

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2154

2001 SENATE POLITICAL SUBDIVISIONS

SB 2154

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2154

Senate Political Subdivisions Committee

☐ Conference Committee

Hearing Date January 12, 2001

Tape Number	Side A	Side B	Meter #
SB 2154 1	x		0.0-end
SB 2154		x	0.0- 26.40
SB 2078		x	26.4-end
Committee Clerk Signature			

Minutes:

The committee was called to order. All senators in attendance.

The hearing was opened on SB2154: Exempts records in housing discrimination complaints filed with the Department of Labor.

Mark Bachmeier, Commissioner of Labor, spoke in favor of SB2154. See attached testimony.

Senator Lyson: Question for Mark, Meter #19.8 "I don't know how anyone can pass a law that says words about to "Engage"? Mark Bachmeier, in course of this year we've never had an individual engaged in act of complaint. To add in this bill as an amendment, to add it back into the law is to affect our ability to gain the other benefits of substantial equivalency if we don't address the concern of the federal agencies. Senator Lyson, if we don't put this portion in the bill, what are they going to do to us? Mark Bachmeier responds, the issue is discussed in opening remarks, substantial equivalency does a number of things for us, if our laws deem to be substantial equivalent, one we can receive federal funds, two, people who have complaints filed

against them don't have to face two separate complaints one filed under the federal law and one filed under the state law, because they could have separate resolutions or penalties under state law or federal law. It consolidates the bills into a single investigation. Thirdly, we by being equivalent and being able to be the sole entity that investigates complaints filed in ND, we can have some control over how we can approach the investigation of some complaints which was part of the discussions two years ago, to work as much as we can to work with the parties to resolve complaints in an informal way that is acceptable to both parties, as opposed as trying to take a more punitive approach to impose sanctions on people who have discriminated against. We gain those benefits, and its the trade off, as the way he would put it. Senator Lyson " if you put this law into affect, you take the 1st amendments rights away from somebody else, it don't make any sense to me at all". Senator Cook, "ultimately you determine the whole complaint process, the penalty is determined, what do we do "? Mark Bachmeier responded, the most complaints will be resolved through conciliation. The penalty is that provided in the law are primarily applicable only if we issue a cause determination that evidence suggests to us a discriminatory practice has occurred and we have not been able to resolve it in a formal way and at that time an administrative hearing is held or if the parties elect for it, a judicial proceeding is undertaken and in either case then certain penalties are applicable at that point. So we don't have authority to impose civil penalties, or those administratively and those can only be done in the context of an administrative hearing or judicial action. We can negotiate settlements that can include various kinds of relief and that's what we attempt to do in cases we find or feel there is discrimination. Other cases whether there isn't evidence, we would simply dismiss those complaints. Senator Cook, if you found a situation where somebody was about to commit discrimination, you're going then to do this process to come up with a record of

reconciliation, am I safe to assume that someone had better not do this? Mark Bachmeier, that's the underlying goal of the whole program to make sure that discrimination doesn't occur, that somebody some kind of harm that we can, that they are provided with housing the if they are not provided with housing. If that situation occurred certainly we would do, we would attempt to address it in an informal way, as you are suggesting, it would depend ultimately on the level of harm that there was evidence linking that action to in terms of that complainant. If evidence suggested, that significant harm was caused to an individual because of discriminatory action someone was about to engage in, we would address it like any other respondent. In terms of their liability for it and trying to resolve it. But certainly it would be informal, and if it was about the former example, and somebody was making comments, yes in all likelihood, it would be unlawful activity, and that if it was carried through, the unlawful activity carried through, a suggestion that some kind of training on fair housing laws of those actions. The goal is to always to handle every situation as informally as possibly and having to get to the point of having a hearing to instill the penalties on those people. Senator Lee I understand why we need to consider this, I feel like the feeds are holding us hostage, I think its the 10th amendment they've forgotten which allows the states to have this authority that is not specifiially delegated to the feds. Two questions: Whether or not we have to permit groups and organizations to bring suit and that goes together with the idea of an individuals about to engage in discriminatory practice". Ex. Meter #27.8 I don't believe that familial status is currently a protective class in North Dakota. Is familial status a new protective class in the state of ND, and are groups and organizations whether or not allowed to do that because that is very different from having individuals? And I see newspaper ads as being an example as "about to engage in", because some well meaning ad that doesn't know the regulations of these stuff, just rent a place, who is

