

2009 HOUSE JUDICIARY

HB 1355

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1355

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/3/09

Recorder Job Number: 8434

Committee Clerk Signature *D. Penrose*

Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1355.

**Rep. Dave Weiler:** Sponsor, support. Explained the bill. There are not enough teeth in the city ordinance here in Bismarck to take care of the problem that has existed over the last two years. John Witzke is a constituent of mine, has had a problem at his residence for eight years. This isn't being taken care of by the local law enforcement agency and has said continually that there isn't anything that they can do about it. Whether it needs a higher authority or not remains to be seen. The problem is that everybody has the right to mount a camera on their house to protect their family, animals, etc. for whatever reason. That's not the problem. We're not here to change that. The problem is that the people that live next to Mr. Witzke take their camera and shine it into his house. There are two cameras, one in the back and one on the side of the house, and are pointing into his windows. We believe it is an invasion of privacy, the locals don't see it that way.

**Rep. Klemin:** Is this going to create an unintended consequence of what you're talking about, but it frequently happens in civil lawsuits or personal injury is alleged by someone, that a private investigator might be hired to watch some person who is claiming a personal injury, to see if he is really injured like he says he is. I know of situations where they had taken

photographs, video and still films of somebody who claims to have a back injury, and he is caught in his garage lifting stuff up and hanging on the walls inside his garage, with the garage door open, of course. This would seem to make that kind of work by a private investigator a class B misdemeanor under this disorderly conduct statute.

**Rep. Dave Weiler:** That's for the wisdom of this committee; you have the right to amend things in or out of the bill. I do believe that this deals with cameras that are mounted and if that's not the case, I'm mistaken.

**Rep. Klemin:** It doesn't say that.

**Rep. Dave Weiler:** Ok, that was the intention.

**Rep. Koppelman:** Do you know if the term visual occurrence is defined anywhere in law.

**Rep. Dave Weiler:** That would be something to ask Legislative Council about. I don't know.

**Rep. Koppelman:** Part of the bill references optical device and another part references surveillance camera, are they synonymous or we talking about two different things.

**Rep. Dave Weiler:** I believe they are the same.

**Chairman DeKrey:** Thank you. Further testimony in support.

**John Witzke, private citizen:** I support this bill. This bill is not about having a camera and protecting your own property. I have no problem with that. It's about using an outdoor video camera to monitor your neighbors or to spy on your neighbors for no reason. I have two sons, 10 and 7. This problem has been going on for 8 years. I would like to see the camera pointed down and back toward their property. It's just plain wrong to have the camera pointed into my windows, which I have to always have the drapes shut. It shouldn't make any difference whether I have two girls or two boys. (Passed around several photos).

**Rep. Koppelman:** Did you talk to the neighbors about this and how did that go. When you talked to law enforcement, given the section you just read us, they are telling you that there is nothing they can do about it, is that it?

**John Witzke:** There hasn't been much communication with the neighbors. I've asked them to be redirected and that didn't work. Then I started to tell them to redirect and that didn't work. As far as the law enforcement is concerned, I showed them this ordinance and asked what part of that ordinance doesn't fit this situation and they won't do anything about it.

**Rep. Klemin:** How did you get a copy of what was taken from their camera?

**John Witzke:** That was a criminal mischief charge against me for trying to redirect the cameras myself and was charged with a class B misdemeanor. I didn't destroy their property, just pushed the cameras so they were facing away from my property.

**Rep. Klemin:** Are you making any effort to try and amend the local ordinance that doesn't contain the language that you would like to see.

**John Witzke:** Yes, I wrote to Charles Whitman, and gave him a copy of the amendment.

**Rep. Klemin:** You didn't follow up with him about the amendment.

**John Witzke:** We called him several times but he hasn't returned my calls.

**Rep. Weiler:** We tried to change the Bismarck city local ordinance to fit basically this language, and they have no interest in bringing it forward. That's why we are here.

**Rep. Wolf:** From looking at the way the picture is taken, it doesn't appear that it is looking into your house. My concern is the way the bill was drafted; it says to use a surveillance camera to capture images from the dwelling. I don't know if this will cover what you're asking for it to cover. The camera doesn't seem to be looking into your house; it looks like it is pointed at their yard, blocked by your fence.

**John Witzke:** There was video where it shows it pointing into the house, but I can't get my hands on the video tape. There are two or three video tapes that they say they have and I have never been able to get a copy from the city attorney or anyone else. Then all of a sudden the video tapes are gone. I offered a \$1,000 reward for this video tape.

