

2009 SENATE JUDICIARY

SB 2171

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2171

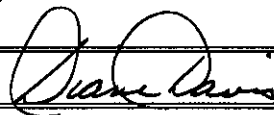
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7296

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the termination of a residential lease by a victim of domestic violence.

Chief Arland H. Rasmussen, Chief of Police, West Fargo PD – See written testimony.

Senator Schneider – Asks if in Section 1 where it states a victim of domestic violence, does this require them to be physically abused before the protections of this law are triggered.

Chief – Replies he would leave the interpretation would be.

Senator Fiebiger – Said as he reads it, it looks like there must be a protection order in place.

Chief – He said yes, so someone doesn't use this to get out of a lease, this protects both parties.

Senator Nething – Said the significance of this is that if there is violence before a protection order they would not be covered under this.

Amy S. Nelson – Executive Director Fair Housing of ND – See written testimony.

Janelle Moos – ND Council on Abused Women's Services – in support of 2171 – See written testimony.

Senator Nething – Asks her to explain her amendment.

Moos – She explains her amendment and discussion follows on the 30 day notice.

The committee discusses how the 30 day notice could help the victim or not.

Reading through the language they believe it does not appear to help the victim. They discuss that some of the language should be changed to “and”, “or”. Ms. Moos would like to include, fear of physical assault.

Senator Fiebiger – Questions the balance between protecting the landlord and protecting the victims.

Senator Schneider – Says by going through the court order process the individual the individual couldn't just use this as excuse to get out of a lease.

Senator Lyson – Said in his experience, courts are hesitant to give protection orders on just one incident without having something more that says this is going to continue. He thinks you would need the “and” & the “or” in the language.

Senator Lee – Testifies in support of the bill. She believes this bill creates structure for landlords and individuals. It needs to have the court orders so the landlords are not taking advantage of.

Rocky Gordon – ND Apartment Association – He is not necessarily opposed to the bill and is in favor of the spirit of the bill, he just has some concerns to the potential for it to be abused. He questions if a person has protection order, can they never be held to a lease. He would like to see that tightened up a bit. He goes over the bill by sections giving his opinion on what should be changed.

The committee discusses sections one and two and who is protected. They do not want to water down the bill. They cannot limit it to just the perpetrator living in the building.

Senator Lyson – Believes the sections cover it very well and he said protection orders are not given out lightly.

Gordon – His concerns is these people can never be held to a lease under this law.

Senator Nething – Asks do you fear the protection order is opened ended.

Gordon – Said it's a possibility.

Senator Fiebiger – Said this bill focuses on the location of the victim, if the perpetrator knows where they live it isn't going to matter if they live in the same building or in the same apartment or where ever they are. The language you're suggesting won't do anything but gut the provision.

Discussion continues on what the right language would be. Should it be a one time? Moos brings up that some victims are stalked so there may be many locations to get away from the stalker. She said victims do not have the resources available to them to move around avoiding leases.

Closed the hearing on 2171

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2171


Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/4/09

Recorder Job Number: 8632

Committee Clerk Signature



Minutes: **Senator D. Nething, Chairman**

Committee work – re: victim of domestic violence can terminate a lease agreement.

Senator Olafson – worked with both sides and they came to an agreement on this amendment.

Committee discusses the amendments.

Senator Olafson - Motion for do pass on the amendments

Senator Nelson – Seconded

Verbal vote on the amendments, all yea

Senator Olafson - Motion for do pass as amended

Senator Schneider – seconded

Vote -6-0

Senator Olafson will carry

Date: 2/4/07
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB 2171
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee Amendments

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment _____

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

Verbal amendment - do pass

Date: 2/4/09
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES SB 2171
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass Amended

Motion Made By _____ Seconded By _____

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething - Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson - V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent _____

Floor Assignment Sen. Olafson

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

REPORT OF STANDING COMMITTEE

SB 2171: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2171 was placed on the Sixth order on the calendar.

Page 1, line 8, replace "and" with "or"

Page 1, line 10, after "agreement" insert ", as provided in this section," and replace "as" with an underscored period

Page 1, remove line 11

Page 1, line 14, after "order" insert "issued under section 14-07.1-02"

Page 2, line 3, after "rent" insert ", subject to the landlord's duty to mitigate"

Page 2, line 10, replace "1" with "2"

Page 2, after line 23, insert:

"9. A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section."

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2171

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2171

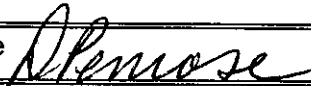
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/9/09

Recorder Job Number: 10433

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2171.

Sen. Judy Lee: Sponsor, support, explained the bill. This bill relates to being able to terminate a lease by a victim of domestic violence. If the batterer knows where that individual lives, and they can't leave because of a lease, that creates an untenable situation for the victim.

Rep. Dahl: Do these victims need a Protection Order or something to that effect to guard against abuse.

Sen. Judy Lee: Yes, a person will need a protection order. That is a perfectly reasonable request (attachment/email).

Rep. Wolf: What are the differences between the original bill and the engrossed bill.

Sen. Judy Lee: Section 4 in the original bill, a tenant terminating a lease under this section is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent, "subject to the landlord's duty to mitigate." That was the added section in the engrossed version. Also, section 9 was added in its entirety.

Ch. DeKrey: Thank you. Further testimony in support.