A nice Christian person, or religious reasons may share philosophical views. Mark Bachmeier response on familial status. Familial status is protected under law and it has been protective under state law since 1983. It prohibits discrimination based on familial status which is defined under the law as having children under 18, not a single vs. married issue, that's a marital issue. Marital status is also protective category under state law but not under federal law, that the issue relating to that one, that's the one to what you are referring, and it does not discriminate against marital status. Advertising in and of itself is a violation of housing and discrimination law, federal and state. Senator Lee, Individuals and Groups, are we required to allow groups and organizations to bring to be federally substantially equivalent under the law. It is a much narrower concept that to say that individuals can bring complaints under our law, while persons can bring complaints under federal law, and that certainly doesn't provide the same protections as the federal law because groups don't expand in it under the definition is for defined individuals, that certainly is a factor. It is required for equivalency. Senator Lee, It is required for equivalency? Senator Cook, The majority of this bill deals with equivalency, what sections do not? What sections for that? Mark Bachmeier, The issues that do not have to do with equivalency are the exempt records, the final section that something that simply cannot investigated cases that recognizes the law doesn't address the issue of records relating to an investigation, and that's something that is not required for an equivalency. In addition, the Section 7 as relating to providing information or upon a completion of an investigation is related to the open records, that's not an issue that a substantial equivalency issue, and the public notice of dismissal of complaints is not. I believe the remaining issues are relating to the law. Senator Christenson, Do I understand that given a laundry this list of things that are protected that gay rights is not one

of them? Mark Bachmeier, you are correct, in that assumption. Senator Flakoll, Mark, again, to get back "to engage in" question of an example if you have a situation of a 4-plex and you have fully occupied, but the person who is in charge of it, the owner, makes the statement in effect that I will never rent to state senators because they leave messes, whatever, is that an example something where they are about to engage in. Mark Bachmeier, Senators are not a protected category, that's a bad example, but if the preference that was stated, was, I will never rent with anyone with kids, that statement, would be a violation, so it wouldn't be because it was evidence that they were about to engage in a discriminatory act, it could be, if a vacancy came up and then they, but I don't know who whatever, or how a complaint would come to us at that point, its' much more likely, number one that if statement was made publicly or in some way somebody brought that complaint to our attention that statement itself if discriminatory advertising, even if you say it to your neighbor, I'll never rent to someone with children, that's a discriminatory advertisement under the law because it is a statement expressing a preference based on a category that's protected under the law, if a vacancy occurs and then your criteria for filling that vacancy is in fact children, then its refusal to rent, its to despair treatment based on protected category, again yes, there could be an element that, but also what you discussed is another violation in and of itself. There could be other factors relating to that example as well. More likely the way the issue would be addressed. Senator FLAKOLL, an issue of a 3 bedroom apartment for sixteen people, how does that work? Mark Bachmeier, you can have occupancy standards. Occupancy standards are not prohibited by the law or super cede by protections under the law based on familial status. As long as it applies to everyone your allowed to have reasonable occupancy standards two per bedroom. Standard for occupancy of any dwelling that your renting, and you don't have to make an exception to those standards. Senator Cook, Mark

would you clarify something for me, Senator Flakoll calls a press conference, and at that press conference he announces he is about to build an exclusive housing development for white, married people with no children only, Is he about to commit discrimination, or has he already committed discrimination? Mark Bachmeier, At this point at which he makes that statement, he has committed a discriminatory housing practice under the law, because he has advertised in an discriminatory fashion. He also expresses his intent to discriminate, but again as a practical matter its a difficult thing to have a complaint on, and say their was evidence to engage in when actually he hadn't engaged in it yet. Senator Mathern, So in this press conference, if Mr. Flakoll is thinking about this thing, is it about to occur? It shows the ambiguity of the statement that I might think he is going to say that, and its about to occur. Not very well defined in most law, its a good definition. Senator Lee, I don't have a tremendous amount of worries about the logical people of ND might interpret this, and I realize our hands are tied in a lot this area, but I do, really fear what will happen when groups and organizations are allowed to bring suits or things they are thinking about doing, because that is a whole different level. Example given Side A Meter #41.7. Mark Bachmeier, Senator Lee, one thing to keep in mind with the standing of groups and organizations beyond the individuals bringing complaints is that those complaints could then be filed with the Department of Labor and there would still be a standard of evidence that they would have to show harm. Needs to show that they were harmed by the occurrence of discriminatory housing practice, when it was first occurred and showing when the organization was harmed by that practice. Senator Lee, if decedents of Vikings who all lived in an apartment building so they could watch the Super Bowl together and now the apartment owner is another football team fan, if they establish an organization obviously the group is not hurt ,however, but the individuals within the group are, so if I am a member of that group, but I don't want to get

sued and all the other people are my friends, are going to support me in this, what happens if an individual is harmed but a group now is able to sue also and are a party to this suit, there the ones with the money, do they have a different position of influence? Mark Bachmeier, its different for the members of the group to individually be harmed by these complaints, and the group per say, and I think there would be some standard and the group would have to show that "it" the entity of the organization had been harmed by the practice, not just by the individual members were harmed by the practice. Senator Flakoll, I'm not sure if I understand the range of outcomes in the event someone is in violation of this, what types of litigation outcomes do occur in terms of either single individual, both or in terms of a group. Mark Bachmeier, there are several common outcomes, one, to a complaint filed after completion of an investigation. If the evidence doesn't support the allegation, a dismissal obviously. If there is evidence that leads us to believe that discrimination may have occurred, we can negotiate a conciliation in a section of the law in conciliation, it identifies things that are included in that, but it doesn't include any kind of civil penalties, only relief to the party, compensatory. The specific items in part of a complaint in terms of a remedy, a conciliation may authorize appropriate relief including monetary relief, is what it states. In that case, in which the evidence is supporting the allegation, if we're not able to reach some kind of a negotiated settlement that is acceptable to both parties, that when we issue a finding, that the discrimination occurred, that's where the case can go beyond the informal stage. That is at that point, we're required under the law to issue a charge of discrimination. When we do that we have to then provide for an administrative hearing on that charge. An administrative law judge can impose greater penalties, more types of remedy, including civil penalties under certain conditions. But the department doesn't have any discretion to do that. We can only negotiate settlements, or issue a charge and let, a hearing officer or administrative law judge

