

JUDICIARY COMMITTEE

The Judiciary Committee was assigned five studies. Senate Concurrent Resolution No. 4011 (2007) directed the Legislative Council to study the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota. Section 2 of Senate Bill No. 2217 (2007) directed the Legislative Council to conduct a study of abstracters, title opinions, and title insurance, including a review of the orderly and efficient transfer of real property which provides adequate assurances of title. Section 2 of House Bill No. 1219 (2007) directed a study of the feasibility and desirability of establishing a statewide automated victim information and notification system to provide information and notify registered victims regarding the status of an offender. House Concurrent Resolution No. 3048 (2007) directed a study of crime victim compensation funding, including a review of other states' efforts, and the receipt of input from victim advocacy groups and medical providers. Section 9 of Senate Bill No. 2008 (2007) directed a study of the practices and laws relating to the sale of real estate by auctioneers, including a review of the sale of multiple parcels of property at a single sale.

The Legislative Council delegated to the committee the responsibility to review uniform laws recommended to the Legislative Council by the North Dakota Commission on Uniform State Laws under North Dakota Century Code (NDCC) Section 54-35-02. The Legislative Council also delegated to the committee the responsibility under Section 53-06.2-04 to receive a biennial report from the Racing Commission regarding the operation of the commission and under Section 53-12.1-03 to receive a report from the director of the North Dakota Lottery regarding the operation of the lottery. The Legislative Council delegated to the committee the responsibility for statutory and constitutional revision. By Legislative Council chairman request, the committee reviewed the state and federal laws and regulations relating to the possession of a firearm by certain offenders.

Committee members were Representatives Lawrence R. Klemin (Chairman), Randy Boehning, Stacey Dahl, Lois Delmore, Brenda Heller, Joyce Kingsbury, Kim Koppelman, William E. Kretschmar, Jasper Schneider, and Lisa Wolf and Senators Tom Fiebiger, Stanley W. Lyson, Carolyn Nelson, Dave Nething, Dave Oehlke, and Curtis Olafson.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2008. The Council accepted the report for submission to the 61st Legislative Assembly.

FORMATION OF A STATE GAMING COMMISSION STUDY

Senate Concurrent Resolution No. 4011 directed a study of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota. The legislative history regarding this resolution indicated that as a way to deal with all the various types of gaming authorized by the state, a single

gaming commission may provide for consistency and accountability.

Background

Under NDCC Chapters 53-06.1 (Games of Chance) and 53-06.2 (Pari-mutuel Horse Racing), certain charitable organizations are permitted to conduct a limited array of games of chance and horse racing events. North Dakota Century Code Chapter 53-12.1 provides for the participation of North Dakota in a multistate lottery.

The State's Gaming Commissions State Gaming Commission

Since the 1977 law that authorized charitable gaming in the state, the responsibility for enforcement of the charitable gaming law has been shared by the Attorney General and local officials. In 1991 a State Gaming Commission was created consisting of a chairman and four other members appointed by the Governor with the consent of the Senate. The legislation gave the State Gaming Commission an increased role in charitable gaming enforcement. Enforcement attention has been directed at preventing crimes and at ensuring compliance with the many requirements of the law. The State Gaming Commission has adopted extensive rules governing accounting procedures and auditing methods to increase opportunities to prevent and detect cheating by players or gaming personnel.

Under the 1991 legislation, the State Gaming Commission would share authority with the Attorney General to impose fines on organizations, distributors, and manufacturers that violate any law or rule and to suspend or revoke a charitable gaming distributor's or manufacturer's license for violation of any law or rule. In 1993, however, the sole authority to impose fines and to suspend or revoke licenses was returned to the Attorney General. The commission is given full authority for adoption of rules to implement the charitable gaming laws.

Since 1985 the Gaming Advisory Board has provided guidance and assistance to the Attorney General and since 1991 to the State Gaming Commission on regulatory policy issues, the revision of the gaming rules, and on recommended law changes. The Gaming Advisory Board meets about three times a year as needed. Members serve on a voluntary basis and are not reimbursed for expenses.

Racing Commission

In 1987 the Legislative Assembly established the Racing Commission and authorized pari-mutuel horse racing. Initially, the Racing Commission was established in the office of the Secretary of State. Members of the commission originally were the Secretary of State and four other members appointed by the Governor. In 1989 the Legislative Assembly moved the Racing Commission from the Secretary of State's office to the Attorney General's office. The Secretary of State was removed as chairman of the commission and one other appointee

of the Governor was added. The 1989 legislation also established the breeders' fund and purse fund and authorized offtrack wagering on races to be held at licensed racecourses either in state or out of state.

In 1991 the Legislative Assembly enacted legislation that provided that of the Governor's five appointees one must be nominated by the state chapter or affiliate of the American Quarter Horse Racing Association, one by the state chapter or affiliate of the United States Trotting Association, one nominated by the state chapter or affiliate of the International Arabian Horse Association, and one nominated by the state chapter or affiliate of the North Dakota Thoroughbred Association. The Legislative Assembly also approved simulcast dog racing in the state.

In 1991 the Legislative Assembly created the promotion fund and provided that unclaimed tickets and breakage from each live race and simulcast program be deposited in the promotion fund. This legislation also provided that the money in the breeders' fund, purse fund, and promotion fund may be spent by the commission pursuant to a continuing appropriation.

In 2001 the Legislative Assembly authorized pari-mutuel wagering to be conducted through account wagering and that an account wager may be made on an account only through a licensed simulcast services provider authorized to operate the simulcast pari-mutuel wagering system under the certificate system.

In 2005 the Legislative Assembly enacted two bills relating to the Racing Commission. The first provided that a member of the Racing Commission who is appointed to fill a vacancy arising from other than the natural expiration of a term who serves the unexpired portion of the term may be reappointed. The second removed the Racing Commission from the Attorney General's office. The bill authorized the Attorney General to request payment for any services the Attorney General renders to the Racing Commission.

Lottery Advisory Commission

The North Dakota Lottery and the Lottery Advisory Commission were established in 2003. The Lottery Advisory Commission is composed of five members, three of whom are legislators selected by the chairman of the Legislative Council and two of whom are selected by the Attorney General. The commission is required to meet at least once a quarter and any additional meetings as the chairman of the commission determines necessary. The commission advises the lottery director and the Attorney General on policy and general operation of the lottery. The commission also serves as the audit committee.

The Attorney General and director of the North Dakota Lottery consult with the Lottery Advisory Commission on substantive policies, plans, issues, contracts, timelines, and activities of the lottery, including selecting retailers; proposing new games; hiring a lottery director; proposing laws and rules; drafting legislative reports; proposing surveys or studies; proposing advertising, marketing, promotional, and educational campaigns; and proposing policies on monetary fines and license suspensions and revocations.

Summary of Neighboring States' Gaming Commission Structure

South Dakota

The South Dakota Lottery Commission is a seven-member board appointed by the Governor which establishes policy for and advises the lottery director on the operation of the South Dakota Lottery. Any major procurement of the lottery requires the approval of the commission. Members are appointed by the Governor and confirmed by the Senate. Each commissioner's term is three years.

Other gaming in South Dakota, which includes the slot machines and table games conducted at Deadwood and the state's pari-mutuel racing, is regulated by the South Dakota Gaming Commission. The South Dakota Gaming Commission consists of five members appointed by the Governor. Each commissioner's term is three years. Members may not serve more than two consecutive full terms.

Minnesota

The Minnesota Gambling Control Board adopts rules for the conduct of charitable gambling, approves all gambling equipment for use, issues licenses, provides training and education to organizations, conducts compliance reviews and site inspections, and imposes penalties for violations. The board has delegated to its director the power to issue or deny licenses and permits under board guidelines. The board receives the financial reports of licensed organizations and verifies gross receipts, prize payouts, expenses, and expenditures of net profits for lawful purposes. The board may investigate alleged violations of law or rule, issue consent orders, and impose civil penalties.

The Minnesota Racing Commission regulates horse racing and card playing in Minnesota.

The Minnesota State Lottery is operated under the control of a director appointed by the Governor with the advice and consent of the Senate. The Minnesota State Lottery does not have a regulatory commission or board. In 2004 the Minnesota Legislature created the Lottery Organizational Task Force to study the organization and profitability of the state lottery. The January 10, 2005, final report of the task force recommended the establishment of a board to oversee the activities of the Minnesota State Lottery. A bill to establish a state lottery board was introduced but failed to pass during the 2005 legislative session.

Montana

The Gambling Control Division of the Montana Department of Justice regulates all forms of gambling in Montana other than the Montana Lottery and horse racing. The Gaming Advisory Council, created in 1989, advises the Department of Justice and other state agencies on public policy matters related to gaming, including amendments to the gambling statutes, additional or modified departmental rules, clarification of existing rules, and operation of the Gambling Control Division.

The Montana Lottery Commission, which is a five-member board appointed by the Governor, sets policies

for the operation of the Montana Lottery. The members are appointed to a four-year term.

The Board of Horse Racing, which is a division of the Montana Department of Livestock, is responsible for regulating the live and simulcast horse racing industry and ensuring compliance by the approximately 3,500 licensees with state laws and board rules.

Testimony and Committee Considerations

The committee received testimony and information from the Gaming Division of the Attorney General's office, members of the State Gaming Commission and the Gaming Advisory Board, the executive director and members of the Racing Commission, the executive director of the North Dakota Lottery, charitable organizations, and various horse racing entities. The committee's deliberations centered on three issues--state gaming regulatory differences, the role and need for the State Gaming Commission, and Racing Commission concerns.

