

2011 SENATE JUDICIARY

SB 2195


2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2195
1/25/11
Job #13366

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to remedies for termination of a lease due to domestic violence

Minutes:

There is attached written testimony

Senator Nething – Chairman

Senator Olafson – District 10 – Introduces the bill – Provides an attachment – He said this bill provides a process for the filing of a complaint on the part of the victim.

In Support of the bill

Janelle Moos – Executive Director of ND Council on Abused Women's Services – See written testimony.

Opposition

Rocky Gordon – Lobbyist for the ND Apartment Association – Relates his concern about the expanding of protected classes. He says anytime there is something going on in the landlord tenant business its discrimination. His association feels the law goes too far. He said to keep in mind that the landlord isn't the bad guy here.

Senator Olafson – Asks about the legislation that was passed last session and if he had any statistics on how many members of his association have seen tenants exercise their rights under that legislation.

Gordon – Responds he doesn't have statistics but mentions he has not heard of any situations where a landlord has not or has acted irresponsibly in response to this law. He questions whether we are trying to fix something that may not be broken.

Senator Olafson – States then it obviously isn't creating problems for your association. He asks if he has heard from his members that this bad legislation and creating headaches.

Gordon – Replies, he has not but he has heard complaints of unjustified complaints filed with the Dept. of Labor. He says that is an issue for them.

Senator Olafson – Asks if he has any alternative suggestions to put teeth into the law.

Gordon – States they would rather see it go through the courts if there needs to be a penalty.

Senator Nething – Asks if a process through the Labor Commissioner wouldn't be simpler for them opposed to a court process.

Gordon – Relates an incident that happened to him. He says it's quite a process to go through.

Senator Olafson – Agrees that the landlord is not the bad guy unless or until the landlord refuses to comply with the legislation. He says that is when a complaint would be triggered.

Gordon – He agrees but talks of how easy it is to file a complaint with the Dept. of Labor when it deals with discrimination.

Neutral

Tony Weiler – Commissioner of Labor – See written testimony.

Senator Olafson – Asks if he sees many frivolous and totally baseless claims filed.

Weiler – Responds that they do because it is fairly easy to file a complaint of discrimination. He says an employer does have to take the time and does have to respond. It has been a concern of his because a large majority of the claims are without merit. He doesn't think there is an easy remedy for that but is looking into his office an administrative decision that they wouldn't have to investigate if they haven't met the first step. He gives the example of have they terminated a lease because of domestic violence, if they haven't he said maybe his office could do a summary of dismissal. He appreciates the fact it takes the landlords a lot time but he says unless they have some comparables they have nothing to determine whether or not there has been a violation.

Close the hearing on 2195

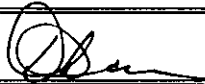
2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB2195
2/9/11
Job #14276

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to remedies for termination of a lease due to domestic violence

Minutes:

There is attached testimony

Senator Nething – Chairman

Senator Olafson explains the testimony that was heard at the hearing. He says this bill would invoke the current process under the Dept. of Labor for filing a complaint. He has an e-mail that gives statistics on how many times this process was used by domestic violence victims. He said he believes property owners are following the law and as long as they do comply this won't affect them. See written testimony.

Senator Sitte moves a do not pass

Motion lost for lack of a second

Senator Olafson moves a do pass

Senator Nelson seconds

Discussion

Senator Sitte said according to the e-mail property owners are seeing a chance this could be abused. She thinks as long as there are so few cases there is no need for this law.

Senator Olafson said under the bill passed in 2009 they would have to have a protection order in place. No one can just claim to be a victim of domestic violence; they must have a court order.

Senator Nething said as he sees it this bill would provide for a process to go someplace, the Labor Commissioner, as it is now there is no place to go to other than the court.

Senator Sitte said it seems the problem has been addressed. She asks why it was introduced.

Senator Olafson – Replies the bill is here to provide a process should that happen.

Roll call vote – 3 yes, 2 no.

Motion carries

Senator Olafson will carry

Date: 2/9/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2195

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Little Seconded By S.

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman			Carolyn Nelson		
Curtis Olafson - V. Chairman					
Stanley Lyson					
Margaret Sitte					
Ronald Sorvaag					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*Motion failed lack of
second.*

Date: 2/9/11
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2195

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By S. Olafson Seconded By S. Nelson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman		X	Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson					
Margaret Sitte		X			
Ronald Sorvaag	X				

Total (Yes) 3 No 2

Absent 1

Floor Assignment S. Olafson

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

REPORT OF STANDING COMMITTEE

SB 2195: Judiciary Committee (Sen. Nething, Chairman) recommends **DO PASS**
(3 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). SB 2195 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2195

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2195
March 9, 2011
15149

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2195.

Janelle Moos, Executive Director, ND Council on Abused Women's Services: Support (see attached 1).

Sen. Curtis Olafson: Sponsor, support (see attached 2a,2b,2c). Explained the bill. Most of you who were here in 2009 would remember the bill that was passed relating to an early exit of a lease agreement for victims of domestic violence. The one thing that we missed was having a provision for filing a complaint if their request wasn't honored. There is a compliant form that is four pages long. It's relatively simple, not complex but it does provide a lot of good information if an investigation is warranted. When the bill was in Senate Judiciary, we asked one of the representatives of the industry, the apartment management industry to do some research on how many times this 2009 bill was used by victims of domestic violence. It was interesting to note that the response was that a large management company in Fargo said that this had been used five to seven times and a large management company in Bismarck said two times. There are people who are exercising their rights under the 2009 bill. I provided copies for you of Chapter 14-16-17, which were the provisions that we passed in 2009 and I also provided copies for you of 14.02.5 which describes the process under the Labor Dept. complaint process.

Ch. DeKrey: Thank you.

Rep. Koppelman: I understand what the bill seeks to accomplish, but I'm not sure that I understand the need for the bill. Why would the Dept. not be able to act upon what is currently in law.

Janelle Moos: There is currently nothing in the section where this found under chapter 47-16, there is no reference to an enforcement provision. This is only making note of what is currently available to tenants to enact their right to fill out the paperwork and go through the process. It's not currently referenced under this section of code. We're making reference to a process available to them.