decide it or if we issue a charge and either of the parties to the charge, I would rather have this in court than an administrative hearing than it could proceed to district court, instead of the administrative hearing. And in again in district court there are greater penalties imposed by the court and those again are outlined in Section 32 of the law deals with what can be imposed in administrative penalties in administrative hearings and those same penalties are available to courts. In some cases substantial. Senator Flakoll, Example of a gentlemen who was a class 3 sex offender, and in this case was protected. Mark Bachmeier, the status of being convicted of any felony is not protected under the law. It's not a protected category under the law. It can be used as a basis for making housing decisions, its not prohibited. So that status is not protected status under state or federal housing law. Senator Watne, We worked very hard to get this into the Department of Labor, and we are very concerned with landlord-tenant rights and I think it is very interesting to see how

the feds have told us how we should get in line with them and do you see the rest of the bill we created before put into your division as a good move and is your department comfortable with it? How many filings have you read this past year since the new law? Mark Bachmeier, We've had 18 complaints filed, took effect October 1, 1999, but the first complaint was January 2000. Our agreement with HUD didn't get into place later in the year 2000, some complaints continued to go to HUD, so 18 is not the representative number for the year. We projected about 35 complaints in a year in addition to other questions that would come to us that would not be fileable, or addressable complaints under the law. We had about 35 filed complaints or investigations ,based on the history of complaints filed with HUD from ND and a bit of a projected increase in that number because when you establish a place for people to go they may be more likely to file complaints because we don't know how many complaints were taken to

court, and not brought to us, and because there are things that can be filed under state law that is protected under the federal law, that wouldn't have been included in the number of cases filed with HUD. In terms, of whether we're comfortable with the law, the program is really progressing very well. (Side B Meter 0.5) I was certainly frustrated in the beginning in that this law was passed and we sent it for review and we dealt with HUD in terms of getting comments on it when it was a bill draft and we had been able to make some changes before it was ever passed, and then it goes to the office of general comments and it comes back, and it costs us the equivalency status and that took us time and effort. Things that get put in this law or are included in our state law to make it equivalent, are not things that are not unlawful otherwise. Talking about persons vs. individuals is the way it is in federal law, if we don't have it in state law, were not equivalent, we

, don't get the benefits of the equivalency law, that people just file their lawsuits in federal court. Its still prohibitive under the federal law, even if we didn't make it prohibitive under the state law. We're not adding greater protections that exists in the federal law, we're just making the law equivalent so that we can gain the benefits that has some control over the process and to be able to have local investigations and resolution of the complaint. We if don't address them and were not equivalent to pass them they will just get addressed by HUD and in federal courts. They'll just will be removed from our jurisdiction. The issue I try to keep in mind is the benefits for us, and for both of the parties to a complaint in ND, the complainant having a place to go and the respondent being able to deal with the local entity that's going to use common sense in the process as well as the ability to partly fund our program and our benefit that we would have to weigh against having a law that offers the same protections as the federal law. How our agency is looking at it. I feel good where were at, I think it is a good law once we get this issue resolved,

we won't have to revisit it again, unless we change the protections and remedies in the law at this point and then HUD can say you made changes, and now your not equivalent anymore. But once we get through this interim equivalency issue, then it will be a standing that we will continue to have. We won't have to do this every two years. The law won't be under review by HUD once they determine it is equivalent.

Jack McDonald, ND Newspaper Association and the ND Broadcasters Association. See written testimony. (Side B, Meter #3.5- Mr. McDonald would rather have it handled here in ND rather than by HUD in Denver. The complaint filed by a police department or court is public record, but the investigative records of the law enforcement agency is confidential until the investigation is completed, or the investigation is dismissed, or case is dismissed. then the investigatory records are open. Our amendments would just suggest the same procedure be followed here, that the complaint itself would be an open record and the investigatory records open after the investigation is completed. The law, if you turn to page 7, of the proposed bill says a "a complaint filed under Section 14-518 and information obtained is confidential. The complaint filed is public record but the information obtained and conducted by the department is exempt, closed, prior to the administrative closure. In other words, after the closure, then its open. My understanding that Commissioner Bachmeier would not oppose that proposed amendment. The only other amendment were proposing is Commissioner Bachmeier on Pg. 6, Line 11&12, we think that okay to have that in there. Just issue a release stating that the dismissal is completed. If these amendments are proposed we certainly would support the bill, and we urge consideration of this bill with these amendments along with the amendments proposed by Mark Bachmeier.