Janelle Moos, ND Council on Abused Women's Services: Support (attachment).

Rep. Koppelman: This bill deals specifically with rental property only, and not everyone rents property. What happens if you own a home, can you tell your mortgage holder that here's my protection order and I am walking away from the home.

Janelle Moos: Most of the other states that have adopted language similar to what is in SB 2171, is only dealing with rental property. There has never been any real change on a national level in other states that would let a victim get out of a home loan.

Rep. Koppelman: Then we're just trying to mirror what other states have done on a national basis, or replicate some language; rather than saying "if the issue is really protecting people in their circumstances, why pick on landlords and not change public policy that a victim should be able to relocate under any housing circumstances".

Janelle Moos: I think it is one step forward, and I think that in terms of the reality of what they are facing, this should help.

Rep. Wolf: Would it be a fair assessment to say that people involved in these situations are more likely to be in rentals.

Janelle Moos: I don't have data on that. I don't know.

Rep. Klemin: On page 1, subsection 3, it says the landlord can't disclose this information, then it goes on to say, but the information may be used if required as evidence in an eviction proceeding, in a claim for unpaid rent or for damages arising out of the tenancy, with the consent of the tenant. I'm trying to visualize a situation where if you need to use this as evidence in a claim for damages, let's say there's physical damage to the residential unit that was vacated, and the landlord wants to sue the tenant for those damages. This seems to say that you can only do that with the consent of the tenant. A lot of these cases, the tenant never appears in the case. So if the landlord sues the tenant, it's usually going to be a default situation and they can't use this as evidence without the tenant's consent. How is that going

work, and then it says or as otherwise required by law. I don't know of any otherwise requirement. It seems like it may be very difficult to get the consent of the tenant when they are going to be the defendant in the lawsuit and probably not even going to appear in the case.

Janelle Moos: I wasn't in on the original drafting of this bill, but in some of our conversations with the other parties interested in this bill, and the Apartment Association, we talked about this scenario, and thought that perhaps the batterer had done the damage. But I see your point.

Rep. Klemin: There could be the possibility that the victim and the batterer are co-tenants. Let's say that we can't, in the lawsuit for the damages to the unit, might be against both of them, we'd have to get the consent of both of them, because they are both tenants. I guess if that is some kind of critical evidence that is needed to show the damages, for some reason I'm not quite sure about, there's no way a tenant is going to consent to have evidence being used against him, even if they did show up. So I'm not quite sure what the point of that is.

Janelle Moos: I'm not sure either; we could look at the other statute that this is modeled after. This is modeled after the MN law.

Rep. Koppelman: Based on previous testimony on this bill this morning, my understanding is that some of these circumstances are a situation where a batterer finds out where a tenant lives. Then the tenant wants to leave because of that batterer knowing where she is living. I would assume that even the landlord who has the current lease, may not be whole either. If you have to get consent, and the purpose of leaving is to try and get lost, would you even be able to find that person to get her consent.

Janelle Moos: He/she as the victim will have to give written notice of wanting to terminate the lease, and whether she would provide a forwarding address or not is up to the victim. There are victims that will not provide that forwarding address because they fear for their safety and that of their family.

Rep. Koppelman: Does this also apply to mobile home leases.

Janelle Moos: I don't know.\

Rep. Kretschmar: Does your organization have any numbers on how many of these domestic protection orders are issued in ND over a period of a year.

Janelle Moos: In 2007, 691 protection orders around the state were issued.

Ch. DeKrey: Thank you. Further testimony in support.

Rocky Gordon, ND Apartment Association: Support the intention of the bill. Some of the concerns we had have been sorted out. We are concerned about abuses of terminating the lease without a good reason.

Rep. Koppelman: Do you know about mobile home leases; it talks about a residential lease. Is that definition is here in law.

Rocky Gordon: I think there is a completely separate section that deals with mobile home rentals and I think that would be taken care of in that section. Generally, mobile home lot rentals aren't on a long term lease basis. That's not to say that they never are, but generally, because of the nature of the mobile home, you take it in and set it, they don't get pulled very often so I don't think it's typical that there are long term leases involved here, but I am not an expert on this matter.

Rep. Klemin: In subsection 8 on page 2, the tenancy continues for any remaining tenants. Let's say that's the aggressor tenant. We've got an aggressor tenant and a victim tenant. So the victim gives a notice and gets out of the lease. But they still have the other tenant that the tenancy continues for. Then you go to page 1 on subsection 3, there is a general provision that the landlord can't disclose this information except as evidence in an eviction, a claim for unpaid rent or damages arising out of the tenancy, with the consent of the tenant. Well, the tenant that we're talking about on line 23, must be the victim tenant, and here we have a

situation where it looks like the landlord may be evicting the other tenant and part of the evidence that the landlord wants to use in that eviction proceeding, whether it's for non-payment of rent, or for damages or whatever, is this protection order. The way this reads, the only way you can use this information about domestic violent, is if you get the consent of that victim tenant, when you don't even know where the tenant is or where they went to. How is this actually going to be possible in a practical sense to do this, to get the consent of the victim tenant.

Rocky Gordon: It could be very difficult, or nearly impossible.

Rep. Klemin: If there is an eviction proceeding for a claim for unpaid rent or damages, do you need to disclose that domestic violence information anyway. Isn't that necessary in that kind of case.

Rocky Gordon: Certainly not, it would not affect the rent. The rent is paid or not, regardless. I could see some situations where it might be very difficult.

