

**2015 HOUSE JUDICIARY**

**HB 1305**

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1305  
2/10/2015  
23584

☐ Subcommittee  
☐ Conference Committee

*Amanda Musch*

## Explanation or reason for introduction of bill/resolution:

Relating to requirements for a change of name.

## Minutes:

Testimony 1

Vice Chairman Karls: Opened the hearing on HB 1305.

Rep. K. Koppelman: (Testimony 1) I am introducing the bill as a result of a conversation I had with one of our district court judges. I was visiting with a judge about what was happening with the court in his area and he said he had a problem with getting requests for name changes. Some of the people may or may not be citizens and he's not sure if he has the right to change their name. The bill says any person desiring to change that person's name they have to demonstrate they are a US citizen or a naturalized citizen.

Rep. Mary Johnson: Did judge Irby consider perhaps because resident aliens are subject to the laws of the United States and the provisions of the US Constitution. Maybe he has no right not to?

Chairman K. Koppelman: I don't know if could is the right word. His concern and justifiable so is that you're right theoretically we have jurisdiction but his feeling in a court in the US and a court in our state if we are to grant a name change that it ought to be a citizen that we are dealing with and not someone who will go back to another country and be someone else.

Rep. Mary Johnson: I can only respond to that because I provided a name change on the lost boys and they were named when they got here and they couldn't answer the questions so this boy found out from his mom in Somalia and his name was totally different and he wanted his name to be the same as his home country name.

Chairman K. Koppelman: I still think it is important and I would say in that circumstance that it would be better for resident alien to seek the name change in their home country or to become a naturalized citizen.

Rep. G. Paur: That person shows up four times in this bill and individual shows up twice. Is there some reason it is in that shape?

Chairman K. Koppelman: We may want to check with Legislative Counsel to be sure all is correct.

Rep. Kretschmar: Could you have just not said a citizen of the US?

Chairman K. Koppelman: We need to check.

Rep. Mary Johnson: Perhaps it is reflective of the 14<sup>th</sup> amendment?

Rep. K. Wallman: I looked it up what other states do. The judge felt we should air on the side of being more restrictive.

Chairman K. Koppelman: We have other issues including homeland security and human trafficking. The judge wanted his citizen to be verified. What are the ramifications if we don't do this?

Rep. K. Wallman: I looked at others in other states and they would allow for the court to take it on an individual basis. The judge thought we should be more on the restrictive side because of terrorism?

Chairman K. Koppelman: We look at what is good for our state. I am happy to have research done if you want to but I don't think that should dictate what we do here. He is very uncomfortable when people come in and ask to change their name without verifying they are a legal citizen. If you intended ill it would be pretty easy to do so.

Representative Wallman: Would it be a useful alternative to put some alternative down on how to determine the identity? Every other state has provisions that spell out how a judge would do that. Do you feel that ND would be more at risk for someone abusing this?

Representative Koppelman: I don't think we normally make law based on how we are compared to other states. We look at the good for our state. I think there are 49 others not 12. I would be happy to have some research done if you would like. I would rather error on the side of the concern of the folks that where the black robes and rap the gavel there than try to substitute our judgment with someone else's.

Rep. G. Paur: Should be put an amendment right in there to forbid the changing of a name of an alien or resident alien? Except under a preponderance of evidence to the contrary?

Chairman K. Koppelman: I have no objections to the committee to check this out.

Rep. K. Wallman: I was thinking about a neighbor of mine who is Canadian and she doesn't have US citizenship and she was married here and able to change her name to her husband's name. Under this law would she be able to do that?

Chairman K. Koppelman: I think the name change for marriage is different.

Rep. K. Wallman: When I was married I followed the petition process of the state in which I was married and so I think it was the same process and so we may want to consider some unattended consequences with the wide net we are casting.

Chairman K. Koppelman: We should ask that question and maybe our LC could inform us.

Rep. K. Hawken: There is another bill to do that so I don't know why we are dealing with this again.

Chairman K. Koppelman: We did have that bill. I think the issue there was with hyphenated names. They are fine with the maiden name being hyphenated but there were some that want to keep their middle and maiden name. There was a bump in the statute that allowed only for one and it was a patch work. Some jurisdictions allowed it and some didn't.

