

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2047

2001 SENATE JUDICIARY

SB 2047

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 24th, 2001

| Tape Number | Side A | Side B | Meter # |
|---------------------------|--------|--------|---------|
| 1 | | X | 16.4 |
| | | | |
| | | | |
| Committee Clerk Signature | | | |

Minutes: Senator Traynor opened the hearing on SB 2047: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 14-09-05.1 OF THE NORTH DAKOTA CODE, RELATING TO GRANDPARENTAL RIGHTS OF VISITATION OF UNMARRIED MINORS.

Vonette Richter, staff council for the interim judiciary committee. (testimony attached) Bill before you would remove the part the court found unconstitutional that shifted burden from grandparents to parents. This moves law back to what it was in 1993. This bill also complies with the supreme courts wishes.

Senator Traynor: so we're back to the 1989 law.

Vonette Richter: 1983.

Senator Traynor: so this is the revision of that law? The language on page 2 was in the statute inacted in 1993.

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Senate Judiciary Committee

Bill/Resolution Number SB 2047

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Susan Beehler (testimony attached). We are not going to argue with either the supreme court
ore the state supreme court.

SENATOR LYSON MOTIONED TO DO PASS. SECONDED BY SENATOR WATNE.

VOTE INDICATED 7 YEAS, 0 NAYS, AND 0 ABSENT AND NOT VOTING. SENATOR

TRAYNOR VOLUNTEERED TO CARRY THE BILL.

Date: 1/24/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 513 2047

| Senate | Judiciary | Committee |
|--------|-----------|-----------|
|--------|-----------|-----------|

☐ Subcommittee on _____

☐ or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Lysan Seconded By Watne

[illegible]

Total (Yes) 7 No 0

Absent

Floor Assignment 712405

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

REPORT OF STANDING COMMITTEE (410)
January 25, 2001 8:28 a.m.

Module No: SR-13-1567
Carrier: Traynor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2047: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS
(7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2047 was placed on the
Eleventh order on the calendar.

2001 HOUSE JUDICIARY

SB 2047

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047

House Judiciary Committee

☐ Conference Committee

Hearing Date 02-14-01

| Tape Number | Side A | Side B | Meter # |
|--|--------|--------|-------------|
| TAPE II | x | | 874 to 1215 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Jean Mullen</i> | | | |

Minutes: Chairman DeKrey opened the hearing on SB 2047. Relating to grand parental rights of visitation of unmarried minors.

Jean Mullen: Assistant Attorney General The statute was enacted in 1983, was amended in the 1990's and that shifted the presumption to the grandparents. That visitation was in the child's best interest. The Supreme Court said the decision was unconstitutional. It was a violation of parental rights. So the statute reverted back to the existing bill. This bill has original language in it to take care of that and some parts of the amended law that were not unconstitutional. Essentially it is to comply with the constitution.

Yonette Richter: Legislative Council, had a handout that would show why the original bill was unconstitutional.

Chairman DeKrey: this is another one of those bills that came out of the judiciary committee that is a clean up bill. This bill brings it in line with the Supreme Court ruling. IS there anyone

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House Judiciary Committee
Bill/Resolution Number SB 2047
Hearing Date 02-14-01

wishing to testify in support of SB 2047 or in opposition. If there is no further testimony on SB 2047, we will close the hearing on SB 2047. Thank you Vonette.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2047b

House Judiciary Committee

☐ Conference Committee

Hearing Date 03-05-01

| Tape Number | Side A | Side B | Meter # |
|---|--------|--------|--------------|
| TAPE II | x | | 3718 to 4103 |
| | | | |
| | | | |
| Committee Clerk Signature <i>Joan Davis</i> | | | |

Minutes: Chairman DeKrey called the committee to order on SB 2047. This bill puts North Dakota law in line with the US Supreme Court decision, I am open to a motion.

COMMITTEE ACTION

Rep Delmore moved a DO PASS motion and Rep Disrud seconded the motion.

DISCUSSION

Chairman DeKrey: If there is no further discussion the clerk will call the roll on a DO PASS motion on SB 2047. The motion passes with 13 YES, 0 NO 2 ABSENT. Carrier Rep Klemin.

Date: 03-05-01
Roll Call Vote #: 1.

