

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

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10/22/03

Date

2003 SENATE AGRICULTURE
SB 2343

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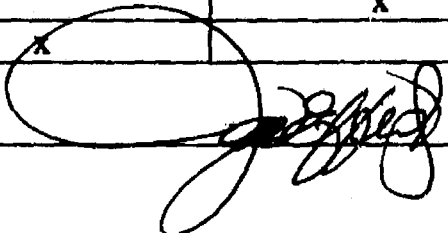
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2343

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 02/07/03

Tape Number	Side A	Side B	Meter #
1	x		31 - 4060
1		x	5058 - end
2	x		0 - 119
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened the hearing on SB 2343. All members were present.


Senator Urlacher introduced the bill. He said the bill affects the corporate farming bill in a very limited area. He said the intent of the bill is not to put nursing homes into the business of farming.

Rodney Auer, administrator of Marian Manor Health Care, a non profit nursing home in Glen Ullin, testified in favor of the bill. He said 2 sections of farm and ranch land were donated to the nursing home. They pay all property taxes on the property. The land provides income to the nursing home and they have used it as collateral for loans. They want to enjoy the income from the land beyond the ten years they are permitted by current law to hold it. He does not believe this bill will infringe upon the intent of the North Dakota corporate farming laws.

Senator Nichols asked if current law permits holding up to ten years?

Mr. Auer said that is correct.

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Senate Agriculture Committee
Bill/Resolution Number SB 2343
Hearing Date 02/07/03

Senator Nichols asked how long the nursing home has held this land?

Mr. Auer said nine years

Senator Nichols asked if these donations are happening often?

Mr. Auer said as far as he knows, they are the only nursing home with agriculture property. He added the renters have no desire to buy the land, they want to continue leasing it.

Senator Urlacher asked if the income from the land would currently exceed interest they might receive from an investment?

Mr. Auer said if they sold the land for fair market value they would have to receive 7 1/2 - 8 % return to equal the rental income.

Senator Seymour asked how many beds in the home?

Mr. Auer said 86 skilled nursing beds.

Senator Klein asked how many acres were donated?

Mr. Auer said 2 sections, one has a meandering creek that runs through it so it is less than 640 acres.

Senator Urlacher asked if the intent of the individual that donated the land was for the nursing home to remain viable for the benefit of the community?

Mr. Auer said that is correct. They are in an estate for another 2 sections of donated land. They are looking at this property and future property. They are looking at donations, land being the most profitable, as a means to stay in business.

Senator Nichols asked about the desired 7 1/2% return, is that based on current appraisal or value upon inheritance?

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Mr. Auer said that is based on current market value, although some land in the area is being sold to state hunting interests.

Senator Flakoll asked if this is a tax deductible donation.

Mr. Auer said if the donation was made by a living donor, yes. They acquired the land through an estate and he is not familiar with estate law.

Senator Nichols confirmed that the nursing home pays property tax on the land.

Mr. Auer said yes.

Senator Urlacher asked if the property was sold, would the nursing home lose the appreciation and interest?

Mr. Auer said yes.

Senator Flakoll asked if this was a prepayment of a nursing home bill?

Mr. Auer said no but that is a good idea.

Senator Nichols asked if they used foreclosure to collect payment on a bill how long could they keep the land?

Mr. Auer wasn't sure. (meter # 747)

Richard Schlosser, representing the members of the North Dakota Farmers Union, testified against the bill. (written testimony) (meter # 800). He added the original challenge to the corporate farming law was in 1942 or 1943 by a hospital. The hospital held land and wanted to maintain it as investment income. The case went to the US Supreme Court which upheld the North Dakota corporate farming law.

Senator Flakoll asked if there is a difference in a nursing home owning and renting out farm land as opposed to owing it and farming it themselves.

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Bill/Resolution Number SB 2343
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Mr. Schlosser said their policy emphatically states ownership should remain with the family farmer.

Senator Urlacher asked if the hospital in the case mentioned was a non profit entity?

Mr. Schlosser said he is not an attorney and is not sure.

Senator Urlacher asked if there were a requirement that the land be leased to a farming operation would that help?

Mr. Schlosser said no, ownership should be by family farmers.

Senator Erbele asked if the law is different for church owned or school district owned land?

Mr. Schlosser said receiving the land isn't a problem, the corporation must divest itself of the land.

Senator Flakoll asked if the government made a mistake in giving the railroad land?

Senator Seymour said his mother in law owns farm land and rents it out; is she in violation of the policy?

Mr. Schlosser said the issue is a non profit entity or corporation owning farm property.

Senator Urlacher said young farmers in this day and age don't buy land, they lease it.

Mr. Schlosser said the ten year period deals with this, rent for ten years then sell the young farmer the land.

Karl Limvere, Chairperson of the Rural Life Committee, North Dakota Conference of Churches, testified against the bill. (written testimony) (meter #1936)

Senator Urlacher asked is he supports family farm corporations?

Mr. Limvere said yes, he supports the current law.

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Senate Agriculture Committee

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Senator Klein said he guesses an 85 bed nursing home in Glen Ullin has 100 employees, most are farm wives, related to the community. Those jobs are important to the community. If the nursing home would leave the community, would it harm the community. Doesn't the Rural Life Committee think this is important?

Mr. Limvere said they are concerned about community development and activity and small nursing homes in small communities are important. The case still can't be made for corporate ownership of farms - they can make other investments.

Senator Nichols said his experience as an agriculture lender for a number of years has shown farm land is a poor investment over time. Regarding Senator Klein's question, the nursing home can still hire the farmer's wife while the farmer can be a better, more productive steward of the land.

Mr. Limvere said the funds generated by a land sale should be put into long range investments. Right now farm rental income may be better than the return on CD's or the stock market but in the long term there is better appreciation in a balanced portfolio. It is easier to manage a portfolio than it is to manage farm land. Is it faith based to lease the land to the highest bidder? Mr. Limvere believes it is not.

Senator Urlacher said the intent of the gift cannot be carried out if the land must be sold.

Mr. Limvere said perhaps a gift should not be accepted if the recipient cannot carry out the wishes of the giver.

Senator Erbele asked if we would be better served if the ownership were required to be by an in state non profit nursing home and it would be rented to an active farmer. Wouldn't this be better than selling the land to an out of state interest?

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Mr. Limvere said we have to find other devices to encourage in state ownership. This isn't the avenue and would create more problems than it would solve. Ownership of many nursing homes is going to out of state health care corporations. (meter # 3732)

Roger Johnson, Agriculture Commissioner, testified against the bill. He said he is sensitive to the financial needs of nursing homes. This bill opens up a lot of other questions. The purpose of the corporate farming laws in North Dakota are designed to protect the family farm. The single argument for the bill is "if we can keep the land, we can make more money". That same argument would also support getting rid of the corporate farming law in North Dakota. He realizes this is not the intent of the bill. The recipients have been given, in the current statute, ten years to divest themselves of the land at a time when income from the investment could be maintained. If the divestiture option was not exercised, it is a missed opportunity, but the opportunity was there.

Chairman Flakoll closed the hearing on SB 2343. (meter #4060)

Senator Urlacher said he would like to work on some amendments to require leasing the property for agricultural purposes if there was support on the committee.

Senator Nichols related a personal experience. He was on the hospital board in Stanley. The hospital had inherited some land. The young man who was renting the land came to the board and asked to buy the land. The board said they would have to put it out on bids to get a fair price and he said that was fine, he just wanted to buy the property and start building some equity. The board ended up voting not to sell and Senator Nichols thinks they still own it. Had the hospital sold the land, they could have done better investing the money in the stock market. The hospital

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Senate Agriculture Committee

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Hearing Date 02/07/03

is now a joint operation with Trinity Hospital in Minot. In the future, will a health care corporation in Minneapolis own the farm land?

Senator Urlacher said as soon as the nursing home board can make more money by selling the land, he thinks they will sell it. If the bill were amended to require renting the property for agriculture purposes and to forbid holding the land if the nursing home changes hand, would that make the bill more acceptable?

Senator Nichols said he still thinks hospitals and churches and nursing homes should not own farm land for very long. Ten years is long enough.

Senator Erbele said he would much rather see the property farmed than owned by a non resident hunter.

Senator Urlacher will try to close the loopholes with an amendments.

Senator Klein said he might support something along those lines.

Senator Urlacher said it bothers him that an individual can't make a gift and have that gift used in the way they intended.

Senator Seymour said there are many different owners of land in North Dakota. We are majoring in minors.

Senator Flakoll adjourned the meeting of the Senate Agriculture Committee.

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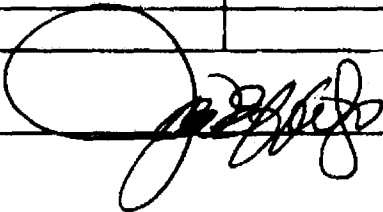
2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2343

Senate Agriculture Committee

☐ Conference Committee

Hearing Date 02/14/03

Tape Number	Side A	Side B	Meter #
1	x		2715 - 3289
Committee Clerk Signature 			

Minutes:

Chairman Flakoll opened discussion on SB 2343. Five members were present. Senator Erbele was absent.


Senator Urlacher discussed the amendments he distributed. He didn't like the bill's statement that nursing homes could become involved in the business of farming or ranching so that has been changed. The rest of the amendment deals with the requirement that if the nursing home changes ownership, they must divest themselves of the property.

Senator Klein confirmed that the amendment eliminates the concern of the corporate owner, takes out the language regarding engaging in the business of farming or ranching and the requirement that if the nursing home changes ownership, they would have to divest themselves of the property.

Senator Urlacher said yes.

Senator Flakoll asked if the only way they can obtain the land is through gift or donation?

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Senator Urlacher said yes.

It was moved by Senator Urlacher and seconded by Senator Klein that the Senate Agriculture Committee pass the amendments.

Senator Nichols said he appreciates the amendments because at least if there is a transfer of ownership now, they have to divest. As a matter of personal conviction, he does not think farm land should be owned by nursing homes.

Senator Urlacher said he thinks board oversight would automatically do it but this will assure it.

Senator Klein said he certainly understands we don't want nursing homes in the business of farming. The concerns of someone's bequeathing property to the nursing home and the financial problems facing community nursing homes, this is a way for the two issues to come together. It provides jobs and insurance benefits to members of the community.

Senator Urlacher said we should not restrict free will donations. This will satisfy the donor and satisfy the community.

The motion to pass the amendments was passed on a roll call vote. Voting yes were Senator Flakoll, Senator Klein, Senator Urlacher, Senator Nichols, and Senator Seymour. Senator Erbele was absent and not voting.

It was moved by Senator Urlacher, seconded by Senator Klein and passed on a roll call vote that the Senate Agriculture Committee take a Do Pass As Amended action on SB 2343. Voting yes were Senator Flakoll, Senator Klein, Senator Urlacher and Senator Seymour. Voting no was Senator Nichols. Senator Erbele was absent and not voting. Senator Urlacher will carry the bill to the floor.

Chairman Flakoll adjourned the meeting of the Senate Agriculture Committee.

30745.0101
Title.0200

Prepared by the Legislative Council staff for
Senator Urlacher
February 12, 2003

ju3
2-14-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2343

Page 1, line 6, after "A" insert "corporate owner of a"

Page 1, line 7, replace "engage in the business of farming or ranching on its land" with "is not subject to the divestiture requirements of this chapter"

Page 1, line 9, replace "This chapter does not prohibit, restrict, or otherwise impose obligations" with "Before a transfer of ownership of a corporate owner of a nursing home owning farmland or ranchland under this section, the owner of the nursing home owning the farmland or ranchland must divest itself of that land and the farmland or ranchland ownership may not be acquired by the new owner of the nursing home."

Page 1, remove line 10

Renumber accordingly

Page No. 1

30745.0101

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Date: 2/14/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2243

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendment 0101

Motion Made By Sen Urlacher Seconded By Sen Klein

Senators	Yes	No	Senators	Yes	No
Senator Tim Flakoll, Chair	✓		Senator Ronald Nichols	✓	
Senator Robert S. Erbele, V. Chair	A		Senator Tom Seymour	✓	
Senator Jerry Klein	✓				
Senator Herb Urlacher	✓				

Total (Yes) 5 No 0

Absent 1

Floor Assignment _____

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

Date: 2/14/03
Roll Call Vote #: _____

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2343

Senate Agriculture Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30745.0101

Action Taken De Pass As Amended

Motion Made By Sen Urlacher Seconded By Sen Klein

Senators	Yes	No	Senators	Yes	No
Senator Tim Flakoll, Chair	✓		Senator Ronald Nichols		✓
Senator Robert S. Erbele, V. Chair			Senator Tom Seymour	✓	
Senator Jerry Klein	✓				
Senator Herb Urlacher	✓				

Total (Yes) 4 No 1

Absent 1

Floor Assignment Sen Urlacher

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

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Operator's Signature Deanna Waller Date 10/22/03

REPORT OF STANDING COMMITTEE (410)
February 14, 2003 2:38 p.m.

Module No: SR-29-2818
Carrier: Urlacher
Insert LC: 30745.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2343: Agriculture Committee (Sen. Flakoll, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2343 was placed on the Sixth order on the calendar.