Opposition: None

Neutral: None

Vice Chairman Karls: Closed the hearing on HB 1305

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1305  
2/17/2015  
23894

☐ Subcommittee  
☐ Conference Committee

*Amanda Muscha*

## **Explanation or reason for introduction of bill/resolution:**

Relating to requirements for a change of name.

## **Minutes:**

--

Chairman Koppelman: Opened discussion on HB 1305.

Rep. L. Klemin: I motion amend the language on lines 10-12.

Rep. Maragos: Seconded the motion

Rep. Lois Delmore: So line 10 will say that the petitioner of the US, we get rid of one and two, and go on to B?

Chairman Koppelman: Correct

A Voice Vote Was Taken: Motion carries

Representative Klemin: When I said that they both have exactly the same rights and status that is not exactly correct. You have to be born here to be president.

Rep. P. Anderson: I'm bothered by the whole resident alien thing. I don't know what we have done to them by just saying not to be a citizen with the name change. That makes me uncomfortable.

Chairman K. Koppelman: Has everyone had a chance to look at the testimony from the last hearing on this bill?

Rep. L. Klemin: Motion a do pass

Rep. Brabandt: Seconded the motion

Rep. K. Wallman: As I read Judge Irby's comments he says that the name change complicates the identification process. We talked about identity laundering and I went and did some research with LC on whether identity is actually a problem. In all the research they did they didn't find your colleague's letter or a memorandum of understanding from the department of homeland security suggesting that this was a problem. Maybe it is maybe it isn't but they couldn't find it as a problem. We also looked at what other states were doing and in 2008 Florida passed a statute on this exact topic. Florida statute is amended to read and it has change of name. The meet of the bill which they passed is 'before the court hearing on a petition for a name change the petitioner must have figure prints submitted for state and national criminal history records check except if a former name is being restored', it then goes on to talk about the figure prints of the petition should be taken in a manner approved by department of law enforcement of the state, shall be submitted electronically to the department for state processing for a criminal history check and that gets relayed to the court. It then goes on in the statute to talk about how the court would refer the person to go and have a figure print national criminal history background check. The cost of processing figure prints and conducting the check required under this section shall be born to the petitioner for the name change or by the parent or guardian of a minor for whom the name change is being sought. I felt that this bill sort of throws the baby out with the bath water and we do have instances of perfectly legitimate people in a process in becoming naturalized citizens or who are here. I brought up the story about my neighbor who came for college, ended up getting married, and prefers to keep her citizenship in Canada because her and her family travel there often. Under this law she would not be able to take her husband's name which she had hoped to. This would have unintended consequences for people who are trying to launder their name. I would offer an amendment on page one, after line one, number a. It would strike out that section and it would add the language...

Chairman K. Koppelman: Before you continue, we have the motion before us. I looking at the testimony and it is compelling. He is concerned that we could change their name when they aren't a citizen while we can't change other things. Changing a name is a lot easier than the others. I agree with what you are saying in terms of that this could be aimed at someone who isn't the intent. Citizenship can be sought but it has to do with jurisdiction.

Rep. L. Klemin: This section deals with court proceedings to change a person's name and I am wondering if a Canadian citizen marries a US citizen and resides in the US, they don't go to court to get their name changed to that of their spouse do they?

Rep. K. Wallman: Yes that's what happens. You file a petition for a name change and you do have to appear in court.

Rep. L. Klemin: Were you quoting from a statute?

Rep. K. Wallman: Yes. It is chapter 2009-173 of the Illinois state statute.

Rep. L. Klemin: Well, that's Illinois.

Rep. K. Wallman: That's right and the reason I brought this up is because there are provisions in many states for non US citizens to have their name officially changed if they

are not a naturalized citizen. They may be in process; they may want to maintain their citizenship in their country of origin.

Rep. L. Klemin: I'm wondering where it is in the ND statute that it says a person marrying a US citizen can't change their name to that of their spouse unless they go through a court procedure.

Rep. K. Wallman: My understanding is that this law would prohibit that.

Rep. L. Klemin: You are reading from Illinois. So it doesn't apply here.