Rep. Klemin: Then it goes on to say with the consent of the tenant, or as otherwise required by law. What kind of otherwise required by law situation could there be.

Rocky Gordon: I can't think of one.

Rep. Klemin: I guess I'm having a little problem with putting stuff into statutes and you don't even know what it means.

Rep. Delmore: In subsection 8, I assume that if there were three tenants in one apartment and one of the tenants had to leave, this wouldn't release the other two tenants, would it.

Rocky Gordon: I think that's one of the situations that we did talk about and that scenario presents itself when a whole lease is terminated for everyone, but it certainly could mean that the person is in the lease with the abuser as well.

Rep. Griffin: In subsection 7, part a, it says that the security deposit provisions apply the first day of the month following the later of the date the tenant vacates the premises or the termination of the tenancy indicated in the written notice under subsection 1. Can you explain that second part, under subsection 1.

Rocky Gordon: What part.

Rep. Griffin: The subsection 7, part (a), I'm just a little confused. I understand the first part about the security deposit, the first day of the month following the later of the date the tenant vacates or the termination of the tenancy indicated in the written notice under subsection 1.

Rocky Gordon: I think that was intended to not trigger the refund of the security deposit by one of the residents leaving. In other words, if we have other residents there that are staying, that the security deposit doesn't have to be refunded, it would stay with the property.

Rep. Griffin: I understand that, that is covered in subsection b, where it talks about additional tenants. But I am wondering how the language which says the termination of the tenancy indicated in the written notice under subsection 1; how is that different from that first part of that subsection.

Rocky Gordon: I don't know.

Rep. Koppelman: In subsection 8 that's been discussed a little bit here, about releasing one tenant and not another. I can understand where there might be circumstances where the landlord might want that. If they have a year lease, and this occurs two months into the lease, and the landlord doesn't want the other person to stay in the property. Should there be something that allows at the option of the landlord or something that allows a landlord some protection in this situation, where they might want the other party to vacate the premises.

Was that talked about.

Rocky Gordon: We did talk about it, but this was not our bill. We were presented with this, and we looked at it and we tried to say that there are some good parts in this that we would certainly be willing to work with this situation, in certain circumstances where this might happen. We certainly do not oppose "at the option of the landlord"; however, the way we looked at it, we said that there is subsequent behaviors after this situation took place, delinquent rents, other problems, we would then carry that forward and deal with it at that time.

Rep. Wolf: Do we have something in our law to allow for a lease to be gotten out of, like if they are called into the Guard or go on active duty.

Rocky Gordon: There is, it is a federal act.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. We will appoint a subcommittee consisting of Rep. Klemin, Rep. Dahl, and Rep. Griffin.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2171

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/11/09

Recorder Job Number: 10695

Committee Clerk Signature

Demose

Minutes:

Chairman DeKrey: We will take a look at SB 2171.

Rep. Klemin: This is the bill where we have to reopen the bill because we didn't have the hearing on the Second Engrossment of the bill. The amendments are for the Second

Engrossment.

Chairman DeKrey: Just put the amendments in your book. We will rehear this bill next week.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2171

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/16/09

Recorder Job Number: 10965, 11024

Committee Clerk Signature

Delmore

Minutes:

Chairman DeKrey: We will rehear SB 2171 on the Second Engrossment.

Sen. Judy Lee: Sponsor, support. The only change as you will notice between the First and Second Engrossments is on page 1, line 14, insert after issued, "after a hearing". Everything else is the same.

Rep. Delmore: Why does this have to be after a hearing rather than simply after a protection order has been signed.

Sen. Lee: A legal person told me we should. I don't know. It was recommended to us that that be the standard under which this would be done, so it wouldn't be something that was too easily be done. That way it would be a protection for the landlord as well.

Rep. Kretschmar: As I read the bill, it kind of gives notice that the tenant is liable for that month and the next month's rent. Can the tenant stay in the property then, if they wish.

Sen. Lee: They can choose to stay there with the additional month's rent was part of the negotiations with the property owners so that they would have some protection for the landlord as well. A lot of landlords require a 60 days' notice, so we negotiated down to this amount of time, the one month additional rent. The apartment owners said they would be comfortable with that amount of time.

Chairman DeKrey: Thank you. Further testimony in support.

Rocky Gordon, ND Apartment Association: I am just here to clear up a few responses that Sen. Lee answered to the questions asked. In response to Rep. Delmore's question, about the "after the hearing". I think the intent there was that there is a difference between temporary protection orders and permanent protection orders. We just wanted to make it very clear that it was only after a hearing and a permanent protection order was issued. We felt that was okay to make that clear. I have a little bit different understanding about the month after termination than Sen. Lee did. It was my understanding that that month only kicks in after termination; which means that the tenant would have vacated. The reason for that, is that it is very difficult to show the apartment when there is that kind of a situation going on, so my understanding is a little different.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the afternoon session)

Chairman DeKrey: We will take a look at SB 2171.

Rep. Klemin: Explained the amendment 90006.0302.

Rep. Griffin: Second.

Chairman DeKrey: Voice vote. Motion carried. We now have the bill before us as amended.

What are the committee's wishes.

Rep. Delmore: I move a Do Pass as amended.

Rep. Wolf: Second.