Senator Lee, (Side B, Meter #6.8-7.3) pg. 6, concerning public disclosure and dismissal, if it has been kind of a frivolous complaint, could there not be more damage done when ever saying

there was a complaint, filed in the first place, like a correction on the bottom of page 12, for a infraction on page 1. Isn't this creating a problem for the parties involved. Jack McDonald, (Side B Meter # 7.4- 8.3) If probably, at least in North Dakota, a lot of these complaints get publicity, I would rather see publicity about the complaint and publicity on the dismissal. If a complaint is filed and there is notoriety or publicity or at least some knowledge some people among people involved in the industry, then at least there is going to be a requisite or some exoneration by the department, there not simply not quietly go away and you'll wonder what happened to that complaint. I think that line was put in there to counteract act just the very thing that you stated. Senator Cook , (Side B Meter #8.5) Well, Mr. McDonald, any publicity that such a complaint gets now is because either party somehow makes the publicity available to the press, this is basically just saying the department does not have to, it doesn't stop the party having the case dismissed against them from bringing it up and informing the press. Mr. McDonald, (Side B Meter #8.5-9.6) You're right, it doesn't. I guess this was put in before to make sure that if there was a dismissal, that the party that was firstly accused would least be some public acknowledgment of a dismissal. That it simply would not be filed away. The person involved may not have the opportunity or the means to publicize the dismissal. If you are an apartment owner and you get the investigation dismissed, it is a little difficult for that individual apartment owner to somehow go to the newspaper and say I just had a case dismissed against me and I think this is news or something and the fact that the department is announcing the dismissal adds to the emphasis of the issue. I feel much more strongly on the proposed amendments on page 7, than on page 6. Senator Cook, (Side B Meter #9.6-9.8) What actually has to happen for the public disclosure, is it posted on the bulletin board or actually sent notification to the press. Jack McDonald, (Side B (.8-10.1) that is up to the department, the standard has been, they just

simply issue a press release that make it available to the public either by posting or sending it to the news media. That's the way other departments have required to make public disclosure, certain filing with the Public Service Commission and things like that. Jack McDonald, (Side B Meter #10.1-11.4) might I just add one small item, part from my amendment. There was some question about the one provision of the bill, that says your about to commit a discriminatory act, and two examples come to mind. One, a real estate developer and your going to files Articles on Incorporation for a condo or planned new development or town home, the Articles of Incorporation set out the covenants or restrictions within the condominium. You filed the Articles of Incorporation before you turn one spade of earth, before a renter, you file those a year ahead of time, and you could in there have reasonably some discriminatory practices which then would indicate that your "about to" build that apartment, that your about to commit to something. Two, as a housing developer, when you file a plat for a housing development you also file your covenants which run with the land, those covenants could be discriminatory in a sense that you limit who can live in there and access those places.

Claus Lembke, ND Association of Realtors, See attached testimony. (Side B Meter 11.6-13.8)

We support this, we need equivalency for local control, and funds for local control. They pledge to do conciliation in their attempts to stamp out any discrimination and do it through conciliation in education and in our opinion that's the only way to remedy any problems, and not in a combative way. If they set out test cases for entrapment, we would be back for your help, but they have not practiced that kind of thing in stamping out discrimination. We support Mr. McDonnell's on page 7, those amendments for the simple reason we have found on federal cases when HUD was doing the investigation, under the control of the federal government, that the respondent had a difficult time getting any information on the complaint. They simply cannot

defend themselves, it should be fairly open, I don't have any trouble during the investigation, but not being public, but when the conclusion has been reached or the investigation has been reached it should be public. Yours as a respondent have every right to defend yourself, under those things.

Neutral testimony, none

Senator Cook, Close Hearing on SB2154.

Discussion of committee members. A roll call vote was taken on the original SB 2154. Senator Watne moved to accept Mark Bachmeier and Jack McDonald's amendments. Senator Christenson 2nd the motion.

7 Yea. 1 Opposed Senator Mathern moved for a Do Pass as amended bill SB2154.

Senator Lee seconded. 8 Yea. 0 Opposed

Senator D Mathern carrier.

January 12, 2001

93
1-17-1
1062

PROPOSED AMENDMENTS TO SENATE BILL NO. 2154

Page 1, line 3, replace "subsection" with "subsections" and after "1" insert "and 3"

Page 1, line 5, after "14-02.5-24" insert ", subsection 2 of section 14-02.5-25" and replace "sections 14-02.5-28 and" with "section"

Page 1, line 7, after "exemptions" insert "; and to declare an emergency"

Page 1, line 9, replace "Subsection" with "Subsections" and after "1" insert "and 3"

Page 1, line 10, replace "is" with "are"

Page 1, after line 14, insert:

- "3. "Conciliation" means the informal negotiations among and aggrieved ~~individual person~~, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint."