Rep. K. Wallman: The idea would be that it would apply here if we amended it. I think I know what you're saying, that the statute in Illinois wouldn't match up to our state and so there may be complications with North Dakota may or may not allow.

Rep. L. Klemin: Illinois law doesn't apply in North Dakota.

Rep. K. Wallman: Your right, my interest in bringing these laws forward from other states is so that we may not do this so broad. My understanding based on the testimony was that we may be inertly laundering identities and we would like to prevent that. I visited with LC so we wouldn't have to use such a broad brush and have consequences that we don't intend.

Chairman K. Koppelman: Let me direct you to the bottom of the first page and top of the second. He says 'residency and citizenship were not equivalent, thus if a judge wants to deny a name change petition on citizenship grounds there has to be statutory authority for it' which I think he means is when these cases get to an appellate court you have to have a law in your state saying only citizens can change their name in our state. He also says 'I could find no recorded case and mentioned cases are rare where a law requiring citizenship for a name change was deemed to have violated any equal protection rights' so I think he is saying is residency and citizenship are different. They are not making second class citizens. It is just saying they are not citizens of the US. The authority to change your name remains with your nation of citizenship.

Rep. D. Larson: Rep Klemin, are you saying this only applies to a court proceeding and you could still change your name just by filling out the paperwork when you get married?

Rep. L. Klemin: I was stating that in the form of a question because I don't know the answer. This section applies to court proceedings.

Chairman K. Koppelman: I do think that is a different proceeding.

Rep. L. Klemin: We're all sympathetic to Canadians but let's insert North Korea instead. Now we have a hostile nation and a person who wants to maintain her North Korean citizenship. That is painting a broad brush the way you phrased it too. Judge Irby's position is how a state law can have the authority to change the name of a non-citizen when he has no authority change names on passports or visas. Maybe we're not ready to move on this.

Rep. Mary Johnson: I think Judge Irby's concern is not about identity laundering. Here the struggle is how do we protect those folks and their freedom? As Judge Irby's example states this fellow changed his name then accused by the feds about lying on his immigration application and spent three years in jail while it was sorted out.

Chairman K. Koppelman: Several possible ramifications.

Rep. P. Anderson: Using the example of you can get married as a resident as an alien and if the marriage doesn't work out the court proceeding would be a divorce and she wouldn't be able to get her name back under this bill.

Chairman K. Koppelman: I'm not sure about that.

Rep. K. Wallman: After I read judge Irby's email I made a note at the bottom that the purpose seemed to give statutory authority to a judge for the purpose of denying a petition for a name change on the grounds of non-citizenship. I think I understand that. The spirit of what I am saying is that we could be giving statutory authority to a judge of allowing a petition of name change on the grounds of and we outline what they are and put some parameters on that. Right now what he was saying is how can we allow this. I would prefer if we do say here's how you can rather than saying no you can't.

Chairman K. Koppelman: It's not only a question on what we have in statute; it is also a question of whether our state has the authority to do that. Would another country be able to change our name? He is saying how can I change someone's name who is not a US citizen and how do I not have the authority if there isn't something in the statute saying I don't have to. He thinks he doesn't have the right to yet there is nothing in the law saying that.

Rep. L. Klemin: It sounds like this bill should be expanded to say if the petitioner is not a citizen of the US this is the procedure you follow and something similar to Rep Wallman read to us. If you want to take the time to prepare an amendment to this bill to reflect that other side of the coin I would remove my motion.

Representative Maragos: I'll withdraw my motion also.

Chairman Koppelman: We can hold this then.

Rep. K. Wallman: I would like to work with Representative Johnson and Representative Klemin on this. Is there any chance of a subcommittee?

Chairman K. Koppelman: I don't think we have time to do that so you can talk together about it.

Rep. Lois Delmore: We've had numerous laws how we have changed with name change and I think the bottom line is they are in different parts of that statute. We want to make sure they all apply and that things can be worked out.

Chairman K. Koppelman: Maybe Tessa can look at that too. I don't think you need to go into court. I think there is a form to allow you to change your name in marriage.

Rep. K. Wallman: I could have misspoken to because there are so many variations.

