2023 HOUSE JUDICIARY

HB 1037

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

HB 1037
1/4/2023

Spousal Support

Chairman Klemin opened the hearing on HB 1037 at 9:17 AM. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. Henderson, Rep. Rios, Rep. S. Roers Jones, Rep. Satrom, Rep. VanWinkle, Rep. Vetter, Rep. Schneider. Absent: Rep. S. Olson

Discussion Topics:

- Length of marriage
- Material change in circumstances
- Existing law concerns

Samatha Cramer: Legislative Counsel: Presented the bill and went over it.

Tony Weiler, State Bar Association: Testify in a Neutral position.

DeAnn Pladson, Pladson Law Firm: Testimony #12311

Adjourned the hearing at 9:55 AM

Chairman Klemin discussed the changes made by the interim committee.

Rep. Shannon Roers Jones moved to amend the bill on page 2, line 29 add “or for a limited time as determined by the court” (#12512).
Seconded by Rep. Vetter

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	AB
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll call vote: 12 Yes 0 Absent 1 Absent, motion carried

Rep. Schneider moved to further amend page 1, lines 13 & 14, remove the sentence “the court may not award permanent spousal support”
Seconded by Rep. Shannon Roers Jones

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Landon Bahl	N
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Donna Henderson	N
Representative SuAnn Olson	AB
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	N
Representative Steve Vetter	N

Roll Call Vote: 4 Yes 8 No 1 Absent, motion failed

Rep. Shannon Roers Jones moved to change the word “shall” to “may” on page 3, line 17.
Seconded by Rep. Satrom

Representatives	Vote
Representative Lawrence R. Klemin	N
Representative Karen Karls	N
Representative Landon Bahl	N
Representative Cole Christensen	N
Representative Claire Cory	N
Representative Donna Henderson	N
Representative SuAnn Olson	AB
Representative Nico Rios	N
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	N

Roll Call Vote: 4 Yes 8 No 1 Absent, motion failed

Rep. Vetter moved for a Do Pass As Amended;
Seconded by Rep. Shannon Roers Jones

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y

Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	Y
Representative SuAnn Olson	AB
Representative Nico Rios	Y
Representative Shannon Roers Jones	Y
Representative Bernie Satrom	Y
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	Y

Roll Call Vote: 12 Yes 0 No 1 Absent, motion carried Carrier: Rep. Vetter

Closed meeting at 10:26 AM

Delores Shimek, Committee Clerk

Adopted by the Judiciary Committee

January 4, 2023

JZ 1/1

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 2, line 29, after "parties" insert " or for a limited time as determined by the court."

Renumber accordingly

REPORT OF STANDING COMMITTEE

HB 1037: Judiciary Committee (Rep. Klemin, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1037 was placed on the Sixth order on the calendar.

Page 2, line 29, after "parties" insert " or for a limited time as determined by the court."

Renumber accordingly

2023 SENATE JUDICIARY

HB 1037

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1037
3/14/2023

A bill relating to spousal support; and to provide for application

11:00 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Luick, Estenson, Sickler, Paulson and Braunberger were present. Senator Myrdal was absent.

Discussion Topics:

- Court order modifications
- Lump sum support
- Support termination
- Divorce agreements
- Income disparity

11:00 AM Samantha Kramer, Assistant Code Revisor, North Dakota Legislative Council, introduced the bill.

11:07 AM Robert Stock testified in favor of the bill. #24461, 24462

10:37 AM Chairman Larson closed the public hearing.

Additional written testimony:

Mitchell Sanderson #24515

10:37 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

1037
3/22/2023

A bill relating to spousal support; and to provide for application

8:45 Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger are present.

Discussion Topics:

- Committee action
- Court discretion
- Duration of support

8:46 AM DeAnne Pladson, Family Law Attorney, spoke in favor of the bill.

8:51 AM Jason McLean, Family Law Attorney, spoke in favor of the bill.

9:06 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

HB 1037
3/22/2023

A bill relating to spousal support; and to provide for application

9:32 AM Chairman Larson opened the meeting.

Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger were present.

Discussion Topics:

- Divorce settlements
- Duration of support
- Committee action

9:32 AM The committee has discussion on the bill.