Rep. Koppelman: But we had a laundry list of fair housing requirements in the Century Code, which many of us have worked on quite a bit over the many years. My understanding is that any complaint, under any of those items, is within the purview of the Labor Dept. to investigate and that's where we steer people if they have those complaints. Why don't you think that they could receive a complaint on that point.

Janelle Moos: I think it is making note that victims are aware of those rights and referencing them in that section of the code. I don't think that it is duplicative language. I think it is just making victims aware of their rights and that there is a process available to them. This was a way to remedy that and just draw their attention to it.

Rep. Koppelman: Sen. Olafson testified that several people have been exercising their rights or pointing out this law in order to do so. But you said that no one has been denied in your earlier testimony. This is a solution in search of a problem that doesn't exist but you feel might because of the oil boom.

Janelle Moos: That's correct. I think it is important that we be proactive at this point in time. We've heard a lot of stories where, not only in our state, but across the country, where victims aren't able to exercise those rights and we want to make sure that the process is available to them.

Rep. Koppelman: You're talking about the right to rent property if they had to leave a prior rental property because of domestic violence, is that correct.

Janelle Moos: And if they were denied their right to get out of their lease under the current section, so it would be both.

Chairman DeKrey: Thank you.

Tony Weiler, Commission of Labor: Neutral (see attached 3).

Chairman DeKrey: Does this bill allow you to do something that you don't already have the ability to do.

Tony Weiler: In response to Rep. Koppelman's question. Under current statute we would have no power or ability to take a complaint based on this 47-16-17.1. We don't have the statutory authority, there isn't any enforcement mechanism. This bill will allow our Dept. to then investigate these claims under the ND Housing Act (see attached 4). Now we would be able to investigate if a person terminated their lease under 47-16-17.1, and then were subsequently denied rental or in some other way discriminated against because they'd done that, then we would be able to investigate that to determine whether they were discriminated against because of that.

Rep. Koppelman: I'm looking at the two sections that we are dealing with here. It seems to me that every other type of situation we call housing discrimination is addressed under 14-02.5 and you have the authority to investigate those, is that correct.

Tony Weiler: Yes.

Rep. Koppelman: But it's because this is in another section that you don't have the authority with regard to this issue.

Tony Weiler: It's because I don't have any jurisdiction to investigate if you've been denied rental or discriminated against in housing because you've invoked 47-16-17.1, which really allows you to say to your landlord, "I've been a victim of domestic violence, I need out of my lease". They have to let you out. The next step would be that I go to the next landlord, and say I want to rent and they deny you that because you invoked this section. Now we could come in and investigate that. Right now I couldn't do that, I don't have power to do that under the housing discrimination act. In essence, this bill adds a category to the housing discrimination act that's not there. It's the same as you being discriminated against because of your race, now you're being discriminated against because you invoked this section which allows you to terminate your lease.

Rep. Koppelman: Would it not be simpler to have just an item, rather than invoking this entire section, which I think is longer than all the other housing discrimination statute, which lists 12 different items, wouldn't it be simpler just to add a 13th item there to say refusing to rent based on domestic violence is housing discrimination. I know that this says that, but it refers back to a different section that is voluminous in its parameters and you're going to be investigating potentially more issues with regard to this one item, than you are with all the other housing discrimination items we have in law.

Tony Weiler: In essence, this bill adds a category to the housing act. To me, it still makes sense to have that other statute stay in place and then add this as an enforcement mechanism. That is what we're trying to do here. I'm not going to go in and start determining anything other than did you invoke this section to terminate a lease, if you did, the next step would be, were you discriminated against because of that. Often we see legislation that doesn't have an enforcement mechanism; this is adding an enforcement mechanism. We heard the numbers of the people in Fargo and Bismarck. It's not going to be a huge number; but if one of those seven people tried to rent again and someone said no, you've invoked that section, now we'd get involved. We wouldn't get any federal funding for it, but we'd get involved.

Chairman DeKrey: Should this become law, are you comfortable with the budget that you are taking through Appropriations process is adequate to cover this extra.

Tony Weiler: If the federal housing law is similar to ND's law, then we get federal funding for it. So for cases filed like this, we would not get paid by HUD.

Chairman DeKrey: This would be dissimilar to federal law.

Tony Weiler: Yes. I think in the housing law right now, I think the two that are not similar to federal law, would be receipt of public assistance and marital status. Those two are listed in the ND housing act, but not in federal law, so there is no money for those types of cases. I don't foresee us having so many claims that it is going to affect us.

Chairman DeKrey: How would you ever prove a complaint like this, other than when you contact the landlord he said he heard that and that's why I didn't give them the apartment. It would be almost impossible to prove, wouldn't it.

Tony Weiler: The application of law to fact, is like that quite a bit. Our investigators try to find as much fact as they can get. They are going to try and do the best they can to make the determination. A lot of times, it's a he said, she said. In those cases, there's not a lot you can do without facts supporting the position.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition to SB 2195.

Rocky Gordon, ND Apartment Association: Opposed (see attached 4, 4a). This bill would put us in a position that we think will potentially put us in a situation where claims will be brought against us, going through the investigations that Mr. Weiler's office do, which are burdensome. But that's not Mr. Weiler's fault, that's the law. They are very burdensome to our industry. That's our real concern with this, we may not know that we have discriminated against someone who terminated a lease with a landlord due to this domestic violence. The other thing is that we are getting to the point where we keep expanding the protected classes, soon everybody is going to be a protected class, then what do we do. That's a concern of ours as well. We did have one of our members, who was a victim of domestic violence, she was going to come and express her opinion on this bill, and why it probably isn't the best way to handle this, but unfortunately she couldn't be here today. I wanted to also point out that our members are very concerned about that part, and there are a lot of them who took off work today (Mr. Gordon had the audience raise their hands if they were concerned about the law).

Chairman DeKrey: Can the person come in on a different date.

Mr. Gordon: Possibly.

Chairman DeKrey: We could hold it open so that she could testify if she wishes to testify.

Mr. Gordon: I can ask her.