Page 1, line 6, after "A" insert "corporate owner of a"

Page 1, line 7, replace "engage in the business of farming or ranching on its land" with "is not subject to the divestiture requirements of this chapter"

Page 1, line 9, replace "This chapter does not prohibit, restrict, or otherwise impose obligations" with "Before a transfer of ownership of a corporate owner of a nursing home owning farmland or ranchland under this section, the owner of the nursing home owning the farmland or ranchland must divest itself of that land and the farmland or ranchland ownership may not be acquired by the new owner of the nursing home."

Page 1, remove line 10

Renumber accordingly

2003 HOUSE AGRICULTURE

SB 2343

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2343

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---13---03

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 40
Committee Clerk Signature <i>Edward D. Ullrich</i>			

Minutes:

CHAIRMAN NICHOLAS : Ok we will open the hearing on SB 2343. Senator Urlacher is with us.

SENATOR URLACHER: District 36. What brought this bill before you. A little back ground. It turns out that an elderly gentleman will some land to the nursing home in Glen Ullin. His intent was to give something back to the community. That took place before the introduction of the bill that relates to this. What his intent was to put something back into the community. There by giving something back to his fellow man. In the form of the nursing home and maintain some employment in the community. I think the intent was very well taken. I don't really put this in the category of corporate farming. There are restrictions in it to not let them operate that land. They have been leasing it to a farmer for a number of years. There income is beyond what it would be if they sold the land and put the proceeds at interest.

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They cannot hire someone to farm it. If there was any change in ownership at any time it would be forced to be sold prior to that ownership. The restrictions are such that were closing it up and not allowing it to expand beyond that present ownership. And still following the intent of the owner. The board naturally is obligated to protect the income and oversee whether it should be sold or leased out. My opinion, I think it is above board. It has a protection built into it. Not to the point to going into corporate farming. I would be glad to answer any questions.

REPRESENTATIVE BELTER: Under current law how much time do they have divest of that.

SENATOR URLACHER: Under current law is ten years and they are at nine years now.

I think his intent was developed before the law came into place. When he drew his will. He was an elderly fellow.

REPRESENTATIVE BELTER: Senator, when you were researching this I know that there are churches that are allowed to own land and I forget the circumstances of that are.

SENATOR URLACHER: I am not totally sure on that end. This land was left to the nursing home only. It would not expand beyond that.

REP. ONSTAD: Was this put into a trust?

SENATOR URLACHER: As far as I know it was direct ownership. The administrator is here. He can explain any other details.

SENATOR URLACHER: I would like to say that in a free society we should have the right and opportunity to donate whatever for the benefit for the community and his fellow man. I feel strongly that we should have that right.

REPRESENTATIVE KLEIN: I look at the bill. It is a little bit misleading. Corporate Farming. We are not talking about John Deere, we are talking about nursing homes. Nursing

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homes are struggling. With the budget restraints that North Dakota has on it they are struggling.

This is one way to help them stay open. I think the land owner should be able to leave it to whoever they want. Their request should be honored. The scope is limited. Before the nursing home is sold they have to get rid of the land. It won't go into new ownership.

REP. ONSTAD: Can the nursing home sell that land right now?

REPRESENTATIVE KLEIN: Yes they can. The reason they don't want to is the stock market the way it is and interest rates being so low that they aren't going to make enough on the selling of the land to do them any good. The interest on the proceeds of the land sale would not be or produce as much income as the leased the way it is presently. Renting it out gives you a better income.

REPRESENTATIVE ONSTAD: If they would have sold it at the beginning of the ten year period where the interest rates were adequate at that time they could have sold it and took advantage of it. Now we are at the end of the ten years and using that as the situation.

REPRESENTATIVE KLEIN: I am sure if they had 20-20 vision on it they would have probably done.

REPRESENTATIVE FROELICH: In the 30 we passed an anti corporate farming law. If we did pass this bill would that not be in conflict and be subject to a decision of the Supreme Court.

REPRESENTATIVE KLEIN: There is a possibility it could be challenged, yes.

REPRESENTATIVE KREIDT: You are receiving the rent of that property. Would not that amount of dollars be offset so it is really no advantage as far as subsidizing the nursing home and their operation. I don't know how they have that set up.

CHAIRMAN NICHOLAS: Anyone else wishing to appear in support of this bill.

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RODNEY AUER: I am the administrator of the Marion Manor Nursing Home in Glen Ullin, ND. This is a not for profit nursing home in Glen Ullin. I am here to seek support of Senate Bill 2343. Marion Manor is fortunate to have farm land that was donated to us. The crop land is leased out to a young farmer and the grazing land is operated by a father son operation. We pay full property taxes to Morton County. The land has provide us with extra income and collateral for loans for many years. We also have the ability to sell it should the need arise. It is our hope that we will be able to enjoy the income from this land well beyond the current ten year holding requirements. This gift then will be able to keep on giving. As the original owners had intended. We don't feel that the government should set requirements that was donated to a nursing home. Once give the property should be allowed to stay with the facility. We don't feel that this bill will infringe on the ND Corporate Farming Laws. We urge you to support this bill as the senate did. Thank you.

CHAIRMAN NICHOLAS: If you were to dispose of this land. Sell it and reinvest it what kind of a return do feel you could get and still be able to use it for collateral which a bond or what ever type of security would allow you to do. What type of comparisons or returns on investments would be verses what you are getting now. If you have looked at it.

RODNEY AUER: Yes we have. The return we are getting is a little over seven percent. We would have to get seven percent on our money. Assuming we sold this property to a farmer. We are fully aware because we have been approached that if we have to sell this land there are interested hunters from out of state that want to purchase this land. There willing to pay much more then the land is worth. My board of directors have a difficult time with selling it period. For the fact they believe that if someone gives us something we should be able to keep it. And

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they feel insulted that we would sell this property. My board is composed of sixty percent farmer ranchers. They realize the Monterey value of this land. They want to keep it.

ROD FROELICH: How much land are we talking about? Grazing land and farming land.
What value are you putting on it now?

RODNE AUER: We are talking about one section that has seventy acres crop land and the rest pasture. The other section is 640 acres of crop land. We have put a value of \$225.00 per acre on the pasture and \$310.00 on the crop land. If we were going to be selling it to farmer, ranchers in the area. That is pretty much the going rate in our area.

REP. FROELICH: In affect, you have a young farmer out there that you are renting it to right now. Aren't you not by selling this land stifling his potential for growth.

RODNE AUER: From what I have seen in our area when land comes up for sale it is the bigger farmer rancher that buys it. The individual that is renting the land now own very little land. He frames considerable amounts of land but it is all leased or rented. He has one quarter of land that is in CRP. To answer you it is based on your perspective.

REPRESENTATIVE MUELLER: How did you come to be in possession of that property?

RODNEY AUER: The land was given to us in a will 9 years ago by a wealth farmer in the area.

In his will, he did not allow us to sell it. He had the language in his will that we had to keep it The required 10 years. His lawyer was familiar with the law. It is stated in the will that the nursing home shall keep my land for 10 years. The original intent was clear.

REPRESENTATIVE MEULLER: The donor was familiar with the law that you have to sell it or divest of it.

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Bill/Resolution Number SB 2343
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REPRESENTATIVE BOE: The man did have legal council. If the land had been left in trust
Donated the money to you.

KREIDT: How do you use money? The money is being invested somewhere. Not being
used for operation of the Nursing Home. Never has been etc.

RODNEY AUER: We have always taken the net rent and put into savings. We have not had
to use it or operation of facility. We use money for replacing assets and modifying and
updating the building. It is not in a trust. It is in a CD There is no offset.

REP. FROELICH: What is the rent on the crop land and the grass land?

RODNEY AUER: The crop land brings in \$12,200.00 and the pasture is \$8,600.00. They just
gave me the checks two weeks ago. How that breaks down.

We pay the tax on the land. They are \$2,350.00.

REPRESENTATIVE BOE: You indicated that the gentleman that willed the land and his intent
was that you would divest within 10 years.

RODNEY AUER: His intent is that we keep the land up to ten years. He was fully aware that
we had to get rid of the land within ten years because that was the law. His attorney new that.
His attorney is our attorney.

REPRESENTATIVE BOE: You new this time was coming. Why is it now a problem?

RODNEY AUER: We were aware of this for many years. That is true. At one of the board
meetings. We discussed it and the president of the board said lets change the law. There fore you
see the bill in front of you today.

I am looking out for Marion Manor Nursing Home.

REP. ONSTAD: Does your Nursing Home pay a property tax.?

Page 7

House Agriculture Committee

Bill/Resolution Number SB 2343

Hearing Date 3---13---03

RODNEY AUER: We only pay property tax on the land because it is not a direct care to the residents. As far as the property goes, the buildings, we do not pay taxes. A not for profit.

CHAIRMAN NICHOLAS: Any other testimony in support of this bill.

Any opposition?

SHIRLEY MEYER: I think if this bill is passed it would be a disaster. We have heard virtually nonstop young people exiting the state from our area. The people that need to be owning and operating our farms and ranchers our young people. Not our nursing homes. Farmers and Ranchers contribute to our economy. They turn over every dollar seven times. All you farmers know what we contribute to the local economy. Our children go to school. We are the only thing that are keeping the structure there at all. This bill is different then the corporate farm bill that earlier passed the house. That bill was seen as a vehicle to put capital into an operation. This bill has just the opposite effect by preventing an infusion of capital into the economy by a new owner. The purpose of the anti corporate farm law is simple. It is to prevent corporations from owning and controlling farm land. It was written to prohibit exactly what this proposed legislation does. Overtime we weaken the current laws we make it more likely that we would loose in a court challenge to our laws. If this legislation passes then you are only one court case away from FEDA, churches, schools etc. Nursing home are corporations. You can't make an exception for one corporation and not the other. In ND there are 84 nursing homes. 28 are controlled by out of state parent companies. 25 are nonprofit, 3 are for profit. If we pass this bill you are putting all of these nursing home in the farming and ranching business. Under current law if people wish to leave there farms to nursing homes they can do that but the nursing

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10/22/03

Date

Page 8
House Agriculture Committee
Bill/Resolution Number SB 2343
Hearing Date 3--13--03

home has 10 years to divest itself of the land. That is an ample period of time. That should not be changed. I URGE A DO NOT PASS.

CHAIRMAN NICHOLAS: Any other testimony.

CARL LIMVERE: Medina, ND {PASSED OUT TESTIMONY WHICH IS ATTACHED:

CHAIRMAN NICHOLAS: Any other testimony?

RICHARD SCHLOSSER: I am here to speak in opposition of L's bill. {RICHARD PASSED OUT TESTIMONY AND READ FROM IT.} WE URGE A DO NOT PASS.

CHAIRMAN NICHOLAS: CLOSE ON SB 2343

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10/22/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2343

House Agriculture Committee

☐ Conference Committee

Hearing Date 3---27---03

Tape Number	Side A	Side B	Meter #
ONE	A		00 TO 3.4
Committee Clerk Signature <i>Edward D. Uffner</i>			

Minutes:

CHAIRMAN NICHOLAS: Committee members let look at SB 2343. Lets take a look at this hand out. Basically what it says, you know we could pass a two year extension and I did talk to council and they said they could put a two year extension on it but I think in lieu of what we have here we just as well as kill the bill. Representative Froelich moved for a DO NOT PASS

AND REPRESENTATIVE MUELLER SECONDED.

CHAIRMAN NICHOLAS: Is there any discussion. Representative Kreidt.

REPRESENTATIVE KREIDT: There was a short letter that Rep. Kreidt passed. {which is attached} Representative Kreidt said he was in favor of a DO NOT PASS.

CHAIRMAN NICHOLAS: Is there any further discussion? Ok the clerk will take the roll for a DO NOT PASS.

THE ROLL WAS TAKEN FOR A DO NOT PASS

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10/22/03
Date

Page 2

House Agriculture Committee

Bill/Resolution Number SB 2343

Hearing Date 3---27---03

THERE WERE 12 YES 0 NO 1 ABSENT. CHAIR CLOSED ON SB 2343.

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10/22/03

Date

SB 2343
3-27-03

Date:
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House AGRICULTURE COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

DO NOT PASS

Motion Made By

FROELICH

Seconded By

MUELLER

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN NICHOLAS	✓				
VICE CHAIRMAN POLLERT	✓				
REPRESENTATIVE BELTER	✓				
REPRESENTATIVE BOEHNING	✓				
REPRESENTATIVE KELSCH	✓				
REPRESENTATIVE KINGSBURY					
REPRESENTATIVE KREIDT	✓				
REPRESENTATIVE UGLEM	✓				
REPRESENTATIVE WRANGHAM					
REPRESENTATIVE BOE	✓				
REPRESENTATIVE FROELICH	✓				
REPRESENTATIVE MELLER	✓				
REPRESENTATIVE ONSTAD	✓				

Total (Yes)

12

No

0

Absent

1

Floor Assignment

REP. MUELLER

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Deanna Hall

Date

10/22/03

REPORT OF STANDING COMMITTEE (410)
March 27, 2003 12:11 p.m.

