however, and the rewards  
usually go to the hunters willing to put  
forth the most effort. "You've got to do  
your homework," Odegaard stressed.  
"You have to do the miles and the  
time.... Some days it takes hundreds of  
miles. It does for me, even in southeast  
North Dakota."

### **DON'T BE AFRAID TO ASK.**

Driving up to a farm "cold" is  
not always an easy thing to do.

However, it is necessary if  
hunters want to expand  
opportunities beyond  
unposted or public land.

Opportunities for hunting on private  
land have changed in the last 10 years,  
and will continue to evolve. The same  
issues debated 70 years ago will likely be  
around well into the future.

Government agencies like the Game  
and Fish Department are developing new  
programs that increase public access to  
private land, but hunters must continue to  
try to establish their own contacts. Fifty-  
three years ago Martin Bovey wrote:  
"Regardless of public shooting grounds  
North Dakota may eventually acquire, it  
is quite certain that for many years to  
come the average man will get the bulk  
of his hunting on farmer-owned land."

That statement remains true today. With  
the right attitude and the right approach,  
hunters can still find the experiences they  
seek. As another fall approaches, it's not  
too early to start the search.

**CRAIG BIHRLE** is the Game and Fish  
Department's communications supervisor.

## **5 Rules for Improving Access Opportunities**

*They don't always work, but ignore them and few doors will open.*

1. Plan ahead and set reasonable expectations.
2. **DON'T BE AFRAID TO ASK.** Driving up to a farm "cold" is not always an easy thing to do. However, it is necessary if hunters want to expand opportunities beyond unposted or public land.
3. Accept "No" graciously; find out if another day might be better.
4. Strive to meet landowners even if the land you want to hunt isn't posted; arrange a personal meeting, rather than relying on a phone call.
5. Honesty and courtesy are vital.



Open to Sportsmen fields of other land controlled by NDGFD during the first week of pheasant season. Small game licenses holders from out of state also are restricted to 10 days of hunting in two five-day segments. Nonresident upland bird hunters may buy additional licenses, however.

"We want economic development in our area," Kerzman stressed. "We want the same playing field."

The Cannonball Co.'s Candrian agreed.

"A lot of small businesses really felt it last year," he said. "Hopefully, we'll see them go to the Legislature."

Lyson said he's aware of lots of complaints from rural business owners.

"We have to look at some areas and see if the complaints are warranted," he said. "We have to take care of these things."

Kerzman said he also plans to introduce an "automatic posting" bill that would turn around state law on trespass and access. North Dakota law now bars hunters from going onto private land if the property owner has posted signs saying that hunting is not allowed. NDGFD interprets that to mean if no signs are posted, hunters may assume the property is open for hunting and may go onto the land without permission, said Rostvet.

Nelson said some landowners like the law the way it is. One of the reasons is landowners whose houses are next to neighbors' fields would be fielding hunters' mistaken queries about access.

"It's not a true rural-urban

(a Jamestown Democrat)," Porter said.

Nelson said splitting nonresident licenses into small game and waterfowl during the last session gives everyone a better understanding of who is hunting what. The numbers will help make better decisions, he explained.

"It was a huge goal," Porter added.

Another measure that's been debated on Web sites is the so-called "native son" legislation that would allow native North Dakotans who have moved out of state to enjoy resident hunting privileges for a flat \$500 fee and an annual license purchase.

"I'm anxious to do something to alleviate some of the problems," said Lyson, the Williston senator behind the measure, which is SB2113.

Opponents say the measure tips the scales for young people deciding between a higher paying job out of state or staying because of the state's bountiful hunting and fishing opportuni-

ties. clause challenges such as the Minnesota lawsuit.

■ Making importation, possession or breeding of exotic wildlife unlawful.

■ Barring the killing of wild mammals held under a wild-animal license for gain, amusement or sport, so-called "caged hunts."

■ Banning inaptly named "Internet hunting," in which a person in the comfort of a living room may harvest game animals by shooting a remote-controlled weapon.

Other topics that could be addressed include big game hunters' use of two-way radios, all big-game hunters in a party being allowed to carry rifles even though some have filled their tags, big-buck contests and deer baiting.

Also raising concern in some hunting Web site chat rooms is a growing trend among large outdoors chain stores of leasing prime hunting acreage and marketing it to customers as a hunting or fishing destination point.

committee has one new member, Rich Wardner, R-Dickinson, who has been a senator since 1999.