13 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Dahl

VR
3/16/09

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2171

Page 1, line 13, replace "an" with "a protection" and replace "for" with "after a hearing under section 14-07.1-02 or an order prohibiting contact"

Page 1, line 14, remove "protection or no contact order issued after a hearing under section 14-07.1-02"

Page 1, line 17, after the third "the" insert "protection" and replace "for" with "or the order prohibiting contact"

Page 1, line 18, remove "protection or no contact order"

Page 1, line 21, remove "if"

Page 1, line 22, remove "required"

Page 1, line 23, remove "with the consent of the tenant."

Page 2, line 14, replace "the landlord's duty to pay" with "timing for the payment of"

Page 2, line 18, remove "later of the" and remove "or the termination of the"

Page 2, line 19, remove "tenancy indicated in the written notice under subsection 1"

Renumber accordingly

Date: 3/16/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2171

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. Delmore 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) 13 No 0

Absent 0

Floor Carrier: Rep. Dahl

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

REPORT OF STANDING COMMITTEE

SB 2171, as reengrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Reengrossed SB 2171 was placed on the Sixth order on the calendar.

Page 1, line 13, replace "an" with "a protection" and replace "for" with "after a hearing under section 14-07.1-02 or an order prohibiting contact"

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Page 2, line 18, remove "later of the" and remove "or the termination of the"

Page 2, line 19, remove "tenancy indicated in the written notice under subsection 1"

Renumber accordingly

2009 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2171

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2171

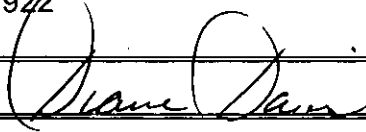
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 4/17/09

Recorder Job Number: 11922

Committee Clerk Signature



Minutes:

Senator Olafson, Chairman

Representative Dahl

Senator Nething

Representative Kingsbury

Senator Fiebiger

Representative Delmore

Senator Olafson asks Representative Dahl to enlighten the committee on what the House did to the bill. Rep. Dahl explains the order for protection or a no contact order, she said the no contact order is not the correct terminology, it should be order for prohibiting contact. They both reference 14-07.1-02 which is for civil protection orders. Prohibiting contact order is something that is done in the criminal context with a judge so a reference to that section would be incorrect. She explains that is why they amended the language. The second change made to the word duty, she says duty exists and is not triggered by any specific event so they changed the language to timing. They also put in the timeline which was agreed to by all parties. Senator Olafson asks her to explain what they changed on page one. She said her committee thought the consent of the tenant was not needed or necessary, they it might cause more problems if it was left in there. Rep. Delmore added they also considered if the person

has a protection order etc. they may not have access to get a hold of the person to get a consent. This was to protect the landlord to get the money they are owed.

Senator Fiebiger said he worries about making information public. He said maybe it is a non-issue. Senator Delmore said it was made clear to them an address and phone number would not be made public.

Senator Nething motions for the Senate to accede to the House Amendments

Senator Fiebiger seconds

Roll call vote – 6 yes, 0 no

Senator Olafson will carry

Date: 4/17/09

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB2171 as (re) engrossed

Senate _____ Judiciary _____ Committee

Check here for **Conference Committee**

- Action Taken
- SENATE accede to House Amendments
 - SENATE accede to House Amendments and further amend
 - HOUSE recede from House Amendments
 - HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 891 -- 892

Unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

Motion Made By S. Nething Seconded By S. Liebiger

Senators				Y	N	Representatives				Y	N
				e	o					s	o
Senator Olafson -Chair	X			X		Rep. Dahl	X			X	
Senator Nething	X			X		Rep. Kingsbury	X			X	
Senator Fiebiger	X			X		Rep. Delmore	X			X	

Vote Count 6 Yes 0 No _____ Absent

Senate Carrier S. Olafson House Carrier R. Dahl

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2171, as reengrossed: Your conference committee (Sens. Olafson, Nething, Fiebiger and Reps. Dahl, Kingsbury, Delmore) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 891-892 and place SB 2171 on the Seventh order.

Reengrossed SB 2171 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2171

SB 2171

The request to create and enact a new section to NDCC 47-16 is made for the purpose of allowing victims of domestic violence to vacate a residential lease. As written the new section provides an opportunity for the victim to escape the violence while providing some economic safeguards to the property owner. The section is based upon statute already in place in the State of Minnesota.

Protection or no contact orders are generally issued as the result of a domestic violence report. Seldom do the orders obligate the respondent with financial support of the victim. The victim is faced with the loss of income derived from the aggressor and is contractually locked into the lease agreement. A victim in fear for their safety or the safety of their children must choose between remaining in the residence or abandoning the lease.

This bill provides financial protection to the property owner through the requirement that the rent for the current month plus one subsequent month be paid by the person terminating the lease. The tenant remains liable for delinquent, unpaid rent, or other amounts owed the property owner. A balance of the victim's safety needs and the property owner's needs are met. I ask your consideration in approval of SB2171.

Arland H Rasmussen, Chief of Police
West Fargo Police Department
800 4th Ave E #2
West Fargo, ND 58078
701-433-5500

20 January 2009

FAIR HOUSING OF THE DAKOTAS

(The Fair Housing of the Dakotas serves North and South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all.)