State Gaming Regulatory Differences

During the course of the committee's study on the formation of a single gaming commission to regulate all forms of gaming in the state, the committee received testimony from representatives of each gaming industry regarding the regulatory differences among the different forms of gaming. According to the testimony, the four gaming industries--lottery, charitable, horse racing, and tribal casino--are fundamentally different in almost all aspects.

According to testimony from the lottery industry, there are few similarities between the lottery and the other three industries. It was noted that a single gaming commission that regulates all types of gaming would struggle, at best, to attempt to thoroughly understand the intricacies of each unique industry; apply due diligence in decisionmaking; achieve responsive results; or fairly, efficiently, and competently regulate four gaming industries. According to the testimony, the Lottery Advisory Commission, which serves as policy advisor to the Attorney General and director of the lottery, is directly involved in all substantive policies, plans, issues, contracts, timelines, and activities of the lottery; has been instrumental in the lottery's accomplishments and financial success; and understands the opportunities and challenges facing the lottery. It was noted that the Legislative Assembly in 2003 entrusted the Attorney General with the responsibility to develop, implement, and administer the lottery. According to the testimony, for the lottery to be successful, the lottery must prosper, have a favorable public image, and players must be confident that games are fair and honest. It was also noted that because of the guidance of the Lottery Advisory Commission, the lottery is prosperous, enjoys a favorable public image, and its games are trusted as being fair and honest. The lottery provides the executive and legislative branches of our government a full accounting of the lottery's financial activity and operation. The lottery has not been the cause of any public or legislative alarm. It was emphasized that if there is a particular gaming-related issue that the

committee is attempting to address, that it should be addressed apart from the North Dakota Lottery.

Testimony regarding the State Gaming Commission and the charitable gaming industry indicated that although the commission's only statutory duty is to adopt gaming rules, the Attorney General takes direction from the state Gaming Commission regarding various gaming issues that may arise. It was noted that consistency and accountability have not been a problem in the charitable gaming industry in the state and that horse racing, charitable gaming, and the lottery are very different and distinct areas of gaming. The testimony further indicated that the current structure of a gaming commission that adopts rules and a volunteer gaming advisory board works very well for the charitable gaming industry. Representatives of the volunteer Gaming Advisory Board indicated that the current structure is very efficient and it gives the charities a voice in the gaming industry. According to the testimony, because of the uniqueness of each type of gaming and because the commission members of each type of gaming in the state serve in a part-time capacity, it would be difficult for the members of a single gaming commission to have the expertise necessary to regulate charitable gaming, the lottery, and horse racing.

The committee also received testimony from the horse racing industry regarding the regulatory differences among the different forms of gaming in the state. It was noted that because of the vast differences in the operation, rules, regulations, and intricacies of each type of gaming, it would be very difficult for the members of a single commission to become experts and be able to adequately regulate all types of gaming. According to the testimony, horse racing is unlike any other type of gaming and, consequently, there is no interaction in this state between racing and the other types of gaming. It was further noted that the racing industry is unlike any other form of gaming in the state because the racing industry involves pari-mutuel wagering, whereas charitable gaming and the lottery do not. Pari-mutuel wagering is regulated under its own set of rules that are interconnected throughout the country. Finally, it was noted that even within a single type of gaming it may take a commission member years to develop the expertise to understand the intricacies of that particular type of gaming. According to the testimony, allowing Racing Commission members to serve consecutive terms would allow for more expertise on the commission.

A representative of the tribal casino industry also emphasized the uniqueness of each type of gaming in the state. The testimony indicated that the tribal casinos have a good relationship with the Attorney General's office. It was noted that casino gaming is a very complicated and unique industry with a lot of money involved and that the tribes strive to be compliant with the requirements set forth in the gaming compacts. According to the testimony, the Attorney General's office has been extremely professional and consistent in its understanding of tribal gaming and that there are few areas that need to be improved with respect to the tribes' relationship with the Attorney General's office.

Role and Need for the State Gaming Commission

The committee received testimony regarding the role of the State Gaming Commission and whether, in light of the limited duties of the commission, the commission was necessary. The only statutory duty of the State Gaming Commission is to adopt administrative rules for charitable gaming in the state. It was noted that there was a point in the history of charitable gaming when there was a disagreement between the gaming industry and the Attorney General. This disagreement led to the formation of the State Gaming Commission. It was noted that the gaming industry now has a very good working relationship with the Attorney General and that the State Gaming Commission may not be needed as much as it was at the time of its formation. The State Gaming Commission is a part-time commission without any paid staff. According to the testimony, the commission, which has a biennial budget of approximately \$6,100, directs the staff of the Gaming Division of the Attorney General's office to draft rules and conduct public hearings. It was noted that current practice could result in disagreement between the Gaming Division and the State Gaming Commission on the rules that should be adopted.

The committee considered a bill draft that would give the Attorney General the authority to adopt rules to administer and regulate the charitable gaming industry. The bill draft would create a gaming advisory commission composed of five members appointed by the Attorney General. Under the bill draft, the duties of the gaming advisory commission would be to advise the Attorney General on policy and general operation of charitable gaming. The bill draft would repeal NDCC Section 53-06.1-01.1, which provides for the State Gaming Commission.

Testimony from the Attorney General's office regarding the bill draft indicated that the Attorney General's office does not have any objections to the bill draft that establishes a gaming advisory commission; however, it was recommended that the size of the commission be increased from five members to seven members. It was also recommended that the number of mandatory meetings of the gaming advisory commission be reduced to two meetings per year. The testimony indicated that the current State Gaming Commission operates well but the Attorney General's office will not oppose the change if the Legislative Assembly wants to change the State Gaming Commission to an advisory commission. The committee revised the bill draft to reflect the recommended changes.

Testimony in opposition to the bill draft indicated that members of the State Gaming Commission believe that the commission serves an important function and should not be eliminated. According to the testimony, the State Gaming Commission has streamlined the gaming process and has worked hard to refine the administrative rules for charitable gaming. It was noted that if the State Gaming Commission were eliminated, the benefit that the State Gaming Commission provides to the Legislative Assembly and the Attorney General would be lost. The testimony indicated that the proposed advisory commission would only be a sounding board and would

not have any real authority. It was also noted that the State Gaming Commission provides the gaming industry with representation.

Other testimony in opposition to the bill draft noted that the bill draft concentrates all the power for charitable gaming rulemaking and enforcement with the Attorney General which consequently diminishes the power of the Legislative Assembly and the Governor. According to the testimony, the State Gaming Commission's rulemaking authority has a check and balance procedure in place because all rules must be approved by the Legislative Council's Administrative Rules Committee. It was noted that State Gaming Commission structure is very efficient and operates on a very limited budget. Members of the charitable gaming industry in opposition to the bill draft testified that the gaming industry is satisfied with the current structure. It was noted that charities are concerned that they may lose their voice in the gaming industry if the changes proposed by the bill draft are made.

Concerns were expressed that there does not appear to be a valid reason for eliminating the State Gaming Commission and replacing it with an advisory commission. The committee concluded that the bill draft regarding the creation of a gaming advisory commission and the elimination of the State Gaming Commission should not be recommended to the Legislative Council.

Racing Commission Concerns

During the course of the committee's discussion of the formation of a North Dakota gaming commission to regulate and control all forms of gaming in North Dakota, the committee received testimony that expressed concerns about the authority and activities of the Racing Commission as well as the lack of oversight of the commission. Committee members also noted that there are concerns and frustrations from the horse industry about the composition of the Racing Commission.

The committee received testimony from the director of the Racing Commission regarding the activities of the Racing Commission. The testimony indicated that the Racing Commission, which is the regulatory body in charge of regulating live and simulcast racing in the state, has tried to accommodate the requests of the racing and horsemen's associations while at the same time hold funds in reserve. According to the testimony, given the resources available, the commission has attempted to keep racing in the state alive and well.

The committee also received testimony from representatives of the two charitable organizations that benefit from the proceeds of horse racing. According to the testimony, there are concerns about the distribution of the racing proceeds to charitable organizations. The testimony indicated that the charitable organizations have struggled to understand the terms, percentages, and procedures in horse racing and wagering. It was noted, however, that because it is difficult for those not involved in the horse racing industry to master a thorough understanding of this system, some charitable organizations may have been too willing to accept the assurances and explanations from the providers. According to the testimony, in spite of assurances from

the Racing Commission that 2007 legislative changes would not adversely affect net revenues, that is what happened. It was noted that changes in the racing industry threaten the organization's ability to provide services to those who need them. The testimony indicated that the charitable organizations cannot continue to operate and lose money.

Testimony from representatives of the horse racing industry indicated that in the national landscape of racing legislation, North Dakota and Oregon stand out as possessing the most advantageous tax structure for advanced deposit wagering. It was noted, however, that although North Dakota possesses some of the most nationally competitive gaming legislation available today, it does not, from outside appearances, possess an internal structure that is attractive to would-be advanced deposit wagering companies. According to the testimony, Oregon's Racing Commission has been strongly supported by both its state legislators and horsemen and, as a result, has become home to many of today's top advanced deposit wagering companies. It was noted that when faced with continual North Dakota headlines wherein the very existence of the state's Racing Commission is in question, it makes attracting new business to the state a very difficult proposition. It was also noted that a stable and progressive-minded regulatory infrastructure is crucial in enticing new or existing advanced deposit wagering companies to reside in the state. The testimony indicated that stability in leadership, direction, and legislative expectations are key to the continued growth of the horse racing industry in the state. According to the testimony, continuity of leadership, focus of direction, and serving the best interests of the majority should be the focus of the Racing Commission. It was noted that the industry is not opposed to oversight of the Racing Commission by the Attorney General, but a central body with a director is important.