Rep. L. Klemin: I think the example judge Irby used may have been a different result if the child would have been adopted. That would be under the adoption statute.

Chairman K. Koppelman: Citizenship, if you marry an American citizen I believe under some courts that grants citizenship so the name change issue is different than a non-citizen asking for a name change. Closed the discussion on HB 1305.

# 2015 HOUSE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Prairie Room, State Capitol

HB 1305  
2/17/2015  
23999

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

Testimony #1

**Chairman K. Koppelman:** This is the bill on name changes. We amended the bill yesterday with Rep. Klemin's amendment which removed the language about being a natural born citizen or a naturalized citizen and changed it to that the petitioner is a citizen of the US. I checked on the question of marriage name changes and that resides in our marriage license law.

**Rep. L. Klemin:** I think Rep. Wallman was looking into possibly further amending this?

**Rep. K. Wallman:** I have plans to bring it to Legislative Counsel this morning to make sure it is in the appropriate form so it is not ready yet.

**Chairman K. Koppelman:** Tell us what you are thinking?

**Rep. K. Wallman:** I will try to get it ready this afternoon. I think it would make for a better bill.

**Chairman K. Koppelman:** Recessed until afternoon.

**Rep. K. Wallman:** I did not meet my deadline and sadly will not have an amendment for you so the bill is as it is.

**Chairman K. Koppelman:** (See Testimony #1) I just received this email from Judge Irby. Read the document. I see no problems with the legislation and I do not think there are complying interests here both in protecting the public and protecting those who are not citizens. Noncitizens can change their names at the point of naturalization and I think that is a much better place for a person to change their name as a federal officer can assess the case and determine the reason. State court is not the place for noncitizens to change their names because the courts know little about immigration.

**Rep. G. Paur:** Did we adopt the recommendation that the petitioner is a citizen of the US?

**Chairman K. Koppelman:** We did.

House Judiciary Committee  
HB 1305  
February 17, 2015  
Page 2

**Do Pass As Amended Motion Made by Rep. G. Paur; Seconded by Rep. L. Klemin:**

**Roll Call Vote: 10 Yes 2 No 1 Absent Carrier: Rep. Mary Johnson:**

February 17, 2015

*St.*  
*2/17/15*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1305

Page 1, line 10, remove the second the colon

Page 1, remove line 11

Page 1, line 12, replace "(2) A naturalized" with "a"

Renumber accordingly

Date: 2/17/2015  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1305

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: Klemin amendments

Recommendation: ☒ Adopt Amendment  
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☐ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐

Motion Made By 1 Klemin Seconded By Maragos

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

Lines 10 & 12

Date: 2-17-15  
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1305

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Rep Paur Seconded By Rep Klemen

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson		✓
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman		✓
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemen	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	✓				
Rep. Paur	✓				

Total (Yes) 10 No 2

Absent 1

Floor Assignment Rep. M. Johnson

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

**REPORT OF STANDING COMMITTEE**

**HB 1305: Judiciary Committee (Rep. K. Koppelman, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (10 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1305 was placed on the Sixth order on the calendar.

Page 1, line 10, remove the second the colon

Page 1, remove line 11

Page 1, line 12, replace "(2) A naturalized" with "a"

Renumber accordingly

**2015 SENATE JUDICIARY**

**HB 1305**

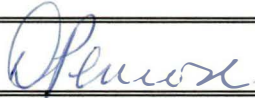
# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1305  
3/10/2015  
24561

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

Ch. Hogue: We will open the hearing on HB 1305.

Rep. K. Koppelman: Sponsor, support. I spoke with a judge in my district, Judge John Irby, who is in the room today. Judge Irby pointed out an issue that I was not aware of. People appeared before him, and other judges throughout our state, asking for name changes. We have parameters in law about how that works and how you can accomplish a change in your name if you seek to do that. The problem was that often times these people either were not citizens of the United States, or that he had no way of verifying whether they were citizens of the US and his concern was being able to change the name of someone who was not a citizen. If someone was a citizen from another country and was able to change his name to "John Smith" he might be able to fly under the radar pretty easily. The bill basically says that for a judge in ND to grant a change in name, that the individual requesting the change needs to be a citizen of the US. The point that the judge made to me, was a good one; do we even have the authority or should we have the authority to grant a name change for someone who is not a citizen of our nation. What are the complications of that? I've heard other examples; an immigration attorney gave some input in the House Judiciary Committee when we heard this about cases that caused a mix-up because the documentation of an individual as they came to the country had one name and they sought and succeeded in getting a name change here and now the names don't mesh on the documents that were important to them to identify them.