9:41 AM Senator moved to Do Pass the bill. Senator Myrdal seconded the motion.

9:41 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	AB
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 6-0-1.

Senator Sickler will carry the bill.

This bill does not affect workforce development.

Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1037, as engrossed: Judiciary Committee (Sen. Larson, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1037 was placed on the Fourteenth order on the calendar. This bill does not affect workforce development.

TESTIMONY

HB 1037

Testimony of DeAnn M. Pladson
January 3, 2023

PLADSON
LAW OFFICE

The Honorable Lawrence R. Klemin, Chairman
House Judiciary Committee
State Capital Building
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: HB 1037

Dear Mr. Klemin:

Please accept this letter as my testimony regarding House Bill 1037 relating to our spousal support laws in North Dakota. I was very grateful for being allowed to share my thoughts and research, and participate in the interim study of spousal support. It was a pleasure working with the interim committee and I am pleased that much of the work done remained in tact for HB 1037.

Past legislative assemblies have considered changes to our spousal support laws. There is no doubt that from a practitioner's standpoint, there are problems associated with determining the appropriate amount of spousal support. The first is a lack of consistency in the spousal support awards which results in a perception of unfairness. The second is an inability to accurately predict an outcome in any given case. The lack of consistency and predictability undermines confidence in the judicial system. Without a reliable way to predict an outcome, clients are left facing a difficult decision and attorneys can only offer forecasts based on their own research and experience.

House Bill 1037 makes great progress in addressing many of the concerns, including creating a threshold question which must be evaluated before spousal support is awarded; clear factors for evaluating all of the facts relevant to spousal support awards; and a directive to the court to apply durational limits on spousal support awards.

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I am offering this testimony in support of amending a few areas of HB 1037.

Page 1, Line 13-14 "The court may not award permanent support." I would urge the committee to delete this sentence from HB 1037. It is unnecessary and may have unintended consequences for those citizens who have been awarded permanent support in the past. The statute is clear that spousal support may be awarded "for a limited period of time." The North Dakota Supreme Court has held that a court will err, as a matter of law, if a court awards support for an indefinite period of time. Kaspari v. Kaspari, 958 N.W. 2d 139 (ND 2021). The Supreme Court is properly interpreting the statutory mandate that spousal support awards must be time limited.

Although HB 1037 is clear that no retro-active application of the law is intended, I believe that this language will invite litigation of prior orders where permanent support was awarded. House Bill 1037 allows practitioners to advise clients that any support award will be time limited. We will further be able to advise our clients to prepare for retirement because of the presumption that spousal support will terminate at that time. It would be devastating to a recipient who was awarded permanent support in the past, to have that taken away arbitrarily, without the ability to plan for such an event. Because "permanent support" has meaning in our prior case law, this language could be used to re-open divorce matter asking for modification as to the duration of support because "permanent support" is abolished. I do not think that is the intent of the legislation, and taking the language out would help to minimize litigation over the duration of past awards.

Page 2, Line 29, "Duration agreed upon by the parties." This is the durational limit for spousal support for a long-term marriage or one that has lasted more than 20 years. Perhaps this is a drafting issue that I do not understand, but I think that the language should address the event where the parties cannot agree. I am proposing that the language read, "Duration agreed upon by the parties or for a limited time as determined by the court." This puts the decision making in the hands of the parties wherever possible. However, when the parties cannot agree, the court will have discretion to make a time-limited award of spousal support in the longest-term marriages. Section 5 addresses what the court must do in order to deviate from the guidelines. If the court is making this determination of whether or not to deviate, it is highly unlikely that the parties have reached an agreement. Adding this language provides additional clarity to the statue. It makes it clear that marriages of long duration may not fit neatly into a category, rather judicial discretion is expected in these circumstances, where the parties are unable to agree.

Page 3, Line 17, "…the court shall terminate spousal support." I am proposing that the court have discretion to terminate spousal support in the event of cohabitation, and I am urging the committee to revise the word "shall" to state "may." I was not active with the legislative process back in 2015, when this law was adopted. I regret that very much. I am hoping that you will see my actions in advocating for sweeping changes in our law, comes out of concerns for our citizens and court litigants who need the assistance from the courts to decide their future. I have agreed that the administration of justice as it relates to spousal support is broken and needs reform. However, I feel very strongly that our current law regarding cohabitation is far more stringent than other states, and very unfair to recipients of spousal support.