During the course of the discussions regarding the Racing Commission, several committee members expressed concern that the Racing Commission does not work well as a stand-alone agency. The committee members also expressed the need for accountability to another governmental entity. In response to the concerns regarding the Racing Commission, the committee considered a bill draft that would give the Attorney General supervisory authority over the Racing Commission. Testimony in explanation of the bill draft indicated that the bill draft would restore the Attorney General's authority over the Racing Commission as it existed before the changes made by the Legislative Assembly in 2005.

Testimony regarding the bill draft from a representative of the Attorney General's office indicated that there is some concern about having oversight without the ability to appoint the members of the Racing Commission.

Testimony from representatives of the horse industry indicated that because of the dissention between the horsemen and the racing industry, there is a need for some changes, but the problems are not insurmountable. While the testimony did not oppose the

bill draft, the continued need for a central body and a director for those involved in the horse racing industry to take their concerns was emphasized.

Recommendation

The committee recommends Senate Bill No. 2043 relating to the oversight of the Racing Commission. The bill would provide that the Racing Commission is subject to the supervision and direction of the Attorney General.

ABSTRACTERS, TITLE OPINIONS, AND TITLE INSURANCE STUDY

Section 2 of Senate Bill No. 2217 directed a study of abstracters, title opinions, and title insurance, which included a review of the orderly and efficient transfer of real property which provides adequate assurances of title.

Background

A person who is transferred title to an interest in real property located in the United States may acquire or receive a variety of types of assurances of the quality of that title. Among the assurances of title that are available to a person who acquires an interest in real property located in North Dakota are abstracts of title, attorney or title opinions, and title insurance. Under NDCC Section 26.1-20-05, title insurance may not be issued unless the title evidence is received from an abstracter and an attorney examines the title evidence.

Abstracts of Title

An abstract of title is a complete historical record of a certain parcel of real property which contains all transactions associated with that property. An abstract of title is organized in chronological order and notes all grants, conveyances, easements, estate proceedings, mortgages, tax liens, judgments, and encumbrances that affect that particular parcel. An abstracter searches the records and compiles an abstract of title. This information is held at the county level in the county recorder's office. To properly compile an abstract of title, an abstracter must perform a proper search of the public real estate records as they pertain to the real property that is described in the abstract and the abstracter must prepare appropriate summaries of every transfer or other transaction affecting the property in question during the span of time to which the requested abstract pertains. An abstract of title includes a certificate by the abstracter that refers to the periods of time covered by the abstract of title and the records that are the subject matter of the abstract.

In North Dakota abstracters are regulated by NDCC Chapter 43-01. This chapter provides for a state abstracters' board of examiners. The board consists of three members who are appointed by the Governor to six-year terms. Section 43-01-09 provides that before a person may engage in the business of making and compiling abstracts of title, the person must obtain a certificate of authority issued by the board and must file a bond or abstracter's liability policy as required by the chapter. Section 43-01-15 provides for the authority and duty of an abstracter.

The fees that may be charged for making and certifying an abstract are contained in NDCC Section 43-01-18. Section 43-01-23, which was enacted in 2005, provides that the board, through the issuance of a temporary certificate of authority and a certificate of registration, may authorize an individual or organization that is authorized to operate in another county to operate in a county that does not have an abstracter. This section provides that the board may not charge an abstracter for the temporary certificate of authority.

Title Opinions

Once the abstracter completes the abstract of title, it is forwarded on to an attorney who renders a title opinion on the marketability of the title to the property, including who the fee owner is as well as naming any other parties with a legal right to or interest in the property. Before issuing a title opinion, the attorney reviews and analyzes the contents of the abstract of title to determine and render an opinion on whether the liens of mortgages reported in the abstract have or have not been released, whether the enforcement of a particular lien is or is not barred by the applicable statute of limitations, whether an express easement has or has not been terminated, or other matters that may have a bearing regarding the current state of the title to the property. Each time the property changes hands, the abstract is updated and a new opinion is rendered.

North Dakota Century Code Section 26.1-20-05, which provides for the title evidence required before title insurance may be issued, provides that the evidence of title must be examined by a person admitted to the practice of law as provided by Chapter 27-11. The evidence of title has been interpreted by those in the industry to mean an abstract of title.

Title Insurance

Title insurance is insurance against loss from defects in title to real property and from the invalidity or unenforceability of mortgage liens. Title insurance is available in many countries but it is principally a product developed and sold in the United States. Title insurance is meant to protect an owner's or lender's financial interest in real property against loss due to title defects, liens, or other matters. The coverage provided by title insurance can be used to defend against a lawsuit attacking the title as it is insured, or reimburse the insured for the actual monetary loss incurred, up to the dollar amount of insurance provided by the policy. Generally, title insurance is required by mortgage lenders for virtually all real estate transactions, including many long-term leases. This form of insurance is usually issued to the purchaser of the property or the lender.

Title insurance in North Dakota is regulated by NDCC Chapter 26.1-20. Section 26.1-20-01 provides that every corporation organized for the purpose of insuring titles to real property in North Dakota is subject to the chapter and the rules adopted by the Insurance Commissioner. As previously mentioned, Section 26.1-20-05 provides that a title insurance company may not issue a title insurance policy unless the title evidence

is received from the abstracter and an attorney licensed in this state has examined the title evidence.

2007 Legislation

Section 1 of Senate Bill No. 2217 increased the amounts of the fees an abstracter may charge for making and certifying an abstract. Testimony in support of the fee increases indicated that with advances in technology, clients expect results faster and better than ever before. The testimony noted that the cost of living as well as the cost of operating a business have increased substantially since the last increase in 2001, thus creating a need for the abstracter fees to keep pace with those increases. It was noted that due to technical advances made in some county offices, searches are more complex and time consuming than five years ago.

Testimony in opposition to the abstracter fee increases suggested that to increase the fee per entry by 67 percent and the fee per certification by 33 percent was irresponsible. According to the testimony, consumers should have a choice between abstracting and title insurance. It was noted that allowing fees to increase without asking the industry to modernize only perpetuates the present system.

Senate Bill No. 2119 (2007) updated the requirements for abstracters, including that an abstracter must have and maintain a complete tract index and all instruments of record in the office of the recorder in and for the county in which the abstracter is engaged in business.

Senate Bill No. 2218 (2007), which failed to pass the Senate, would have required a title insurance company to secure a certified abstract of title that has been examined by an attorney and which is current to the present transaction. Testimony in support of this bill indicated that the changes would clarify the original intent of NDCC Section 26.1-20-05. Testimony in opposition to the bill indicated that the bill takes a step backward by requiring an updated abstract before title insurance can be purchased.

Testimony and Committee Considerations

The committee received extensive testimony from those involved in the real estate industry, including the State Bar Association of North Dakota, the North Dakota Land Title Association, Farm Credit Services, the Abstracters' Board of Examiners, the Insurance Department, and the North Dakota Association of Realtors. The committee's consideration centered on five issues--the evidence of title and title opinion requirement for title insurance, the statutory requirements of abstracters and abstract companies, the North Dakota Records Information Network, the licensure of title insurance agents, and the regulation of out-of-state lenders.

Evidence of Title and Title Opinion Requirement for Title Insurance

The primary focus of the committee's study was NDCC Section 26.1-20-05, which is referred to as North Dakota's "plant law," the law that provides that the evidence of title must be examined by an attorney before

title insurance may be issued. The concerns generated by Section 26.1-20-05 centered on two issues--whether the term "evidence of title" was ambiguous and needs clarification and whether the requirement that the evidence of title must be examined by an attorney before title insurance can be issued is a practice that is outdated, is costly to consumers, and should be repealed or modified.

The committee received extensive testimony regarding these issues. Regarding the first issue, the testimony indicated that changes should be made to NDCC Section 26.1-20-05 to clarify that a certified abstract is required before title insurance may be issued. According to the testimony, some title insurance issuers do not believe that the evidence of title must be an abstract, but rather can be any evidence of title. It was recommended that the section should be clarified to require a certified abstract to the current date. The testimony suggested that the term "evidence of title" be changed to "a certified abstract of title continued to the date on the commitment to insure." It was argued that there would not be a question of interpretation if this change were made.

Regarding the issue of whether the requirement that the evidence of title must be examined by an attorney before title insurance can be issued is necessary, the committee received testimony that this requirement provides North Dakotans title assurance that is of the best quality at the lowest cost and in the most efficient manner. According to the testimony, about 20 years ago title insurance was not used in North Dakota. Only abstracts and title opinions were used. A change in lending policies regarding the sale of loans on the secondary market resulted in the increased use of title insurance. The out-of-state companies that are buying the loan want title insurance, not just an opinion of a local law firm. It was noted that title insurance is issued in about 98 percent of all real estate transactions in eastern North Dakota. According to the testimony, Minnesota, which does not require an abstract or a title opinion before the issuance of title insurance, has higher title insurance rates than North Dakota. The testimony indicated that the methods used in Minnesota to conduct searches are inconsistent and have resulted in increased title insurance claims. It was noted that examining a title is an acquired skill that should be done by an attorney. It was argued that the method used in North Dakota works well and is cost-effective. According to the testimony, most of the opposition to the process used in North Dakota comes from the out-of-state lenders.