Module No: HR-55-5896
Carrier: Mueller
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2343, as engrossed: Agriculture Committee (Rep. Nicholas, Chairman) recommends
DO NOT PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed
SB 2343 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-55-5896

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2003 TESTIMONY

SB 2343

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10/22/03

Date

North Dakota Farmers Union

PO Box 2136 • Jamestown ND 58402-2136

PHONE: 701-252-2340

E-MAIL: ndfu@ndfu.org

800-366-NDFU (6338)

WEBSITE: www.ndfu.org

FAX: 701-252-6584

MISSION STATEMENT: North Dakota Farmers Union, guided by the principles of cooperation, legislation and education, is an organization committed to the prosperity of family farms and rural communities.



Testimony on SB 2343 February 6, 2003 Senate Agriculture Committee

Mr. Chairman and members of the committee, my name is Richard Schlosser, I am here on behalf of North Dakota Farmers Union. We are opposed to Senate Bill 2343 because we firmly believe that the ownership and operation of farmland should be in the control of family farmers. As stated in the preamble to our policy 'we believe that the family farm system of agricultural production can provide the opportunities of individual enterprise to all farm families in our society. No other system can achieve the economic and social stability, the soil and the environmental stewardship and the production efficiency of the family farm. Ownership, operation, and the management of a farm unit should be vested within the family who farms and makes a livelihood from that farm unit. Policies that encourage the separation of ownership, operation or management of farm units are contrary to the interests of family farmers.'

The ownership and operation of agricultural land by nursing homes in and of itself may seem to be a rather harmless activity, but we see it as an opening or further weakening of the corporate farming law. A policy change

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Richard Schlosser
Operator's Signature

10/22/03
Date

such as this would encourage other entities to seek changes in the law in order to hold and/or operate similar properties without divesting. We see this as a challenge and a lost opportunity for producers who are attempting to own their own farm or ranch. More importantly, it might be a lost opportunity for a young farmer or rancher who is attempting to start out on his own. We are all familiar with the challenges that we face in North Dakota in dealing with out migration and an aging population. With that in mind we need to set policy that promotes agricultural land ownership by young farmers and ranchers. As policymakers and farm leaders we need to encourage our youth to take pride and ownership in our state, not only in terms of its resources, but also in the belief that this is a great place where they can raise their families and call home.

I would simply conclude by quoting our policy on this subject.

"Farmland must be in control of family farmers. Laws should discourage concentration of farmland ownership by corporations and off farm interests. We call for strict enforcement of our state's corporation farming laws. These laws must be closely monitored and strengthened so they may continue to preserve production agriculture for family farmers." Thank you and I would try to answer any questions at this time.

**STATEMENT OF
Karl Limvere, Chairperson
RURAL LIFE COMMITTEE
NORTH DAKOTA CONFERENCE OF CHURCHES**

**SENATE BILL # 2343
CORPORATE FARMING AMENDMENT**

**FEBRUARY 7, 2003 HEARING
SENATE AGRICULTURE COMMITTEE**

Mr. Chairman. I am Karl Limvere, Pastor of the Zion United Church of Christ of Medina. I serve as the chairperson of the Rural Life Committee of the North Dakota Conference of Churches.

The North Dakota Conference of Churches and its Rural Life Committee have established goals and objectives defining the common good for rural America. We believe that ultimately, the test of any agricultural or economic policy is a moral one. Public policy must put human needs ahead of economic profits.

We envision and support the development of a rural society that promotes the greatest potential number of diversified family farming/ranching opportunities possible. We support a widely-dispersed structure of agriculture production with broad-based ownership that is dominated by resident, owner-operator, family farms and ranches.

We support authentic development in agricultural production systems that enhance family and community life, food security and the stewardship of creation. We oppose public policies which encourage or enhance the industrialization and corporatization of agricultural production.

We specifically believe that corporations (other than the restricted family farm operations as permitted in current law) should not be allowed to own or operate farm land or to engage in farming/ranching. We do not distinguish between for-profit or non-profit corporations. We simply believe corporations should not be allowed to engage in the productions of crops, livestock, produce, fibers or other agricultural commodities.

North Dakota has been very protective of its agricultural land to prevent such land from being owned and operated by corporations. The state law governing farming by corporations has been carefully crafted and there have been very few exceptions to that law.

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For example, one of these exceptions is for non-profit organizations, such as the Nature Conservancy, for the purpose of conservation of natural resources. However, there is another whole procedure requiring a final decision by the Governor of our state to make a determination as to whether it is in the public interest for such land to be purchased by such an organization.

While we recognize the worthwhile objectives and charitable purposes of most non-profit nursing homes, we do not believe that a case can be made that nursing homes should be granted an exemption from our state's corporate farming laws.

And if they were, how would we differentiate among other non-profit corporations that also carry out charitable activities and public good. I don't see anything unique about nursing homes that they should be provided an exemption from this law, while other also worthwhile organizations are not exempt. If you would grant an exemption for nursing homes, you would be hard pressed to deny any other charitable group from also having an exemption. Let's not open that door, because the bottom line is that non-profit corporations should not be in the business of ownership of agricultural land or farming and ranching.

When the state's corporate farming law was updated and modernized, the legislative assembly wisely provided only very limited exceptions under rigorous restrictions and did not make a general exception for non-profit corporations. There is no reason to change that now.

The current law allows non-profit corporations to receive agricultural land through bequests and gifts, but it does not allow such non-profits to continue to own or to operate that land. There is a specific time period within which that farmland must be sold to an eligible buyer.

I have served on the governing boards of various religious and charitable organizations. We are always pleased to receive gifts and bequests from willing donors. However, I have found that in most situations, most charitable investment advisors will recommend that the standard procedure for accepting non-cash gifts is to liquidate those assets as quickly as possible so that they might be appropriately reinvested within the charitable organization's investment portfolio in accordance with the organization's investment guidelines and needs. As a general rule non-profit organizations should not be in unrelated for-profit businesses or enterprises, including farming. As a general investment rule, non-profits should not be invested in high-risk ventures.

We would oppose SB2343 on the principle that agricultural land should not be owned or operated by corporations, whether they be profit or non-profit.

However, in addition, I would also point out that this particular bill leaves a broad base of questions unanswered. As written, it would allow either for-profit or non-

profit corporations or privately-owned nursing homes to own and operate farmland. While most of our nursing homes are non-profit, we do have some for-profit operations as well. Many of our nursing homes are owned and operated by health care systems. Some of these are based outside of the state of North Dakota.

I don't know the status or the particulars of the case, but we should note that the North Dakota Attorney General has brought suit against one of these non-profit corporations over the question of how charitable receipts can be utilized as a result of their sale of some facilities, including nursing homes.

The proposed bill does not define a nursing home, nor does it establish any limitations on what kinds of nursing homes, nor does it address any issues that arise when a nursing home is owned by another entity.

By the time the myriad of unanswered questions are resolved, we would have legislation that was much more complicated than the ten lines of this bill. Yet, it still would be unacceptable because it breaks faith with the underlying principle that corporations, including non-profits, should not be engaged in the business of ownership and/or operation of farmland.

Therefore I would urge this committee to give this legislation a "do not pass" recommendation and for the North Dakota Senate to vote to kill the bill.

Thank you.

Respectfully submitted,

Karl Limvere, Chairperson
Rural Life Committee
North Dakota Conference of Churches
PO Box 725, Medina, ND 58467

zionucc@daktel.com

North Dakota Farmers Union

PO Box 2136 • Jamestown ND 58402-2136

PHONE: 701-252-2340

E-MAIL: ndfu@ndfu.org

800-366-NDFU (6338)

WEBSITE: www.ndfu.org

FAX: 701-252-6584

MISSION STATEMENT: North Dakota Farmers Union, guided by the principles of cooperation, legislation and education, is an organization committed to the prosperity of family farms and rural communities.



Testimony on SB 2343

March 13, 2003

House Agriculture Committee

Mr. chairman and members of the committee, my name is Richard Schlosser and I am here to speak in opposition to SB 2343 on behalf of the members of North Dakota Farmers Union. We are opposed to SB 2343 because we believe that the ownership as well as the operation of farmland should be in the control of the family farmers and ranchers who operate those farms and ranches. We believe that the family farm system of agricultural production can provide the opportunities of individual enterprise to all farm families in our society. No other system can achieve the economic and social stability, the soil and the environmental stewardship and the production efficiency of the family farm. Ownership, operation, and the management of a farm unit should be vested within the family who farms and makes a living from the farm unit. Policies that encourage the separation of ownership, operation or management of farm units are contrary to the interests of family farmers.

SB 2343 seeks to add new language to the chapter 10-06.1 of the North Dakota Century Code that would allow nursing homes to own farmland and ranch land beyond the established divestiture period.

Presently, the law states in chapter 10-06.1-11, "...a nonprofit that acquires land by gift or devise after December 31, 1984, the ownership of which is

North Dakota Farmers Union is a tax exempt agricultural organization under 501 (c) (6) of the Internal Revenue Code. It is not a charitable organization and therefore payments to North Dakota Farmers Union are not deductible as charitable contributions for income tax purposes. However, they may be deductible under other provisions of the Internal Revenue Code.

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not permitted under this chapter, shall divest itself of the land within ten years after the acquisition." The law presently allows the gifting of agricultural land to non-profits, but does not allow that nonprofit to hold the land for more than ten years. We question whether this is good public policy to allow, or should we say begin to allow, nonprofit corporations to retain ownership beyond the ten year divestiture requirement. Quite possibly, if SB 2343 passes, many other nonprofits would ask for the same exemption under this section of North Dakota law.

We feel that SB 2343 weakens the corporate farming statute and as so could potentially be a lost opportunity for producers who are attempting to own or expand their operations. More importantly, it may very well be a lost opportunity for a young farmer or rancher who is attempting to start out on his or her own.

I would simply conclude by saying that we at North Dakota Farmers Union feel that farmland should be in the control of family farmers and that laws should discourage concentration of farmland ownership by either for profit or nonprofit corporations. North Dakota has a long history of protecting and entrusting its agricultural resources to family farmers and ranchers. We feel that this bill would weaken those protections set forth in the anti-corporate farming law. We, therefore, urge a do not pass on SB 2343. Thank you.

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**STATEMENT OF
Karl Limvere, Chairperson
RURAL LIFE COMMITTEE
NORTH DAKOTA CONFERENCE OF CHURCHES**

**SENATE BILL # 2343
CORPORATE FARMING AMENDMENT**

**March 13, 2003 HEARING
HOUSE AGRICULTURE COMMITTEE**

Mr. Chairman. I am Karl Limvere, Pastor of the Zion United Church of Christ of Medina. I serve as the chairperson of the Rural Life Committee of the North Dakota Conference of Churches.

The North Dakota Conference of Churches and its Rural Life Committee have established goals and objectives defining the common good for rural America. We believe that ultimately, the test of any agricultural or economic policy is a moral one. Public policy must put human needs ahead of economic profits.

We envision and support the development of a rural society that promotes the greatest potential number of diversified family farming/ranching opportunities possible. We support a widely-dispersed structure of agriculture production with broad-based ownership that is dominated by resident, owner-operator, family farms and ranches.

We support authentic development in agricultural production systems that enhance family and community life, food security and the stewardship of creation. We oppose public policies which encourage or enhance the industrialization and corporatization of agricultural production.

We specifically believe that corporations (other than the restricted family farm operations as permitted in current law) should not be allowed to own or operate farm land or to engage in farming/ranching. We do not distinguish between for-profit or non-profit corporations. We simply believe corporations should not be allowed to engage in the productions of crops, livestock, produce, or other agricultural commodities.

Historically, North Dakota has been very protective of its agricultural land to prevent such land from being owned and operated by corporations. The state law governing farming by corporations has been carefully crafted and there have been very few exceptions to that law.

For example, one of these exceptions is for non-profit organizations, such as the Nature Conservancy, for the purpose of conservation of natural resources.

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However, there is another whole procedure requiring a final decision by the Governor of our state to make a determination as to whether it is in the public interest for such land to be purchased by such an organization.

Churches and religious organizations are among the primary organizers and operators of health care facilities in this state, including nursing homes. Therefore we certainly recognize the worthwhile objectives and charitable purposes of most non-profit nursing homes. However, we do not believe that a case can be made that nursing homes should be granted an exemption from our state's corporate farming laws.

And if they were, how would we differentiate among other non-profit corporations that also carry out worthy charitable activities and public good. I don't see anything unique about nursing homes that they should be provided an exemption from this law, while other also worthwhile non-profit organizations are not exempt. If you would grant an exemption for nursing homes, you would be hard pressed to deny any other charitable group from also having an exemption. Let's not open that door, because the bottom line is that non-profit corporations should not be in the business of ownership of agricultural land or farming and ranching.

When the state's corporate farming law was updated and modernized, the legislative assembly wisely provided only very limited exceptions under rigorous restrictions and did not make a general exception for non-profit corporations. There is no reason to change that now.

The current law allows non-profit corporations to receive agricultural land through bequests and gifts, but it does not allow such non-profits to continue to own or to operate that land beyond the ten-year limit. Farmland must be sold to an eligible buyer within that time limit. In fact, I would point out that this very point was upheld by the U.S. Supreme Court in a challenge brought by Ashbury Hospital of Fargo.