Page 5, line 18, after "public" insert "by the department"

Page 5, line 20, overstrike "concerned persons" and insert immediately thereafter "the parties to the concillation"

Page 5, after line 31, insert:

"SECTION 9. AMENDMENT. Subsection 2 of section 14-02.5-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If making the determination within the period is impracticable, the department shall give in writing to the complainant and the respondent the reasons for the delay. If the department determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall, except as provided by section 14-02.5-27, immediately issue a charge on behalf of the aggrieved ~~individual person~~."

Page 6, remove lines 7 through 12

Page 7, line 8, replace "and information" with "is an open record. Information"

Page 7, line 9, replace "are" with "is"

Page 7, after line 13, insert:

"SECTION 14. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2 of 2

Date: January 12, 2001
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. S.B. 2154

Senate Political Subdivisions Committee

☐ Subcommittee on _____

or

☐ Conference Committee

Legislative Council Amendment Number 18199.0101

Action Taken No Pass

Motion Made By Sen. Watne Seconded By Sen. Christenson

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll		✓	Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 7 No 1

Absent 0

Floor Assignment _____

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

Date: January 12, 2001
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. S.B. 2154 as Amended

Senate Political Subdivisions Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Sen. D. Mathern Seconded By Sen. Judy Lee

Senators	Yes	No	Senators	Yes	No
Senator Cook	✓		Senator Christenson	✓	
Senator Lyson	✓		Senator Mathern	✓	
Senator Flakoll	✓		Senator Polovitz	✓	
Senator Lee	✓				
Senator Watne	✓				

Total (Yes) 8 No 0

Absent 0

Floor Assignment Sen. D. Mathern

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

REPORT OF STANDING COMMITTEE

SB 2154: Political Subdivisions Committee (Sen. Cook, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2154 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "subsection" with "subsections" and after "1" insert "and 3"

Page 1, line 5, after "14-02.5-24" insert ", subsection 2 of section 14-02.5-25" and replace "sections 14-02.5-28 and" with "section"

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"SECTION 14. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

2001 HOUSE POLITICAL SUBDIVISIONS

SB 2154

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2154

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-1-01

Tape Number	Side A	Side B	Meter #
I	xx		1105--5175
Committee Clerk Signature <i>Pam Owen</i>			

Minutes: Chair Froseth opened the hearing on SB2154 relating to exempt records in housing discrimination complaints filed with the department of labor; and to declare an emergency.

Mark Bachmeier, ND Dept of Labor : testified in support of SB2154. (SEE ATTACHED) The reason for this bill to be an emergency because our current interim agreement is time limited. We need the interim label removed, and get on with having full equivalency status, and insure our continued funding for this program.

Rep. Delmore : (2887) This issue is very important to me. I was wondering about the choice being open for federal or state. How many people will this encourage to file in state rather than federal?

Mark : Once we have a work sharing agreement in place, a complaint filed either place comes to us for investigation. So if a complaint is filed with HUD first, HUD refers it to us.

Rep. Delmore : If I don't like the investigation and outcome, I still have the right to go to another level?

Mark : No. There is an appeal process available to be determined by the department. If it is a dismissed complaint and they feel the complaint should not have been dismissed, the appeal comes to us. We may go to HUD to see who they agree with. They could disagree with us.

Rep. Delmore : (3115) I don't see anything mentioned about advertising in the bill. I was part of the interim committee studying this issue. Is that covered somewhere else?

Mark : Advertising is part of the law. We have equivalent provision to the federal law.

Rep. Delmore : On page 2, I noticed what is excluded, which is the status as to respect to marriage. Are you aware of the bill that is in the senate that does allow for landlords not to rent to people who are not married to each other?

Mark : I'm familiar with that bill. It addresses cohabitation. It's been a legal question ongoing for some time. We have an attorney general's opinion from 1990 that addressed that issued from a case filed then in state court. The question was whether or not the housing discrimination protection based on their status conflicts with an old statute that prohibits cohabitation. This statute still exists in state law. The legal question addressed at that time is whether those two laws conflict with each other. If not, then how do they reconcile. The opinion of the attorney general in 1990 was that the protection on housing discrimination, based on marital status, did not prohibit someone from refusing to rent to a cohabiting couple. Their logic was if the legislature had intended the housing discrimination protection law to supersede the cohabitation law, it would have repealed the old law. Since it did not, they had to be a way to reconcile it.

Rep. Ekstrom : (3505) Is this bill to get the interim label removed?

Mark : Yes, basically.

Rep. N. Johnson : In section 2, it states what you can't use to discriminate. Is pet ownership or the maximum of people living at a facility, acceptable to say no to?

Mark : Those are not protected categories. Yes, it would be permissible to have a policy of "no pets".

Rep. N. Johnson : My question is about the section you have about renting to the elderly. The part removed from federal law, you now want removed from state law. Why this removal?

Mark : I'm not sure why they removed it. It may make it easier to designate housing for the elderly, specifically.

Rep. Kretschmar : (3975) Does our current law requiring cohabitation conflict with federal law?

Mark : There is not because marital status is a protection under state law not federal. This is a protection under state law only. Marital status is not protected under the Federal Fair Housing Act.