According to the testimony, title insurance rates are based upon risk. It was noted that risk in North Dakota is low due in large part to the requirement of abstracts and title opinions. The testimony indicated that North Dakota has one of the lowest title insurance rates and claims rates in the country. According to the testimony, out-of-state title insurance companies will write title insurance on any title evidence; however, there is a difference between a marketable title, one which is free of defects, and an insurable title, one which the insurance company will insure in spite of defects. It was

emphasized that inferior work done now causes problems later. The result of eliminating the process used in North Dakota will be the erosion of the quality of title over time. It was noted that the result will be that title insurance companies will raise rates or get out of the title insurance business in the state. Testimony from an attorney who practices in North Dakota and Minnesota argued that the number of problems with the Minnesota transactions versus the North Dakota transactions is about 20 to 1.

The committee also received testimony in support of eliminating the requirement of an evidence of title and a title opinion before title insurance can be issued. According to the testimony, North Dakota is the only state that has the abstract and title opinion requirement for title insurance. It was argued that this state's process results in a duplication of costs. The testimony noted that consumers do not have a choice between abstracting and title insurance.

According to the testimony, for North Dakota to move forward, modernization must take place. It was noted that there are two abstract offices in the state without fax machines. The testimony indicated that not every abstract office has competition and not all abstract offices have an attorney. According to the testimony, the requirement of an updated abstract and a title opinion before the issuance of title insurance is a double cost to consumers. It also was noted that consumer expectations have changed and a timely turnaround on real estate transactions is expected. The lack of competition in most counties and the delays caused by the statutory requirements have resulted in frustration on the part of lenders and consumers. The testimony indicated that a 2004 study of title insurance rates indicated that the rates were about \$.76 per acre in South Dakota and Montana and about \$1.08 per acre in North Dakota. According to the testimony, although North Dakota may have the lowest rates in the country for title insurance, when the additional cost of the abstract and the title opinion are included, the total cost to the consumer is no longer the lowest in the country. It was noted that the total costs in Montana and South Dakota are substantially lower than in North Dakota.

The committee reviewed the title evidence requirements, title insurance costs, and closing costs in South Dakota, Minnesota, Montana, Wisconsin, and Nebraska.

Statutory Requirements of Abstracters and Abstract Companies

The committee received testimony from the Abstracters' Board of Examiners regarding the statutory requirements of abstracters. The Abstracters' Board of Examiners receives its authority from NDCC Chapter 43-01. The board issues and oversees two types of certificates. The first--the certificate of registration--is awarded to an individual. The second--the certificate of authority--is granted to an abstract plant after meeting certain statutory criteria. To receive a certificate of registration, the individual must pass an examination that is written and administered by the board. Upon passage of the examination, the individual must pay a certificate

fee and must complete 18 hours of continuing education credits every three years to maintain the certificate. An individual issued a certificate of registration does not have the authority to issue abstracts of title. Abstracts of title may only be issued by entities holding a certificate of authority, also known as the "plant license." To receive a certificate of authority, certain requirements must be met, including having and maintaining in the abstracter business a complete tract index and a copy of all instruments of record from the recorder's office in the county in which the entity is engaged in business, filing a bond or abstracter's liability policy, having in charge an individual who holds a certificate of registration, and paying the certificate and examination fee. The board has the authority to deny a certificate application or discipline a certificate holder for certain reasons.

The board may inspect an abstracter's records at any time to determine if the abstracter is complying with the board's rules. According to the testimony, a timeliness standard of three weeks has been used to determine whether the abstracter is operating in a timely manner. A logbook is required to be maintained by an abstracter. The logbook provides the data necessary to determine if the three-week standard is being met. Disciplinary measures the board may take include canceling or suspending a certificate of authority or certificate of registration, requiring additional education, establishing a mentor or monitor, restricting practice parameters, or imposing a fine of up to \$500 per violation. Until 2005 the board did not have the authority to bring in a temporary abstracter when an abstract company or an individual abstracter lost a certificate due to a violation of the rules. The change to NDCC Section 43-01-23 grants the board the authority to issue a temporary certificate for someone willing to come in and perform the work in the affected county. Although the board may not charge a fee for the temporary license, the board may require additional security. The board may review the abstracter's logbooks at any time; however, the logbooks are not an open record.

The committee also received testimony regarding the qualifications of abstracters and abstract companies from the North Dakota Land Title Association. According to the testimony, abstracters are professionally trained in the research of real estate records and are the first line of defense in assuring good title. An abstract company must meet certain requirements, including having a set of the county land title records. An abstract plant is a complete set of records and a complete set of transactions. It was noted that abstracters provide the expertise to thoroughly research land records and prepare the abstracts of title upon which attorneys rely in their examination and preparation of title opinions. State law that requires an updated abstract and a title opinion issued by an attorney before title insurance may be issued has been a source of controversy because some interested persons want a short path to title insurance. It was noted that it is undeniable that the combination of title work prepared by a licensed abstracter and the examination by a North Dakota attorney results in relatively trouble-free titles in North Dakota.

According to the testimony, some individuals believe that the title insurance agents, their employees, or other unlicensed persons are capable of doing the research and examination required to write quality title insurance. It was noted that while some believe this method is a less expensive and faster process for consumers, the result will be incorrect data and damage to the consumer. An uncertified title researcher is not subject to the statutory fee schedule and may charge as much as the market will bear. According to the testimony, any argument that abstracting fees cost the consumer more money is unfounded, especially if an unregulated, nonprofessional search results in a defective title. As a result of the process required in North Dakota, it was noted that the state has some of the lowest title insurance claims due to its certified search and examination procedures.

North Dakota Recorders Information Network

The committee received testimony that advances in technology have allowed for some electronic access to records. One of the electronic programs through which subscribers can access real estate records is a program known as the North Dakota Recorders Information Network (NDRIN). In the aftermath of the flooding in the Red River Valley in 1997, discussions began about the need for preservation and technology enhancements for the state. Committees were formed and with the assistance of Cass County and the Federal Emergency Management Agency (FEMA) a workable plan was developed and implemented to microfilm all real estate records in all 53 counties and to provide storage of that film in a secure, offsite location. A grant from FEMA for \$1.2 million allowed all counties in the state to develop methods to ensure that valuable records can be replaced in the event of a disaster. The grant also allowed a central repository to be built for storage of electronic records. It was noted that the system not only provides another means of safeguarding the recorders' records but also provides access to public records via the Internet.

The North Dakota Recorders Information Network operates under a joint powers agreement from each participating county. All counties except Divide, Renville, Grand Forks, Traill, Grant, Emmons, Logan, and Dickey participate in NDRIN in some way. The program has a subscriber-based website for access to images and information. There is a \$100 one-time setup fee and a \$25 per month access fee for all the information on NDRIN. As of the date of the testimony, there are 2,656 subscribers, including oil and gas companies, landowners, attorneys, realtors, abstracters, credit bureaus, state offices, banks, appraisers, and private individuals. It was noted that one of the requirements of the FEMA grant was that records must be microfilmed and be kept offsite. According to the testimony, microfilming is the only recognized form of archiving. All backup records are kept at an underground storage facility in Hutchinson, Kansas.

Licensure of Title Insurance Agents

In response to testimony that raised concerns about the regulation of title insurance companies in the state, the committee received testimony from the Insurance Department regarding title insurance and the licensing of title insurance agents. According to the testimony, an applicant who is applying for a license for title insurance in North Dakota is exempt from the examination requirements if the applicant is a licensed abstractor or attorney or if the applicant has at least 80 hours of training provided by an insurance company licensed in the line of title insurance. There are statutory continuing education requirements for any person who is licensed in the lines of property, casualty, life and annuity, accident and health, personal lines, or crop insurance. A person who is licensed only for the line of title insurance is exempt from any ongoing continuing education requirements specific to insurance agents; however, it was noted that because many title agents are licensed as attorneys, they are subject to continuing education requirements to maintain their professional license as an attorney. There are about 400 title agents licensed by the state, about half of whom are residents of the state. The 200 licensed nonresidents are licensed under a reciprocal agreement with another state. A company selling title insurance in the state without a certificate of authority would be dealt with by the Insurance Department. It was noted that there is no evidence of any title insurance companies doing business without the required certificate.

A title insurance company is issued a certificate of authority, whereas an agent is issued a license. Testimony recommended that in determining liability for a loss, the policyholder may look to both the agent and the principal for the loss. It was noted, however, that the company should not be precluded from being held liable. It was recommended that NDCC Section 26.1-20-05 be changed to provide for the revocation of the individual agent's license for a violation of Section 26.1-20-05, not the certificate of authority for the entire title insurance company. It was also suggested that a change to this section be made to allow for flexibility on the part of the Insurance Department with respect to the revocation or suspension of a certificate of authority or an insurance producer license for violations of Section 26.1-20-05.

Regulation of Out-of-State Lenders

During the course of the committee's discussion of abstracters, title opinions, and title insurance, the committee received testimony that raised concerns that there should be an examination of ways to regulate, control, and tax out-of-state companies that are making loans in North Dakota. According to the testimony, some out-of-state companies are not following North Dakota laws and the companies are charging for the work being done in connection with their loans. It was noted that these companies are taking a lot of income out of North Dakota without paying any taxes. The testimony indicated that closing their loans here; collecting fees for services supposedly performed here, such as title searches; and writing title insurance on property in the state should be enough to require those

companies to register in North Dakota, file reports with the state, and pay income taxes on the income they generate from the ancillary services. It was also noted that the out-of-state companies are meeting the evidence of title requirement but may not be getting an abstract. According to the testimony, the out-of-state companies are charging the purchaser a search fee that is about the same amount as an abstract update but without the accuracy of an abstract.