**Rep. Wolf:** Why does she have the video cameras pointed at your house?

**John Witzke:** I really don't know. Apparently they feel threatened by me or my family.

**Rep. Vig:** This camera is one side of the neighbor's house, is there another camera on the other side of this house too, or what's on the other side of the house.

**John Witzke:** They have four cameras. There is one in the back yard, one in the front yard and two on the side that faces my property.

**Rep. Vig:** So they are surveilling more than the driveway.

**John Witzke:** They say they are protecting their property. But as far as I can tell, 50-60% is pointed at my property. I have a problem with them taking unauthorized video of my children.

**Rep. Delmore:** When you tried to move that camera, was there a way to do it so that none of your property would be in the frame. Would that give the neighbor the needed area to be watched for their protection?

**John Witzke:** I have a picture of that too, I think it would. All they to do is point it down a little bit toward their own property.

**Rep. Dave Weiler:** The picture was from the criminal mischief trial from the City of Bismarck, so they are obviously not going to give a picture of the camera that actually does point at their house.

**Rep. Klemin:** There seems to be some distance between the camera and your house, in some cases the houses might be a lot closer together depending on where the camera is.

**John Witzke:** The city attorney said that they are supposed to install a protective shroud to eliminate that overview. I don't know what the solution is.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition.  
Neutral testimony.

**Keith Witt, Chief of Police, City of Bismarck, ND:** I don't disagree with what Mr. Witzke said in terms of the difficulty he has with the situation. I became aware of this case since I became chief of Bismarck. We had a police officer meet with the neighbor and I thought we had the camera moved to a position that was agreeable to both sides but maybe that's the case at this time. This is a difficult situation here in Bismarck, as are any disputes between next door neighbors or neighbors on the same block; we often deal with these problems across the state. I think the issue here is what angle the camera was pointed at. Mr. Witzke's definite feeling that it is to harass, annoy and videotape his family. I don't disagree with what his happening from his perspective, but my dealings with the other person involved who has the camera, they had garbage showing up on their yard, damage to vehicles in their driveway, and most concerning to them was that they had a dog show up twice with BB's in the dog. I'm not here to say that it was Mr. Witzke or his family; those were the concerns of the neighbor. It's a difficult situation and up to the committee to sort it out.

**Rep. Koppelman:** From a law enforcement perspective, for someone to try to protect their home with video surveillance, would there be any reason for them to point a camera into somebody else's home to obtain that level of security or is this surveillance of their property what would logically be involved.

**Keith Witt:** I think that's really case specific depending on what is happening. I think in this situation the neighbor may have felt, for whatever reason, that the threat was coming more

from Mr. Witzke's side of their house, so that is why the camera is directed in that direction. As far as a different situation, each case would be different.

**Chairman DeKrey:** In 8 years, if they didn't see the vehicle incident or the dog incident, my question is what good are the cameras in the first place.

**Keith Witt:** The cameras seem to provide them with some sense of security.

**Rep. Delmore:** Can the camera see inside the window of the house.

**Keith Witt:** I would have to see the monitor inside the house to see exactly what it is filming.

**Rep. Delmore:** In the post-911 era, we're doing a lot more of this type of security, would this bill cause a complication for that.

**Keith Witt:** It could, if there were no reasonable exceptions to allow law enforcement to perform their duties.

**Chairman DeKrey:** Would something like Google Earth, would that make it illegal, because you can type in your own address and get a satellite picture of your place.

**Rep. Klemin:** On the street view on Google, I can go right up to my driveway and house.

**Rep. Koppelman:** With any bill, we have to look at all the issues, and in this instance it is a public policy question before us. We also need to look beyond this case to what else this bill would do. Do you have any concerns with our technology today, would this bill be useful to you in law enforcement, and if so, if it had provisions that took care of the concerns you raised. Would it provide a positive public purpose to have this bill?

**Keith Witt:** I think in terms of these situations they have been isolated cases. I'm not aware of any other issues we've had in Bismarck. We have had a lot of peeping toms, but haven't had a problem with a lot of electronic technology being used. This bill, from a law enforcement perspective, I would say that we had a couple of issues. If somebody, for example, similar to Mr. Witzke's case contacted us and said that a neighbor has a camera and I think it's pointing

in my windows. We would have to determine what exactly they are seeing with the camera. If we went up to the neighbor's house and said that the camera seemed to be pointing at the other house, and they said no it wasn't and the officer asked if they could come in and check that out, and the neighbor said no you can't. But somehow we are supposed to sort out, as the police, what the camera is pointing at. I think we could have technical difficulties sometimes in doing that.