Sen. Armstrong: Will this apply to permanent resident aliens and her original name change was here in the US. Would she be forced to keep her ex-husband's name because she is neither a citizen but a permanent resident alien?

Rep. K. Koppelman: She could become a citizen.

Sen. Armstrong: She can't, because then she would have to give up her Norwegian citizenship. The US would recognize her dual citizenship, however, her home country won't and she's not willing to no longer be a Norwegian citizen. I agree that it is important but I think there should be another subcategory. They don't get full rights of citizenship, but they do get significant amount of rights.

Rep. K. Koppelman: When we craft laws we find these little wrinkles. I would certainly listen to the judge and see what he has to say about that.

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

Judge John Irby, Fargo, East Central Judicial District: As mentioned, I am here to support this bill. We had a discussion about this. Name changes, under common laws, you are called whatever you want to be called. It has evolved where what you are called is between you and your government. If the government is not here (U.S.) I question whether or not we should be involved in anything between a citizen and that citizen's government.

Likewise, there have been states that have had similar laws to ours, where a judge has found a reason why, based on citizenship, why the judge felt that the name should not be changed. In those rare cases where something like that got appealed, the Supreme Court for the state of Maryland, said no, there is a difference between citizenship and your residency requirements.

Therefore, looking at the law as written, you cannot deny a change of name on that basis. Name changes are pretty easy in ND. You fill out a petition, file publication, and go through a criminal background check. It is one of the more requested pro-se forms that the self-help center gets. The forms are on the internet as well. I think there is an opportunity for a little mischief if somebody wanted to change their name and the state court got involved in something that perhaps shouldn't have their name change. There is a potential for security risk. People, who are not citizens, can have their name changed at the time they become naturalized. The petitions are pro se and they just have to be verified petitioner. It's pretty obvious in looking at these cases, that the people who are petitioning, English is not their first language, far from it; oftentimes we reject these petitions for technical reasons; maybe they didn't get their criminal background check, they may have inconsistencies in the spelling of their names. We send them back and then they fix it and get it back to the court. I've wondered about whether these people aren't citizens and the concerns we might have for those. If we require that the person

inform the court on the petition that they are a citizen, we could avoid some of those problems, if you are going to be name changing it through a petition.

Ch. Hogue: The recommended remedy for them would be for them to go to their country where they are a citizen and accomplish the name change in that country, rather than here in U.S.

Judge Irby: If that was important to them, yes. I understand that some of these countries don't have governments that would be amenable for them to go back and do that. Once they become citizens then they can remedy that.

Ch. Hogue: In Sen. Armstrong's example, I see there is some language on lines 20 and 23 of the bill, existing law that kind of makes different circumstances when the change is in conjunction with an annulment or divorce in a marital relationship. Is that something that could be added to this (a).

Judge Irby: I'm not sure it is necessary, because I thought we would just be dealing with the change of name by petition. If somebody gets divorced, they come before the court and if there are questions there, they can be answered there, in the case of a divorce or annulment or even a marriage. If you are doing it by petition that was all I was thinking about with this bill.

Ch. Hogue: In the context of the divorce, the party wanting to resume a different name could ask the divorce court for that and that could be part of the order.

Judge Irby: Yes it is. In the complaint for divorce, or an amended complaint, they have to request that their name be changed along with the granting of the divorce.

Sen. Armstrong: That brings up another point. I worked on a case not too long ago. A couple gets divorced five years ago, she maintains custody of the children, very amicable divorce, and she wanted to keep the same last name as her children. Four years later, when he gets remarried, now she petitioned the court to change her name. So that would fall into the petition category, because it wasn't done as part of the divorce, it was done as a part of her ex-husband's remarriage.