In response to these concerns, the committee received testimony from the Department of Financial Institutions regarding the regulation of out-of-state lenders. The Department of Financial Institutions oversees the licensing of money brokers under NDCC Chapter 13-04.1. As of April 14, 2008, the department had 369 active licensed money brokers, 49 of which are located in North Dakota. The department also oversees the licensing of consumer finance companies for which loans are limited to \$35,000. If the consumer finance companies are engaging in home equity lending, the company also would be required to obtain a money broker license so they could exceed the \$35,000 limitation. State law offers exemptions for banks, credit unions, saving and loan associations, insurance companies, the farm credit administration, real estate brokers, salespersons who assist a client in obtaining financing, and various other types of entities. It also was noted that the regulator for out-of-state banks, credit unions, and thrifts may be the department's counterpart state regulatory agency for the home state of the bank or credit union or a federal agency. If the out-of-state lender does not have a physical presence in the state, the lender is likely regulated by federal law or the law of another state.

Conclusion

It was the consensus of the committee that while there are some ambiguities involving NDCC Section 26.1-20-05 and the impact this section may have on consumers, these ambiguities and concerns do not warrant legislative changes. The committee makes no recommendation regarding the abstracters, title opinions, and title insurance study.

STATEWIDE AUTOMATED VICTIM INFORMATION AND NOTIFICATION SYSTEM STUDY

Section 1 of House Bill No. 1219 authorized the Information Technology Department to establish a statewide automated victim information and notification (SAVIN) system. Section 2 of House Bill No. 1219 directed a study of the feasibility and desirability of establishing a SAVIN system to provide information and notify registered victims regarding the status of an offender.

Background

North Dakota Law Regarding Victims' Rights

North Dakota Century Code Chapter 12.1-34 provides for the rights granted to a victim of a crime in North Dakota. Section 12.1-34-02 provides that victims of crime have certain rights, such as the right to receive

prompt notice of the inmates' release from custody, the right to be informed of the parole and pardon process, the right to be notified of the parole board and pardon advisory board's decision, the right to be notified of protection available in cases of intimidation, and the right to be informed of appropriate and available community services. Section 12.1-34-03 provides that victims and witnesses have responsibilities, such as aiding in the prosecution of the crime; cooperating with law enforcement authorities throughout the investigation, prosecution, and trial; and notifying law enforcement authorities, the prosecuting attorney, the custodial authority, and others involved in the process of any change of address.

North Dakota Century Code Chapter 12.1-34 also establishes the entities that are responsible for providing victim services and victim information and notification. Section 12.1-34-04 designates the prosecuting attorney as the person responsible for securing for victims and witnesses of crime the rights and services described in Chapter 12.1-34. Section 12.1-34-02 provides that law enforcement is responsible for providing information to victims and witnesses regarding investigations and arrests. This section also provides that custodial authorities, which include the Department of Corrections and Rehabilitation and the state's jails and regional correctional facilities, are responsible for informing victims and witnesses if a criminal defendant receives a temporary, provisional, or final release from custody or if the defendant escapes from custody.

In addition to the rights and responsibilities that NDCC Chapter 12.1-34 provides to victims and witnesses, Chapter 12.1-35 addresses certain services and rights that are to be provided to victims and witnesses who are children. Section 12.1-35-02 provides that state's attorneys are encouraged to provide additional services to children who are involved in criminal proceedings as victims or witnesses, including explanations of all legal proceedings in which the child will be involved.

The Department of Corrections and Rehabilitation, through its Victim Services Program, employs a victim coordinator who is responsible for informing victims of inmate status changes and issues. The program also provides victims with crises intervention and referral information. The Victim Service Program works closely with the State Parole Board and the Pardon Advisory Board and also serves to educate law enforcement, prosecutors, judiciary, and the public on victims' rights, needs, and issues. The other custodial authorities in the state--the jails and regional correctional facilities--are responsible for providing information to victims and witnesses regarding an offender's release from custody.

House Bill No. 1219 (2007)

House Bill No. 1219, as introduced, would have directed the Information Technology Department to establish the SAVIN system. The bill directed the Department of Corrections and Rehabilitation to ensure that an offender's information contained in the SAVIN system was updated to notify a victim regarding an offender's status. The bill also directed other custodial

authorities to cooperate with the Department of Corrections and Rehabilitation in establishing and maintaining the SAVIN system. The fiscal note for the introduced bill included a 2007-09 general fund cost of \$3.33 million and a 2009-11 cost of \$986,518.

As passed, the language of Section 1 of the bill, which has been codified as NDCC Section 12.1-34-06, authorized the Information Technology Department to establish a SAVIN system that may be administered by the Department of Corrections and Rehabilitation. The system must permit a victim to register or update the victim's registration information for the system by calling a toll-free telephone number or accessing a public website and must notify a registered victim when certain events relating to the offender occur.

Testimony and Committee Considerations

The committee received extensive information and testimony from the Criminal Justice Information Sharing (CJIS) Initiative of the Information Technology Department regarding the status of the establishment of a SAVIN system. The committee also sought the opinions of those directly involved in the process of providing information and notification for victims, including law enforcement, correctional facilities, and victim advocacy organizations. The committee's considerations centered on the desirability of establishing a SAVIN system and the implementation and funding for the SAVIN system.

Desirability of Establishing a SAVIN System

The committee received periodic reports from the Information Technology Department regarding the status of a federal grant for the establishment of a SAVIN system. In December 2006 the Information Technology Department submitted an application to the federal Bureau of Justice Assistance for a federal grant for a SAVIN system. In October 2007 notification was received that North Dakota had been awarded the grant. At the October 30, 2007, meeting of the Legislative Council's Budget Section, the Information Technology Department, on behalf of CJIS, requested authorization for an increase of \$1.4 million in federal spending authority. The Budget Section requested that CJIS refine the future costs of implementing a SAVIN system. The Budget Section also delayed the authorization of the spending authority until the Judiciary Committee had the opportunity to make a recommendation regarding the SAVIN system. According to the report, the ongoing costs of the program are \$423,998 per year or \$847,996 per biennium. The SAVIN system is expected to have a two-year implementation cycle.

According to the testimony, the Information Technology Department will contract with a vendor for the SAVIN system services. It was noted that Appriss, Inc., is the only company with an existing service that meets the federal grant requirements. Appriss, Inc., provides automated victim notification services in 44 states. It was noted that the department would attempt to negotiate a two-year to five-year contract with this company at an estimated yearly cost of \$311,150.

In response to the request of the Budget Section for the Judiciary Committee to make a recommendation regarding the SAVIN system, the committee received testimony regarding the desirability of establishing a SAVIN system.

Testimony from various law enforcement agencies indicated that law enforcement spends a great deal of time notifying domestic violence victims about the status of an abuser or offender. The status notification includes notifying the victim when protection orders have been served and when an abuser is released from jail. According to the testimony, these services can be streamlined in an automated system. It was noted that 47 other states use an automated system. The testimony also indicated that an automated system would allow law enforcement and detention staff to better use their time in providing emergency services, serving protection orders, investigating crime, and attending to the ever-growing jail population. According to the testimony, information provided to a victim is not only a right, but it also may be the only thing that keeps a victim feeling safe and able to continue with everyday life.

The testimony of a county jail administrator indicated that a SAVIN system will provide local jurisdictions another means to notify victims of crimes as required under NDCC Chapters 12.1-34 and 12.1-35. It was noted that the system would be extremely helpful to many of the local jails that do not have an automated notification process. For those counties that have an automated process in place, a SAVIN system will allow those to enter information and provide a secondary means of notification.

Testimony from a county victim witness coordinator also expressed support for a SAVIN system. According to the testimony, many victims are not notified of any criminal procedures and may not be aware that their offender has been charged with a crime. Many rural counties do not have the resources to provide services to victims. With a SAVIN system, prompt notification of release can be made. The testimony indicated that this information will give victims some sense of security and control over their lives. The system also would provide a way to track victims for statistical purposes. According to the testimony, a SAVIN system would give victim service providers more time to provide more direct services to victims.

The committee also received testimony in support of a SAVIN system from victim advocacy organizations. According to the testimony, victims have a need to be kept informed of the criminal case involving their victimization. For victims of domestic violence and sexual assault, their safety and security depend on access to timely information of the criminal case proceeding and the service of protection orders. In 2006 domestic violence advocacy programs assisted 754 individuals in seeking emergency protection orders. When a victim seeks a protection order, advocates work with the victim to develop a safety plan that is primarily based on the victim's past experience with the offender but also seeks to predict how the offender may react when served with the order. According to the testimony, it is imperative for a victim to know when the protection

order was served and how the offender reacted in order for the victim to determine which safety plan option to implement, such as going to a shelter or staying in the residence. The information gathered through the enhanced communication between the criminal justice system and victims will lead to the establishment of better rapport with victims, an increased level of trust in the criminal justice system, and the ability for victims to be empowered through knowledge. The testimony indicated that a SAVIN system will empower victims with knowledge and allow victims to better determine their needs in regard to the safety and security of their lives.