Rep. Koppelman: Being in the rental business, I heard Mr. Weiler's testimony that he wouldn't get any federal money for this. I suspect the reason for that is because this isn't in the federal laundry list of protected classes when it comes to fair housing. Are you aware of anything in ND law to protect a class for fair housing that isn't in the federal law.

Mr. Gordon: We do. I think we have two or three additional protected classes.

Chairman DeKrey: You said marital status and what.

Tony Weiler: Marital status, receipt of public assistance and age.

Rep. Koppelman: If you had someone come to you and say, I had to leave my last place of residence where I was renting, because I am a victim of domestic violence, but I need a new place to rent. Do you know anyone that would refuse to rent to them; what would be your practice if that were to happen.

Mr. Gordon: As long as they met our other criteria, as I mentioned. As long as you meet our rental criteria, you would be rented to.

Rep. Koppelman: So that would not be a factor weighing in one way or another in terms of whether you would or wouldn't rent to them.

Mr. Gordon: No.

Rep. Koppelman: If they were in a situation where they had to leave more quickly and terminate an earlier lease, you wouldn't count that against them if they explained to you that the reason was because they were a victim of domestic violence and that's protected under ND law elsewhere.

Mr. Gordon: As long as they met our other criteria.

Rep. Koppelman: But one of the criteria might be breaking a previous lease, but if they explained to you that they had to break the last lease, and here's why, ND law protects me in that way.

Mr. Gordon: No it would not.

Rep. Hogan: Could you simply ask the question on your general application. Have you ever broken a lease because of domestic violence, so you would have the information when you receive the application.

Mr. Gordon: I think if they become a protected class, I'm not sure if we can do that.

Rep. Hogan: But the question is, if you ever needed to break a rental lease because of domestic violence is relevant to the specific issue. It might be a question we want to research.

Rep. Klemin: You had touched on the possibility that a landlord might be violating this bill and not know it. Could you expand on that a little bit. How could that happen.

Mr. Gordon: It's likely if a person terminated a lease for domestic violence, the landlord on the front end is going to know because the law says that they have to show you that they have a permanent protection order. But on the re-rental side, #1 it's not required that they show you anything and #2 when you call for a previous landlord reference, it's probably more than likely not that the landlord is going to say that they let them out because they were a victim of domestic violence. For one thing, that might be too much information and for another, that may potentially be illegal.

Rep. Klemin: Are there cases when you send out the request To Whom It May Concern, it doesn't say that they've got to fill it out and send it back. The new landlord, when you sent this request for information, there's nothing that says that they have to fill it out and send it back to you. So I am assuming that there are times when you don't get these back from the previous landlord.

Mr. Gordon: That's true, however, most professional organizations in the industry do, because we do it for each other. In the event that that's not the case, then we just have to go to our other criteria. There are situations where they've never rented an apartment before, for example, where we wouldn't get a previous landlord reference.

Rep. Klemin: I know of many situations where the apartment is rented by somebody who lives upstairs and owns the house and is renting an apartment downstairs, they aren't a professional organization like you're talking about. There are a lot of those situations, so it's conceivable that even if you asked the question, you're not going to get an answer.

Mr. Gordon: That is possible. Just to give some perspective, I would say that we get 90+% of them back.

Rep. Beadle: The way the law is being proposed, as I read this, in conjunction with what was passed in the last session, it makes it discriminatory if Rocky Gordon & Co. did not lease to somebody because of the fact that they exercised this right to terminate a lease due to domestic violence. But you would still have all your other issues. If you're not aware that they terminated due to domestic violence, you're not discriminating against them. If someone were Jewish and you didn't know it, you wouldn't be guilty of discriminating against them, because you didn't know it to begin with. Putting them as a protected status, if you aren't aware of it, you can't be

penalized for prohibiting them to be there because of that, because you clearly weren't aware.

Mr. Gordon: That's not true. We can be. The other point I want to make is when the original federal housing laws were put together, they felt that discrimination based on race was such an egregious matter that they made it pretty hard on landlords to go through the process; they did that on purpose because they wanted it stopped. I don't disagree with that. They made the whole process very difficult. Now, the reality is that the process is better than it used to be. When I started in this business, the first complaint that was filed against me, a person filled out a postcard, mailed it to Denver, they sent a person up here for two weeks, who went through our complete office, talked to my neighbors, talked to the tenants, probably went through my garbage. That was a very complete investigation. The reason was that they wanted to make it very tough on landlords that were doing these acts of discrimination. Over time the process has gotten better and also pulling it into ND, the investigative process has helped. The Commissioner's office has an input forum that gathers more information than what used to be gathered and maybe we're getting a little smarter too by doing things like this to make sure that we can protect ourselves. But the process was made very difficult for landlords then and to some extent it is today, but it is better than it was.

Rep. Koppelman: You provided the form that applicants fill out when they are trying to rent property. Could you supply the committee with the other forms you use, such as the one that goes to the previous landlord, just so we have an idea of what.

Mr. Gordon: It is on the back of the application. We also have them sign, giving us permission, to run a credit check, background check, so that they know upfront that we are doing it.

Rep. Koppelman: This is what the applicant signs.

Mr. Gordon: Yes, and then we fax this to the previous landlord.

Rep. Koppelman: So you don't have a separate form, you just fax a copy.

Mr. Gordon: Because they want to know that we have their permission.

Rep. Maragos: I am assuming that you are the final arbiter of what an acceptable previous rental record is under the criteria.

Mr. Gordon: For my company, I am. But again, we put a lot of weight on the answers to these last questions. There is a lot of weight given to, would you rent to this applicant again.

Chairman DeKrey: Thank you. Tony, can you get some answers for us on those questions that came up.

Tony Weiler, Commissioner of Labor: Neutral. I have been the Commissioner for 6 months and 2 days. I don't claim to know everything. I can't imagine a situation where this wouldn't be relevant or be required for my office to find discrimination. I do think that what Rep. Beadle said is correct in that if we get a complaint, we are going to investigate that. I have a very good staff, they are very thorough. They are going to investigate it. If Mr. Gordon's office shows me that they didn't re-rent because this previous landlord said that they wouldn't rent to them again, but didn't mention domestic violence, I can't imagine a situation where we would find that to be cause or find that to be discriminatory. There is still an element where you would have to have knowledge. Whether you can ask the question, I don't know that.