Judge Irby: Courts maintain jurisdiction over divorce cases, and you could probably move to amend the divorce to include the name change rather than by petition.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will close the hearing.

# 2015 SENATE STANDING COMMITTEE MINUTES

**Judiciary Committee**  
Fort Lincoln Room, State Capitol

HB 1305  
3/11/2015  
24625

☐ Subcommittee  
☐ Conference Committee

Committee Clerk Signature



**Minutes:**

1

Ch. Hogue: We will take a look at HB 1305. Sen. Armstrong will explain the amendment.

Sen. Armstrong: My amendment is on line 11, page 1 (see attached #1), just adding "permanent resident" to the list. The reason for that is because there are various scenarios, and almost all involving marriage and we heard about that in the testimony yesterday. There are scenarios out there where US citizens are married to foreign people, who are not citizens of the US. All of them have young children and all of them are married and if you do the math, half of them will end up divorced at some point in time. The person gets a green card, a permanent resident card, and that is a government issued ID from the US. If they have to go back to their home country, name changes aren't as simple as they are thought to be. I want to protect the permanent resident, so they can work with their home country to do it. A lot of these people will end up staying here. They will have the right to stay here because they will have young children who very often don't speak the language of their home country and they have permanent resident status. So I added that.

Sen. Nelson: Wouldn't the kids be citizens because they were born here.

Sen. Armstrong: The children are citizens here, which is one of the reasons that their mother or father would be allowed to stay here. The problem is that if they want to change their married name back to their maiden name, it's not as simple as going back to your home country; a lot of those name changes originated in the US through marriage, etc. Judge Irby was correct in that this wouldn't apply to divorce judgments except there are various scenarios where it doesn't happen in the divorce judgment and if they want to change their name they are going to have to do it in both countries, because they still have

a foreign passport, but a US issued green card, US driver's license; they are going to have to work with both groups anyway to do it, because they have a foreign passport, but I want to make sure that there is the protection so that they can work back and forth with each other.

Sen. Grabinger: I move the amendment.

Sen. Casper: Second the motion.

Ch. Hogue: We will take a vote. **6 YES 0 NO; motion passed.** We now have the bill before us as amended.

Sen. Armstrong: I move a Do Pass as amended on HB 1305.

Sen. Casper: Second the motion.

**6 YES 0 NO 0 ABSENT                      DO PASS AS AMENDED**

**CARRIER: Sen. Armstrong**

March 12, 2015

3/12/15  
JAE

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1305

Page 1, line 10, after "citizen" insert "or permanent resident alien"

Renumber accordingly

Date: 3/11/15  
Voice Vote # 1

2015 SENATE STANDING COMMITTEE  
VOICE VOTE  
BILL/RESOLUTION NO. 1305

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: Armstrong Amendment

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Seconded By

Motion Made By Sen. Grabinger Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

Date: 3/11/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTE

BILL/RESOLUTION NO. 1305

Senate JUDICIARY Committee

☐ Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation: ☐ Adopt Amendment  
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation  
☒ As Amended ☐ Rerefer to Appropriations  
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ \_\_\_\_\_

Motion Made By Sen. Armstrong Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Armstrong

**REPORT OF STANDING COMMITTEE**

**HB 1305, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1305 was placed on the Sixth order on the calendar.

Page 1, line 10, after "citizen" insert "or permanent resident alien"

Renumber accordingly

**2015 TESTIMONY**

**HB 1305**

2/10/2015

1.1

HB1305

To: Rep. Kim Koppelman

FROM: John C. Irby, District Court Judge ECJD

RE: HB 1305 – Citizenship requirement for name change petition

North Dakota's current requirements regarding name changes is found at NDCC 32-08-02. My concern is that while the law requires a petitioner to be a resident for at least six months, there is no requirement for United States citizenship. I thought it strange that state law could allow the court to change the name of a non citizen of this country. A state district court has no authority to change a non citizen's passport, work visa or other documents. Name change petitions are relatively simple. The state has forms for petitioners to use and the self help center can advise. As a result many petitioners are changing their names or the names of their children on a *pro se* basis.