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB-2047

House JUDICIARY Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep Delmore Seconded By Rep Disrud

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------------|-----|----|-----------------|-----|----|
| CHR - Duane DeKrey | ✓ | | | | |
| VICE CHR -- Wm E Kretschmar | ✓ | | | | |
| Rep Curtis E Brekke | ✓ | | | | |
| Rep Lois Delmore | ✓ | | | | |
| Rep Rachael Disrud | ✓ | | | | |
| Rep Bruce Eckre | ✓ | | | | |
| Rep April Fairfield | | | | | |
| Rep Bette Grande | ✓ | | | | |
| Rep G. Jane Gunter | ✓ | | | | |
| Rep Joyce Kingsbury | ✓ | | | | |
| Rep Lawrence R. Klemin | ✓ | | | | |
| Rep John Mahoney | ✓ | | | | |
| Rep Andrew G Maragos | ✓ | | | | |
| Rep Kenton Onstad | | | | | |
| Rep Dwight Wrangham | ✓ | | | | |

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Klemin

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

REPORT OF STANDING COMMITTEE (410)
March 5, 2001 12:17 p.m.

Module No: HR-37-4811
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2047: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2047 was placed on the
Fourteenth order on the calendar.

2001 TESTIMONY

SB 2047

CONSTITUTIONAL AND STATUTORY REVISION

Grandparent Visitation - Recommendation

The committee received testimony regarding a North Dakota Supreme Court decision, *Hoff v. Berg*, 595 N.W.2d 285 (1999) in which the court declared a portion of NDCC Section 14-09-05.1 unconstitutional.

In 1983 the Legislative Assembly enacted a statute regarding grandparental visitation rights. That statute provided the test that the court was to apply was whether visitation was in the best interests of the minor and would not interfere with the parent-child relationship. Further, the court was to consider the amount of personal contact between the grandparents or great-grandparents and the minor and the minor's parents. In 1993 the statute was amended to require that visitation must be granted to grandparents unless the court found that visitation was not in the best interests of the minor. The 1993 amendment shifted the burden to the nonconsenting parent to prove that visitation was not in the best interests of the child by providing that visitation rights of grandparents to an unmarried minor were presumed to be in the minor's best interest. In *Hoff v. Berg*, the North Dakota Supreme Court found unconstitutional the 1993 amendment providing the presumption that grandparent visitation was in the best interests of the child and shifting the burden to the parent to prove that it was not.

The committee also received testimony regarding a recent United States Supreme Court opinion, *Troxel v. Granville*, _____ U.S. _____, 120 S. Ct. 2054 (2000), in which the Court declared a Washington grandparent visitation statute unconstitutional. In that case, the Washington statute, which was declared to be very broad, permitted "any person" to petition a court for visitation rights "at any time," and authorized the court to grant such visitation rights whenever "visitation may serve the best interest of the child." The Court, in finding the statute unconstitutional as applied, reiterated its prior holdings that "there is a presumption that fit parents act in the best interests of their children." The Court also found that the statute's application of a presumption in favor of the grandparents was a fatal flaw in the application of the statute. According to the testimony received by the committee, the 1993 amendments to the North Dakota grandparent visitation statute would not have withstood constitutional scrutiny under *Troxel*; however, the now applicable 1983 statute appears to be constitutional under the Court's analysis in *Troxel*.

The committee recommends Senate Bill No. 2047 to amend NDCC Section 14-09-05.1, the grandparent visitation statute, to comply with *Hoff v. Berg*.

Testimony SB 2047**Wednesday January 24, 2001 Judiciary Committee 10:30AM****Fort Lincoln room**

Good morning Chairman Senator Traynor and members of the Judiciary Committee,

My name is Susan Beehler, a working mom with 5 children, a custodial parent, and a Girl Scout leader to two troops in Mandan, and training to become an advocate for AARC.

Members of R-KIDS are in favor of SB 2047. We understand why the wording had to be changed. The concern we have is in the Supreme Court ruling where a grandfather was ordered to pay support. Does SB2047 guarantee he will have visitation of that child? We feel requiring support but not allowing visitation is unfair to the child and the grandparent. Could it be worded some way to guarantee for the visitation of persons under such circumstances?

Susan Beehler 663-4728

susieqbee@prodigy.net