I have served on the governing boards of various religious and charitable organizations. We are always pleased to receive gifts and bequests from willing donors. However, I have found that in most situations, most charitable investment advisors will recommend that the standard procedure for accepting non-cash gifts is to liquidate those assets as quickly as possible so that they might be appropriately reinvested within the charitable organization's investment portfolio in accordance with the organization's long-term investment guidelines and needs. As a general rule non-profit organizations should not be in unrelated for-profit businesses or enterprises, including farming. As a general investment rule, non-profits should not be invested in high-risk ventures.

We would oppose SB2343 on the principle that agricultural land should not be owned or operated by corporations, whether they be profit or non-profit. In addition, I would point out that this particular bill leaves a broad base of questions unanswered. As written, it would allow either for-profit or non-profit corporations or privately-owned nursing homes to own and operate farmland. While most of

our nursing homes are non-profit, we do have some for-profit operations as well. Many of our nursing homes are owned and operated by health care systems. Some of these are based outside of the state.

I don't know the status or the particulars of the case, but we should note that the North Dakota Attorney General has brought suit against one of these non-profit corporations over the question of how they can utilize charitable receipts originating in North Dakota upon the sale of their properties. This bill as now amended by the Senate would provide that when a nursing home is sold it would have divest to itself of any agricultural property. However, this amendment did not address the underlying issue that the Attorney General had raised about the use of charitable gifts.

The bill does not define a "nursing home", nor does it establish any limitations on what kinds of nursing homes, nor does it address any issues that arise when a nursing home is owned by another entity. Nor does it define what a "corporate owner of a nursing home" might be. Remember not all nursing homes are non-profit. We also have seen non-profit health facilities sold to for-profit investors and corporations.

I am not trying to suggest that you should try fixing this bill in order to answer some of the questions I have raised, because I really don't think it is fixable. By the time the myriad of unanswered questions are resolved, we would have legislation that was much more complicated than the twelve lines of this bill. Yet, it still would be unacceptable because it breaks faith with the underlying principle that corporations, including non-profits, should not be engaged in the business of ownership and/or operation of farmland.

Therefore I would urge this committee to give this legislation a "do not pass" recommendation and for the North Dakota House of Representatives to vote "no" to defeat this unnecessary bill that would pry open a significant leak in the dike that has provided protection to our state's family farm system.

Thank you.

Respectfully submitted,

Karl Limvere, Chairperson
Rural Life Committee
North Dakota Conference of Churches
PO Box 725, Medina, ND 58467

zionucc@daktel.com 701-486-3369

Testimony Senate bill 2343

First of all I would really like to commend the people that make such generous gifts to nursing homes or other charities. Their hearts are in the right place.

However, I believe SB 2343 is a piece of legislation that would be disastrous if it is enacted.

We have heard virtually non-stop about the exodus of young people from our state and how we are going to address the issue of out migration. This bill, if passed, would only add to our declining rural areas. The people that need to own and operate our farms and ranches are our young farmers and ranchers. Not the nursing homes.

Farmers and ranchers contribute to our rural economy. They turn over every dollar they make seven times in the local area. They buy groceries, send their children to school, pay property taxes, and they keep the rural infrastructure alive and well.

This bill is different than the corporate farm bill that earlier passed the house. That bill was seen as a vehicle to infuse capital into a farming operation. This bill has the opposite effect by preventing an infusion of capital into the economy by a new owner.

The purpose of the anti-corporate farm law is simple; it is to prevent corporations from owning and controlling farmland. No more and no less. It was written to prohibit exactly what this proposed legislation does. Every time we weaken the current statute, we make it more likely that we would lose in a court challenge to our law. If this proposed legislation passes we are only one court case away from PETA, churches, schools, fraternal clubs, or even the state from owning and operating our ranches. You cannot write legislation to exempt a specific case without affecting all cases. In North Dakota there are 84 nursing homes. Twenty-eight of these are controlled by out of state parent companies. Twenty-five are non-profit, and three are for profit. If

SB 2343 should happen to pass, all 84 of these nursing homes will be in the farming and ranching business.

Under current law, if people wish to leave their farm to a nursing home or any other charitable cause, they can. However, the nursing home has nine years to divest them of the farming asset. That is an ample amount of time for any corporation, whether you are a coalmine or a nursing home, to divest of the land. That should not be changed.

Another concern you should have if this bill passes would be the financial exploitation of one of our most vulnerable segment of society, which are our elderly citizens.

For generations the business on our ranches and farms has been done with a nod and a handshake. On many places there are verbal agreements on how the land will be owned and operated in the event of the older partner's death. But then the unthinkable happens and one of the elderly couple (usually the husband) becomes ill or disabled and is placed in the nursing home. Now for the first time an elderly woman is alone and facing her first \$3000 a month nursing home bill. She's started to suffer from dementia, she's scared, alone, and most of all she's worried about her husband and knows she's too frail to care for him. A suit shows up and tells her, "Here just sign this and everything will be OK." And she does.

When her Grandson finds out he asks, "Grandma why did you sign all of our land over to the nursing home?"

"Well, he was such a nice young man wearing a suit and a tie. He told me if I just sign that paper that Grandpa will be taken care of, and they won't send me a bill anymore. And I didn't want you kids to worry!"

Senate Bill 2343 does have a provision in it that the land cannot be acquired as payment-in-kind for services, but the very real concern is there for the future.

Please give SB2343 a DO NOT Pass recommendation.

Marlen Maner
HealthCare Center
<mmnh@westriv.com>
>

To: "gkreidt@state.nd.us" <gkreidt@state.nd.us>
cc:
Subject: SB 2343

03/26/2003 09:38 AM
Please respond to
"mmnh@westriv.com"

Thanks for the call Gary, I find it hard to understand that the committee can legislate a 2 year extension on our land dilemma but I do appreciate the effort. Although our main objective is to allow a benefactors gift to remain indefinitely with the Nursing Home receiving it. Therefore an extension doesn't excite me too much and I would accept a do not pass with the same enthusiasm as an extension. I guess what I'm saying is the committee should vote on the bill as presented and not water it down so that they can pass it and feel better about it. I hope I am not sounding rude. Please get back to me with your thoughts. Thanks Rod

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10/22/03
Date

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OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

2344

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2003 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2344

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Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2344

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 02/14/03

Tape Number	Side A	Side B	Meter #
Tape 1	x		2450 to end
Tape 1		x	0-4050
Committee Clerk Signature <i>[Signature]</i>			

Minutes:

Senator Karen Krebsbach, Chairman opens SB 2344. All senators present.

Senator Dever introduces bill (Testimony attached)

Senator Nelson sponsor of bill speaks in support. She would like to eliminate confusion of definition of a veteran.

Bob Hanson, Veteran's Coordinating Council in support of SB 2344. The council consists of 3 members, the commander, the adjutant and one organizational representative. They must have a unanimous vote in order to support any legislation. We vote by organization not by individual. This bill has received unanimous recommendation from council and the council believes this is long overdue. We are in full support of Senator Dever's testimony.

He also submits testimony from Jim Brent, Cass county Veteran's Service Officer (Attached)

Senator Krebsbach : Is there anyway to know the numbers that this bill will have an effect on?

Hanson: No but when the money runs out the money runs out.

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[Signature]
Operator's Signature

10/22/03
Date

Page 2
Senate Government and Veterans Affairs Committee
Bill/Resolution Number SB 2344
Hearing Date 02/14/03

Senator Krebsbach : Do our neighboring states have a law like this?

Hanson: Not sure.

Senator Fairfield : How long has this definition been in place?

Hanson: I do not know?

Senator Dever : During the Vietnam war the draft was for 2 years and toward the end they started offering early outs.

Senator Fairfield : Under this definition, if someone were in active duty for 13 months and then injured are you considered a veteran?

Hanson: yes, if you are injured you are automatically considered veteran.

Jim Coats, former Representative of ND Legislature : (Information attached) in support of SB 2344

Neutral position

Ray Harkema, Commissioner of Veteran's Affairs for the State of ND (Testimony attached)

Senator Krebsbach : Could hardship have qualified that dental information from Mr. Brent's testimony.

Harkema: I would have to look at the discharge.

Continues testimony

Senator Krebsbach : Is there some way to make it more clear in our Century Code?

Harkema: I know there is I have not worked on that before coming here. I feel the 24 months is the hang-up here.

Senator Nelson : It looks like it is all in one clause and maybe to make it more clear and break it down.

Page 3

Senate Government and Veterans Affairs Committee

Bill/Resolution Number SB 2344

Hearing Date 02/14/03

Harkema: I would work on that with you.

Senator Fairfield : Could you tell me about the appeals process?

harkema: If someone appeals it goes to a subcommittee and they hear the appeal of the veteran.

That committee can overturn my decision.

Neutral position

David Munach, I feel more confuse about what a definition of a veteran. I don't understand what the big deal is about taking out the 24 months.

Neutral position

Ron Otto, Morton County Services: We didn't have anyone stand up in our meetings in opposition of this. We don't know why the testimony about "Normand" was denied, it shouldn't have been. This bill would just make it easier.

Brad Maajos, Member of Administrative Committee for Veteran's Affairs in support of SB 2344.

throughout my career I have been responsible for determining eligibility. Discharges come for many different reasons. What is the problem with the definition, this bill would bring the infamous "or" would take care of any other reason's to not grant that benefit. 2 ways to think about this issue, one deals with helping veteran's more , and one deals with questioning the impact of helping more veteran's.

John "Butch" Olson, President of Vietnam Motorcycles Club in support of SB 2344

Rudy Jensen, in favor of SB 2344.

Closed SB 2344

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10/22/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2344

Senate Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 02/17/03

Tape Number	Side A	Side B	Meter #
Tape 1	X		350-750
Committee Clerk Signature			

Minutes:

Senator Karen Krebsbach, Chairman reopens SB 2344. All senators present.

Senator Fairfield moves a Do Pass

Senator Wardner 2nd

6 Yes 0 No

Carrier: Senator Dever

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Date

Date: 2/17/03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2344

Senate Government and Veteran Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Fairfield Seconded By Wardner

Senators	Yes	No	Senators	Yes	No
Senator Karen Krebsbach, Chr.	✓		Senator April Fairfield	✓	
Senator Dick Dever, Vice Chr.	✓		Senator Carolyn Nelson	✓	
Senator Richard Brown	✓				
Senator Rich Wardner	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Dever

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

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10/22/03
Date

REPORT OF STANDING COMMITTEE (410)
February 18, 2003 8:27 a.m.

Module No: SR-31-3036
Carrier: Dover
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2344: Government and Veterans Affairs Committee (Sen. Krebebach, Chairman)
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2344
was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-31-3036

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10/22/03
Date

2003 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2344

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2344

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 3-14-03

Tape Number	Side A	Side B	Meter #
1	x		27.5-end
1		x	0-19.2
2	x		23.9-30.6
Committee Clerk Signature <i>Joseph Burke</i>			

Minutes: Chairman Klein called the meeting to order on SB 2344. All committee members were present.

Senator Dever was present and gave a statement in favor of SB 2344. **(SEE ATTACHED TESTIMONY)**

Representative Williams: I support the bill, is the bill addressing the problem? In the present language is it preventing some of our people from getting the loans and the grants?

Senator Dever: it is my understanding that yes, that has happened.

Jim Brent, Cass County, Retiree of the U.S. Army, also the County Veterans Service Officer: appeared in support of SB 2344. Cass County has the largest veteran population of the state, I do many loans and many grants that go to the Department of Veterans Affairs for approval. This bill is very important to me and also to my veterans especially who need our help the most, the people that are poor, the people that are homeless, substance abuse, Post Traumatic Stress Disorder and other things.

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10/22/03
Date

Page 2
House Government and Veterans Affairs Committee
Bill/Resolution Number SB 2344
Hearing Date 3-14-03

Bob Hanson, Vice Chairman of the Veterans Coordinating Council; appeared in support of SB 2234. (SEE ATTACHED TESTIMONY).

Representative Winrich: I think we should recognize that there are many different definitions in federal law. I for example am eligible for life insurance from the Veterans Administration, I'm not eligible for free medical at a Veterans Administration Hospital because I don't satisfy the requirements of that program there are a lot of different qualifications in the various federal program.

Representative Klein: I think we need to do this for these veterans that the testimony was here for not that I don't disagree with what your trying to do but I really think we have some problems out there on getting help for these veterans.

Jim Coats, N.D., Veterans Coordinating Council; appeared in support of SB 2344.

Representative Devlin: made a DO PASS motion on SB 2344.

Representative Meier: SECOND the motion.

VOTE: 14-YES 0-NO 0-ABSENT.

Motion carried.

Representative Haas: will carry the bill to the floor.

Meeting adjourned.

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10/22/03
Date

Roll Call Vote #:

Date: 3-14-03

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTE
SENATE BILL/RESOLUTION NO. SB 2344

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Pass

Motion Made By

Rep. Devlin

Seconded By

Rep. Meier

Representatives	Yes	No	Representatives	Yes	No
Chairman M.M. Klein	X		B. Amerman	X	
Vice Chairman B.B. Grande	X		L. Potter	X	
W.R. Devlin	X		C. Williams	X	
C.B. Haas	X		L. Winrich	X	
J. Kasper	X				
L.R. Klemm	X				
L. Meier	X				
M. Sitte	X				
W.W. Tieman	X				
R.H. Wikenheiser	X				

Total (Yes) 14 No 0

Absent 0

Floor Assignment

Rep. Haas

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

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Date

10/22/03

REPORT OF STANDING COMMITTEE (410)
March 14, 2003 1:12 p.m.