The potential ramifications of a name change for a non-citizen can be serious. In this post 9/11 world complicating the process of identifying non-citizens legally in this country brings about increased risks of misidentification. Even if no ill purpose exists for the request the name change for a non-citizen may be ill advised. I discussed this proposal with an immigration lawyer. He related to me the following story regarding a client, a non-citizen, legally present who ran into immigration trouble by changing his name. The short version of the story is that he was basically a war orphan brought here by foster parents and took their name. He found out what his real name was and successfully petitioned the court to change it to his family name. When he actually applied for citizenship he was charged by immigration officials with lying to the government regarding his name when he entered this country as a child. In the end, after 3 years in jail deportation proceedings were halted and he was released.

Due to the nature of these petitions, not many denials are appealed to an appellate court but the few cases I found held that on a statutory analysis basis of a name change law similar to North Dakota the judge could not deny the petition on grounds of non-citizenship. Residency and citizenship were not equivalent.

1.2

Thus, if a judge wants to deny a name change petition on citizenship grounds, there has to be statutory authority for it.

I could find no reported case, and as mentioned reported case are rare, where a law requiring citizenship for a name change was deemed to have violated any equal protection rights.

I view HB 1305 as a straight forward plain language amendment to our name change law that can stave off potential problems for both law enforcement and the petitioner.

Thank you for allowing me this input.

#1  
HB 1305  
2-17-15

Here it is. David Chapman is a leading immigration lawyer in North Dakota. He believes that the law is a good one. It protects the public and a petitioner who might inadvertently be breaking immigration laws through their petition. If anyone could speak to this from a petitioner's standpoint it would be Mr. Chapman.

My concerns are addressed by the bill. The attorney general is all right with it. It appears appropriate from an immigration standpoint.

Thanks again.  
John Irby

**From:** David J Chapman [<mailto:dchapman@djchapmanlaw.com>]

**Sent:** Monday, February 16, 2015 10:23 AM

**To:** Irby, John

**Subject:** RE: name change petitions for resident aliens

Your Honor: Sorry it took a while. I have 2 motion deadlines this week in two different cases and I am up to my ears in work—worked 9 hours Saturday and 10 yesterday. Today is not much better and I am hiding at home and working remotely. I see no problems with the legislation and I do think there are compelling interests here both in protecting the public and protecting those who are not citizens. Both could very well be reasons to defend the law. On the one side we defend against terrorists coming here, changing their name and vanishing only to blow something up or attack someone later. However, it even protects lawful permanent residents because until the person becomes a citizen they are under the jurisdiction of US Citizenship and Immigration Services, US Immigration and Customs Enforcement, US Customs and Border Protection and potentially the Immigration Courts as well. The story I related previously was one in which a man unknowingly changed his name and then was hit with deportation proceedings for lying on entry to the US. Of course, he was a child and did not know any better. He was being held responsible for the lie of someone else who foster parented him during a civil war in his country and brought him here as their own. Non-citizens can change their names at the point of naturalization and I think that is a much better place for a person to change their name as the federal officer can then assess the case and determine the reason. It also allows the person to meet with an immigration lawyer prior to their naturalization who may caution against naturalization or advise ways to avoid the huge expense of immigration court. State Court is not the place for non-citizens to change their names because the courts know little about immigration—they do not come into contact with it a lot. In fact, when it comes to naturalization, only an immigration lawyer knows the intricacies. Even Immigration Judges do not know all of it—I defended a Texas lawyer in a disciplinary complaint before the Board of Immigration Appeals a couple of years back and wanted to put an expert on naturalization on the stand. The Government opposed and said “We are all immigration lawyers well versed in the system.” The Court stopped the Government mid-sentence and said that as an Immigration Judge, she dealt with deportation a lot, but hardly saw any naturalization cases. She wanted the expert input. I think the law is a good one and although likely intended for security purposes, it could clearly be defended as helping non-citizens as well because once they start down the road in Immigration Court, it is costly and traumatic.

**David J. Chapman**

D J Chapman Law, P.C.