Since the beginning of this nation, marriage has been considered more than a private contract. Rather, it is considered a legal "status." An old, but still cited U.S. Supreme Court decision explains the significance of granting legal "status" to what is also a consensual personal relationship. In the 1888 case of Maynard v. Hill, the Court wrote:

> The [marriage] relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress. [As] expressed by the supreme court of Maine in Adams v. Palmer[citation omitted]: 'When the contracting parties have entered into the married state, they have not so much entered into a contract as into a new relation, the rights, duties, and obligations of which rest not upon their agreement, but upon the general law of the state, statutory or common, which defines and prescribes those rights, duties, and obligations.'

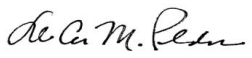
By distinction, entering into cohabitation does not automatically create legal rights and obligations for matters such as property distribution or financial support or inheritance rights. Most states have maintained a bright line between marriage and cohabitation. For example, unlike the married, cohabitants do not obtain rights and obligations respecting inheritance or testimonial privilege. Nor are third parties required to treat currently cohabiting couples like spouses. Cohabitants, therefore, may not generally recover for wrongful death or loss of consortium. Cohabitants almost never receive private insurance survivors' benefits or unemployment benefits related to a relocating partner. Health insurance companies are legally free to allow or disallow insuring a cohabiting partner as part of an employer-provided health insurance benefit. The federal government offers Social Security survivors' benefits only to formally married spouses and not to cohabitants. States also regularly decline to grant survivor benefits for cohabiting partners of state employees. Unmarried couples do not have the same legal protection as married

couples; and they also have no legal responsibility for each other in the event of a breakup. A “relationship analogous to a marriage” does not exist.

I support having laws in place which addresses cohabitation. When a couple hold themselves out as married to the public, but privately they do not marry to retain the right to collect spousal support, our laws should be able to address this unfairness. However, firmly believe that our current law is too stringent and does not afford the court with the discretion necessary to fully evaluate these cases. I am prepared to research this for the committee if you so desire. My limited and initial research indicates that many states give the court the discretion to terminate, suspend or reduce spousal support after considering various factors such as whether or not the parties share joint assets or accounts, whether or not they hold themselves out as a couple, the mutual benefits received from the cohabitants and the level of economic interdependence. Our current laws create a rigidity which may not be fair to the litigants before the court. I am urging the committee to allow the court to have some discretion when deciding these matters.

I thank you and the Committee for your time.

Very truly yours,



DeAnn M. Pladson
Pladson Law Office, P.L.L.C.

23.0117.02001
Title.03000

Adopted by the Judiciary Committee

January 4, 2023

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page 2, line 29, after "parties" insert " or for a limited time as determined by the court."

Renumber accordingly

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1037

Page No. 3, line 5 – Insert a new Section 6. c. that states as follows:

c. Existing spousal support judgments that exceed the durational limits recited in Section 5 regarding length of marriage shall be deemed a material change in circumstance that warrants modification.

Renumber accordingly

Page No. 4, line 6 through 8 – **SECTION 2. APPLICATION**. It is the intent of the sixty-eighth legislative assembly that this Act applies to any spousal support order, regardless of the date of issuance, but applies only to spousal support payments accruing after the effective date of this Act.

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March 13, 2023

Senator Diane Larson, Chairman
Members of Senate Judiciary Committee

Re: HB 1037

Dear Senator Larson and Judiciary Committee Members:

Please accept this letter as my written testimony regarding House Bill 1037 relating to spousal support laws in North Dakota. My name is Robert Stock and I submit this testimony in my personal capacity although I am a licensed practicing attorney in the State of North Dakota. I submit this testimony in support of HB 1037 but with proposed amendments that would apply HB 1037 to existing spousal support orders.

My personal divorce case and resulting judgment is one of the most egregious examples of what can happen without a bill like HB 1037 in place. Unfortunately, my ex-wife and I were not able to come to an agreement without judicial involvement. Our divorce was tried in State District Court and ultimately appealed to the North Dakota Supreme Court.