Module No: HR-46-4821
Carrier: Haas
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2344: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2344
was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-46-4821

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10/22/03
Date

2003 TESTIMONY

SB 2344

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10/22/03

Date

Testimony

SB 2344

Sen. Dick Dever

Senate Government And Veterans Affairs Committee

February 14, 2003

Madam Chairman, members of the committee, for the record I am Sen. Dick Dever, Senator from District 32, Bismarck.

I am the prime sponsor of SB 2344. It is an extremely simple bill. There are no hidden agendas or quirks or mandates in this bill.

This bill changes the definition of veteran for the grant and loan programs under the control of the administrative committee on veterans affairs and administered by the department of veterans affairs as contained in NDCC 37-14. Currently, NDCC 37-14 uses the definition of veteran as contained in NDCC 37-01-40. This definition change would more closely mirror the definition of veteran under federal law for being eligible for VA benefits.

Current law, NDCC 37-01-40, subsection 1, defines veteran as, "A 'veteran' is a person who has served on continuous federalized active military duty for twenty-four months or the full period for which the person was called or ordered to active military duty, whichever is shorter, and who was discharged or released therefrom under other than dishonorable conditions. A discharge reflecting 'expiration of term of service' or 'completion of required service' or words to that effect qualifies the shorter term of service as making the person a veteran." This bill does not change the definition of veteran for any other issue, such as veterans preference.

The federal definition of veteran, as provided by Mr. Dale Ronning, the North Dakota VFW national service officer at the Fargo VA facility to Bob Hanson on February 3, 2003 is, according to Title 38 U.S.C., Section 101, "The term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." Mr. Ronning stated for certain benefits there may be other conditions required. However, he also stated, "The key here is 'under conditions other than dishonorable.'" I am making available a copy of his email with my testimony.

For a North Dakota veteran to be eligible to currently receive state benefits, that individual must meet the definition of veteran in NDCC 37-01-40 which has a 24 month service criteria. My bill changes that the requirement for loan and grant programs for North Dakota veterans eligibility so it would more closely mirror the federal government's definition of veteran by changing our definition to say that "a 'veteran' means an individual who served in the armed forces of the United States on federal active duty for reasons other than training and who has been discharged under other than dishonorable conditions." It makes absolutely no sense to make our state's

veterans jump through more hoops for state veterans benefits and programs than they do to receive federal VA benefits.

Under the current definition I would not qualify as a veteran under state law because I do not have a full 24 months of service even though I meet all the other criteria, served my country honorably and am considered a veteran by the federal government.

There are many others who may have served in the service for less than 24 months, received a discharge which is other than dishonorable and are not eligible to receive state benefits, because they do not have 24 months of service. The 24 months of service was put in when this nation had a draft which was for 24 months. We no longer have a draft. This criteria is no longer pertinent.

Let me make it clear simply because this language is changed to make it more like the federal definition, it does not mandate that the veteran will receive a loan or grant. Obviously, if the loan or grant program does not have the money to make grants or loans, the administrative committee on veterans affairs, which has the overall responsibility for these programs, may also put conditions on these programs with which the commissioner of veterans affairs must comply in order to ensure as many veterans as possible may use these programs without overspending the amounts available for each program. I have trust in the administrative committee's ability to monitor these programs in a manner which will prohibit the commissioner from overspending the amounts available to be used for either or both programs, while still allowing the maximum number of veterans under the new definition to use the programs. I don't believe a commissioner would do anything which the administrative committee has not authorized that person to do.

I encourage you to review the other cosponsors on this bill to see who felt this was an important issue which needed to be addressed, and changed, so that those who have served our country, regardless of amount of time they were on active duty, are considered to be eligible to participate in our programs benefiting our veterans. I think you will agree it is an impressive listing.

The change streamlines the process. It leaves no doubt who is eligible. It states clearly that the only criteria to be considered to be eligible for state benefits under the grant and loan programs under the control of the administrative committee on veterans affairs are 1) if they served in the armed forces of the United States on federal active duty for reasons other than training and

2) that they had been discharged under other than dishonorable conditions.

I respectfully ask that you give this simple legislation a do pass recommendation.

Thank you.

Deanna Waller
Operator's Signature

10/22/03
Date

Bob Hanson

From: <VFWDRONN@vba.VA.gov>
To: <rehanson@bis.midco.net>
Sent: Monday, February 03, 2003 8:07 AM
Subject: RE: Definition

According to Title 38 USC, Section 101: The term "veteran" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

The key here is "under conditions other than dishonorable".

Certain veteran benefits are tied to provisions. For example, to receive pension, a veteran must have served 1 day of wartime service.

For certain benefits, eligible veterans must have served for a period of more than 180 days and discharged or released with other than a dishonorable.

So, for certain benefits, there are certain provisions.

From: Bob Hanson[SMTP:rehanson@bis.midco.net]
Sent: Monday, February 03, 2003 5:15 AM
To: Dale Roming
Subject: Definition

Date:

I have been asked several times what is the definition of veteran to receive federal VA benefits. I have a general idea but could you please email me what it actually is. I would like to have it as soon as possible so I can have it available when asked. Really appreciate your help.

Thank you.

Bob Hanson

2/14/2003

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Bob: Please read and submit the following statement to the North Dakota Senate on my behalf on February 14, 2003:

Good Morning,

My name is Jim Brent and I am a resident of Fargo, North Dakota. I am also a veteran with 20 years of active military service in the United States Army, retiring from the 7th Infantry Division, at Fort Ord, California, in the grade of Sergeant First Class on November 1, 1987. Currently I serve as the Cass County Veterans Service Officer, a position I have held since my appointment on February 1, 1996. Not only is Cass County the highest populated county in North Dakota it also is home to the largest veterans population in the state as well. Because of this ever growing veterans population we at Cass County Veterans Service have the opportunity to provide service and make application for both federal and state benefits for our veterans and their family members which I believe by far exceeds that of any other county in North Dakota.

The issue before the senate this morning is Senate Bill 2344. The passing of this bill is of vital importance to the veterans of North Dakota, especially for those veterans who live on a fixed income and experience daily difficulty making ends meet. Let me share with you the case of a an actual veteran we will call NORMAND:

Normand is a Naval veteran who served his country both "HONORABLY & FAITHFULLY" during the period of the Vietnam War. He was an impoverished veteran with a spouse, who met the basic qualifications for federal (VA) benefits and was, in fact, drawing non-service connected disability pension. The VA pension rate was low enough, however, to qualify him for the North Dakota Emergency Grant Assistance Program.

Normand came to our office with a request for emergency assistance for a grossly infected mouth. We sent him to a local dentist for examination and were advised that he needed to be placed on antibiotics immediately due to the serious nature of his condition. We submitted an application for emergency assistance to the North Dakota Department of Veterans Affairs requesting funding for emergency dental care and the application was denied on the basis that our veteran did not qualify for the program because he did not serve on continuous federalized active military duty for twenty-four months or the full term for which he was called or ordered to active military duty.

The veteran's term of active military service for which he was called was twenty-four months. He actually served for one year, ten months, and eight days of active service. Just one month and twenty-two days short of the required twenty-four months. The veteran was assigned to the USS Connable (DE 1056) and his ship was deployed to sea from Norfolk, Virginia. Normand, with less that two months to go on his initial enlistment did not deploy with the vessel and was discharged early. This, from the Navy point of view, was far less expensive and cumbersome than finding a way to return the veteran to port for processing and separation.

This is but one of many examples of deserving veterans who were denied access to North Dakota veterans benefits simply because they failed to meet the strict criteria of the current law. Please

Deanna Hallmark
Operator's Signature

10/22/03

Date

keep in mind that most if not all qualified for VA non-service connected disability pension or other federal programs based on their "HONORABLE & FAITHFUL" service to their country, however, weren't able to qualify for an Emergency Assistance Grant through the state of North Dakota.

Honorable Senators, the North Dakota veterans who are impoverished and need this assistance the most will benefit from your approval of SB 2344. I respectfully request that you not turn your back on these deserving individuals who answered their call to duty. "Freedom Isn't Free".

Sincerely,

James G. Brent

1.

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Date

NORTH DAKOTA VETERANS CEMETERY

1825 46th St., Mandan, North Dakota 58554

Guidelines

For the mutual honor and benefit of Veterans, members of the National Guard, Reserve and their spouses, the North Dakota Veterans Cemetery has adopted the following guidelines. All burials shall be conducted in accordance with these rules and all visitors shall abide by these guidelines.

1. **PAYMENT OF TRANSPORTATION COSTS.** All transportation costs shall be paid by the veteran's family or from private funds.
2. **PREPARATION FOR BURIAL.** a. All bodies shall be prepared for burial, and services conducted by licensed mortuaries, and morticians in and for the state of North Dakota, under the rules and regulations of the state of North Dakota, board of morticians. b. Each family shall have the right to select their own mortuary firm for arrangements.
3. **CREMATED REMAINS.** Cremated human remains must be provided in a container acceptable to the Cemetery Manager.
4. **BURIAL SERVICES.** All committal services will be conducted in the interment center, unless otherwise arranged with the Cemetery Manager.
5. **MILITARY HONORS.** Arranging for military honors is a responsibility of the family of the deceased, however cemetery personnel will offer suggestions as to whom the family might contact.
6. **BURIAL PLOTS.** Burial plots will be provided in the order of interment as the need arises.
7. **PLOT CHARGES.** There will be no charge for burial plots, however, there will be an opening and closing charge for all non-military interments.

20. **NON-VETERAN SPOUSE / DEPENDENT CHILDREN ENTITLEMENT.** a. Any non-military spouse and eligible dependent children of an eligible veteran or Guard / Reserve member may also qualify for burial in the North Dakota State Veterans' cemetery providing that the interment of the qualifying non-military spouse is in the same burial plot as that provided for the eligible member. b. The non-military spouse or dependent children burial must comply with all rules applicable to the burial of the military member.

21. **HEADSTONE.** Each grave in the cemetery shall be marked with an upright granite headstone. A headstone is provided without charge for all veterans and twenty year National Guard and reserve service members. This benefit does not apply to National Guard or Reserve members who have not served at least twenty years and are not veterans. The next of kin shall purchase these headstones.

22. **MEMORIAL MARKERS.** A memorial marker may be placed for eligible veterans whose remains have not been recovered, have been scattered and have not been memorialized at another cemetery.

23. ADDITIONAL INFORMATION:

Phone: (701) 667-1418

Fax: (701) 667-1419

WEB SITE: www.state.nd.us/vet/

E-Mail: vetcem@nd.ngb.army.mil

0501

8. **BURIAL VAULTS.** The use of cement burial vaults is required. The next of kin will make the purchase arrangements of the vault with the funeral director.

9. **WORKING HOURS.** The cemetery will be open for interments Monday thru Friday throughout the year from 8 A.M. to 4 P.M. local time, except holidays.

10. **VISITING HOURS.** The cemetery will be opened everyday throughout the year. The Cemetery Manager must approve exceptions to these stated hours.

11. **RESTRICTIONS.** In keeping with the honor bestowed to these hallowed grounds visitors are requested to conduct themselves with dignity and sacredness. Accordingly, visitors will not be permitted to:

- a. Litter the grounds;
- b. Cut, break or injure trees, shrubs, grass or other plantings;
- c. Use the cemetery for any form of sports or recreation, to include but not limited to, jogging, skating, skiing and bicycling;
- d. Use the cemetery as picnic grounds;
- e. Use the cemetery for public gatherings of a partisan nature;
- f. Allow pets to run loose; or
- g. Otherwise engage in any other demeaning activity or boisterous action.

12. **FRESH CUT FLOWERS.** Fresh cut flowers may be placed on graves at any time during normal working hours. Only temporary metal flower containers are permitted. Floral items will be removed from graves when they become faded or unsightly.

13. **ARTIFICIAL FLOWERS.** Artificial flowers may be placed on graves during the period of October 15th to the 10th day following Memorial Day.

14. **CHRISTMAS FLOWERS.** Christmas wreaths or blankets are permitted on graves during the Christmas season commencing 1 December and will be removed by caretakers on 1 February each year.

15. **PERMANENT PLANTINGS.** Permanent plantings will not be permitted on graves at any time. Potted plants / artificial flowers will be permitted on graves during the period 10 days before and 10 days after Easter Sunday and on Memorial Day.

16. **COMMEMORATIVE ITEMS.** Statues, vigil lights, glass objects of any nature or any other commemorative items are not permitted on the graves at any time.

17. **U.S. FLAG AND CEMETERY FLAGPOLE.** a. The flag of the United States will be displayed each day of the year. b. The flag of the United States will be brought to half staff one-half hour before the start of the first committal service of the day and returned to full staff one-half hour after the last service is completed for the day. c. On Memorial Day, the flag of the United States will be flown at half staff until conclusion of the Memorial Day service and returned to full staff thereafter, or as directed by the Cemetery Manager. All graves will be decorated on Memorial Day with small United States Flags. U.S. Flags are not permitted on graves at any other time.