Chairman DeKrey: Please provide the answers to the questions raised here today. We will recess this hearing since we need to hear from the lady who wanted to testify. We will reschedule this.

Rep. Klemin: Would it be clearer if the bill had an amendment in it that required evidence of knowledge or willful conduct on the part of the landlord, or mitigating factors or something like that.

Mr. Weiler: I don't know that I have a good answer to that. I'm trying to think of the other tenets of the housing act that we look for. We're looking for comparables, looking if you have not rented to other people who might be part of a protected category. We're going to look at what kind of information that both parties have, or what was available to the landlord. I just don't know the housing laws well enough to tell you that knowledge is required in every category, but the way I know that we investigate complaints is that we want to know what information each party had, primarily the person who is being alleged to have discriminated and that's in all areas. If they don't know then I can't think of a situation where they would be held liable for something they didn't know. I don't think that would be a cause case.

Chairman DeKrey: Thank you. Further testimony in opposition.

Jeremy Petron, President, Bismarck-Mandan Apartment Association: I am employed with Gold Mark Property Management as an area manager in Bismarck (see attached 5). We are opposed.

Rep. Koppelman: If someone came to rent an apartment and told you that they were a victim of domestic violence and had to terminate my previous lease early because of that, I want to rent from you and if they said that in ND law it says that you can't refuse me to rent, would you worry about a penalty or would you rent to that person because the law already says you have to.

Jeremy Petron: We would rent to the individual. What we're concerned about is the expansion of a protected class where they could potentially put a fair housing claim against us and we're essentially guilty until we prove our innocence.

Rep. Koppelman: Under current practice, without this bill, do you see a scenario where you would just say, there's no penalty so I don't have to do this; I'm not going to follow the law. You're going to do what the law says.

Jeremy Petron: Yes. We wouldn't discriminate.

Rep. Onstad: The previous landlord said no, they wouldn't rent to that individual again, and yes we did not give them their deposit back and that was the only statement that was there. Would you rent to that particular person.

Jeremy Petron: With that limited information, I don't think that we would, unless we had more facts as to the reason why they had poor rental history.

Rep. Onstad: The landlord wouldn't rent to that person, but the landlord's reason was of a domestic violence situation, part of the apartment was wrecked, a hole in the sheetrock so the deposit wasn't returned. The other part was that they had broken the lease and they didn't want to be involved in that situation. Now, if they don't divulge that information, how can you make an informed decision, and you just tell them no, we can't rent to you, are you going to go and check that further, or what's going to happen. Now is this person going to explain their case or what the situation was. Now it's left up to you to determine yes or no. Is that how it would end up.

Jeremy Petron: Yes. If the rental reference comes back poor, if there were police reports and damage to the apartment and the person is a victim of domestic violence that comes to us, if they are telling us beforehand or showing the court order, which is the reason that they were released from the lease, we wouldn't not re-rent to them. We would still take that as a favorable rental reference.

Rep. Onstad: I am assuming that you're a large rental association. You probably get several rental requests daily, so out of those 10 applications that you received that day and then this one is a "no", are you going to further check that out or are you just going to take these other applicants because they are more favorable.

Jeremy Petron: We wouldn't look further into the reason why if it wasn't disclosed to us specifically, as to why they left the past apartment and that the landlord wouldn't rent to them again in the future.

Chairman DeKrey: Thank you. Further testimony in opposition. We will recess the hearing until a later date.

Tony Weiler, Commission of Labor supplied attached 6. Answers to several questions posed by the committee. The recessed hearing will hear additional testimony in March 23, 2011.

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2195
March 23, 2011
15868

☐ Conference Committee

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will re-open the hearing on SB 2195. We will take testimony in opposition.

Greg Thompson, ND Apartment Association: Opposed. We did not oppose the statute when it was passed last session. That statute being section 47-16-17.1 that provides a termination remedy for victims who are victims of domestic abuse and allowing them to get out of a lease agreement. Our issue with this bill is that we don't see a problem. There have been no claims that we're aware of. It's a situation where a remedy in our view is not necessary if a problem does not exist. Our position is two-fold. One, there really is no need for the bill and two, it can create some unfairness. At the outset, we, the ND Apartment Association, has always been in favor of providing protections for victims of domestic abuse. I've been practicing law in this area for 29 years and I do field a lot of phone calls from property owners who, even before the bill was passed, 47-16-17.1 situations where there is a domestic abuse, police are called, the property owner is approached by usually the victim, saying that I either want to get out of the lease or I don't want to be living with him anymore, do I change the locks, do I let him out of the lease, what do we do. This has been going on for many years, as you are well aware; 47-16-17.1 codified the arrangement to allow the victim of domestic violence to get out of the lease. Again, we don't have an issue with that. The landlord, under those circumstances, is already at a financial loss by allowing the victim out of the lease, but so be it. The bill expands the protections by now allowing that person to also file a fair housing claim in a circumstance where the victim might feel that they were discriminated against. Our issue, principally on fairness grounds, is that under the statute, that property owner where that victim is applying is 99.9% of the time not going to know about that person's prior situation. In fact, the statute itself, in subsection 3, if you read the statute, says that landlord is prohibited from disclosing any information about that arrangement, about the domestic abuse situation. A couple of years later, if that victim then goes and applies with another property owner, and might be denied because the victim might have bad credit, or a criminal history, then the victim would have the right to turn around, if the bill gets passed, and file a fair housing claim with the Dept. of Labor. Now you might ask, what is the