Telephone: 701-221-2530

ND Relay: 1-800-366-6889 (Voice)

SD Relay: 1-800-877-1113 (Voice)

Address: 909 Basin Avenue, Suite 2, Bismarck, ND 58504

Toll Free: 1-888-265-0907

Fax: 701-221-9597

ND TDD: 1-800-927-9275

SD TDD: 1-866-273-3323

**Testimony before the
Senate Judiciary Committee
on Senate Bill 2171
by the Fair Housing of the Dakotas
January 20, 2009**

Mr. Chairman, and members of the Committee, my name is Amy S. Nelson and I am the Executive Director of the Fair Housing of the Dakotas (FHD). The FHD is a non-profit agency which serves North and South Dakota. We work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD educates the public on Fair Housing Laws and also investigates allegations of housing discrimination. When discrimination is found, we assist complainants in filing complaints of housing discrimination with the North Dakota Department of Labor (NDDOL) and/or in state or federal court.

People contact our office with a variety of housing questions. Unfortunately, in recent years we have seen an increase in the number of contacts to our office regarding domestic violence and related issues. The most common scenario is from a female who is residing with a partner who is abusing her. Most often, there are also young children in the home. The female is trying to determine if she will be held to her lease should she vacate. Other contacts to our office have involved females who have left an abusive situation and been held to the lease requirements by her landlord. I'll discuss one of these scenarios which occurred in 2008 to a person who contacted our office.

Our client was living with her boyfriend and their child in 2006 in Fargo. Both were on the lease. Following escalating incidents, one evening she feared for her safety and locked herself in the bathroom at their apartment and called the police. There was some minor damage to the bathroom door as a result. The police came and calmed her boyfriend down and she left with the child to stay with friends. Because the police were called, she alerted her landlord to the situation and asked to be released from her lease so she could move out. Her landlord told her that she would not be liable for the damage or lease if she got her boyfriend to sign a statement that he was releasing her from the lease. The next day, with a friend and fearing what she might confront, she met with her boyfriend and he signed the statement. Given the stress of the situation and wanting to vacate as soon as possible with a friend present, she dropped the statement into her landlord's rent box and proceeded to vacate. She also attached a note which included her new mailing address and asked the landlord to send her a copy of the statement. She never received. She and her child then moved to Williston and in with her parents to get back on their feet. Her ex lived at the apartment a few more months and then moved out a state. Her police complaint remains open due to unpaid child support. In 2008, she felt she was in a position to get out on her own and applied for an apartment. She had worked very hard to turn things around for her and her child. However, she was denied the first apartment that she wanted to rent. She could not understand why given she had a good job and income. She visited with the prospective landlord and was told that she had received a bad landlord reference indicating that she owed over \$2,000 because she gave improper notice and for rent which was not paid following her vacating. She obtained a copy of the reference being given by



her former landlord and not only did it note this but it also indicated police involvement due to "Domestic". Not only was she upset to find that she owed this money, but also that her privacy was violated like that. I contacted the landlord regarding my concerns at sending a tenant back into a dangerous situation to obtain a release as well the discrepancy about the release from the lease and that a domestic police call was being noted on landlord referrals. The landlord's attorney stated that they saw nothing wrong with the reference because they felt a need to tell the truth. Our client chose to continue residing with her parents rather than get rejected by other landlords and is reviewing her options.

This is just one example given by a tenant who contacted our office last year. In these situations, not only is the victim having to leave an emotionally charged situation, go out on their own often with young children, with limited to no funds, and typically into a shelter, but she also has to deal with still paying the rent at a property she cannot reside in safely and/or be held to what occurred at that property. I understand that there needs to be a balance with the rights of a housing provider. Consequently, it is our view that with proper notice any damage should be the responsibility of the abuser and any unpaid rent should be the responsibility of the tenant who continues to reside at the unit. Anything unpaid should be pursued by the housing provider through Small Claims Court like any other situation involving outstanding debt by a renter.

Our office went from 1 or 2 contacts on this issue in 2006 to 12 in 2008. These numbers may seem low but they are increasing. Seeing this trend, in 2007 we worked with a local domestic violence prevention organization in putting together a fact sheet on fair housing and domestic violence. In 2008, we received requests from the public for 75 copies of this fact sheet. Most often these copies went to housing providers and organizations assisting vulnerable populations because victims were fearful of receiving the publications at their home. As the fact sheet documents, under the Violence Against Women Act (VAWA), subsidized housing providers are required to have certain policies in place to assist victims of domestic violence, dating violence, sexual assault and stalking. Fair Housing Laws can apply since women are overwhelmingly the victims of this type of violence so it becomes a gender discrimination issue. The fact sheet also notes several cases which were filed as fair housing violations. However, the VAWA currently only requires such policies when the property is subsidized or when tenants are on housing assistance. This leaves a large gap of the rental housing industry in North Dakota uncovered.

The Fair Housing of the Dakotas supports passage of Senate Bill 2171. I thank you for the opportunity to provide testimony today and please let me know if you have any questions. Thank you.