John French, a past president of the Grand Forks Wildlife Club, wonders what kind of welcome HPC and possibly other issues will receive when legislators convene Jan. 4.

"After the last session, everyone kind of ran out of gas," he said. "Whether (HPC) received warmly, I don't know. I think legislators are tired dealing with the issue."

But Hanson, the Jamestown legislator and longtime member of the natural resources committee who also is on the education committee, knows differently.

"We have a (education) worth \$50 million, and then people show up," he said. "Hunting, we have 300 show. They are more interested in hunting and fishing rights than they are on taxation."

(Reach reporter Richard Lyson at 250-8256 or outdoors@marcktribune.net.)



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House Natural Resources Committee

1/21/05

TESTIMONY IN FAVOR OF **HB 1343**

Chairman Nelson, distinguished members of the House Natural Resources Committee:

For the record, my name is Chuck Damschen and I represent District 10 which takes in Pembina County less 2 townships, all of Cavalier County, and a good share of Towner County.

I have long been a proponent of property owners' rights so some of you may not be as surprised to see me here today as you are dismayed.

As I hear the talk in the halls about improving hunter/landowner relations, it occurs to me that adopting this legislation would remove one burr from the saddle.

The fact that a state agency can, in effect, advertise access to privately owned land is negative in itself. Add to this if it happens to be an agency that is not particularly renowned for its landowner-friendly practices - practices which produce revenue for the agency at the expense of the offended landowner - and this burr in the saddle becomes a real pain in the posterior!

An overwhelming amount of wildlife production in North Dakota occurs on privately owned land with no compensation to the landowner. I encourage this committee to give HB 1343 a "do pass" as it would curtail the practice of a state agency promoting unauthorized access to this privately owned property.

Thank you, and I will attempt to answer any questions you might have.



**Administration:**  
1101 1<sup>st</sup> Ave N  
P.O. Box 2054  
Fargo, ND 58107  
701-298-2200 • 1-800-367-9668  
Fax: 701-298-2210

**State Headquarters:**  
4023 State St  
P.O. Box 2793  
Bismarck, ND 58502  
701-224-0330 • 1-800-932-8869  
Fax: 701-224-9485

**North Dakota Farm Bureau**

[www.ndfb.org](http://www.ndfb.org)

## North Dakota Farm Bureau Testimony on House Bill 1343

Good Morning, Chairman Nelson and members of the House Natural Resources Committee. My name is Brian Kramer and I am representing the 27,500 member families of North Dakota Farm Bureau in support of House Bill 1343. This is a very simple bill with a very simple message. State government and agencies shall refrain from telling the public that trespassing on nonposted private property is allowed in North Dakota.

By passing this bill, people wishing to access private property may be more apt to inquire about the opportunity to legally enter private property. At least, they won't be encouraged to enter nonposted land.

Most resident outdoor enthusiasts know the laws regarding posting of land to trespass. Therefore, this bill is of no consequence to them. For those that do not know the law and may ask the department, they can be referred to statute. Nonresidents may be unaware of the "posting" law. But most of those people understand private property rights and will seek permission to enter private property, whether it is posted or not. It will not create a hardship for those folks.

We believe this is a reasonable bill. We ask that you give the bill a "Do Pass" recommendation. Thank you, I will try to answer any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1343

Page 1, line 6, after "**prohibited**" add "- **Exception**" and replace "The" with "Except for the attorney general with respect to the attorney general's powers and duties under chapter 54-12, the"