18. **REMOVAL OF DECORATIVE ITEMS.** During lawn mowing and ground maintenance season all floral items will be removed from graves when that section of the cemetery requires mowing or other maintenance.

19. **ELIGIBILITY.** ~~Any~~ **Veteran of wartime or peacetime service who is eligible for burial in a National Cemetery, in accordance with VA Publication VA-NCS-IS-1 (Interment in VA National Cemeteries).** b. Present & past National Guard members and present & past members of the Army, Air Force, Navy, Marine Corps and Coast Guard Reserve forces. Length of service in the National Guard and Reserve, for enlisted personnel will be completion of at least one term of enlistment and officers who have completed at least four years of service and receive a discharge shown as: "Honorable", "Under Honorable Conditions", or "General". Undesirable, bad conduct, and any type of discharge other than honorable may not qualify the individual for burial, depending upon a determination made by the Adjutant General of North Dakota. c. Any person authorized for interment by the Adjutant General of North Dakota.

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UNITED STATES CODE ANNOTATED
TITLE 38. ~~REDACTED~~
PART I--GENERAL PROVISIONS
CHAPTER 1--GENERAL

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Current through P.L. 107-377 (End) approved 12-19-02

§ 101. Definitions

For the purposes of this title--

(1) The terms "Secretary" and "Department" mean the Secretary of Veterans Affairs and the Department of Veterans Affairs, respectively.

(2) The term "~~REDACTED~~" means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.

(3) The term "surviving spouse" means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.

(4)(A) The term "child" means (except for purposes of chapter 19 of this title (other than with respect to a child who is an insurable dependent under section 1965(10)(B) of such chapter) and section 8502(b) of this title) a person who is unmarried and--

(i) who is under the age of eighteen years;

(ii) who, before attaining the age of eighteen years, became permanently incapable of self-support; or

(iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution;

and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Secretary to be the father of such child. A person shall be deemed, as of the date of death of a veteran, to be the legally adopted child of such veteran if such person was at the time of the veteran's death living in the veteran's household and was legally adopted by the veteran's surviving spouse before August 26, 1961, or within two years after the veteran's death; however, this sentence shall not apply if at the time of the veteran's death, such person was receiving regular contributions toward the person's support from some individual other than

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the veteran or the veteran's spouse, or from any public or private welfare organization which furnishes services or assistance for children. A person with respect to whom an interlocutory decree of adoption has been issued by an appropriate adoption authority shall be recognized thereafter as a legally adopted child, unless and until that decree is rescinded, if the child remains in the custody of the adopting parent or parents during the interlocutory period. A person who has been placed for adoption under an agreement entered into by the adopting parent or parents with any agency authorized under law to so act shall be recognized thereafter as a legally adopted child, unless and until such agreement is terminated, if the child remains in the custody of the adopting parent or parents during the period of placement for adoption under such agreement. A person described in clause (ii) of the first sentence of this subparagraph who was a member of a veteran's household at the time the person became 18 years of age and who is adopted by the veteran shall be recognized as a legally adopted child of the veteran regardless of the age of such person at the time of adoption.

(B) For the purposes of subparagraph (A) of this paragraph, in the case of an adoption under the laws of any jurisdiction other than a State (as defined in section 101(20) of this title and including the Commonwealth of the Northern Mariana Islands)--

(i) a person residing outside any of the States shall not be considered to be a legally adopted child of a veteran during the lifetime of such veteran (including for purposes of this subparagraph a Commonwealth Army veteran or new Philippine Scout, as defined in section 3566 of this title) unless such person--

(I) was less than eighteen years of age at the time of adoption;

(II) is receiving one-half or more of such person's annual support from such veteran;

(III) is not in the custody of such person's natural parent, unless such natural parent is such veteran's spouse; and

(IV) is residing with such veteran (or in the case of divorce following adoption, with the divorced spouse who is also an adoptive or natural parent) except for periods during which such person is residing apart from such veteran (or such divorced spouse) for purposes of full-time attendance at an educational institution or during which such person or such veteran (or such divorced spouse) is confined in a hospital, nursing home, other health-care facility, or other institution; and

(ii) a person shall not be considered to have been a legally adopted child of a veteran as of the date of such veteran's death and thereafter unless--

(I) at any time within the one-year period immediately preceding such veteran's death, such veteran was entitled to and was receiving a dependent's allowance or similar monetary benefit under this title for such person; or

(II) for a period of at least one year prior to such veteran's death, such person met the requirements of clause (i) of this subparagraph.

(5) The term "parent" means (except for purposes of chapter 19 of this title) a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than one year stood in the relationship of a parent to a veteran at any time before the veteran's entry into active military, naval, or air service or if two persons stood in the relationship of a father or a mother for one year or more, the person who last stood in the relationship of father or mother before the veteran's last entry into active military, naval, or air service.

(6) The term "Spanish-American War" (A) means the period beginning on April 21, 1898, and ending on July 4, 1902, (B) includes the Philippine Insurrection and the Boxer Rebellion, and (C) in the case of a veteran who served with the United States military forces engaged in hostilities in the Moro Province, means the period beginning on April 21, 1898, and ending on July 15, 1903.

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(7) The term "World War I" (A) means the period beginning on April 6, 1917, and ending on November 11, 1918, and (B) in the case of a veteran who served with the United States military forces in Russia, means the period beginning on April 6, 1917, and ending on April 1, 1920.

(8) The term "World War II" means (except for purposes of chapters 31 and 37 of this title) the period beginning on December 7, 1941, and ending on December 31, 1946.

(9) The term "Korean conflict" means the period beginning on June 27, 1950, and ending on January 31, 1955.

(10) The term "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof.

(11) The term "period of war" means the Spanish-American War, the Mexican border period, World War I, World War II, the Korean conflict, the Vietnam era, the Persian Gulf War, and the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

(12) The term "veteran of any war" means any veteran who served in the active military, naval, or air service during a period of war.

(13) The term "compensation" means a monthly payment made by the Secretary to a veteran because of service-connected disability, or to a surviving spouse, child, or parent of a veteran because of the service-connected death of the veteran occurring before January 1, 1957.

(14) The term "dependency and indemnity compensation" means a monthly payment made by the Secretary to a surviving spouse, child, or parent (A) because of a service-connected death occurring after December 31, 1956, or (B) pursuant to the election of a surviving spouse, child, or parent, in the case of such a death occurring before January 1, 1957.

(15) The term "pension" means a monthly or other periodic payment made by the Secretary to a veteran because of service, age, or non-service-connected disability, or to a surviving spouse or child of a veteran because of the non-service-connected death of the veteran.

(16) The term "service-connected" means, with respect to disability or death, that such disability was incurred or aggravated, or that the death resulted from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(17) The term "non-service-connected" means, with respect to disability or death, that such disability was not incurred or aggravated, or that the death did not result from a disability incurred or aggravated, in line of duty in the active military, naval, or air service.

(18) The term "discharge or release" includes (A) retirement from the active military, naval, or air service, and (B) the satisfactory completion of the period of active military, naval, or air service for which a person was obligated at the time of entry into such service in the case of a person who, due to enlistment or reenlistment, was not awarded a discharge or release from such period of service at the time of such completion thereof and who, at such time, would otherwise have been eligible for the award of a discharge or release under conditions other than dishonorable.

(19) The term "State home" means a home established by a State (other than a possession) for veterans disabled by age, disease, or otherwise who by reason of such disability are incapable of earning a living. Such term also includes such a home which furnishes nursing home care for veterans.

(20) The term "State" means each of the several States, Territories, and possessions of the United States, the

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District of Columbia, and the Commonwealth of Puerto Rico. For the purpose of section 2303 and chapters 34 and 35 of this title, such term also includes the Canal Zone.

(21) The term "active duty" means--

- (A) full-time duty in the Armed Forces, other than active duty for training;
- (B) full-time duty (other than for training purposes) as a commissioned officer of the Regular or Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits" or (iii) at any time, for the purposes of chapter 13 of this title;
- (C) full-time duty as a commissioned officer of the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey (i) on or after July 29, 1945, or (ii) before that date (I) while on transfer to one of the Armed Forces, or (II) while, in time of war or national emergency declared by the President, assigned to duty on a project for one of the Armed Forces in an area determined by the Secretary of Defense to be of immediate military hazard, or (III) in the Philippine Islands on December 7, 1941, and continuously in such islands thereafter, or (iii) at any time, for the purposes of chapter 13 of this title;
- (D) service as a cadet at the United States Military, Air Force, or Coast Guard Academy, or as a midshipman at the United States Naval Academy; and
- (E) authorized travel to or from such duty or service.

(22) The term "active duty for training" means--

- (A) full-time duty in the Armed Forces performed by Reserves for training purposes;
- (B) full-time duty for training purposes performed as a commissioned officer of the Reserve Corps of the Public Health Service (i) on or after July 29, 1945, or (ii) before that date under circumstances affording entitlement to "full military benefits", or (iii) at any time, for the purposes of chapter 13 of this title;
- (C) in the case of members of the Army National Guard or Air National Guard of any State, full-time duty under section 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law;
- (D) duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under chapter 103 of title 10 for a period of not less than four weeks and which must be completed by the member before the member is commissioned; and
- (E) authorized travel to or from such duty.

The term does not include duty performed as a temporary member of the Coast Guard Reserve.

(23) The term "inactive duty training" means--

- (A) duty (other than full-time duty) prescribed for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned under section 206 of title 37 or any other provision of law;
- (B) special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by an authority designated by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

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(C) training (other than active duty for training) by a member of, or applicant for membership (as defined in section 8140(g) of title 5) in, the Senior Reserve Officers' Training Corps prescribed under chapter 103 of title 10.

In the case of a member of the Army National Guard or Air National Guard of any State, such term means duty (other than full-time duty) under sections 316, 502, 503, 504, or 505 of title 32, or the prior corresponding provisions of law. Such term does not include (i) work or study performed in connection with correspondence courses, (ii) attendance at an educational institution in an inactive status, or (iii) duty performed as a temporary member of the Coast Guard Reserve.

(24) The term "active military, naval, or air service" includes--

(A) active duty;

(B) any period of active duty for training during which the individual concerned was disabled or died from a disease or injury incurred or aggravated in line of duty; and

(C) any period of inactive duty training during which the individual concerned was disabled or died--

(i) from an injury incurred or aggravated in line of duty; or

(ii) from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident occurring during such training.

(25) The term "Secretary concerned" means--

(A) the Secretary of the Army, with respect to matters concerning the Army;

(B) the Secretary of the Navy, with respect to matters concerning the Navy or the Marine Corps;

(C) the Secretary of the Air Force, with respect to matters concerning the Air Force;

(D) the Secretary of Transportation, with respect to matters concerning the Coast Guard;

(E) the Secretary of Health and Human Services, with respect to matters concerning the Public Health Service; and

(F) the Secretary of Commerce, with respect to matters concerning the National Oceanic and Atmospheric Administration or its predecessor organization the Coast and Geodetic Survey.

(26) The term "Reserve" means a member of a reserve component of one of the Armed Forces.

(27) The term "reserve component" means, with respect to the Armed Forces--

(A) the Army Reserve;

(B) the Naval Reserve;

(C) the Marine Corps Reserve;

(D) the Air Force Reserve;

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- (E) the Coast Guard Reserve;
- (F) the Army National Guard of the United States; and
- (G) the Air National Guard of the United States.

(28) The term "nursing home care" means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care. Such term includes services furnished in skilled nursing care facilities, in intermediate care facilities, and in combined facilities. It does not include domiciliary care.

(29) The term "Vietnam era" means the following:

(A) The period beginning on February 28, 1961, and ending on May 7, 1975, in the case of a veteran who served in the Republic of Vietnam during that period.

(B) The period beginning on August 5, 1964, and ending on May 7, 1975, in all other cases.

(30) The term "Mexican border period" means the period beginning on May 9, 1916, and ending on April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

(31) The term "spouse" means a person of the opposite sex who is a wife or husband.

(32) The term "former prisoner of war" means a person who, while serving in the active military, naval or air service, was forcibly detained or interned in line of duty--

(A) by an enemy government or its agents, or a hostile force, during a period of war; or

(B) by a foreign government or its agents, or a hostile force, under circumstances which the Secretary finds to have been comparable to the circumstances under which persons have generally been forcibly detained or interned by enemy governments during periods of war.

(33) The term "Persian Gulf War" means the period beginning on August 2, 1990, and ending on the date thereafter prescribed by Presidential proclamation or by law.

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UNITED STATES CODE ANNOTATED
TITLE 20. EDUCATION
CHAPTER 28--HIGHER EDUCATION RESOURCES AND STUDENT ASSISTANCE
SUBCHAPTER IV--STUDENT ASSISTANCE
PART E--NEED ANALYSIS

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§ 1087vv. Definitions

As used in this part:

(a) Total income

(1) Except as provided in paragraph (2), the term "total income" is equal to adjusted gross income plus untaxed income and benefits for the preceding tax year minus excludable income (as defined in subsection (e) of this section).

(2) No portion of any student financial assistance received from any program by an individual, no portion of a national service educational award or post-service benefit received by an individual under title I of the National and Community Service Act of 1990 [42 U.S.C. 12511 et seq.], and no portion of any tax credit taken under section 25A of Title 26, shall be included as income or assets in the computation of expected family contribution for any program funded in whole or in part under this chapter.