Rep. Ekstrom : (4055) Could a landlord exclude a certain age? You can have housing that is for older folks, only. Can they say you can't have your grand kids live with you?

Mark : Yes. The exemptions in law specifically provide the protection for family status and age. It does allow for someone to refuse someone who wants younger people to live there.

Rep. Niemeier : I'm looking at section 6. Can you give me an example of an additional respondent would be about to engage in a discriminatory practice?

Mark : That is a good question. We have had discussion about that issue. For equivalency purpose it has to be there. We can't find any situations, though. I think it's there to address an intent; if someone says "I'm not going to rent to someone with children". They may not have actually refused someone with children yet, but have stated that feeling. They have expressed the intent to engage in that practice. That is about the best example I can come up with. That comment would be discriminatory advertising, which would be a violation of the law anyway. So it is personally very confusing to me.

Page 4
House Political Subdivisions Committee
Bill/Resolution Number SB2154
Hearing Date 3-1-01

Rep. Niemeier : (4805) Which of these changes are not equivalency issues?

Mark : The open records section.

Chair Froseth : Section 9 was amended by the senate. You did not mention anything on it.

Mark : I apologize for that. On the original bill, we missed an occurrence on the draft. They caught that and changed it to add the occurrences we missed.

Chair Froseth : Any further testimony for or against? Hearing none, SB2154 is closed.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2154 b

House Political Subdivisions Committee

☐ Conference Committee

Hearing Date 3-8-08

Tape Number	Side A	Side B	Meter #
1		xx	3500--3830
Committee Clerk Signature <i>Ram Deen</i>			

Minutes: Chair Froseth : Take up SB2154. Are there any more concerns about this bill?

Rep. Ekstrom : My questions were answered about the open records area.

Vice-Chair Severson : I move a **DO PASS**.

Rep. Maragos : I second.

VOTE: 13 YES and 0 NO with 2 absent. PASSED. Rep. Ekstrom will carry the bill.

Date: 3-8-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 56 2154

House POLITICAL SUBDIVISIONS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Vice Chair Severson Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman Glen Froseth	✓		Rep. Wayne W. Tieman	✓	
Vice-Chair Dale C. Severson	✓				
Rep. Lois Delmore	✓				
Rep. Rachael Disrud	✓				
Rep. Bruce Eckre	✓				
Rep. Mary Ekstrom	✓				
Rep. April Fairfield	AB				
Rep. Michael Grosz	✓				
Rep. Jane Gunter	✓				
Rep. Gil Herbel	✓				
Rep. Nancy Johnson	AB				
Rep. William E. Kretschmar	✓				
Rep. Carol A. Niemeier	✓				
Rep. Andrew G. Maragos	✓				

Total (Yes) 13 No 0

Absent 2 at

Floor Assignment Rep. Ekstrom

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

REPORT OF STANDING COMMITTEE (410)
March 8, 2001 11:18 a.m.

Module No: HR-40-5108
Carrier: Ekstrom
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2154, as engrossed: Political Subdivisions Committee (Rep. Froseth, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING).
Engrossed SB 2154 was placed on the Fourteenth order on the calendar.

2001 TESTIMONY

SB 2154



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

www.state.nd.us/labor
E-mail: labor@state.nd.us

Testimony on SB 2154
Prepared for the
Senate Political Subdivisions Committee

January 12, 2001

Chairman Cook and members of the Committee, good morning. For the record, my name is Mark Bachmeier and I am the Commissioner of Labor.

Let me begin my testimony this morning by refreshing your memories a bit. You will recall that HB 1043 was introduced following a study of discrimination in the state conducted by the Judiciary Committee during the interim between the 1997 and 1999 Legislative Sessions. The bill passed in 1999, creating N.D.C.C. chapter 14-02.5 and authorizing the Department of Labor to investigate complaints of discriminatory housing practices.

The intent of the new law was twofold. First, it provided a place for North Dakotans who feel they have been discriminated against in the sale or rental of housing to have their concerns addressed administratively within the state. Prior to the new law, the only remedy available under state law was through civil action in court. Alternatively, people could file complaints with the Federal Department of Housing and Urban Development (HUD) at the agency's regional office in Denver. Complaints filed with HUD historically have taken as long as three to five years to be resolved.

Secondly, the new law was intended to be "substantially equivalent" to the Federal Fair Housing Act. State and local agencies enforcing laws that are deemed by HUD to be substantially equivalent to the federal law are eligible to contract with that agency to investigate cases for them. Substantial equivalency is crucial because it, first, provides us with federal funding for our program. Secondly it ensures that there will be only a single investigation of a complaint rather than two separate investigations of the same complaint by state and federal agencies. Finally, it provides for a large measure of local control over the investigation and disposition of cases filed in the state.

The standard for substantial equivalency is that the state or local law must offer at least the same protections and the same remedies as the federal law. Our law has been reviewed by HUD and we currently have in place an Agreement for Interim Referrals and a funding contract with the agency. Our agreement is "interim" pending our addressing a small number of concerns of the federal agency through promulgated rules and/or amendments to our law. SB 2154 before you, with a few exceptions, addresses substantial equivalency issues.