Renumber accordingly

**54-12-01. Attorney general - Duties.** The attorney general shall:

1. Appear for and represent the state before the supreme court in all cases in which the state is interested as a party.
2. Institute and prosecute all actions and proceedings in favor or for the use of the state which may be necessary in the execution of the duties of any state officer.
3. Appear and defend all actions and proceedings against any state officer in the attorney general's official capacity in any of the courts of this state or of the United States. If both parties to an action are state officers, the attorney general may determine which officer the attorney general will represent and the other officer may employ counsel to represent that other officer.
4. Consult with and advise the several state's attorneys in matters relating to the duties of their office.
5. Attend the trial of any party accused of crime and assist in the prosecution when in the attorney general's judgment the interests of the state require it.
6. Consult with and advise the governor and all other state officers and when requested give written opinions on all legal or constitutional questions relating to the duties of such officers respectively.
7. Prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.
8. Give written opinions, when requested by either branch of the legislative assembly, upon legal questions.
9. Enforce the proper application of funds appropriated to the public institutions of the state and prosecute breaches of trust in the administration of such funds.
10. Prosecute corporations and limited liability companies, when necessary, for failure or refusal to make the reports required by law.
11. Keep in proper books a register of all cases prosecuted or defended by the attorney general or the attorney general's assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties and reported to the attorney general as provided by law, and deliver the same to the attorney general's successor in office.
12. Keep in the attorney general's office a book in which the attorney general shall record all the official opinions given by the attorney general during the attorney general's term of office, such book to be delivered by the attorney general to the attorney general's successor in office.
13. Pay into the state treasury all moneys received by the attorney general for the use of the state.
14. Serve as superintendent of the bureau of criminal investigation and perform all duties incident to the proper and efficient conduct of that office.

15. Attend to and perform any other duties which from time to time may be required by law.
16. Appoint the state fire marshal and supervise the operation of the state fire marshal department.
17. Give written opinions, when requested by the governing body or city attorney of a city in the state of North Dakota.
18. Repealed by S.L. 1991, ch. 637, § 9.
19. Give written opinions to public entities as defined in subdivision a or b of subsection 12 of section 44-04-17.1, when requested by an interested person under section 44-04-21.1.

**54-12-02. Attorney general may institute action in which state is a party.** The attorney general and the attorney general's assistants are authorized to institute and prosecute all cases in which the state is a party, whenever in their judgment it would be for the best interests of the state so to do.

**54-12-04. Attorney general to investigate and prosecute criminal matters in counties on demand of district judge - How expenses paid.** Upon the written demand of a judge of the district court, with or without the consent and approval of the state's attorney of the county wherein such duties are to be performed, the attorney general, either personally or through the attorney general's assistants, shall be required to make a full and complete investigation of any criminal matter or complaint referred to in the demand. The attorney general shall take full charge of and shall conduct any criminal prosecution in any county within the district of said district judge to the same effect and with like power and authority as the duly elected state's attorney of that county. All expenses, including mileage as now provided by law for state officers, and disbursements for subsistence while performing those duties incurred by the attorney general, must be paid and allowed by the county in which the said duties were performed in the manner in which claims against the county are allowed and paid, after an itemized statement thereof has been approved by the judge who requested that the same be performed.

**20.1-01-14. Possession or control of wildlife prima facie evidence of criminal offense.** Possession or control by any person of any wildlife, or any part thereof, the killing, taking, or possessing of which is unlawful, is prima facie evidence the wildlife was caught, taken, or killed in this state in violation of this title.

**Source:** S.L. 1973, ch. 202, § 8; 1991, ch. 232, § 3.

**Cross-References.**

Big game, prima facie evidence of unlawful hunting, see § 20.1-05-05.

Confiscation, see N.D.C.C. ch. 20.1-10.

Posted land, entry with firearm as prima facie evidence, see § 20.1-01-20.

State ownership of game and fish, see § 20.1-01-03.

35A Am. Jur. 2d, Fish, Game, and Wildlife Conservation, § 60.

36A C.J.S. Fish, § 45; 38 C.J.S. Game; Conservation and Preservation of Wildlife, §§ 55, 75-79.

Validity, construction, and effect of statutes or regulations making possession of fish or game, or of specified hunting or fishing equipment, prima facie evidence of violation, 81 A.L.R.2d 1093.

**Collateral References.**

Fish ⇌ 15; Game ⇌ 9.

**20.1-01-15. Joint violator testifying against other participants not subject to prosecution.** Repealed by S.L. 1989, ch. 275, § 1.

**20.1-01-16. Common carriers not to transport game or fish except during open seasons.** No transportation company or common carrier may receive for transportation, transport, or attempt to transport any protected game birds, animals, or fish, except during the open season on such birds, animals, or fish.

**Source:** S.L. 1973, ch. 202, § 8.

**Cross-References.**

Common carrier defined, see § 8-07-01.

**Collateral References.**

35A Am. Jur. 2d, Fish, Game and Wildlife Conservation, §§ 47, 53.