(b) Untaxed income and benefits

The term "untaxed income and benefits" means--

- (1) child support received;
- (2) welfare benefits, including assistance under a State program funded under part A of title IV of the Social Security Act [42 U.S.C.A. § 601 et seq.] and aid to dependent children;
- (3) workman's compensation;
- (4) veterans' benefits such as death pension, dependency, and indemnity compensation, but excluding veterans' education benefits as defined in subsection (c) of this section;
- (5) interest on tax-free bonds;
- (6) housing, food, and other allowances (excluding rent subsidies for low-income housing) for military, clergy, and others (including cash payments and cash value of benefits);
- (7) cash support or any money paid on the student's behalf, except, for dependent students, funds

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provided by the student's parents;

- (8) the amount of earned income credit claimed for Federal income tax purposes;
- (9) untaxed portion of pensions;
- (10) credit for Federal tax on special fuels;
- (11) the amount of foreign income excluded for purposes of Federal income taxes;
- (12) untaxed social security benefits;
- (13) payments to individual retirement accounts and Keogh accounts excluded from income for Federal income tax purposes; and
- (14) any other untaxed income and benefits, such as Black Lung Benefits, Refugee Assistance, railroad retirement benefits, or benefits received through participation in employment and training activities under title I of the Workforce Investment Act of 1998 [29 U.S.C.A. § 2801 et seq.].

(c) Veteran and veterans' education benefits

(1) ~~any individual who--~~ any individual who--

(A) has engaged in the active duty in the United States Army, Navy, Air Force, Marines, or Coast Guard; and

(B) was released under a condition other than dishonorable.

(2) The term "veterans' education benefits" means veterans' benefits the student will receive during the award year, including but not limited to the following:

- (A) Title 10, chapter 2: Reserve Officer Training Corps scholarship.
- (B) Title 10, chapter 106: Selective Reserve.
- (C) Title 10, chapter 107: Selective Reserve Educational Assistance Program.
- (D) Title 37, chapter 2: Reserve Officer Training Corps Program.
- (E) Title 38, chapter 30: Montgomery GI Bill--active duty.
- (F) Title 38, chapter 31: vocational rehabilitation.
- (G) Title 38, chapter 32: Post-Vietnam Era Veterans' Educational Assistance Program.
- (H) Title 38, chapter 35: Dependents Educational Assistance Program.
- (I) Public Law 97-376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits).
- (J) Public Law 96-342, section 903: Educational Assistance Pilot Program.

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(d) Independent student

The term "independent", when used with respect to a student, means any individual who--

- (1) is 24 years of age or older by December 31 of the award year;
- (2) is an orphan or ward of the court or was a ward of the court until the individual reached the age of 18;
- (3) is a veteran of the Armed Forces of the United States (as defined in subsection (c)(1) of this section);
- (4) is a graduate or professional student;
- (5) is a married individual;
- (6) has legal dependents other than a spouse; or
- (7) is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

(e) Excludable income

The term "excludable income" means--

- (1) any student financial assistance awarded based on need as determined in accordance with the provisions of this part, including any income earned from work under part C of subchapter I of chapter 34 of Title 42;
- (2) any living allowance received by a participant in a program established under the National and Community Service Act of 1990 [42 U.S.C.A. § 12501 et seq.];
- (3) child support payments made by the student or parent; and
- (4) payments made and services provided under part E of title IV of the Social Security Act [42 U.S.C.A. § 670 et seq.].

(f) Assets

(1) The term "assets" means cash on hand, including the amount in checking and savings accounts, time deposits, money market funds, trusts, stocks, bonds, other securities, mutual funds, tax shelters, and the net value of real estate, income producing property, and business and farm assets.

(2) With respect to determinations of need under this subchapter and part C of subchapter I of chapter 34 of Title 42, other than for subpart 4 of part A of this subchapter, the term "assets" shall not include the net value of--

- (A) the family's principal place of residence; or
- (B) a family farm on which the family resides.

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Deanna Ballin
Operator's Signature

10/22/03
Date

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(g) Net assets

The term "net assets" means the current market value at the time of application of the assets (as defined in subsection (f) of this section), minus the outstanding liabilities or indebtedness against the assets.

(h) Treatment of income taxes paid to other jurisdictions

(1) The tax on income paid to the Governments of the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau under the laws applicable to those jurisdictions, or the comparable tax paid to the central government of a foreign country, shall be treated as Federal income taxes.

(2) References in this part to Title 26, Federal income tax forms, and the Internal Revenue Service shall, for purposes of the tax described in paragraph (1), be treated as references to the corresponding laws, tax forms, and tax collection agencies of those jurisdictions, respectively, subject to such adjustments as the Secretary may provide by regulation.

(i) Current balance

The term "current balance of checking and savings accounts" does not include any funds over which an individual is barred from exercising discretion and control because of the actions of any State in declaring a bank emergency due to the insolvency of a private deposit insurance fund.

(j) Other financial assistance; tuition prepayment plans

(1) For purposes of determining a student's eligibility for funds under this subchapter and part C of subchapter I of chapter 34 of Title 42, estimated financial assistance not received under this subchapter and part C of subchapter I of chapter 34 of Title 42 shall include all scholarships, grants, loans, or other assistance known to the institution at the time the determination of the student's need is made, including veterans' education benefits as defined in subsection (c) of this section, and national service educational awards or post-service benefits under title I of the National and Community Service Act of 1990 [42 U.S.C.A. § 12511 et seq.].

(2)(A) Except as provided in subparagraph (B), for purposes of determining a student's eligibility for funds under this subchapter and part C of subchapter I of chapter 34 of Title 42, tuition prepayment plans shall reduce the cost of attendance (as determined under section 1087ll of this title) by the amount of the prepayment, and shall not be considered estimated financial assistance.

(B) If the institutional expense covered by the prepayment must be part of the student's cost of attendance for accounting purposes, the prepayment shall be considered estimated financial assistance.

(3) Notwithstanding paragraph (1), a tax credit taken under section 25A of Title 26 shall not be treated as estimated financial assistance for purposes of section 1087kk(3) of this title.

(k) Dependents

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(1) Except as otherwise provided, the term "dependent of the parent" means the student, dependent children of the student's parents, including those children who are deemed to be dependent students when applying for aid under this subchapter and part C of subchapter I of chapter 34 of Title 42, and other persons who live with and receive more than one-half of their support from the parent and will continue to receive more than half of their support from the parent during the award year.

(2) Except as otherwise provided, the term "dependent of the student" means the student's dependent children and other persons (except the student's spouse) who live with and receive more than one-half of their support from the student and will continue to receive more than half of their support from the student during the award year.

(l) Family size

(1) In determining family size in the case of a dependent student--

(A) If the parents are not divorced or separated, family members include the student's parents, and the dependents of the student's parents including the student;

(B) If the parents are divorced or separated, family members include the parent whose income is included in computing available income and that parent's dependents, including the student; and

(C) If the parents are divorced and the parent whose income is so included is remarried, or if the parent was a widow or widower who has remarried, family members also include, in addition to those individuals referred to in subparagraph (B), the new spouse and any dependents of the new spouse if that spouse's income is included in determining the parents' adjusted available income.

(2) In determining family size in the case of an independent student--

(A) family members include the student, the student's spouse, and the dependents of the student; and

(B) If the student is divorced or separated, family members do not include the spouse (or ex-spouse), but do include the student and the student's dependents.

(m) Business assets

The term "business assets" means property that is used in the operation of a trade or business, including real estate, inventories, buildings, machinery, and other equipment, patents, franchise rights, and copyrights.

CREDIT(S)
2002 Electronic Update

(Pub.L. 89-329, Title IV, § 480, as added Pub.L. 99-498, Title IV, § 406(a), Oct. 17, 1986, 100 Stat. 1472, and amended Pub.L. 100-50, § 14(28), June 3, 1987, 101 Stat. 353; Pub.L. 100-369, § 7(b), July 18, 1988, 102 Stat. 837; Pub.L. 101-610, Title I, § 185(3), (4), Nov. 16, 1990, 104 Stat. 3168; Pub.L. 102-325, Title IV, § 471(a), July 23, 1992, 106 Stat. 606; Pub.L. 103-82, Title I, § 102(c)(4), (5), Sept. 21, 1993, 107 Stat. 824; Pub.L. 103-208, § 2(g)(17) to (20), Dec. 20, 1993, 107 Stat. 2474; Pub.L. 104-193, Title I, § 110(h)(2), Aug. 22, 1996, 110 Stat. 2172; Pub.L. 105-78, Title VI, § 609(j), (k), Nov. 13, 1997, 110 Stat. 1524; Pub.L. 105-244, Title IV, § 479, Oct. 7, 1998, 112 Stat. 1732; Pub.L. 105-277, Div. A, § 101(f) [Title VIII, § 405(d)(15)(B), (f)(12)(B)], Oct.

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5 U.S.C.A. § 2108

Page 1

UNITED STATES CODE ANNOTATED
TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
PART III--EMPLOYEES
SUBPART A--GENERAL PROVISIONS
CHAPTER 21--DEFINITIONS

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Current through P.L. 107-377 (End) approved 12-19-02

§ 2108. Veteran; disabled veteran; preference eligible

For the purpose of this title--

~~the term "veteran" means an individual who--~~

(A) served on active duty in the armed forces during a war, in a campaign or expedition for which a campaign badge has been authorized, or during the period beginning April 28, 1952, and ending July 1, 1955;

(B) served on active duty as defined by section 101(21) of title 38 at any time in the armed forces for a period of more than 180 consecutive days any part of which occurred after January 31, 1955, and before October 15, 1976, not including service under section 12103(d) of title 10 pursuant to an enlistment in the Army National Guard or the Air National Guard or as a Reserve for service in the Army Reserve, Naval Reserve, Air Force Reserve, Marine Corps Reserve, or Coast Guard Reserve; or

(C) served on active duty as defined by section 101(21) of title 38 in the armed forces during the period beginning on August 2, 1990, and ending on January 2, 1992;

and who has been separated from the armed forces under honorable conditions;

(2) "disabled veteran" means an individual who has served on active duty in the armed forces, has been separated therefrom under honorable conditions, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the Department of Veterans Affairs or a military department;

(3) "preference eligible" means, except as provided in paragraph (4) of this section--

(A) a veteran as defined by paragraph (1)(A) of this section;

(B) a veteran as defined by paragraph (1)(B) or (C) of this section;

(C) a disabled veteran;

(D) the unmarried widow or widower of a veteran as defined by paragraph (1)(A) of this section;

(E) the wife or husband of a service-connected disabled veteran if the veteran has been unable to qualify for any appointment in the civil service or in the government of the District of Columbia;

(F) the mother of an individual who lost his life under honorable conditions while serving in the armed forces during a period named by paragraph (1)(A) of this section, if--

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- (i) her husband is totally and permanently disabled;
- (ii) she is widowed, divorced, or separated from the father and has not remarried; or
- (iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed; and

(G) the mother of a service-connected permanently and totally disabled veteran, if--

- (i) her husband is totally and permanently disabled;
- (ii) she is widowed, divorced, or separated from the father and has not remarried; or
- (iii) she has remarried but is widowed, divorced, or legally separated from her husband when preference is claimed;

but does not include applicants for, or members of, the Senior Executive Service, the Defense Intelligence Senior Executive Service, the Senior Cryptologic Executive Service, or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(4) except for the purposes of chapters 43 and 75 of this title, "preference eligible" does not include a retired member of the armed forces unless--

(A) the individual is a disabled veteran; or

(B) the individual retired below the rank of major or its equivalent; and

(5) "retired member of the armed forces" means a member or former member of the armed forces who is entitled, under statute, to retired, retirement, or retainer pay on account of service as a member.

CREDIT(S)

1996 Main Volume

(Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 410; Pub.L. 90-83, § 1(6), Sept. 11, 1967, 81 Stat. 196; Pub.L. 90-623, § 1(2), Oct. 22, 1968, 82 Stat. 1312; Pub.L. 92-187, § 1, Dec. 15, 1971, 85 Stat. 644; Pub.L. 94-502, Title VII, § 702, Oct. 15, 1976, 90 Stat. 2405; Pub.L. 95-454, Title III, § 307(a), Title IV, § 401(d), Oct. 13, 1978, 92 Stat. 1147, 1154; Pub.L. 96-54, § 2(a)(8), (9)(A), Aug. 14, 1979, 93 Stat. 381; Pub.L. 96-191, § 8(a), Feb. 15, 1980, 94 Stat. 33; Pub.L. 97-89, Title VIII, § 801, Dec. 4, 1981, 95 Stat. 1161; Pub.L. 100-325, § 2(a), May 30, 1988, 102 Stat. 581; Pub.L. 102-54, § 13(b)(1), June 13, 1991, 105 Stat. 274.)