big deal, if there's no problem, if there's no substance to the claim, it gets thrown out. That is correct and I know Commissioner Weiler is here to talk about this as well. In my experience, and I do a lot of work with property owners who defend fair housing claims. The reality of fair housing claims is that most of them do get thrown out. The problem is that they don't get thrown out until the Dept. of Labor has investigated it. By law they are required to investigate. The property owners don't want to take a chance with these claims, so they call me and then we have to defend the claim. Eventually, following the investigation, it might get dismissed. It usually is dismissed; however, that property owner has just spent another \$1500 -2,000 dollars going through the investigation and when it's found that there isn't merit to the claim, then it gets dismissed, but the property owners are out that money. It's too narrow of a circumstance where you are being asked to create a remedy where a problem doesn't exist. Another problem we're going to run into with this, is that the bill as it's worded, would allow only victims who have followed the statute, 47-16-17.1 to file a claim. However, as Commissioner Weiler would tell you, anybody can file a claim, and then the Dept. of Labor has to investigate. If a victim of domestic violence has not followed the statute, feels that they have been discriminated against, they still have the right to file a claim and then after investigation, then it still gets thrown out. To me, it's just a situation where it's begging for a solution where no problem exists. If the Committee was looking for some sort of an "out" here, some remedy here, we would not, on behalf of the ND Apartment Association, object to an amendment to the proposed legislation that authorizes a fine, not to exceed, \$1,000. In a legitimate circumstance, maybe there should be some fine levied; but it would still have to have some proof that the law was violated.

Rep. Klemin: What remedy does the tenant have under 47-16-17.1 if the landlord doesn't want to let the tenant out of the lease. The statute clearly says that you must do that. If the landlord won't do that or won't return the security deposit or whatever, what remedy does the tenant have now under existing law.

Greg Thompson: If a tenant called me on that, I would say that you have a clear remedy by just leaving. If you followed the statute, and you've gotten the protection order after a hearing, you have every right to just leave. You have to pay that extra month's rent, you have to follow the statute, but if somebody called me on that, I would say that as long as you followed the statute, and of course, I would ask the questions, you have every right just to leave. If the landlord sues you for the ongoing rent, you have a clear defense to the statute. It's no different than any other lawsuit where you would have a valid defense. You can't stop someone from suing you, as you know, but you would have a clear defense.

Rep. Klemin: Well if a tenant had provided the documentation required by this section on domestic violence, wouldn't a suit then by the landlord then be frivolous.

Greg Thompson: Possibly. For sure it would get thrown out by a judge and possibly the judge could even award legal fees to the defendant.

Rep. Klemin: I'm also wondering about if a landlord doesn't return a security deposit, the tenant does everything that they are supposed to do here and the landlord doesn't return the security deposit, doesn't the tenant have a right to damages and 3x the amount.

Greg Thompson: 47-16-07.1 does allow the tenant to get treble damages in a situation where the property owner withheld the security deposit without reasonable justification. That would be pretty clear unreasonable justification so the treble damages would apply in that situation.

Rep. Klemin: At the end of this section, 47-16-17.1 it has the provisions in subsection 9 about a person may not refuse to rent and so forth. What remedy would a tenant have under this section if a new landlord refused to rent to that tenant.

Greg Thompson: The remedy there would be a lawsuit. If there was refusal to rent and then the person had to go elsewhere and pay more for rent, in my view there would be compensatory damages that would be allowed in that situation.

Rep. Klemin: But a tenant would have to start a lawsuit. Couldn't the tenant file a complaint with the Dept of Labor.

Greg Thompson: Not at the present time.

Rep. Klemin: Should that be put in there to allow that.

Greg Thompson: That's what we are opposing. We believe the statute is being followed at the present time, and we are opposing any new protected group being formed, because that is what this bill is going to do. We're not aware of any other state that has done this either; that has added a victim of domestic violence as a protected group. Since there isn't a problem that exists at the present time, we think that is a scary scenario to add that as a protected group under the fair housing laws based on what I said.

Rep. Klemin: Where would the fine, up to \$1,000 come in.

Greg Thompson: They would still have to file a lawsuit. They would have to initiate a proceeding against the property owner who violated the statute. Then the judge would have the authority to issue that fine.

Rep. Klemin: So you're really not talking about a fine. You're talking damages.

Greg Thompson: Or a civil penalty.

Rep. Klemin: But who gets the money.

Greg Thompson: The tenant would get the money.

Rep. Klemin: Then it would be damages I think. A fine or civil penalties generally go to the government.

Greg Thompson: Oh. Well, I understand what you're saying.

Rep. Klemin: So the amendment that you were just talking about, would that go into subsection 9 or would that be a new subsection that would provide, or allow, a tenant to get damages up to \$1,000.

Greg Thompson: I would add it to subsection 9. I think it would fit there.

Rep. Klemin: If it were a new subsection, it would apply to the whole section, it would apply to the old and new landlords.

Greg Thompson: I would be fine with that as well. If the statute is being violated, the property owner should be penalized.

Rep. Onstad: What would be a typical reason to deny a rental request.

Greg Thompson: Principle reasons that we see are bad credit, income not sufficient, and criminal behavior.

Rep. Onstad: They would know this because of the rental application.

Greg Thompson: Correct. The applicant is required to provide that information. The property owner then runs through the credit, criminal history, and the income. That is also our concern. A lot of these victims may be denied for other reasons and they may think that they are being denied because three years ago, they were able to get out of a lease. That still would be a claim that we would have to defend.

Rep. Onstad: You have one rental opening and five people apply. You're saying that there are a whole host of reasons why I can choose one of the five, even though I knew previous history and that would be your grounds for this is okay.

Greg Thompson: I preach all the time about fairness and treating everybody the same. Hopefully, most of my clients follow my advice, but not always. They have objective criteria that they follow. Your income must be three times the rent amount, for instance; or your credit score must be over 600. They do have objective criteria that they try to follow.

Rep. Onstad: Based on the last question, a lot of times in domestic violence, the person gets out of there, they aren't the one that's been violated, they are the ones who do not have the income; therefore, their credit isn't going to be very good. They are the ones that have to move from a city to somewhere else, without a reference.

What opportunities do you see that they have, when knowing that they left a bad situation and for the same reasons you're giving us to deny somebody, they fit that category because they don't have that ability, once they leave a bad situation.

Greg Thompson: That is an unfortunate circumstance. One exception that a lot of the property owners always engage in, is to ask for a personal guarantee or a co-signer to the lease in those circumstances. In a lot of those situations, those victims, if they don't have sufficient income should be able to qualify for a section 8 housing voucher as well. There are other remedies available out there for those individuals.