1121 Westrac Drive, Suite 206

Fargo, ND 58103

(701) 232-5899

FAX: (701) 232-6470

# 1-1  
3/11/15

## PROPOSED AMENDMENTS HB 1305

- 1 A BILL for an Act to amend and reenact section 32-28-02 of the North Dakota
- 2 Century Code, relating to requirements for a change of name.

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

4 **SECTION 1. AMENDMENT.** Section 32-28-02 of the North Dakota Century Code  
5 is amended and reenacted as follows:

6 **32-28-02. Change of name of person - Petition - Criminal history record**  
7 **checks - Exceptions.**

8 1. Any person desiring to change that person's name may file a petition in  
9 the district court of the county in which the person is a resident, setting  
10 forth:

11 a. That the petitioner is a citizen or a permanent resident of the United  
12 States.

13 b. That the petitioner has been a bona fide resident of the county for  
14 at least six months before the filing of the petition.

15 b.c. The reason for which the change of the petitioner's name is sought.

16 c.d. The name requested.

17 2. When an individual files a petition for a name change, the court shall  
18 determine whether the petitioner has a criminal history in this state or any  
19 other state. The court may require the petitioner to submit to a statewide

1-2  
3-11-2015  
HB 1305

- 1 and nationwide criminal history record check. The criminal history record  
2 check must be conducted in the manner provided for in section 12-60-24.  
3 All costs associated with the criminal history record check are the  
4 responsibility of the petitioner. This subsection does not apply to a  
5 request for a name change as part of an application for a marriage license  
6 under section 14-03-20, to a request for a name change in conjunction  
7 with the annulment of a marriage under chapter 14-04 or the dissolution or  
8 separation of a marriage under chapter 14-05, or to the change of a  
9 minor's name unless the court has reason to believe the request is being  
10 made to defraud or mislead, is not being made in good faith, will cause  
11 injury to an individual, or will compromise public safety. If the individual  
12 petitioning for a name change has a felony conviction under a law of this  
13 state or a law of another state or the federal government, the request is  
14 presumed to be made in bad faith, to defraud or mislead, to cause injury to  
15 an individual, or to compromise public safety. The name change may not  
16 be granted unless the individual requesting the name change proves by  
17 clear and convincing evidence that the request is not based upon an intent  
18 to defraud or mislead, is made in good faith, will not cause injury to an  
19 individual, and will not compromise public safety.
- 20 3. The judge of the district court, upon being duly satisfied by affidavit or  
21 proof in open court of the truth of the allegations set forth in the petition,  
22 that there exists proper and reasonable cause for changing the name of  
23 the petitioner, and that thirty days previous notice of the intended

1 application has been given in the official newspaper of the county in which  
2 the petitioner resides, shall order a change of the name of the petitioner.  
3 Proper and reasonable cause does not exist if the court determines that  
4 the request for a name change is made to defraud or mislead, is not made  
5 in good faith, will cause injury to an individual, or will compromise public  
6 safety. The court may waive publication of the notice when the proposed  
7 change relates only to a first or given name as distinguished from a  
8 surname or upon evidence satisfactory to the court that the petitioner has  
9 been the victim of domestic violence as defined in section 14-07.1-01.

10 4. If the person whose name is to be changed is a minor, the court shall  
11 consider the appointment of a guardian ad litem, and notice of the  
12 intended application must be published in the official newspaper of the  
13 county in which the minor resides and, if different, the official newspaper  
14 of the county in which each of the minor's parents reside. If the minor has  
15 a noncustodial parent, a copy of the notice must be deposited in a post  
16 office in this state, postage prepaid, not later than ten days after the  
17 publication of the notice, and directed to the noncustodial parent's last  
18 reasonably ascertained post-office address. An affidavit of mailing of the  
19 notice prepared in accordance with the North Dakota Rules of Civil  
20 Procedure must be filed with the court.

21 5. If the court issues a name change order for a petitioner who has a criminal  
22 history in this or any other state, the court, within ten days after the  
23 issuance of the change of name order, shall report the name change to

3/11/15

HB 1305

1-4

- 1 the bureau of criminal investigation.
- 2 6. The provisions of this section may not delay the granting of a marriage
- 3 license under section 14-03-20, which may be granted without the change
- 4 of name.

HB 1305  
3/11/15