The first issue addressed in the bill relates to who can be an aggrieved party under the law. Our law as enacted inconsistently refers to both "aggrieved individuals" and "aggrieved persons." The federal law exclusively uses the broader term of person, giving groups and organizations, as well as individuals, standing to bring complaints. Sections 1, 8, 11, and 12 of the bill address this issue exclusively.

The second issue addressed is a bit confusing. Section 14-02.5-07 of our law prohibits discrimination in residential real estate-related transactions, defines such transactions, and then goes further to define a "person in the business of selling residential real property." The latter definition does not exist in the corresponding section of the federal law but exists exactly in another section of that act. In other words, it seems that the definition was inadvertently placed in the wrong section of our law and has the effect of limiting the protections of that section in a way that the federal law does not. Sections 2 and 3 of the bill remove the definition from the incorrect section and place it in the proper place, making both sections equivalent to the federal law.

Section 4 of the bill clarifies several issues relating to the conditions under which housing may be exempt from certain provisions of housing discrimination law if it is specifically intended to provide housing for older persons. The primary change here relates to a change in federal rules to no longer require that housing provide "significant facilities and services specifically designed to meet the needs of older persons" in order to qualify under one of the exemptions.

Section 5 removes the requirement from our law that complaints be submitted under oath. Requirements that may discourage some people from filing complaints are not allowed for substantial equivalency. Requiring a complaint to be notarized is considered to be such an obstacle.

Section 6 relates to the conditions under which a person may be added to a complaint as an additional or substitute respondent. The federal act allows a person to be added to a complaint if the department determines that the person is engaged, has engaged, or is about to engage in the discriminatory housing practice. Our law currently does not include the last condition.

Section 7 deletes a statement requiring the department to make information available to the parties to a complaint upon completion of investigation. The statement is out of place in a section addressing conciliation and is unnecessary given the exempt records section we propose to add to the end of the chapter.

Section 9 simply specifies the time within which the department must provide information to the parties to a complaint upon issuing a charge.

Section 10 removes the requirement for the department to make public disclosure of each dismissal of a complaint. This is not required for equivalency, creates a practical

problem of how and how broadly to make the public disclosure, and seems unnecessary since most complaints are not publicly disclosed.

Section 13 of the bill relates to the exemption of certain records. Currently the law addresses the issue only with respect to a conciliation agreement and statements made or actions taken during a conciliation. My primary concern in this area is that we be able to prevent the disclosure of information obtained during an investigation while the case is active and that an investigator's notes, or working papers, remain exempt from disclosure.

In addition, I would like to propose just a few simple amendments that were neglected in the original bill draft. First, two occurrences of the "aggrieved individual to aggrieved person" change were missed in the current bill draft. Secondly our Assistant Attorney General recommended two simple points of clarification in the provisions relating to the disclosure and use of statements made or actions taken during a conciliation. And, finally, declaring this bill an emergency measure would allow us to move more quickly to conclude our substantial equivalency review with HUD and to get the interim status removed from our agreement with the agency. Draft amendments to make these additional changes are attached to my testimony.

Thank you for your time and patience. I would be pleased to answer any questions you may have.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2154

Page 1, line 3, replace "subsection" with "subsections" and after "1" insert "and 3"

Page 1, line 5, after "14-02.5-24" insert ", subsection 2 of section 14-02.5-25"

Page 1, line 7, after "exemptions" insert "; and to declare an emergency"

Page 1, line 9, replace "subsection" with "subsections" and after "1" insert "and 3"

Page 1, after line 14, insert:

"3. "Conciliation" means the informal negotiations among and aggrieved individual person, the respondent, and the department to resolve issues raised by a complaint or by the investigation of the complaint."

Page 5, line 18, after "public" insert " by the department"

Page 5, line 20, overstrike "concerned persons" and insert immediately thereafter "the parties to the conciliation"

Page 5, after line 31, insert:

"SECTION 8. AMENDMENT. Subsection 2 of section 14-02.5-25 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If making the determination within the period is impracticable, the department shall give in writing to the complainant and the respondent the reasons for the delay. If the department determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall, except as provided by section 14-02.5-27, immediately issue a charge on behalf of the aggrieved individual person."

Page 7, after line 13, insert:

"SECTION 14. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

Testimony from Clam Lemboke

SB 2154

Senat Pol. Subdiv. Committee

1-12-01

My name is Clam Lemboke, I represent
the N.D Assoc of Realtors and we
support this bill.

We need the equivalency - ~~we~~
we need to keep enforcement of
fair housing laws locally

and we need to keep our ability for
the Labor Department to receive federal
funding

We also support the proposed amendments
proposed by Mr. McDonald.