FAIR HOUSING & DOMESTIC VIOLENCE & ASSAULT

FACT SHEET NO. 7 (Published by the Fair Housing of the Dakotas)

The Violence Against Women Act (VAWA) was signed into law in 1994 and was groundbreaking legislation which addressed the issue of violence against women. In 2000 and 2005, the law was reauthorized and given additional power to protect a woman's rights when a victim of domestic violence, dating violence, sexual assault and stalking. The reauthorization was the result of increasing numbers of such reported violence. Specifically, US Department of Justice (DOJ) studies indicated at the time:

- ◆ Among cities surveyed, 44% of homeless individuals identified domestic violence as a primary cause of homelessness. 92% of homeless women had experienced physical or sexual abuse at some point in their lives and 62% had been victims of intimate partner violence as adults.
- ◆ Increasing numbers of women and families across the United States were being discriminated against, denied access to, and even evicted from public and subsidized housing because of their status as victims of domestic violence. There are not enough Federal housing rent vouchers available to accommodate the number of people in need of long-term housing and some people are on waiting lists for years.
- ◆ Women who leave their abusers frequently lack adequate emergency shelter options. In cities surveyed in 2004 prior to VAWA reauthorization, requests for emergency shelter by homeless women with children had increased by 78%. Victims of domestic violence often return to abusive partners because they cannot find long-term housing. A choice gets made between a life with the abuser and a life on the streets.
- ◆ Because abusers frequently manipulate finances in an effort to control their partners, victims often lack steady income, credit history, landlord references, and a current address, all of which are necessary to obtain long-term housing. A victim may have had to flee her abuser for safety reasons with little or no money, thus failing to pay her rent and/or breaking her lease which can destroy her rental history.
- ◆ Victims of domestic violence in rural areas face additional barriers and unique circumstances such as geographic isolation, lack of public transportation, difficulty ensuring confidentiality in small communities, and decreased access to many resources.

These statistics and others were recognized by Congress and the US Department of Housing & Urban Development (HUD) as needing to be addressed by those administering Federal housing programs. VAWA states that it is illegal for rental properties receiving federal funding to evict a tenant or refuse to rent to an applicant because that person was a victim of actual or threatened domestic violence, stalking or dating violence. VAWA covers public housing authorities as well as properties receiving funds through Section 8, Section 811, Rural Development and other federal housing

assistance programs and specifies:

- ◆ Landlords and housing authorities are prohibited from denying housing or refusing to accept a Section 8 voucher because an applicant has been a victim of domestic violence, stalking or dating violence, or has been previously evicted because of domestic violence.
- ◆ Domestic violence, stalking or dating violence cannot be used as a means of terminating a Section 8 voucher holder.
- ◆ Leases can be split to protect the victim in order to evict, remove or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against household members without evicting, terminating or penalizing the victim of such violence who is also a tenant or lawful occupant.
- ◆ A housing provider or public housing agency responding to an incident of domestic violence, stalking or dating violence may request that an individual certify via a HUD approved certification form that the individual is a victim of such violence and that the incident(s) in question are the result of actual or threatened abuse.
- ◆ A victim may transfer to another jurisdiction under the tenant based assistance program if the victim has complied with all other requirements.
- ◆ All information provided to a housing provider or public housing agency regarding any incident of domestic violence, stalking or dating violence shall remain confidential by that housing provider or public housing agency unless as otherwise required by law.

This is also an issue for housing providers who do not receive federal funding. According to various studies, women are victims of violent crimes by spouses and violent crimes from significant others 85-90% of the time. Under Federal Fair Housing Law and North and South Dakota state laws, gender (sex) is protected from housing discrimination. As a result, a policy which eliminates or denies participation in a program solely because the individual was a victim of domestic violence, stalking or dating violence, would potentially have a disparate impact upon women because they make up the majority of such victims. Thereby making such a policy a violation of fair housing laws due to gender discrimination. A disparate impact means that even if a landlord does not intend to discriminate against women, the landlord's actions are still harmful to women as a group while they do not have the same harmful effect on men as a group.

Housing providers who assume that renting to a victim of domestic violence will be a threat to the health and safety of other tenants risk a fair housing violation. For example, a landlord refuses to rent to a female domestic violence victim yet rents to other victims of crime.

Housing providers should also not evict tenants for police calls for health and safety reasons or when police ac-

tivity or arrests occur because of being a victim of domestic violence. For instance, a victim of domestic violence may have been arrested when she contacted the police for help because she was forced to fight back against her abuser in self-defense. Evicting due to police calls could be gender discrimination in housing because women in domestic violence situations would be a primary source of police contact in those situations. If a victim fears she will be evicted for reporting domestic violence, she is more likely to keep the abuse a secret and not seek assistance. In regard to charging victims for damage caused by the abuser, housing providers should proceed with caution because it could be a fair housing violation if shown to have a disparate impact due to gender or if only charged in a domestic violence situation versus damage caused by other acts of crime which are not charged to those victims.

Significant Fair Housing Case Law in this Area:

—Alvera et al v. C.B.M. et al: First fair housing case to argue evictions due to domestic violence was a form of gender discrimination. Female tenant was physically assaulted by her husband in their apartment. The police were called and her husband was arrested, jailed and charged. The tenant obtained a restraining order which she gave to her landlord. She was then informed that she was being evicted due to a zero tolerance policy against violence. Settlement reached for an undisclosed sum and change in management policy as it related to victims of domestic violence. (OR)

—Bouley v. Young-Sanbourin: Female tenant was beaten by husband and called police. Husband was arrested and never returned to the home. The landlord served a notice of eviction after meeting with the tenant. The tenant argued the eviction was because her reaction to being assaulted did not concur with the landlord's gender stereotypes about how a female victim should act and because she refused to listen to the landlord's attempt to discuss religion with her after the assault. Settlement reached following judge's ruling that victim had a claim. (VT)