Rep. Onstad: So going back to the five applicants for one opening. It's kind of vague in the situation where we have all kinds of outs, why we can deny this person because of the other four applicants, etc. It puts them in an extreme situation, would you not agree.

Greg Thompson: Well, I wouldn't agree that it was an extreme situation. Like I said, they do have other remedies available; they can get section 8, other housing vouchers. Part of that, I guess, depends on the market conditions, too. Fargo, where I practice, is usually lucky to get one applicant for a 24-plex. There usually isn't a fight over the unit, but in circumstances where there might be, hopefully the same objective criteria applies to everybody.

Rep. Delmore: You're saying that you're not aware of even one case where this type of circumstance has happened, yet you don't want to see this put in law. That just seems like a very strange argument to me.

Greg Thompson: I knew the flipside of this argument is, well if it's not a problem why not throw it in there. Again, I think it's a solution looking for a problem. If it isn't broken, let's not try to repair it. I just don't think it's necessary, but on the other side of it, I can definitely see some abuse in terms of filing of claims with the Dept. of Labor where there is no merit to it.

Rep. Delmore: You would tell this committee that people are not filing those kinds of claims right now, that are rather frivolous, that don't necessarily have anything to do with this particular portion that we are trying to put in to Code.

Greg Thompson: There are claims that are definitely frivolous that are being filed with the Dept of Labor right now. My point is, let's not add to it. A lot of those claims are getting dismissed right now.

Rep. Hogan: I'd like to follow up on Rep. Klemin's example. The tenant tries to notify the landlord and the landlord doesn't respond. The tenant leaves. The tenant then applies somewhere else and they ask for a background check from that landlord and gets a bad background check. Do they have any remedy for that background check.

Greg Thompson: Not at the present time, no.

Rep. Klemin: I've been trying to think about this, it seems like you're saying there is the remedy that's proposed, that it's an undiscriminatory housing practice if inappropriate. Instead you proposed a damages amendment of \$1,000. But that would still require the tenant to start a lawsuit.

Greg Thompson: It would still apply under this bill, it's still going to require that tenant to file a housing complaint as well.

Rep. Klemin: Under the bill, yes.

Greg Thompson: Under the bill, yes. So either way they have to initiate something.

Rep. Klemin: But your preference would be for them to sue the landlord, if the unlikely event ever happened.

Greg Thompson: Yes, but it would be addressed in state district court, rather than through the Labor Commissioner.

Rep. Klemin: The argument is going to be, why should the tenant have to go and hire an attorney and incur these expenses and so forth.

Greg Thompson: I don't think they would if it's a fine that's not to exceed \$1,000, the Small Claims jurisdiction is \$10,000.

Rep. Klemin: But as we talked about, it's not going to be a fine; it's going to be statutory damages that can be recovered. I'm thinking that the tenant should be awarded attorneys fees if they have to actually go to this extent to do this, for violation of the statute.

Greg Thompson: I wouldn't have a problem with that.

Rep. Klemin: I've got a new subsection 10, that I just drafted, "in an action for violation of this section, the tenant may recover statutory damages of \$1,000, together with actual damages, attorney fees, costs and disbursements to be determined by the court".

Greg Thompson: I would be fine with that.

Chairman DeKrey: Thank you. Further testimony in opposition to SB 2195.

Ann Springer, Past President, ND Apartment Association and the Fargo/Moorhead Apartment Association: I've been a member of both of those associations for better than 20 years and am very proud to work with the Association on behalf of the tenants, landlords, and owners of residential income property in ND. I am also a

victim of domestic violence. Although many of the people here today that have known me for better than 20 years, they are learning that fact for the first time. It's not something that I like to talk about. It's very uncomfortable actually for me to talk about it. Although the crime was committed against me, I still feel ashamed and embarrassed about it. I don't necessarily fall under that stereotype that was being suggested earlier today about income issues. Money was not a problem with us. It still happened, I was still a victim of domestic violence. At the time of the assault, I couldn't believe it was happening to me. It was a surreal experience. I actually thought to myself, is this actually happening to me. How can this happen to me, I'm a smart, educated woman, I was always a good girl, did the things I was supposed to do, that were expected of me. How could this be happening to me. After the arrest, the police officer gave me a telephone number for some resources to help me. Although I was still in disbelief that the activities had occurred, I made the call the next day. I was glad for the services that were made available to me. I received counseling and some other advice. Although I learned that I wasn't the one to be blamed for the assault, I still didn't like talking about it to anyone. I am concerned that the SB 2195 has the potential for the renters that they would have to talk about this situation, in their situation, in order to be able to be granted what is being presented in this bill. How will the landlord know then, whether or not this person is a victim of domestic violence/assault. He/she can't ask me, that's against the law for them to ask me that. They can't put it on the application and ask them if they have been a victim of domestic assault. This puts the victim in a situation where they must disclose their situation. The landlord can't be held accountable to abide by the law and honor privacy issues, yet not have the tools to be able to do their job to screen the tenants properly, to ask the questions or otherwise get the information somewhere else. I truly appreciated the resources that were made available to me. I appreciate the intent of this bill. The intent is to provide additional protection. But I strongly question whether or not there are other issues that are going to be brought up as a result of this. So we need some further direction on how to implement or practically apply the use of this bill before it could be used. Mr. Thompson visited and Rep. Klemin drafted a second portion, maybe that's to be given greater consideration.

Rep. Delmore: What is the average rent someone pays in Fargo.

Ann Springer: It's really subjective, based on the type of apartment or home that they live in. I would say a 2 bedroom apt. is \$550-600.

Rep. Delmore: Would be the average.

Ann Springer: Average, yes.

Chairman DeKrey: Thank you. Further testimony in opposition to SB 2195.

Rocky Gordon, Apt. Association: Opposed. I wanted to answer one point that was brought up here. If this bill is passed, it doesn't change rental criteria. We talk about

how high rents are and the situation a person might be in. The rental criteria that are in place, remain. This bill wouldn't change any of that. I just wanted to clarify that for the committee.

Rep. Delmore: Can you tell me how many cases you think that this bill would turn up. Do you really see a floodgate opening and many cases of domestic violence victims.