My now ex-wife was awarded permanent spousal support, with no durational limit, even though we had been married 14 years and were 36 and 35 years old at the time of our divorce. Although both of us were healthy, relatively young and only married for 14 years, the trial court ordered spousal support that could last 40 plus years, or over three times the length of our marriage.

Just as important is the fact that this result could have been different depending on the judge. The award could have been for zero; the award could have been for 2 years, 6 years, 12 years, or 40 years. The point is there must be a legislative check in place to provide some semblance of rationality and consistency in how spousal support is awarded. HB 1037 provides that legislative check while still allowing enough discretion to account for the exceptional case of medical disability or similar circumstances. As Justice Sandstrom aptly stated in his dissenting opinion in my personal divorce case, it is time to end the spousal support lottery.

However, the current version of HB 1037 does not adequately address my situation and hundreds like it. HB 1037 in its current form only applies to actions for divorce or legal separation that occur on or after August 1, 2023. I am proposing amendments to HB 1037 to clearly address the application of the statute to existing spousal support orders.

I propose a new Section 6.c. that would read as follows:

Existing spousal support judgments that exceed the durational limits recited in Section 5 regarding length of marriage shall be deemed a material change in circumstance that warrants modification.

SECTION 2. APPLICATION would read as follows:

It is the intent of the sixty-eighth legislative assembly that this Act applies to any spousal support order, regardless of date of issuance, but applies only to spousal support payments accruing after the effective date of this Act.

The purpose of the proposed amendments is to clearly state that the new durational limits provided for in HB 1037 should apply to existing spousal support awards, whenever made. These amendments address the administration of justice under the previously broken spousal support system and address the unfettered discretion that the current Bill was drafted to control. The proposed amendments will also address the lack of consistency in previous spousal support awards that result in a perception of unfairness and lack of trust in the judicial system.

The proposed amendment to the application clause is important as it makes clear that the intent of the legislative assembly is that the Act applies to existing spousal support orders. This is an important clarification not only for the durational limits stated in Section 5, but also for the rebuttable presumption that spousal support terminates upon the payor attaining full retirement age, as stated in Section 11.

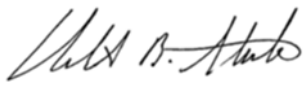
I believe that the proposed amendments are also consistent with the intent of SB 2069, which was previously sponsored by Senator Luick but withdrawn so that the current bill could be considered.

The proposed amendments will not invite a wave of litigation over prior orders where permanent support was awarded, as opponents to retroactive application might argue. The proposed amendments do not provide for across the board retroactive application. Importantly, the proposed amendments will not affect spousal support payments that have already been made. For example, if the original spousal support award exceeds the durational limit stated in Section 5, further spousal support would be terminated upon a motion to modify spousal support, but the receiving spouse would not be required to pay back any payments already received, regardless of whether the original duration far exceeded the new durational limits.

The modification contemplated by the proposed amendments would be accomplished through a simple motion to modify. This approach is consistent with the current state of North Dakota law with respect to modification of spousal support orders and will not cause any additional litigation than there would be in the normal course.

I urge this Committee to adopt the proposed amendments as those with spousal support orders already in place deserve the same consistency as those orders yet to be decided. The issues are the same for everyone affected and this statute should be applied accordingly. Thank you to Senator Larson and this Committee for spending time on this important issue and considering my comments and proposed amendments.

Sincerely,



Robert B. Stock

Attachment: Proposed Amendments to House Bill No. 1037

HB 1037

(Spousal Support)

No person is responsible for another adult in this world.

No person is promised an award of support if a marriage does not work.

If a person wants to divorce a person, then do so and move on and do not expect a free living off of that person!

This chapter needs to be removed from the NDCC and ruled illegal and unconstitutional!

The whole of family law is corrupt and Unconstitutional and needs to be challenged in court!

All legislators who support this abuse of family law need to resign from any elected position who support such laws.

How would any one of you with a son vote for this type of involuntary servitude without ever committing a crime!!!!

PS: I know men who would qualify for spousal support under this statute but the courts do not award it to a man they just award it to women and this is the definition of unequal protection of the law!!!!!