—Warren v. Ypsilanti Housing Commission: Involved a zero tolerance situation similar to the Alvera case where a female tenant was served an eviction following a police call to her apartment when a former boyfriend arrived unannounced and assaulted her. Settlement reached for victim and change in management policy. (MI)

—ACLU v. St. Louis Housing Authority: Female was a victim of ongoing domestic violence. Couple broke up but ex continued to stalk, harass and threaten tenant including damages to her apartment windows and property. Tenant gained a restraining order and showed her landlord who issued a notice of lease violation. Housing authority refused to allow tenant to transfer to another unit to conceal identity claiming tenant was responsible for her domestic violence situation. Tenant paid for apartment damage done by abuser and abuser continued to violate restraining order and cause damage. At no time, did the housing

authority ban the alleged abuser from the property or file criminal or civil complaints against him. Settlement reached to allow tenant to transfer to undisclosed apartment, refund her costs of repairs to windows and other damage done by abuser, send employees to domestic violence training and ban abuser from property. (MO)

—Blackwell v. Urban Property Management: Tenant was beaten, stabbed and raped by an ex-boyfriend in her subsidized apartment unit. Fearing for her safety, she asked her landlord to allow her to transfer to other housing but her landlord refused. Fearing for her safety and that of her children, she gave up her voucher, left the housing with her children and went into hiding with friends and family. She was unable to afford housing without her voucher and remained in hiding until her ex was caught and arrested three months later. Case reached \$60,000 settlement and change in policies. (CO)

—ACLU v. Northend Village: An ex-boyfriend harassed and stalked a female tenant causing her to gain a protection order. Despite order, ex kicked in tenant's door when she was not home and broke windows. Police charged the ex but tenant's landlord still served her an eviction notice for not supervising guests even though she was not home at time and had protection order. Settlement reached where Respondents will not evict or discriminate against individuals because they have been the victims of domestic violence, dating violence, sexual assault or stalking, regardless if the abuser is residing in the tenant's household. The Respondent will also offer early lease termination and relocation to tenants who have been the victims of such abuse and need to leave their homes to ensure their safety. The Respondents also agreed to pay monetary damages and attorneys' fees. (MI)

Examples of how Housing Providers can assist victims of domestic violence:

- ◆ Change locks for tenant when requested due to a safety concern. Make sure property is well-lit, safe and secure. Complete repairs that may pose a safety issue, such as broken windows and locks, in a timely manner.
- ◆ Acknowledge domestic violence protection orders and help to enforce them. Exclude the violent person from the premises. Assist in the pressing of criminal charges.
- ◆ Do not publish victim's addresses in newsletters or give out information to anyone without a release from the tenant. Recognize that domestic violence is not a lease violation.

If you want more information on fair housing or pursuing your fair housing rights when a victim of violence, contact the Fair Housing of the Dakotas. If you have questions about domestic violence or suspect someone may be a victim, please contact the National Domestic Violence Hotline at 1-800-799-SAFE for assistance.

The work that provided the basis for this publication was supported by funding under a grant with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretation does not necessarily reflect the views of the government. This information is not itself legal advice; for legal advice about a particular situation, contact an attorney. The Fair Housing of the Dakotas serves North & South Dakota and works to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD is located at 909 Bismarck Avenue, Suite 2, Bismarck, ND 58504. Phone: 701-221-2530 or 1-888-265-0907. ND TDD: 1-800-927-9275 or ND Relay: 1-800-366-6889 (voice). SD TDD: 1-866-273-3323 or SD Relay: 1-800-877-1113. Email: info@fhdakotas.org Web: www.fhdakotas.org

Alternative formats will be made available upon request. Revised 8/08



page 1

Testimony on SB 2171
Senate Judiciary Committee
January 20, 2009

Chair Nething and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in support of SB 2171.

We would like to thank Senator Lee and the co-sponsors of the bill for initiating this important piece of legislation that will protect victims of domestic violence from penalty and liability related to the termination of a lease agreement.

In 2005, Congress passed the Violence Against Women and Department of Justice Reauthorization Act (HR 3402) that provided amendments to Sec. 606.- the low-income housing assistance voucher program and Sec. 607.- amendments to the public housing program. The purpose of these amendments is to ensure that victims of domestic violence, dating violence, and stalking have access to the criminal justice system without jeopardizing their housing and are not discriminated against because of their status as victims. The amendments further state that an individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of tenancy or of program assistance by a public housing authority or landlord, so long as that individual would otherwise qualify for assistance. SB 2171 is an attempt to create similar language and protections for victims within North Dakota Century Code (NDCC).

In recent survey of rural domestic violence programs in North Dakota 11 of 15 surveyed indicated that housing issues were of great concern to victims that they served. Priorities were:

- locating adequate affordable housing
- maintaining housing after police were called to domestic violence incident
- released from lease without cost of penalties

The ND Council on Abused Women's Services Rural Issues Committee is currently creating educational tools for victims relating to their housing rights and will also be providing education to landlords and housing providers.

As I stated earlier we are supportive of SB 2171 but we would like to propose minor amendments that would add enhanced protections for victims.

Under Section 1, subsection 2, lines 12-17 we would suggest proposing a reasonable time period for notice of release such as 30days from the incident of domestic violence or the issuance of a

permanent protection order. This would provide additional time for the victim to find alternative housing.

Under Section 1, subsection 4, lines 1-5 and subsection 6, lines 9-13 we propose deletion of the requirement of the victim to pay an additional amount equal to one month's rent as this one month rent in addition to relocation costs could be prohibitive to victims.