Other testimony in support of a SAVIN system was received from a victim whose daughter was shot and killed 28 years ago. According to the testimony, there had been numerous incidents involving the man who was convicted of her daughter's murder of which she never received direct notification, including the offender's escape from prison on two different occasions. The testimony indicated that the victim has the right to be the first to be notified when there is any information about the criminal. It was noted that because victim service providers cannot be working around the clock, a SAVIN system would provide victims with the needed information. It was also noted that a SAVIN system would enable a victim to feel more in control of the situation which would help alleviate some of the victim's frustration.

In response to committee concerns regarding the operation of the SAVIN system, the testimony indicated that it would be the responsibility of the victim to sign up for the notification and to keep contact information updated. Under a SAVIN system, the information would be updated on a daily basis. It was noted that system does not replace victim coordinators, but, rather, it gives them another tool to assist victims.

In light of the testimony in support of the establishment of a SAVIN system, the committee recommended that the Budget Section authorize the Information Technology Department to accept the federal grant and to expend the funds in the grant for the SAVIN system. At its March 19, 2008, meeting, the Legislative Council's Budget Section authorized the expenditure of the Bureau of Justice Assistance SAVIN grant.

SAVIN System Implementation and Funding

Upon authorization of the Bureau of Justice Assistance SAVIN grant, the committee received information regarding the implementation of the program. According to the testimony, the Information Technology Department had refined the cost estimates for the SAVIN system and the necessary ongoing funding required for maintaining the program. It was noted that matching funds for the project will come from the Supreme Court's unified court information system replacement project and the CJIS Interface Projects that will supply data to the SAVIN system as well as the CJIS portal. The Legislative Assembly approved the court's information system replacement project in 2007 and the funding is in the court's budget. According to the testimony, the implementation estimates were provided by the vendor given the state's size and functional

requirements. It was reported that these estimates plus estimated nonvendor costs range from \$1.2 million to \$1.4 million, which indicated that the project can be accomplished using the federal grant funds awarded. It was noted that because of the delay in obtaining approval for expending the funds, the department intended to apply for the one-year extension that will extend the project to June 30, 2010.

The committee received testimony that in light of the implementation of the SAVIN system, there would be a need for legislative changes to various state laws regarding victim notification. In response to this information, the committee considered a bill draft that would change the current victim notification laws to require the victim and other concerned citizens to register with the SAVIN system to receive their victim notifications. The bill draft makes the changes to the North Dakota Century Code which will be necessary upon implementation of the SAVIN system. The bill draft provides that some of the notification duties that are currently the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities, would be automated under the SAVIN system.

The committee received testimony from a victim advocacy organization which expressed concerns that an automated system may affect some of the victim's rights that are provided for in current law, particularly regarding the notification of pretrial release. According to the testimony, if a victim must be registered to be notified, some victims may not get the notification. It was noted that there are some victims who do not want to release their notification information to anyone out of fear that the offender may gain access to the information. According to the testimony, it would be helpful if the advocacy organization would be permitted to register with the SAVIN system on behalf of the victim. The testimony expressed a concern that the bill draft and the SAVIN system change the rights of the victims.

Testimony in support of the bill draft indicated that the SAVIN system is intended to retain all rights that victims are afforded under the current system. It was noted that not all information will be relayed to victims and witnesses through the SAVIN system. Some information will continue to be the responsibility of the entity to relay to the victim. The SAVIN system puts the responsibility on the victim to keep the victim's contact information updated. The registration system will allow up to six contact telephone numbers and up to three e-mail addresses. The SAVIN system will replace those notification situations that were previously handled by a letter or a telephone call. In other notification situations, there will still be direct notification from an entity. Finally, it was noted that the SAVIN system is not intended to replace the current notification system, but, rather, it is an additional tool that will be available to make some of the notification process automated and more efficient.

Several committee members expressed concerns regarding the use of the term "address" as it related to the information required from a victim for notification. The committee made the decision to change the term to "contact information." The committee also requested

that the bill draft clarify that all contact information must be kept confidential.

Recommendation

The committee recommends House Bill No. 1041 relating to statutory changes necessary for the implementation of a SAVIN system. The bill changes the current victim notification laws to require the victim and other concerned citizens to register with the SAVIN system to receive the victim notifications. The bill provides that some of the notification duties that currently are the responsibility of certain entities, including prosecuting attorneys, courts, or custodial authorities, would be automated under the SAVIN system.

CRIME VICTIM COMPENSATION FUNDING STUDY

House Concurrent Resolution No. 3048 directed a study of crime victim compensation funding, including a review of other states' efforts, and the receipt of input from victim advocacy groups and medical providers.

Background

North Dakota Law Regarding Crime Victims

North Dakota Century Code Chapter 12.1-34 establishes that certain entities are responsible for providing victim services and victim information and notification. Under this chapter, the prosecuting attorney is responsible for securing for victims and witnesses of crime the rights and services described in the chapter; law enforcement is responsible for providing information to victims and witnesses regarding investigations and arrests; and custodial authorities are responsible for informing victims and witnesses about the status of a criminal defendant.

In addition to the rights and responsibilities that NDCC Chapter 12.1-34 provides to victims and witnesses, Chapter 12.1-35 addresses services and rights that are to be provided to victims and witnesses who are children. Section 12.1-35-02 provides that state's attorneys are encouraged to provide the additional services to children who are involved in criminal proceedings as victims or witnesses.

Victim Services Program

The Victim Services Program, which is a program within the Field Services Division of the Department of Corrections and Rehabilitation, manages a comprehensive crime victim delivery system. The program has a victim coordinator who informs victims of inmate status changes and issues. This position also provides victims with crisis intervention and referral information. The program works closely with State Parole Board and the Pardon Advisory Board as well as serves to educate law enforcement, prosecutors, judiciary, and the public on victims' rights, needs, and issues.

The other aspect of the Victim Services Program is the crime victims compensation fund and assistance programming. In 1993 the responsibility for crime victim compensation was transferred to the Department of

Corrections and Rehabilitation from the former Worker's Compensation Bureau. The funding under this program is available to victims who have been physically or emotionally injured in a violent crime in North Dakota; North Dakota residents injured by an act of terrorism in a foreign country; dependents of a homicide victim; and individuals who assume responsibility for funeral or medical expenses of a homicide victim. This fund serves as a payer of last resort to victims. This secondary source pays only for losses not paid by other sources, such as medical insurance, medical assistance, sick leave or annual leave paid by the employer, Social Security, workers' compensation, or other disability benefits.

Testimony and Committee Considerations

The committee received testimony and information from the Department of Corrections and Rehabilitation and from victim advocacy groups. The committee's consideration focused on victim compensation funding levels and sources and on methods used in other states to fund victim compensation programs.

Victim Compensation Funding Levels and Sources

The crime victims compensation fund can reimburse victims for up to \$25,000 of damages related to medical expenses, forensic expenses, wages lost, and funeral expenses as a result of a violent crime. Wage loss is limited to an award of not more than \$300 per week. Allowable funeral expenses are limited to \$3,000. Recovery is not available under this program for property loss.

The funding for crime victim compensation in the state is derived from federal and special funds. No general funds have been appropriated for the crime victims compensation program. The sources of the special funds include gifts, donations, restitution, inmate industry salaries, offender supervision fees, and other correctional fees. The federal fund allocation is set on a formula that reflects state effort. The more the state spends using state dollars, the more the federal government provides in the next biennium. The victim compensation program receives about \$150,000 to \$200,000 per biennium in federal Victims of Crime Act funds. According to the testimony, because the biennial appropriation for crime victim compensation has been set at \$425,403 since 1993 and because the number of applications for assistance continues to rise every biennium, the crime victims funding program exceeds its budget every biennium. It also was noted that the point in the biennium at which the program depletes its funds occurs earlier and earlier each biennium. The testimony indicated that the program is very important and should be adequately funded, especially in light of continuously increasing medical costs. It was estimated that the program needs about \$1 million per biennium to be adequately funded.

The program ended the 2005-07 biennium with a deficit of approximately \$500,000. In 2007 the Legislative Assembly gave the department a one-time appropriation of \$515,855 to help the program become current with its bills for a total appropriation of \$942,258.

The additional funds appropriated to the program were the result of funding designated for a drug treatment pilot project that was not established. As of February 29, 2008, \$165,233 of the original appropriation remained. It was projected that the program will end the biennium with a deficit of \$350,000 to \$500,000.

Testimony from victim advocacy groups indicated that society has a responsibility to make victims whole. The testimony stressed the importance of keeping the crime victims compensation fund solvent. It was noted that money may be paid out in small amounts, but for each victim, that amount of money is important. The fund helps domestic violence victims pay for medical treatment, counseling, and lost wages. The medical providers often must wait until the next biennium to receive payment. During the 1995-97 biennium, the crime victims compensation program implemented an 80 percent pay policy. Under this policy, the program asks vendors to write off 20 percent of their medical bill and the program pays the remaining 80 percent. The testimony stressed the need for the state to make an investment of general fund dollars. It was noted that charitable contributions are used to provide emergency assistance funds to victims, but the charitable contributions are not enough and do not provide consistency.

For the 2005-07 biennium, the crime victims compensation performance data included the following information:

- Number of claims pending at the beginning of the biennium - 10.
- Number of claims received during the biennium - 552.
- Number of claims for payment - 451.
- Number of victims age 17 and under - 152.
- Number of victims age 18 to 64 - 295.
- Number of victims age 65 and older - 4.
- Number of claims not approved for payment - 97.
- Number of claims pending at the end of biennium - 14.
- Total expenses paid - \$493,623.83.

