

2009 SENATE JUDICIARY

SB 2176

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2176

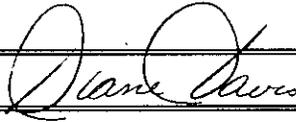
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7298

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to the termination of a lease by death.

Senator Lee – District 13 –Introduces the bill – She relates an incident that she knows of regarding this bill. She states this is an appropriate thing to do, especially when some family member of the deceased is already having a hard time.

The committee discusses the language in the bill. Should they require written notice, who would be the executor of the estate, or maybe they only have a representative.

Senator Olafson – Asks how long it takes to appoint a personal representative.

Senator Nething – Could take a couple months or could be quick depending on the situation.

Senator Lee – Says the attorney's in the room should be able to come up with better language and she doesn't have a problem with that. She thinks we need to protect some of these people who are not well off when having to deal with an estate.

Rocky Gordon – In favor with amendment. He says the standard in the industry, is that the lease is terminated in the month following the month of the death. He would propose different language. Language that is fair to all parties.

Senator Nelson – Asks about collecting double rents.

Gordon – Replies there are other laws that prohibit double rent.

Amy Nelson – Neutral –Fair Housing of the Dakotas – In 2008, they had 5 inquiries dealing with individuals that had a relative pass away and questions about the lease. The primary frustration was with leases that had a 60 day notice, and where they were told they were liable till the unit was rented. Also where a deposit was going to be kept because they did not fill the terms of the lease.

Senator Fiebiger – Asks if the amendment proposed by Mr. Gordon would be a fair way to alleviate the concerns that have been raised to your organization.

Nelson – Said it would be a good compromise.

Closed hearing on 2176

Senator Nething asked Senator Fiebiger to come up with an amendment.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2176

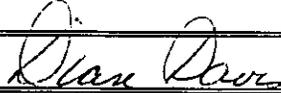
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: 1/20/09, committee work 1/26/09

Recorder Job Number: 7756 advance to 2:44 min.

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Committee work

Committee discusses the amendment

Senator Fiebiger moves the amendment, Senator Nelson seconds

Amendments verbal do pass

Motion made do pass as amended by Senator Fiebiger, seconded by Senator Nelson

Vote, 6 yes, 0 no

Senator Fiebiger will carry

UNOFFICIAL PROPOSED AMENDMENTS TO SB 2176

Page 1, line 9, after the first "month" insert "in the month following", remove the second "of",
after "lessee" insert a period, and remove ", the last day of the following month, or
under"

Page 1, remove lines 10 through 12

Renumber Accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2176

Page 1, line 9, ^{replace} after the first ~~month~~ ^{with} insert "in the month following" / remove the second "of" ^{and} ~~and~~ ^{replace} after "lessee" insert a period, and remove ", the last day of the following month, or ~~under~~" ^{with an underscored period}

Page 1, remove lines 10 through 12

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2176: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2176 was placed on the Sixth order on the calendar.

Page 1, line 9, replace the second "of" with "in the month following" and replace ", the last day of the following month, or under" with an underscored period

Page 1, remove lines 10 through 12

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2176

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2176

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/10/09

Recorder Job Number: 10541, 10545, 10605

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2176.

Rocky Gordon, ND Apartment Association: This is not our bill, but we have no opposition.

Chairman DeKrey: Thank you.

Rep. Delmore: If you die on the first day of the month, you pay rent for that month and the next month.

Rocky Gordon: Yes, it is. We talked about that, and yes we did put that in.

Rep. Koppelman: The discussion we had yesterday on a different bill, we talked a little bit about the landlord's duty to mitigate in response to the kind of scenario that Rep. Delmore brings up. I would think that if a landlord could find another tenant, they wouldn't charge the extra rent.

Rocky Gordon: That's very true. We would say that the obligation would apply. However, if in a situation of a parent, the death occurs, and it's not a comfortable situation to start showing the apartment before the apartment has been cleaned out. It's a little bit of a sensitivity issue on our parts as well.

Rep. Delmore: There may be times, if someone lived in that apartment for a long time, that it would take a while to go through things and move everything out. It may take a while to go through everything before they can even think of moving out.

Rep. Klemin: Notwithstanding this language, is there any reason, if the parties agreed, why the lease couldn't terminate sooner.

Rocky Gordon: If the parties agreed, I don't see any reason why not.

Rep. Klemin: If the heirs of the decedent have everything moved out, there was another tenant available to move in; certainly you could agree to do that.

Rocky Gordon: Yes.

Rep. Kretschmar: In a situation where a couple leased the apartment and the husband was the lessee, he passed away; would you terminate the wife and make her get out or would you work something out.

Rocky Gordon: In most cases, both parties are signed on the lease, so it wouldn't do anything to the remaining party; they would remain in the apartment on the lease.

Rep. Griffin: Do you think that we should include the lessor in the language.

Rocky Gordon: If the property is owned by an individual and passes away, I don't have an objection.

Rep. Klemin: I think in that situation, the estate of the landlord would become the lessor, until the property was probated and whoever became the new lessor would still be subject to the terms of the existing lease on the property.

Rocky Gordon: That, I believe, is correct.

Rep. Klemin: I think an analogy would be if the landlord sold the property to another owner, that new owner is going to be subject to the terms of the leases. The leases are binding on them. So there wouldn't be any change except as to who gets the rent.