Finally, we would request that a discrimination prohibition be added to the bill draft. Many rental companies have housing in a number of communities throughout the state and this would guarantee additional protections for the victim in their relocation efforts.

Again, we would like to thank Senator Lee and the co-sponsors for initiating SB 2171 and urge your support after taking our amendments under consideration.

Thank you.

Lee, Judy E.

From: Lee, Judy E.
Sent: Monday, March 09, 2009 10:44 AM
To: Lee, Judy E.
Subject: FW: 2169 and 2171

From: Michael D. Reitan [mailto:Michael.Reitan@westfargond.gov]
Sent: Monday, March 09, 2009 7:26 AM
To: Lee, Judy E.
Subject: RE: 2169 and 2171

Senator Lee,
Due to the weather we are unable to attend the hearings. SB2169 is an important clarification of the statute to reflect the more current practice of storing files in electronic form. We can place electronic marks on files to identify juvenile and adult records. It is unreasonable to keep the records physically separated as now required as it would require two separate servers.

SB
2171
SB2170 is important to domestic violence victims as it allows them to break a long term lease following an act of violence. Following an act of violence the offender is typically ordered not to have contact with the victim. A financial issue develops as the offender is unable or chooses not to continue the financial support necessary to maintain the lease. The victim may also need to leave the area to prevent further abuse. To have the lease remain in affect further victimizes the victim of domestic violence.

Please support both bills.

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**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

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Testimony on SB 2171
Senate Judiciary Committee
March 9, 2009

Chair DeKrey and Members of the Committee:

My name is Janelle Moos and I am speaking this morning on behalf of the North Dakota Council on Abused Women's Services in support of SB 2171.

In 2005, Congress passed the Violence Against Women and Department of Justice Reauthorization Act (HR 3402) that provided amendments to Sec. 606.- the low-income housing assistance voucher program and Sec. 607.- amendments to the public housing program. The purpose of these amendments is to ensure that victims of domestic violence, dating violence, and stalking have access to the criminal justice system without jeopardizing their housing and are not discriminated against because of their status as victims. The amendments further state that an individual's status as a victim of domestic violence, dating violence, or stalking is not an appropriate basis for denial of tenancy or of program assistance by a public housing authority or landlord, so long as that individual would otherwise qualify for assistance. SB 2171, which was modeled after Minnesota's statute and initiated by Senator Lee, is North Dakota's attempt to enact similar protections for victims of domestic violence.

In recent survey of rural domestic violence programs in North Dakota 11 of 15 surveyed indicated that housing issues were of great concern to victims that they served. Priorities were:

- locating adequate affordable housing
- maintaining housing after police were called to domestic violence incident
- released from lease without cost of penalties

The ND Council on Abused Women's Services Rural Issues Committee is currently creating educational tools for victims relating to their housing rights and will also be providing education to landlords and housing providers. It would be our intent to include information relative the new statute created by SB 2171 to ensure compliance with the law and to ensure victims are afforded their rights under this section.

After the bill was initially heard in the Senate Judiciary Committee we worked closely with Senator Olafson and Rocky Gordon with the ND Apartment Association to draft amendments to the bill that were agreeable to both of our organizations. Specifically, we requested that a discrimination prohibition be added to the section of the code to ensure a victim is not discriminated against by a landlord when they are attempting to relocate if they had exercised their right to terminate a lease. As you can see this discriminatory prohibition language was added under section 1, subsection 9, lines 24-28.

We had also requested that the additional month's rent required under section 1, subsection 4 be removed as we felt it was punitive and would potentially limit a victim's ability to terminate their lease but after much deliberation we agreed to have the language inserted that states it is the landlord's duty to mitigate these costs (section 1, subsection 4, line 3) as an enhanced protection under this section.

We would like to again thank Senator Lee and the co-sponsors for initiating this important piece of legislation and Senator Olafson for working tirelessly to draft the amendments you see in SB 2171 and urge your favorable consideration of this bill.

Thank you.

UNOFFICIAL PROPOSED AMENDMENTS to SB 2171

Page 1, line 8, replace “and” with “or”

Page 1, line 10, after “agreement” insert “, as provided in this section,” and remove “as”

Page 1, remove line 11

Page 1, line 17, after “order,” insert “To qualify as an order for protection or a no contact order under this section, the tenant must receive the order as a result of the hearing required by 14-07,1-02.”

Page 2, line 3, after “rent” insert “subject to the landlord’s duty to mitigate”

Page 2, after line 23, insert:

9. A person may not refuse to rent, refuse to negotiate for rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because of a tenant, applicant, or a household member having exercised their right to terminate a lease under the provisions in this Chapter.

Page 2, line 10, replace “1” with “2”

UNOFFICIAL PROPOSED AMENDMENTS to SB 2171

Page 1, line 8, replace “and” with “or”

Page 1, line 10, after “agreement” insert “, as provided in this section,” and remove “as”

Page 1, remove line 11

Page 1, line 13 after “for” insert “permanent”

Page 1, line 17, after “for” insert “permanent”

Page 2, line 3, after “rent” insert “subject to the landlord’s duty to mitigate”

Page 2, after line 23, insert:

9. A person may not refuse to rent, refuse to negotiate for rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because of a tenant, applicant, or a household member having exercised their right to terminate a lease under the provisions in this Chapter.

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