2002 Electronic Update

(As amended Pub.L. 105-85, Div. A, Title XI, § 1102(a), (c), Nov. 18, 1997, 111 Stat. 1922; Pub.L. 105-339, § 4(a), Oct. 31, 1998, 112 Stat. 3185.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

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10/22/03
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Chairman Krebsbach, Government and Veterans Affairs Committee, I am Ray Harkema, Commissioner of Veterans Affairs for the State of North Dakota. My responsibilities to the veterans of North Dakota are spelled out in Section 37-18-04 of the North Dakota Century Code, and state that I shall implement programs and benefits authorized by statute. Section 37-18.1-03 describes the responsibilities of the Administrative Committee on Veterans Affairs and provides that the Administrative Committee shall be responsible for general administration of all veterans affairs in North Dakota.

Senate Bill 2344 removes reference to North Dakota Century Code 37-01-40, "veteran and wartime veteran defined" and creates a new definition that applies only to Department financial programs.

N.D.C.C. 37-01-40 states – A "veteran" is a person who has served on continuous federalized active duty for twenty-four months or the full period for which the person was called or ordered to active military duty, whichever is shorter, and who was discharged or released therefrom under other than dishonorable conditions. A discharge reflecting "expiration of term of service" or completion of required service" or words to that effect qualifies the shorter term of service as making the person a veteran.

My intention is to explain the impact this change would have on our programs and answer any questions the committee may have.

Some would say this change would mirror the federal definition that's used for federal benefits. Here are examples of service time required for a few V.A. benefits:

- The federal pension program requires 90 days active service with at least 1 day being served during a wartime period.
- To qualify for healthcare benefits, the veteran must have been discharged from active military service under honorable conditions and served a minimum of 2 years, if discharged after September 7, 1980 (prior to this date, there is no time limit), and if a National Guardsman or Reservist, served the entire period for which called to active duty other than for training purposes only.
- Veterans discharged under conditions other than dishonorable are eligible for burial in a VA national cemetery. With certain exceptions, service beginning after September 7, 1980, as an enlisted person, and after October 16, 1981, as an officer, must be for a minimum of 24 consecutive months or the full period for which the person was called to active duty. Reservists and National Guard members are eligible if they were entitled to retired pay at the time of death, or would have been entitled had they not been under the age of 60.
- For widow/widowers to be eligible for death pension benefits, the deceased veteran was discharged from service under other than dishonorable conditions, and he or she served 90 days or more of active duty with at least 1 day during a period of war time. However, the V.A. requires that anyone who enlists after 9/7/80 generally has to serve at least 24 months or the full period for which a person was called or ordered to active duty to receive any benefits based on that period of service.

I mention death pension because our loan program includes all widow/widowers, not just those of wartime veterans.

Chairman Krebsbach, I just wanted to point out that N.D.C.C. 37-01-40 mirrors the federal requirement more than the proposed change.

The minimum service for enlistment is and has been for twenty-four months to include the draft. The all volunteer force began in 1975. So a twenty-four month obligation is standard for all branches of service.

There are three type of discharges: Honorable, General (under honorable conditions), and Under other than Honorable conditions. Most individuals discharged with less than 24 months, may a general discharge.

General (under honorable conditions). If a member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as General (under honorable conditions) is warranted when significant negative aspects of the member's conduct or performance of duty outweigh positive aspects of the member's military record

We do approve applications with discharges less than twenty-four months using the following criteria approved by the Administrative Committee: disability, overseas returnee, hardship, early release to attend school, and pregnancy.

Under S.B. 2344 the following examples would meet the eligibility period for time in service:

1 year 10 months- Excessive lost time

1 year 8 months-	Misconduct
1 year 7 months-	Behavioral disorder
1 year 4 months -	Admitted homosexual or bisexual
10 months -	Unfitness
7 months -	Failure to maintain acceptable standards
3 months -	Did not meet medical fitness standards
3 months -	Disability existed prior to entry
3 months -	Unsuitability, apathy
2 months -	Enlisted in error

Under the grant program, the spouse would also be included. The grant program does not have a lifetime limit, so year after year after year, a veteran and spouse could receive grant benefits based on one of the above discharges.

One separation code (21L) is for Convenience of the Government and for Good and Sufficient reason when determined by secretarial authority. If a specific reason is not indicated, we simply ask the veteran. Any doubt is ruled in favor of the veteran.

This points out a major difference between N.D.C.C. 37-01-40 and the proposed change in regards to time served for "veteran" status. To meet N.D.C.C. 37-01-40, a person is required to serve out their obligation. The proposed change places no such requirement on an individual.

If S.B. 2344 is adopted, what is the impact?

For the grant program it is funding from the Postwar Trust Fund interest earnings. I remember in past biennia, the Fund would earn nearly \$600,000.00. Those days seem to be over. This biennium, the

projection is \$480,000.00. The Administrative Committee has other obligations to fund such as:

- The Transportation program - five vans that transport veterans to the Fargo V.A. Medical Center and Miles City. These vans are driven by volunteer drivers. Without this service, many of our veterans would not receive the care they need
- Department administrative costs - FTE position & rent
- Department web site and toll-free number
- Administrative Committee travel expenses.

Our grant program has been suspended once already due to lack of funding. If our investment predictions are accurate, this program may be in jeopardy under the current guidelines. Is it fair to the veteran who completed his/her term of service to open the program to those that didn't?

The Loan Program requires a lot of administration but it has proved to be extremely valuable in helping veterans through a financial hardship. This is an unsecured loan that requires constant monitoring.

The Veterans Aid Loan Fund is used for loans to veterans or their widows. In previous biennia, this fund has been tapped as an alternate funding source. The 2003-2005 budget indicates \$44,000 is to be used from this Fund for administrative costs. We feel that this drain on the Fund would start to negatively impact the amount of money available for loans. It is projected by June 30, 2005, the fund's estimated balance will be \$265,853. This is down considerably from the \$379,381 balance of June 30, 2001 and does not take into

account any loans that will be written off due to bankruptcy, death or being uncollectible. This is a revolving fund that relies on loans being repaid to maintain its balance.

We attempt to only approve loans to responsible individuals. The military discharge is one indication. Another is the individual's credit report.

This same committee approved an Appeals Process last legislative session. When an application is denied, the individual may appeal to a five member committee made up from the Administrative Committee on Veterans Affairs. There have been three appeals based on discharges of less than twenty four months. All three decisions to disapprove the application have been upheld by the Appeals Committee.

All applications are reviewed by more than one staff member. I have 23 years of active duty, my programs manager has 23 years of active duty and our veterans' specialist has 4 years of active duty. That's a total of 50 years of military experience.

In closing, anyone who served our great nation is a "veteran." Unfortunately, we cannot provide financial benefits to everyone. Just as the State of North Dakota does not provide all to its citizens.

I will be glad to answer any questions the committee may have.

37-01-40.1

1. A "veteran" is a person who has served on continuous federalized active military duty for twenty-four months or the full period for which the person was called or ordered to active military duty, whichever is shorter, and who was discharged or released therefrom under other than dishonorable conditions. A discharge reflecting "expiration of term of service" or "completion of required service" or words to that effect qualifies the shorter term of service as making the person a veteran.

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10/22/03

Date

SB 2344 Testimony
Bob Hanson, Vice Chair, North Dakota Veterans Coordinating Council
House Government & Veterans Affairs Committee
March 14, 2003

- North Dakota Veterans Coordinating Council has unanimously voted to support this bill.
- Done at the request of the ND County Veterans Service Officers Association and veterans organizations.
- Changes definition of veteran for the veterans aid loan program and the emergency hardship assistance grant program to be more in line with federal definition used by VA for their services and benefits.
 - Removes the requirement for these programs that an individual must have served for a continuous 24 months of service. Does not impact veterans preference.
 - Proposed definition states, for these programs, "veteran" means an individual who served in the armed forces of the United States on federal active duty for reasons other than training and who has been discharged under other than dishonorable conditions."
- Definition change only affects the veterans aid loan program and the grant program. Both are under the control of the administrative committee on veterans affairs, and are administered by the ND department of veterans affairs. Neither of these programs use any general fund dollars.
 - The loan program is a revolving, self-sustaining fund which is used to grant veterans loans up to a maximum of \$5000 at 8%, which if payments are made on time is reduced to 4%.
 - The grant program is funded by interest earnings from the Post War Trust Fund in amounts as authorized by the administrative committee for those veterans who have fallen through the cracks. It provides dental, optical, hearing, transportation and special needs grants to needy veterans. Emphasize, no general fund dollars are given out in these two programs.
 - There are no mandates that every veteran who applies must receive financial support from either of these programs. If the money in either of these funds is not available, then no one will receive any assistance. If the money in either of these funds is depleted or reduced to a low level, the administrative committee can, and has taken steps to make changes to either ensure as many veterans as possible receive the funds they deserve or they can close the program(s) until such time as the fund(s) can replenish itself.
- Statistics
 - Department of veterans affairs statistics for fiscal 1997 through fiscal 2001 indicate of all requests for an emergency hardship assistance grant which were denied, an average of 28% of them were because the veteran did not meet the current definition of a veteran requiring 24 months of service and having other than a dishonorable discharge. Following the 2001 session's passage of an appeals process regarding the commissioner's decisions, this percentage dropped to 15% and the actual number denied for not meeting the definition of veteran was cut in half.
 - The department's statistics for fiscal 1999 through fiscal 2001 for the same information on the loan program indicated an average of 12% of those denied loans was because the veteran did not meet the current definition of a veteran. The fiscal 2002 figures indicate about the same percentage did not meet the definition of veteran, although the actual number of veterans denied for this reason was down by nearly 60%.

In conclusion, I ask you for your favorable consideration of this long overdue change in the law and give this bill a do pass recommendation.

Thank you.

Deanna Hallen
Operator's Signature

10/22/03
Date

Testimony
SB 2344
Sen. Dick Dever
House Government And Veterans Affairs Committee
March 14, 2003

Chairman Klein, members of the committee, for the record I am Sen. Dick Dever, Senator from District 32, Bismarck.

I am the prime sponsor of SB 2344. I want to also thank you, Mr. Chairman, and you, Rep. Amerman, for joining me as cosponsors of this bill. It is an extremely simple, but important bill. There are no hidden agendas or quirks or mandates in this bill.

This bill changes the definition of veteran for the grant and loan programs under the control of the administrative committee on veterans affairs and administered by the department of veterans affairs as contained in NDCC 37-14. Currently, NDCC 37-14 uses the definition of veteran as contained in NDCC 37-01-40. This proposed definition change would more closely mirror the definition of veteran under federal law for being eligible for VA benefits.

Current law, NDCC 37-01-40, subsection 1, defines veteran as, "A 'veteran' is a person who has served on continuous federalized active military duty for twenty-four months or the full period for which the person was called or ordered to active military duty, whichever is shorter, and who was discharged or released therefrom under other than dishonorable conditions. A discharge reflecting 'expiration of term of service' or 'completion of required service' or words to that effect qualifies the shorter term of service as making the person a veteran." This bill does not change the definition of veteran for any other issue, such as veterans preference.

The federal definition of veteran, as provided by Mr. Dale Ronning, the North Dakota VFW national service officer at the Fargo VA facility to Bob Hanson on February 3, 2003 is, according to Title 38 U.S.C., Section 101, "The term 'veteran' means a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable." Mr. Ronning stated for certain benefits there may be other conditions required. However, he also stated, "The key here is 'under conditions other than dishonorable.'" I am making available a copy of his email with my testimony.

For a North Dakota veteran to be eligible to currently receive state benefits, that individual must meet the definition of veteran in NDCC 37-01-40 which has a 24 month service criteria. My bill changes that the requirement for loan and grant programs for North Dakota veterans eligibility so it would more closely mirror the federal government's definition of veteran by changing our definition to say that "a 'veteran' means an individual who served in the armed forces of the United States on federal active duty for reasons other than training and who has been discharged under other than dishonorable conditions." It makes absolutely no sense to make our state's veterans jump through more hoops for state veterans benefits and programs than they do to receive federal VA benefits.

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Under the current definition I probably would not qualify as a veteran under state law because I do not have a full 24 months of service even though I meet all the other criteria, served my country honorably and am considered a veteran by the federal government.

There are many others who may have served in the service for less than 24 months, received a discharge which is other than dishonorable and are not eligible to receive state benefits, because they do not have 24 months of service. The 24 months of service was put in when this nation had a draft which was for 24 months. We no longer have a draft. This criteria is no longer pertinent.

Let me make it clear simply because this language is changed to make it more like the federal definition, it does not mandate that the veteran will receive a loan or grant. Obviously, if the loan or grant program does not have the money to make grants or loans, they cannot be made. The administrative committee on veterans affairs, which has the overall responsibility for these programs, may also put conditions or priorities on these programs which do not violate the law or cause discrimination, to ensure as many eligible veterans as possible may use these programs without overspending the amounts available for each program. I have trust in the administrative committee's ability to monitor these programs in a manner which will prohibit the commissioner from overspending the amounts available to be used for either or both programs, while still allowing the maximum number of veterans under this new definition to use the programs. I don't believe a commissioner would do anything which the administrative committee has not authorized that person to do.

The change streamlines the process. It leaves no doubt who is eligible. It states clearly that the only criteria to be considered to be eligible for state benefits under the grant and loan programs under the control of the administrative committee on veterans affairs are 1) if they served in the armed forces of the United States on federal active duty for reasons other than training and 2) that they had been discharged under other than dishonorable conditions.

I respectfully ask that you give this legislation a do pass recommendation.

Thank you.

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