Rocky Gordon: I don't. That's part of the point, how many people would benefit by this. Zero, one, maybe two. No one has come forward in the last 18 months.

Rep. Delmore: Part of what we try to do with legislation is to protect all citizens; even if there is only one or two victims that could have their rights protected, that might be something that we still need to look at.

Rocky Gordon: If you recall two years ago, I stood here in favor of the bill. I want to make sure that everybody understands that. I was in favor of the bill. If your decision is to weigh potential benefit to one or two people against the potential of the law being abused. Please remember, it costs us \$1500 at a minimum to defend a bogus claim. That's really the decision here.

Rep. Delmore: If we were to amend this bill, it would also cost somebody who wanted to bring the claim in court at least that amount as well, would it not. That's part of the reason for getting involved with the housing authority rather than going to court.

Rocky Gordon: As I understood the amendment, the prevailing person would get costs and attorneys fees.

Rep. Klemin: I don't think the amendment says the prevailing person. It would say that the tenant would recoup those costs, as determined by the court.

Chairman DeKrey: Thank you. Further testimony in opposition. We will now take further testimony in support of SB 2195.

Janelle Moos, Executive Director, ND Council on Abused Women's Services: Support. I am passing around the talking points that I emailed to the Committee a couple of weeks ago. Robin Runge is here; she is a board member, as well as Lynn Talley, Board President and Director of Safe Shelter in Jamestown (see attached 1).

Robin Runge, Asst. Prof. at UND School of Law: Support (see attached 2). It is clear that not all victims of domestic violence will be able to terminate their leases under this statute. As a result, not all victims are entitled to protection from discrimination and retaliation in seeking future residential rental housing and thus no new protected class will be created in the ND Housing Discrimination Act with the passage of SB 2195. It is important to hear that Mr. Thompson and the ND Apt.

Assoc. has not heard of any violations of this law, he wouldn't be hearing from tenants who are victims, they wouldn't be calling him, the landlords would be. It is possible that we do know that there are victims of domestic violence, actually who are contemplating this. Maybe they did become aware of it, and they actually did try to break their lease but because there is no remedy they can't go to court about it, there's no place to file a complaint, so we do not know currently if this is an issue. Mr. Thompson admits that these issues arise; he actually testified this morning that he receives calls from landlords with some frequency regarding these questions. I want to commend them for trying to do the right thing. I think it is wonderful that when these issues come up that they call their resources and seek assistance. How do we deal with this, what should we do. Those very phone calls indicate that this is an issue. Perhaps there are landlords that aren't availing themselves of Mr. Thompson's guidance. We aren't hearing about them. We do know that this is a problem and it needs a remedy based on his testimony this morning. I want to address the proposed amendment that was discussed earlier of creating a mechanism whereby you could bring a civil suit to seek a fine of \$1,000 and that attorney's fees would actually be an option. Although I think that is an improvement over the statute as it currently exists, the way SB 2195 is currently drafted, by permitting victims to file a charge of discrimination with the ND Dept of Labor, we are actually minimizing costs and taking the burden off the victims. As was mentioned earlier, this would require the victim to have a lawyer. We actually know nationwide statistics that 90% of victims of domestic violence go to court to get a protection order without a lawyer. We don't have enough lawyers actually to handle the issues that are already before the courts. Even with the attorneys' fees provision, I am concerned that we will not have lawyers who will be able to represent victims in these cases. However, the investigators in the Dept of Labor are trained in this area and their purpose is actually to minimize costs by taking those charges and trying to mediate. Their goal is to try and avoid litigation. The costs incurred both by the landlord and by the individual are much less by going through that process. If we think about it, what we really want is for that victim to be able to get safe housing. That's exactly what the enforcement mechanism of the ND Dept of Labor is intended to do.

Chairman DeKrey: Can they legally put on the application that they fill out, where they ask your credit history, past rental history, are you a victim of domestic violence, can they ask that on the application.

Robin Runge: I know that the Labor Commissioner addressed that in some of the materials he already provided to you, I agree with his legal assessment. You can legally put anything you want on the lease application. The question is, as he indicated, if that question is on the lease, and then someone is denied housing after they submitted that lease application and they get a "no". Because the question is on there, as someone who looking at that, it raises the possible concern, was that the basis of the refusal. Even if a landlord chose not to rent to someone because they were a victim of domestic violence, because they checked that box, it is not illegal expressly here in ND and SB 2195 wouldn't make it illegal. The thing that

would be illegal for that landlord to do is to fail to rent, to discriminate or retaliate against the individual who had previously gotten out of a lease as described through this list. That's it. That's the small group of bodies we're talking about. That's it, just the people who went through this whole process. The question isn't that they were a victim of domestic violence, the question is did this person run through all these hoops and legally get out of their lease and now they are on the market again and trying to get a new apartment and are they being discriminated against.

Rep. Klemin: It seems like both sides of this recognize that there isn't an adequate remedy under the current law although the tenant does have to jump through a lot of hoops to qualify under this, but that wasn't the Apt. Association's bill. The issue seems to be, what the remedy should be. Of course, as you know, mediation at the Labor Commissioner's level, but also the courts do require alternative dispute resolution in any civil litigation, so if the tenant has jumped through all these hoops, and is going to be entitled to award of statutory damages, actual damages, attorneys fees, costs and disbursements, a landlord would be pretty foolish to continue with a lawsuit related to that matter and so likely that will get resolved fairly soon, if it ever did occur. I know from personal experience that most of the time, lawsuits are not just filed out of the blue. There has been a certain amount of communication before hand and that is kind of a last resort.

Robin Runge: True, but that presumes that the individual has a lawyer who is talking to the landlord's lawyer leading up to litigation.

Rep. Klemin: They should go to you for that.

Robin Runge: Right, I don't sleep. We don't have the pro bono or other counsel. I don't know that it's fair to expect the Bar Association to do it. But I agree with you, it is a good reminder that the mediation process is also available through the civil court system. I think some other benefits that are important to note about having this be a part of the ND Housing discrimination act, is that by involving the Labor Commissioner, what we're saying as a state, this is a right we want to enforce. We're saying that this rises to the level of importance. That we, as a state, are saying that this warrants attention. I do believe that by actually filing charges with the Dept of Labor is that often, filing that charge leads to a quick resolution of many matters because it is the first shot across the bow. That's a process that is actually less onerous for a victim; she can fill out the form, it's available online.