SB
2154

HOUSING DISCRIMINATION COMPLAINT PROCESS

Send **INTAKE QUESTIONNAIRE**

- review for completeness and signature

Develop **COMPLAINT**

- must be filed **within one year** after the discriminatory practice occurred or terminated, whichever is later
- may be amended at any time

Send **COMPLAINT** to complainant for review and signature

- revise if necessary

File **COMPLAINT**

- notice to complainant that complaint has been received, advise of time frames and choice of forums under the chapter
- **within 10 days** of filing the complaint or the identification of an additional respondent involved in the discriminatory practice, serve notice to respondent identifying alleged discriminatory practice and procedural rights and obligations including a copy of the complaint

Receive **ANSWER**

- must be received **within 10 days** of the date the respondent receives the notice and copy of complaint
- must be in writing and under oath
- may be amended at any time

INVESTIGATION

- shall be completed **within 100 days** after the complaint is filed
- if not completed within 100 days all administrative proceedings will be disposed of **within 1 year** of the filing of the complaint
- if unable to complete the investigation within 100 days, notify complainant in writing of the reasons for the delay

Develop **FINAL INVESTIGATIVE REPORT**

- may be amended if additional information is discovered

Determine **REASONABLE CAUSE**

- must be done **within 100 days** after the complaint is filed unless determination is impracticable to make or a conciliation agreement is approved
- if making a determination is impracticable, notify complainant and respondent in writing of the reasons for the delay
- if reasonable cause is determined, a charge must be issued immediately

CHARGE

- upon issuance of a charge, a copy of the charge is sent to each respondent and complainant
- respondent shall receive notice for the opportunity for a hearing
- charge may not be issued after the beginning of a civil trial commenced by the complainant seeking relief

DISMISSAL

- issued promptly when no reasonable cause is determined
- public disclosure shall be made of each dismissal

JUDICIAL DETERMINATION

- election must be made by complainant or respondent **within 20 days** of the service of the charge
- the department, if the complainant, must make the election **within 20 days** of the date the charge was issued
- a claim for relief shall be filed by the AG **within 30 days** of election for judicial determination

ADMINISTRATIVE HEARING

- if judicial determination is not elected, the department shall provide for a hearing on the charge
- an administrative hearing may not continue if a civil trial is commenced

CIVIL ACTION

- may be filed within **2 years** of the occurrence or termination of alleged discriminatory practice or the breach of conciliation agreement entered, whichever is last
- the 2 year period does not include the time when the administrative hearing is pending
- a claim for relief may be filed whether or not a complaint has been filed
- if a conciliation agreement has been obtained, a civil claim may not be filed
- if the department has issued a charge and a hearing has begun, a civil claim may not be filed

January 12, 2001

SENATE POLITICAL SUBDIVISIONS COMMITTEE
SB 2154

SENATOR COOK AND COMMITTEE MEMBERS:

My name is Jack McDonald. I'm appearing today on behalf of the North Dakota Newspaper Association and the North Dakota Broadcasters' Association. We oppose portions of SB 2154 that close public records that are now open and ask that you consider our proposed amendment.

North Dakota has a long tradition of open government that has served its citizens well. It was one of the first states to pass comprehensive open records/open meetings laws in 1957 and the very first state to put those provisions into its Constitution.

The records that this bill closes are records that have been open. We're not aware of any problems that have arisen that requires that they now be closed. We certainly support the efforts of the Labor Department regarding fair housing, and it was our industry that led the effort in 1999 to give the Labor Department this authority.

We understand the Labor Department is mainly concerned about the confidentiality of investigatory records. We can understand that, since most investigatory records are closed until the investigation has concluded.

Therefore, we are proposing the following amendments to keep the ongoing investigatory records confidential, but that will allow the complaint to be public, and allow the investigatory records to be public after the investigation is complete. This is the same system that is now the law for law enforcement records. We think it will work for the Labor Department as well.

We respectfully urge that you adopt our amendments and pass the bill. If you have any questions, I will be happy to try to answer them. THANK YOU FOR YOUR TIME AND CONSIDERATION.

PROPOSED AMENDMENTS TO SB 2154

Page 6, line 11, delete the overstrikes

Page 6, line 12, delete the overstrikes

Page 7, line 8, after "14-02.5-18", delete "and" and insert "is an open record
under section 44-04-18, but"

Renumber accordingly

John Hoeven
Governor

Mark D. Bachmeier
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

www.state.nd.us/labor
E-mail: labor@state.nd.us

**Testimony on SB 2154
Prepared for the
House Political Subdivisions Committee**

March 1, 2001

Chairman Froseth and members of the Committee, good morning. For the record, my name is Mark Bachmeier and I am the Commissioner of Labor.

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Section 10 simply specifies the time within which the department must provide information to the parties to a complaint upon issuing a charge.

Section 13 of the bill relates to the open-records status of certain records. Currently the law addresses the issue only with respect to a conciliation agreement and statements

made or actions taken during a conciliation. My primary concern in this area is that we be able to prevent the disclosure of information obtained during an investigation while the case is active and that an investigator's notes, or working papers, remain exempt from disclosure.

Section 14 declares the bill an emergency measure. The logic for this is simply that our current agreement with HUD is time-limited and having these changes take effect sooner would allow us to more quickly conclude our substantial equivalency review with HUD and get the interim status removed from our agreement with the agency.

Thank you for your time and patience. I would be pleased to answer any questions you may have.