Other States' Funding of Crime Victim Compensation Programs

All states have a crime victims compensation program; however, states vary in the amount the state pays victims and how the states fund their program. State compensation program funding comes from a mix of state and federal resources. Forty-one states, including the District of Columbia and Puerto Rico, depend solely or primarily on offender fees for funding. Forty-seven states can trace at least some of their funding to offender fees. Eleven states are solely or primarily dependent on legislative appropriations from general revenue. Two neighboring states have annual general fund appropriations--Montana has a \$587,000 general fund appropriation and Minnesota has a \$1,828,750 general fund appropriation. Wisconsin uses a mixed appropriation of \$488,000 in offender fees and approximately \$1,512,000 from its general fund.

The testimony received by the committee indicated that the sources and amounts of offender fees vary

greatly. For example, the California crime victims compensation program receives about half its state income from penalties assessed on fines; the other half is from fines ranging from \$200 to \$10,000 on felonies and \$100 to \$1,000 on misdemeanors, plus income from fines on traffic offenses, infractions, and civil violations. The Iowa program receives income from a \$100 civil penalty charged each person convicted of operating a motor vehicle while under the influence for reinstatement of that person's driver's license. The program also receives 18 percent of the state's 95 percent share of a 30 percent surcharge on all criminal fines. The South Dakota program receives \$2.50 on every criminal conviction, including traffic violations. In Wyoming the program's funding comes from a court-ordered minimum assessment of \$100 for each felony or high misdemeanor conviction and \$50 for some other misdemeanors.

The testimony indicated that assessing fees to offenders is one way to fund programs, such as the crime victims compensation program. It was noted, however, that offenders rarely have the money to pay the fees. It was suggested that consideration be given to the possibility of collecting a fee that would be dedicated to the crime victims compensation fund. It was noted that those states that have dedicated fees that do well are states that assess the fee to the largest number of people using the smallest fee possible to generate the income needed.

It was the consensus of the committee that in light of the court administration fees and other costs already imposed on offenders, increasing offender fees would not be a reliable way to provide additional funding for victim compensation.

Recommendation

The committee recommends that in 2009 the Legislative Assembly provide \$550,000 in additional funding to adequately fund the Department of Corrections and Rehabilitation's crime victims compensation program.

AUCTIONEER PRACTICES AND LAWS STUDY

Section 9 of Senate Bill No. 2008 directed a study of the practices and laws relating to the sale of real estate by auctioneers, including a review of the sale of multiple parcels of property at a single sale. The legislative history of this section indicated that there was a concern about the auction process that involves the sale of real estate. It was noted that complaints about the process used when selling multiple parcels of real estate at a single sale may indicate a need for more regulation of the auction process.

Background

Licensure of Auctioneers

North Dakota Century Code Chapter 51-05.1 governs the licensing of auctioneers and auction clerks. Section 51-05.1-04 defines an auctioneer as "a person, who for a compensation or valuable consideration, sells or offers for sale either real or personal property at public auction

as a whole or partial vocation." Section 51-05.1-01 provides that a person may not conduct a sale as an auctioneer or an auction clerk without a license issued by the Public Service Commission. Section 51-05.1-02 provides that licenses may be granted only to persons with a good reputation for honesty, truthfulness, and fair dealing and who are competent to transact the business of an auctioneer or auction clerk. Section 51-05.1-01.1 provides that the fee for the annual license or renewal is \$35. This section also requires that before a license is issued, the applicant must file a corporate surety bond with the commission.

North Dakota Century Code Section 51-05.1-01.2 provides for exceptions to licensure as an auctioneer. This section provides that a license is not required for the sale of an estate by an executor or an administrator, sale by a sheriff or other person under court order, sale by a public official acting in an official capacity, or sale of purebred or registered livestock. Section 51-05.1-03 contains the grounds for which a license may be refused, suspended, or revoked. This section also provides that a person has a right to a hearing before the Public Service Commission before a license may be revoked or suspended.

North Dakota Century Code Section 51-05.1-04.1 provides that "[a]n auctioneer may not sell the property of another at auction without a prior written contract with the seller which sets forth the terms and conditions upon which the auctioneer will sell the property. . . ."

Other North Dakota Laws and Rules Applicable to Auctioneers

Other laws that are applicable to auctioneers and auction clerks are NDCC Chapter 9-06, formation of a contract; Chapter 3-05, agency relationships; Chapter 51-12, false advertising; Chapter 36-09, brands and marks; Chapter 51-15, consumer fraud and unlawful credit practices; Chapter 41-02, sales; Chapter 41-06, bulk transfers; and Chapter 57-39.2, sales tax.

Administrative rules regarding auctioneers are contained in North Dakota Administrative Code Article 69-08. The rules include the requirements for approved auction schools and the retention of records by auction clerks.

Testimony and Committee Considerations

The committee received testimony from a representative of the Public Service Commission, auctioneers, and landowners. The committee's consideration centered on the auctioneer licensing requirements and the need for additional regulation of auctioneers.

Auctioneer Licensing Requirements

The committee received testimony from the Public Service Commission regarding auctioneer licensing requirements. The Licensing Division of the Public Service Commission has had jurisdiction over auctioneer licensing since 1957. Before 1957 auctioneers were licensed by the county treasurer of the county in which the auction sale was held. In 1975 the Public Service Commission's responsibility was expanded to include

the jurisdiction over auction clerks. While the auctioneer is responsible for selling or offering property for sale at public auction, the auction clerk is responsible for recording each item offered for sale, collecting all proceeds of the sale, paying all expenses of the sale, and making settlement to parties.

An auctioneer must meet all license requirements before a license can be issued. An applicant must file an application form along with a \$35 license fee; two completed reference forms; a surety bond, with an attached power of attorney; and proof of satisfactory completion of an approved course of study relating to auctioneers or proof that the applicant has been actively engaged as a licensed auctioneer for a period of at least one year preceding the date of application. The bond must provide annual coverage of not less than \$5,000 for an auctioneer or \$10,000 for an auction clerk. The auction clerk also must meet license requirements before a license can be issued. Although auction clerks do not have to complete an approved course of study relating to auctioneers, they are required to maintain a trust account for handling funds collected at auction sales. The auctioneer and auction clerk may not sell the property of others without a prior written contract containing specific items as provided in NDCC Section 51-05.1-04.1.

The Public Service Commission has used an electronic database program to issue auctioneer and auction clerk licenses since 1992. The current database program, developed in 1998, also monitors the status of auctioneer and auction clerk licenses. Since 1998 the commission has revoked 10 auctioneer licenses and six auction clerk licenses for failure to maintain adequate bond. In 2004 the commission revoked an auction clerk license after the licensee failed to pay a party for items sold at public auction. There are two administrative rules for auctioneers. The first rule provides for the requirements for auction schools and the second rule provides for the closing requirements for auction clerks. It was noted that the administrative rules do not address how auction sales are conducted.

Need for Additional Regulation of Auctioneers

The committee reviewed information regarding the real estate auction practices in other states. The information was based upon a survey conducted by the Public Service Commission. The information indicated that of the states surveyed--Alabama, Arizona, Arkansas, Kansas, Louisiana, Massachusetts, North Carolina, Oklahoma, Oregon, South Dakota, and Washington--only South Dakota addresses the issue of the manner in which parcels of land are sold. South Dakota Administrative Rule 20:69:06:07 provides, in part, "[i]f property being sold by auction is put up in tracts, each tract is the subject of a separate sale."

To address the issues raised in the study regarding a review of the sale of multiple parcels of property at a single sale, the committee considered a bill draft that would prohibit the use of a multiparcel bidding system or a choice of tract bidding system for real estate auctions.

In response to the bill draft, the committee received considerable testimony in opposition to placing

additional regulations on the practices of auctioneers. Testimony from landowners indicated that if a landowner wants to sell real estate by auction, the auctioneer and the seller should decide how the auction is to be conducted. According to the testimony, the bill draft would take away the seller's rights and would interfere with the right to contract. It was noted that the law should protect the seller from unqualified or dishonest auctioneers but should not interfere with the contract between the auctioneer and the seller. It was emphasized that the restrictions proposed in the bill draft are not needed.

Other testimony indicated that North Dakota's laws regarding auctioneers are among the best in the nation. The testimony indicated that the seller's choice to decide how an auction is to be conducted should not be removed. It was noted that buyers at an auction have the choice as to whether they want to bid and how much they want to bid.

Testimony in opposition to the bill draft from representatives of the auctioneer industry indicated that the bill draft is unnecessary, is not comprehensive, and will thwart the auctioneers' efforts to get the top price for the sellers. According to the testimony, buyers at an auction are made aware of the terms of the auction in the advertising for the sale and are given a full disclosure of the terms of the sale immediately before the bid opening begins. If real estate is being offered for sale in tracts and the seller elects to hold the bids open and tie the property together as one parcel, a description of the process is also given at that time. It was noted that buyers are entitled to have agents and other representatives to represent them in the bidding process. As in any business affair, buyers are entitled to have professional representation at an auction sale, including attorneys, real estate brokers, appraisers, lenders, and other agents.