**20.1-01-17. Posting of lands by owner or tenant to prohibit hunting — How posted — Signs defaced.** Only the owner or tenant of any land may post it by placing signs alongside the public highway or the land giving notice that no hunting is permitted on the land. The name of the person posting the land must appear on each sign in legible characters. The signs must be readable from the outside of the land and must be placed conspicuously not more than eight hundred eighty yards [804.68 meters] apart. As to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed land. No person may in any manner deface, take down, or destroy posting signs.

**Source:** S.L. 1973, ch. 202, § 8; 1983, ch. 260, § 2; 1991, ch. 126, § 2.

**Cross-References.**

Landowner's consent before posting waterfowl rest areas, see § 20.1-11-11.

Marking of game farms, refuges, management areas, breeding grounds and resting places, defacing signs, see § 20.1-11-10.

Posting of game refuges and management areas, see § 20.1-11-07.

20.1-01-18

GAME, FISH, PREDATORS, AND BOATING

**Owner of Lands on Both Sides of Highway.**

Where party who owned land adjoining both sides of a section line which had been opened as a highway posted "no hunting"

signs on both sides thereof, he showed that he intended to include the highway within the posted area. *Rutten v. Wood*, 79 N.D. 436, 57 N.W.2d 112 (1953).

★

**20.1-01-18. Hunting on posted land and trapping on private land without permission unlawful — Penalty.** No person may hunt or pursue game, or enter for those purposes, upon legally posted land belonging to another without first obtaining the permission of the person legally entitled to grant the same. No person may enter upon privately owned land for the purpose of trapping protected fur-bearing animals without first gaining the written permission of the owner or operator of that land. A person who violates this section is guilty of a class B misdemeanor for the first offense and a class A misdemeanor for a subsequent offense within a two-year period.

Source: S.L. 1973, ch. 202, § 8; 1977, ch. 200, § 1; 1991, ch. 127, § 2.

**20.1-01-19. When posted land may be entered.** Any person may enter upon legally posted land to recover game shot or killed on land where the person had a lawful right to hunt.

Source: S.L. 1973, ch. 202, § 8.

wounded game as criminal trespass, 41 A.L.R.4th 805.

**Collateral References.**

Entry on private lands in pursuit of

**20.1-01-20. Entering posted land with gun or firearm prima facie evidence of intent to hunt game.** Proof that a person having a firearm, or other weapon declared legal by governor's proclamation, in the person's possession entered upon the legally posted premises of another without permission of the owner or tenant is prima facie evidence the person entered to hunt or pursue game.

Source: S.L. 1973, ch. 202, § 8.

game, or of specified hunting or fishing equipment, prima facie evidence of violation, 81 A.L.R.2d 1093.

**Collateral References.**

Validity, construction, and effect of statutes or regulations making possession of fish or

**20.1-01-21. Hunting near occupied building without permission unlawful.** No person may hunt or pursue game upon the premises of another, within four hundred forty yards [402.34 meters] of any occupied building, without consent of the person occupying such building.

Source: S.L. 1973, ch. 202, § 8; 1975, ch. 206, § 1.



By: Dean Hildebrand

Re: HB1343

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF SIOUX

Case No. 03-C-0709

Rodney J. Froelich and Kathryn M.  
Froelich

Plaintiffs

vs

John Hoeven, Governor of the State of  
North Dakota, and Dean C. Hildebrand,  
Director of the Game and Fish  
Department, State of North Dakota

Defendants

**OPINION****FACTS**

Rodney and Kathryn Froelich (the Froelichs) own 7500 acres of land in Sioux County, North Dakota. Dean Hildebrand is the Director of the North Dakota Game and Fish Department, the state agency which regulates hunting and fishing. John Hoeven, the Governor of North Dakota, administers the executive branch of state government, including the Game and Fish Department. Dean Hildebrand and Governor John Hoeven will be referred to as the "State."

The Froelichs initiated this action in May 2003. They contend the State has misinterpreted the game code so as to: (1) abrogate the common law tort of civil trespass, and (2) give the public a legal right to hunt on unposted private land without permission. The Froelichs claim they have the right to exclusive use of their property, the right to protect their interest through a civil trespass action, and the State's interpretation of the posting provisions found in Section 20.1-07-17 and 20.1-07-18 of

the North Dakota Century Code is a taking without just compensation – creating an easement of public access for hunting purposes.