**Rep. Koppelman:** But if you're investigating any crime, wouldn't the next step be that you would get a search warrant.

**Keith Witt:** I don't know how a judge would view probable cause in this case. How do you have probable cause with a camera and what it is actually viewing?

**Rep. Vig:** Back home, the neighbor's house had a burglary alarm system that is registered for insurance; are these cameras registered with your office.

**Keith Witt:** No, in fact, in Bismarck we don't register alarm systems.

**Rep. Vig:** If this has been going on for 8 years, has there been any reports to your department from the neighbor about any violations that they've witnessed by the security camera, the dog is still alive.

**Keith Witt:** I don't know the exact number, but the neighbor has made several reports to our department.

**Rep. Wolf:** If this was enacted into law, would the department be able to solve the issue; would this give it some teeth.

**Keith Witt:** The statute would obviously give some teeth to this issue. I thought we had this situation resolved to the point where he was comfortable that the camera was no longer pointed toward his windows.

**Chairman DeKrey:** Thank you. We will close the hearing.



# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1355

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/9/09

Recorder Job Number: 9013

Committee Clerk Signature

*D. Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at HB 1355.

**Rep. Dahl:** I almost think that the city ordinance was written better than this bill was.

**Rep. Klemin:** There are all kinds of things that you can get that block anybody from looking through glass, like solar guard that keeps the sun out, or you can look out but they can't look in. All the person had to do was to go to Menards and get some of that stuff and stick it on his window and still see out like it was daylight and nobody could look in. Why didn't he do that?

**Rep. Dahl:** Probably part of it was the backyard.

**Rep. Delmore:** Anybody could look into your back yard, but this was into the windows.

**Rep. Griffin:** I move a Do Not Pass.

**Rep. Wolf:** Second.

10 YES 2 NO 1 ABSENT

DO NOT PASS

CARRIER: Rep. Griffin

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1355

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/11/09

Recorder Job Number: 9261

Committee Clerk Signature

*Delmore*

Minutes:

**Chairman DeKrey:** We will take a look at HB 1355. Rep. Koppelman wasn't here when we took action on the bill on 2/9/09. Explain your amendments.

**Rep. Koppelman:** Explained the amendments.

**Rep. Delmore:** We thought it made more sense that this be a city policy. We didn't have anyone else come forward to support this.

**Rep. Koppelman:** We are just trying to make good policy for privacy to take care of some of these concerns that might come up. That's why I removed some of the specific surveillance language.

**Rep. Klemin:** I don't see that this resolves the problem other than putting people through some additional hoops about notice; and I think it's very difficult to enforce even with the amendment on here. I think it's very easy to keep from being looked at, just put on the window coverings or blinds.

**Chairman DeKrey:** We will leave the bill alone as a Do Not Pass.

Date: 2/9/09  
 Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1355

**HOUSE JUDICIARY COMMITTEE**

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken  DP  DNP  DP AS AMEND  DNP AS AMEND

Motion Made By Rep. Griffin Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig		✓
Rep. Dahl		✓	Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 10 No 2

Absent 1

Floor Carrier: Rep. Griffin

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

**REPORT OF STANDING COMMITTEE**

**HB 1355: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS**  
(10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1355 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1355

6-05-07. Window-Peeping.

1. It is unlawful for any person to look, peer, or peep into, or to loiter in a position or place affording a view into any window not that person's own property, with intent to annoy, harass or alarm any person or in reckless disregard of the fact that any person is annoyed, harassed or alarmed.

2. It is unlawful to use cameras, telescopes or binoculars to peer into any window not that person's own property with the intent to annoy, harass or alarm any person or in reckless disregard of the fact that any person is annoyed harassed or alarmed.

3. The use of surveillance cameras is permitted. When used in residential areas, cameras must be directed or shielded in such a manner as to block out adjacent dwellings or accessory structures. A person found to be in violation of this section shall be given 7 days to re-direct the cameras and failure to redirect the cameras within that time is an offense.

*Source: Code of Ords., 1973, Sec. 24-86*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1355

Page 1, line 7, replace "; or uses a surveillance" with ". An"

Page 1, remove line 8

Page 1, line 9, remove "another person but an"

Page 1, line 11, replace "an" with "a prohibited" and remove "from another person's dwelling or accessory"

Page 1, line 12, remove "structures" and after the underscored period insert "This subdivision does not apply to a law enforcement officer in the course of official duties or a licensed private investigator in the course of an investigation."

Renumber accordingly

HB 1355

I have video evidence of this camera pointing more this way →

Kitchen window

House

This fence wasn't here until 2 1/2 years after this camera was put up.