The testimony emphasized that sellers should be able to direct how the sale of their property will be conducted, and the final decision as to how property will be split for sale should be for the seller to decide. According to the testimony, legislation that seeks to put limitations on how real estate can be sold should not be exclusive to auctioneers but should have equal impact on real estate brokers, attorneys, and others who deal in the sale of real property. It was also noted that legislation requiring that property offered in tracts must be the subject of a separate sale would be harmful to sellers because buyers could agree that one party will not bid on a certain tract if another party does not bid on another tract, thus creating an artificial price ceiling. Finally, it was noted that the state's interest in auctions should be to ensure that the transactions are fair, not to interfere with private contracts.

The committee also received testimony regarding the bill draft and the study from a sponsor of the legislation that prompted the study. According to the testimony, during the 2007 legislative session the sponsor was made aware of a problem associated with certain practices involving real estate sales by auctioneers. The testimony indicated that at that time there appeared to be strong support from an association of auctioneers for

some type of regulation. It was noted, however, that since that time the demand for intervention has ended and that the auctioneers no longer desire action on this subject from the Legislative Assembly. It was also noted that the discussion on this issue has been healthy and will lead to self-discipline within the industry.

Conclusion

The committee determined that there is not a need for legislative involvement in the area of the specific terms of an auction involving real estate. It was the consensus of the committee that the study be concluded and that the committee make no recommendation as a result of the study.

UNIFORM LAWS REVIEW

The North Dakota Commission on Uniform State Laws consists of 11 members. The primary function of the commission is to represent North Dakota in the National Conference of Commissioners on Uniform State Laws. The national conference consists of representatives of all states and its purpose is to promote uniformity in state law on all subjects on which uniformity is desirable and practicable and to serve state government by improving state laws for better interstate relationships. Under NDCC Sections 54-35-02 and 54-55-04, the state commission may submit its recommendations for enactment of uniform laws or proposed amendments to existing uniform laws to the Legislative Council for its review and recommendation during the interim between legislative sessions. The commission plans on recommending these Acts to the Legislative Assembly in 2009:

- Amendment to Section 21 of the Uniform Anatomical Gift Act approved by the Executive Committee of the national conference in 2008.
- Amendments to the Uniform Interstate Family Support Act approved by the national conference in 2008. The Uniform Interstate Family Support Act is tied to a federal mandate enacting the 2000 Hague Convention on Maintenance, which was signed by the President in 2008. The amendments modify the current version of the Act's international provisions to comport with the obligations of the United States under the convention. The federal enacting legislation states that a version of this Act must be passed by 2010.
- Amendments to the Uniform Principal and Income Act approved by the national conference in 2008. The amendments will bring the Uniform Principal and Income Act into compliance with Internal Revenue Service comments regarding allocation of IRA distributions in Section 409 and clarify the formula for calculating how much a trust needs to distribute and how much it can use to pay taxes.
- Amendments to the Uniform Probate Code approved by the Executive Committee of the national conference in 2008 and amendments to the Uniform Probate Code approved by the national conference in 2008, except for the

provisions for cost-of-living adjustments. The amendments update the intestacy provisions of the Uniform Probate Code which deal with inheritance by children.

- Uniform Adult Guardianship and Protective Proceedings Act. This Act addresses the issue of jurisdiction over adult guardianships, conservatorships, and other protective proceedings and provides a mechanism for resolving multistate jurisdictional disputes arising because there are more than 50 guardianship systems in the United States.
- Uniform Debt-Management Services Act, including the 2008 technical amendments. This Act applies to consumer debt counseling services and debt-management services and provides for registration requirements, bond requirements, and disclosure requirements.
- Uniform Emergency Volunteer Health Practitioners Act. This Act allows reciprocity to other states' licensees on emergency services providers so that covered individuals may provide services without meeting the disaster state's licensing requirements, specifically the problem of allowing out-of-state medical professionals to practice in the afflicted areas.
- Uniform Prudent Management of Institutional Funds Act. This Act provides statutory guidelines for management, investment, and expenditures of endowment funds held by charitable institutions, and expressly provides for diversification of assets, pooling of assets, and total return investment to implement whole portfolio management.
- Uniform Revised Limited Liability Company Act. This Act permits formation of limited liability companies, which provide the owners with the advantages of both corporate-type limited liability and partnership treatment. The commission will introduce a study resolution on this Act.

The committee makes no recommendations regarding these uniform Acts.

RACING COMMISSION REPORT

The committee received a report from the director of the Racing Commission. The Racing Commission is the regulatory body in charge of regulating live and simulcast racing in the state. The Racing Commission is a member of the Association of Racing Commissioners International, an organization that monitors racing on both a national and international level and is constantly creating and modifying rules for the regulation and improvement of racing. The dues paid to the Association of Racing Commissioners International, approximately \$5,000 in 2006, are based upon a percentage of the handle.

The Racing Commission's primary responsibilities are to regulate live and simulcast races as well as to license all of the participants, including simulcast service providers, tote operators, simulcast site operators, live track providers, simulcast employees, and live racing participants, including owners, trainers, and jockeys.

Because racing deals with live horses, qualified veterinarians are hired to ensure the safety of the animals. Certified stewards are needed for the regulation of the races. The winners of all races are tested for drugs to assure the integrity of racing. One of the most important areas of regulation is to protect the interest of the pari-mutuel wagers. Audits, investigations, and inspections of the pari-mutuel facilities are done for the protection of those wagering in our state. According to the report, pari-mutuel wagering is the driving force that supports the live horse racing industry in North Dakota.

Racing simulcast sites are located in Belcourt, Bismarck, Fargo, Williston, and Grand Forks. The Racing Commission is interested in adding more simulcast sites.

The Racing Commission's biennial budget is about \$400,000. Pari-mutuel wagering from 1997 through 2006 generated approximately \$18 million for the state's general fund. The Racing Commission has been appropriated between \$120,000 and \$150,000 per biennium out of the general fund for administrative costs. In 2007 the Racing Commission licensed a new service provider, which resulted in generation of about \$4.7 million in handle.

LOTTERY REPORT

The committee received a report from the director of the North Dakota Lottery regarding the operation of the lottery. According to the report, the lottery's mission is to maximize net proceeds for the benefit of the state by promoting entertaining games; providing quality customer service to retailers and players; achieving the highest standards of integrity, security, and accountability; and maintaining public trust.

For the 2007-09 biennium, the lottery's appropriation was \$2.519 million for operating expenses and \$1.412 million for salaries and benefits for 10.5 full-time equivalent (FTE) positions. The appropriation funds nine FTE positions in the Lottery Division of the Attorney General's office, one FTE position in the Information Technology Division, and a one-half FTE position in the Finance and Administration Division. The appropriation also funds three part-time draw operators. The lottery has a continuing appropriation for variable expenses of prizes, retailer commission, online gaming system vendor fees, and Multi-State Lottery Association game group dues. The lottery recently celebrated its fourth anniversary and enjoys broad public support in the play of its games. The challenge facing the lottery is to increase ticket sales and state general fund revenues each year in a very competitive market environment. The subscription service launched in November 2005 accounts for about 2.4 percent of total draw sales and it is trending toward the lottery's goal of 5 percent of total sales or about \$1.2 million per year.

For the 2007-09 biennium, the lottery has projected sales of \$47.8 million and net proceeds of \$12.4 million. It was noted that the lottery is on track to meet or exceed these projections.

According to the report, a vital part of the lottery's mission is to maximize revenue for the state's general

fund. To do this, the lottery must be innovative, energetic, and offer exciting and attractive games that add value to the lottery's product mix for players to play, license retailers that are in convenient locations to sell tickets, develop attractive point-of-sale items, have creative marketing promotions, provide quality customer service to retailers and players, and control operating expenses. During the 2007-09 biennium, the lottery has done or has plans to relaunch each of the four games currently being played. During the 2007-09 biennium, the lottery is monitoring the development of another game planned for 2010 and plans to conduct a raffle with another state lottery, which is planned for the end of 2008.

TECHNICAL CORRECTIONS - RECOMMENDATION

The committee continued the practice of reviewing the Century Code to determine if there are inaccurate or obsolete names and statutory references or superfluous language. The committee recommends House Bill No. 1042 to make technical corrections throughout the Century Code. The following table lists the sections affected and describes the reasons for the change:

1-02-12	The change relates to the effect of the language contained in headnotes and is the result of a change in publication style.
15.1-13-32	This section, which refers to a 2007 report to the Legislative Assembly, is repealed.
16.1-01-09	The change relates to the underscoring of statutory language appearing in a legislative bill and is the result of a change in drafting style.
33-06	Chapter 33-06, relating to eviction, is repealed and moved to a new location in Title 47, relating to property.
47-32	This change creates a new chapter relating to eviction. This chapter was previously located in Title 33.
57-39.2-18	This change is the result of a reference to a time period following a specific date. Because the date has passed, the reference is no longer necessary.
57-40.2-09	This change is necessary due to the removal of a date reference that left the sentence grammatically deficient.

MISCELLANEOUS

In response to a request from the chairman of the Legislative Council, the committee received testimony and reviewed state and federal laws regarding the possession of firearms by individuals who have been convicted of certain offenses. North Dakota Century Code Section 62.1-02-01 prohibits certain offenders from possessing or using firearms for a number of years after the completion of a period of probation. The testimony indicated that perhaps the court could have more discretion in this matter, especially in the case of deferred imposition of sentence cases. The committee reviewed state laws, the federal Gun Control Act of 1968, and the related federal regulations regarding this issue. Because of the likelihood that any state action on this issue would be preempted by federal law, the committee makes no recommendation.