The Froelichs seek a declaratory judgment holding that the public may not lawfully hunt on unposted private land without the landowner's permission. In addition, they claim the State's interpretation of the posting laws is a governmental taking of private property without just compensation, in violation of the United States and North Dakota Constitutions. The Froelichs claim the State's interpretation of law has caused injury to their property rights and economic harm. They seek injunctive relief, in addition to the declaratory judgment.

The State contends that under North Dakota law the public may hunt on unposted private land without the landowner's permission. The State argues that the Froelichs are seeking an advisory opinion under the guise of a request for a declaratory judgment, the Froelichs have failed to join the necessary and proper parties, the State's interpretation of the game code has no effect on the Froelichs' ability to bring suit against an appropriate defendant for common law trespass, and the State's interpretation of the game code does not affect an unconstitutional taking of property without just compensation.

The parties to this case brought various motions before the Court. The Froelichs requested the Court grant summary judgment. The State requested the Court grant judgment on the pleadings, or, in the alternative, summary judgment.

#### SUMMARY JUDGMENT STANDARD

"Summary judgment is a 'procedural device for promptly and expeditiously disposing of an action without a trial if either party is entitled to judgment as a matter of law, and no dispute exists as to either the material facts or the reasonable

inferences to be drawn from undisputed facts, or if resolving the factual disputes will not alter the result." *First Union Nat'l Bank v. RPB2, LLC*, 2004 ND 29, ¶ 7, 674 N.W.2d 1.

### ANALYSIS

The Froelichs request a declaratory judgment holding that the public may not lawfully hunt on unposted private land without the landowner's permission.

Declaratory judgments are governed by Chapter 32-23 of the North Dakota Century Code. A court may issue a declaratory judgment if the following elements are present: (1) there must be a justiciable controversy – a controversy where a claim is asserted against someone who has an interest in contesting it; (2) the controversy must be between parties whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue must be ripe for judicial determination. *Saefke v. Stenehjem*, 2003 ND 202, ¶ 12, 673 N.W.2d 41.

The purpose of a declaratory judgment is to determine the rights, status, or other legal relations in an underlying justiciable controversy. *Section 32-23-01, North Dakota Century Code*; see also *In Interest of McMullen*, 470 N.W.2d 196, 198 (N.D. 1991). A declaratory judgment must involve a controversy between parties with adverse interests. *Langer v. State*, 69 N.D. 129, 141, 284 N.W. 238, 245 (1939). If a decision by the court will not settle a dispute, it would be an advisory opinion. 22A AmJur.2d, *Declaratory Judgments*, § 34. An advisory opinion is one where the alleged injury claimed by the plaintiff is speculative, remote, or contingent upon a hypothetical set of facts. 22A AmJur.2d, *Declaratory Judgments*, § 34. Courts do not render advisory opinions. *Saefke*, at ¶ 15.

In the instant litigation, the Froelichs request a declaratory judgment indicating the public may not lawfully hunt on unposted private land without the landowner's permission. Such a decision would be an improper advisory opinion. It would not settle a dispute between the State and the Froelichs. This action does not involve a controversy between two parties with adverse interests. Rather, a declaratory judgment would merely be advising the Froelichs of their right to bring an action for civil trespass in the future under a contingent or hypothetical set of facts. That issue should be addressed in a civil trespass lawsuit against an alleged trespasser. Such an action would probably require proof of damages. There is no actual controversy between the State and the Froelichs. I conclude the Froelichs are requesting an advisory opinion. The facts of this case are not appropriate for a declaratory judgment.

A declaratory judgment would not be appropriate in this case because of the Froelichs' failure to bring the proper parties before the court. When a party seeks declaratory relief, "all persons who have or claim any interest that would be affected by the declaration must be made parties..." *Section 32-23-11 of the North Dakota Century Code*. A declaration that the public may not lawfully hunt on unposted private land without the landowner's permission would not be binding on any potential trespasser. The Froelichs are seeking a declaration of their rights as between themselves and potential trespassers. This case requires at least one trespasser to be named as a defendant. Even if the Froelichs were not requesting an advisory opinion, their failure to name a trespasser as a defendant prohibits me from issuing a declaratory judgment.