Rep. Koppelman: I would think also that the lessee would want some assurances of continuity. If you're renting something and the landlord dies, and you just signed the lease last month, you're turned on your ear because your landlord passed away is not a good thing for the lessee either.

Rocky Gordon: That is what I was alluding to. That's correct.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will recess the hearing.

(Reopened later in the same session.)

Chairman DeKrey: We will reopen the hearing on SB 2176.

Sen. Judy Lee: Sponsor, support. I had a constituent that went to the hospital, and then passed away. During the hospital stay, the management company continued to show her apartment. Then they were told that they owed 60 days rent after the death of the tenant. The tenant did not have the assets to pay that. The relatives of the tenant didn't have the money either. I just felt this wasn't right.

Rep. Klemin: I'm looking at this from the standpoint of prospective effect only, rather than affecting existing leases. If you had a lease right now that had some requirement that is different than this, I'm wondering if there might be some constitutional reason why we couldn't apply this to existing leases. It would have to be prospective only. Have you looked into that issue?

Sen. Lee: I can't answer that. I would be happy to inquire about that. My hope would be that it would apply to existing leases. The Apartment Association and owners/landlords were all in the discussions about this.

Rep. Klemin: Time might maybe take care of this, but I think we have some constitutional provisions about passing laws that unfairly obligation of contracts.

Sen. Lee: I understand that, and I don't have an answer. But I would surely like to see this apply to current leases if it were possible. I guess the alternative is for people to say "come and get me".

Rep. Klemin: There might have to be a court case.

Sen. Lee: I don't want that either.

Chairman DeKrey: Thank you. Further testimony on SB 2176. We will close the hearing.

(Reopened later in the afternoon session.)

Chairman DeKrey: We will take a look at SB 2176.

Rep. Griffin: I would like to make a motion that we add the "lessor"; that if the landlord dies, the lessee can get out of the lease.

Rep. Kretschmar: I would think the lessee would like to keep the lease.

Rep. Klemin: I would too, I would resist that amendment. I think the general rule is, if the property in the hands of a landlord changes ownership, whether by sale, death, or whatever, you are still bound by the lease.

Rep. Griffin: I agree with you, I think the language, when you are dealing with a month-by-month lease; it appears that under statute, it says on a month-by-month lease, it says that either party can pull out at that time; that the death will terminate by either party. That's the language right before it in the beginning.

Rep. Klemin: I think that would be a hardship on the tenant. All of a sudden their landlord in CA dies, and they get kicked out of their apartment.

Rep. Griffin: To me, that's the way the law reads right now, is that the lease terminates.

Rep. Klemin: What could happen is, certainly a party could give notice of intention to terminate, but the way this language is added on here, it's automatically going to terminate.

Chairman DeKrey: I will appoint a subcommittee of Rep. Koppelman, Rep. Kretschmar, and Rep. Griffin.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2176

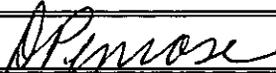
House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/17/09

Recorder Job Number: 11139

Committee Clerk Signature



Minutes:

Ch. DeKrey: We will take a look at SB 2176. What are the committee's wishes?

Rep. Koppelman: Explained the amendment 90151.0202. The first sentence of the section, which is part of current law, is very cumbersome and hard to understand. So after talking with LC, the first part of the amendment simply clears up that language a little bit to make it a little more understandable. The first sentence says that if there is a lease where it is terminable at the pleasure of one of the parties, where either party can cancel whenever they want to, and this is current law; if someone dies or is incapacitated, as soon as notice is served of that, the lease terminates. That is part of current law, and it says only in those cases does this occur. The new bill is basically a caveat to that, an exception. Beginning on line 9, upon the death of a lessee of real property for residential purposes however, and at the option of any surviving lease or the estate of the decedent, the lease terminates on the last day of the month, in the month following the death of the lessee unless the lease term expires before that time. It is still kind of cumbersome but what it means is basically, that as Sen. Lee talked about the issue when she testified, and basically it leaves it up to the surviving lessee or the estate of the decedent; if there is some reason they wouldn't want the lease to end, it allows them to keep it.

The line 10 addition simply says that if the lease term expires before that time, which it could end this month instead of having another month, then that prevails. I move the amendment.

Rep. Kretschmar: Second.

Chairman DeKrey: Voice vote, motion carried. We now have the bill before us as amended.

What are the committee's wishes in regard to SB 2176?

Rep. Koppelman: I move a Do Pass as amended.

Rep. Delmore: Second.

13 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Koppelman

VK
3/18/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2176

Page 1, line 6, overstrike "when the" and insert immediately thereafter "a"

Page 1, line 7, after "property" insert "which" and overstrike "it"

Page 1, line 9, after the second underscored comma insert "and at the option of any surviving lessee or of the estate of the decedent,"

Page 1, line 10, after "lessee" insert "unless the lease term expires before that time"

Renumber accordingly

Date: 3/17/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2176

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep. Koppelman Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

SB 2176, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2176 was placed on the Sixth order on the calendar.

Page 1, line 6, overstrike "when the" and insert immediately thereafter "a"

Page 1, line 7, after "property" insert "which" and overstrike "it"

Page 1, line 9, after the second underscored comma insert "and at the option of any surviving lessee or of the estate of the decedent."

Page 1, line 10, after "lessee" insert "unless the lease term expires before that time"

Renumber accordingly