Finally, the Governor of North Dakota and the Director of the Game and Fish

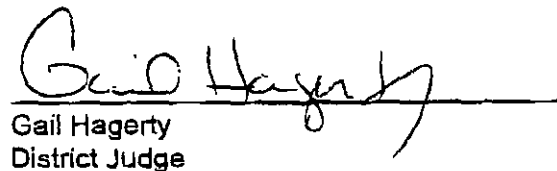
Department do not make the law. I would conclude they had correctly stated the law in this matter, if I was to reach that issue. Any alleged misstatement of the law by them does not change the law or the remedies provided under the law. If there is a common law action for civil trespass, the Governor and the Director of the Game and Fish Department cannot take the claim away from the Froelichs, although the legislature may have done so in enacting Sections 20.1-01-17 and 20.1-01-18. The State's construction or interpretation of Sections 20.1-01-17 and 20.1-01-18 does not impair any civil trespass remedies that may be available to the Froelichs. The Froelichs have the right to bring any lawful claim against the proper defendants, which includes a claim for common law civil trespass, if such a claim exists.

#### CONCLUSION

I grant summary judgment in favor of the State. This is based on my conclusion that the Froelichs seek an advisory opinion, have failed to name all persons who have or claim any interest in the declaratory relief sought, and retain a common law claim for civil trespass, if one exists.

Dated May 3, 2004.

BY THE COURT:

  
Gail Hagerty  
District Judge

By: Mike Donahue 1/21/05  
*United Sportsmen of North Dakota*

Post Office Box 272  
Bismarck, ND 58502  
www.unitedsportsmen-nd.org  
E-mail: info@unitedsportsmen-nd.org

**TESTIMONY REFERENCING**

**HB 1343**

**By Mike Donahue, Lobbyist #275**

**House Natural Resources Committee**

**January 21, 2005**

The United Sportsmen of North Dakota and the N.D. Wildlife Federation do not support HB 1343 and ask for a **Do Not Pass**.

This is certainly an interesting bill. In four short lines (6—9) it manages to say that the state is no longer responsible and accountable to keeping the public informed.

Really!!

What will be next that we will legislate away the public right to know.

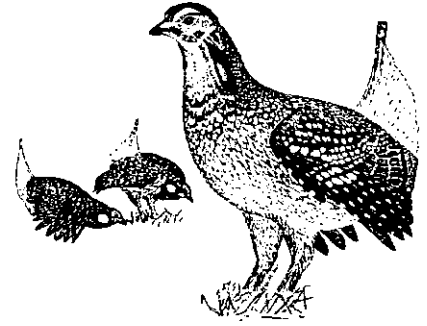
**PLEASE DO NOT PASS HB 1343.**



*North Dakota Chapter*

**THE WILDLIFE SOCIETY**

P.O. BOX 1442 • BISMARCK, ND 58502



**TESTIMONY OF MICHAEL McENROE  
NORTH DAKOTA CHAPTER OF THE WILDLIFE SOCIETY  
ON HB 1343; HOUSE-NATURAL RESOURCES COMMITTEE  
ON JANUARY 21, 2005**

**Chairman Nelson and Members of the House Natural Resources  
Committee:**

**My name is Mike McEnroe, and I am representing the North Dakota  
Chapter of The Wildlife Society, comprised of over 300 wildlife  
biologists, land managers, natural resource administrators, and  
educators. The Chapter is opposed to HB 1343.**

**The Chapter does not have a position on the current trespass law in  
North Dakota, but it is not appropriate to enact a law prohibiting  
employees of a public agency from advising or explaining what the laws  
of the State are to the public.**

**The Chapter urges a Do Not Pass recommendation on HB 1343.**



Cass County  
**WILDLIFE CLUB**

Box 336  
Casselton, ND 58012

By: Harold Neameyer



**TESTIMONY OF HAROLD NEAMEYER**  
**CASS COUNTY WILDLIFE CLUB**  
PRESENTED TO THE HOUSE NATURAL RESOURCE COMMITTEE

ON

**HB 1343**  
JANUARY 20, 2005

Mr. Chairman and Members of the Committee:

The Club is opposed to this bill because it keeps dedicated state employees from doing their job. How can the public get information if this bill were to pass.

We don't think this proposed bill is even legal and certainly not ethical.

Please oppose this bill.