Rep. Onstad: In previous testimony, it talked about being a part of a domestic violence situation and the fact that you don't want to talk about it. I agree.

Robin Runge: Yes, it's a tough situation.

Rep. Onstad: They don't want to talk about it, so for that reason, all of these steps 1-6 to follow through because they don't want to bring attention to it and they hope it will get better, keep going back into that situation. To get to this point, it probably

wasn't a one-time incident, it's been many times to go through these hoops. So what percentage of people do you think actually go through the entire six steps vs. I'm out of here.

Robin Runge: This is a challenge with the law because we experience this all the time when we are trying to provide protections for victims of domestic violence. We get to this place where we are going to have to require them to self identify in order to get this protection, whether that be access to food stamps, Visa for immigration, access to a job in some states. An issue that has been discussed for years is how we protect your confidentiality and your privacy. I think that's why the provision actually in the existing statute about the fact that at least when you disclose initially, it stays with the landlord. That's important. To answer your question, we don't know how many victims there may be. If one victim walks through the door to my clinic and we're able to take her case, we're able to help her, if one victim finds that form on the Dept. of Labor's website, one, and it's worth it. That list of steps is extensive, but I think it makes sense to protect the landlords, and that's exactly what it does. There's no fraud problem here. If you've gotten the protection order, a judge has issued an order of protection that means you are a victim of domestic violence under our law. It's a balancing act. I have to say that there needs to be some balance when we pass laws like this to avoid any kind of fraud or abuse of the system. I don't have statistics. I do know that 24 states in addition to ND and the District of Columbia have passed some form of legislation to provide protections for victims of domestic violence in housing. Two states that I'm aware of, have added domestic violence victims to their protected classes; North Carolina and Wisconsin.

Rep. Onstad: In many cases, the one that's being violated is not the income provider for that family. So for that reason, the victim likes to stay because they have nowhere to go in that housing situation; so they elect to stay with that tenant until there is an avenue for them to leave and feel safe. It will probably not be utilized because they have nowhere to go.

Robin Runge: That's a very good point. Of those 24 states that have passed laws to provide protections for victims of domestic violence in housing, the vast majority have an ability to allow the victim to stay in the residence and stay safe, and allow the perpetrator out of the residence. Most victims don't have a place to go. The wait for public housing in Grand Forks, was two years. That's not uncommon. We're in a tough place housing wise in this country right now. You're raising some key issues about truly responding to what victims need in these circumstances and aware of the fact that the victim is often not in a place to have an income, to go out into the market and find another place to live.

Rep. Kretschmar: If SB 2195 would become the law in ND and someone was found to have been discriminatory against a victim, what happens next.

Robin Runge: The Labor Commissioner is here and he can describe in more detail what happens than I can. Based on my experience, is that the individual would have

the right to file a charge of discrimination, which is a form that is available electronically on the website. It's actually a great form, it's written in normal English. There are a lot of things in the law, I think, that are hard to understand. It is intended to be accessible, they complete the form and stick it in the mail or they can file it electronically. Then, my understanding is that an individual in the Labor Dept conducts an investigation. They may call that individual back, ask some further questions, call the landlord who is listed on the form, and ask them additional questions and do a fact investigation. Then over a period of time, they issue a determination. That determination is either cause or no cause. Cause would mean that we do believe they violated the statute. No cause means that they don't. That takes some time, and usually in that process, actually while the investigation is going on, the investigator and the attorneys in the Dept. encourage the parties to come together and conciliate. That, actually in my experience, has been very effective. I would like to think, that in this circumstance it could be very effective because, as Mr. Thompson testified, I don't think we're saying that landlords are evil doers here, we're saying that we have a problem and are trying to figure out what to do about it. How can we come to a solution. However, if they cannot come to a solution, after that process, after the determination is issued, they can, if there is a cause determination, there is a possibility of an administrative hearing where the Dept of Labor would represent the State and the individual would not be a party. Or that individual can choose, within 90 days, to go to court and file a lawsuit. That's further down the road.

Rep. Klemin: I don't think you have gone quite far enough. When you get to the administrative hearing or to a court action and it was determined that it was housing discrimination what's the penalty.

Robin Runge: So the damages that are available under the ND Housing Discrimination Act, include compensatory damages, in theory, punitive damages, which are impossible to get, and I believe there is an attorney's fees provision in there if they go to court. But really, the focus is on compensatory damages. So that is lost rent; be focused on the cost to the lessee, the victim of domestic violence. What have they done since then, did they incur additional costs. I would think possibly restoring them to getting them into the apartment that they were denied, if they were denied access to an apartment. There are some damages available, but they aren't fines. They are related to the costs associated with what the victim incurred as a result of the discrimination or retaliation.

Rep. Klemin: Why would the tenant want to get restored to an apartment that the tenant wanted to get out of the lease.

Robin Runge: SB 2195 is the provision that prohibits discrimination or retaliation against a victim when they are trying to seek a new apartment. That's the limited scope of SB 2195. The limited scope of the bill, under the ND Housing Discrimination Act, is the victim had an apartment. Decided that she needed to get out of the lease, went through the steps to get out of the lease, got the protection

order, she's out on the market now and she's gone to another community and filled out a rental application. Through that process, is denied access to housing and she believes that the reason is because she previously broke a lease as permitted under the statute. Then she would file a charge of discrimination with the ND Dept of Labor.

Rep. Klemin: Everything you've said about compensatory damages, attorney fees, etc. sounds just like the alternate remedy proposed by the Apt. Association. So what's the point here. Why not have the remedy they suggested. I don't know what other ramifications may come from a finding of housing discrimination as far as the landlord is concerned but it seems like the consequences of filing that housing discrimination act turn out to the same as what the Apt Association is already proposing as an alternative.

Robin Runge: I think there are some parallels. I think the distinctions are really critical and that is that the Dept of Labor's investigatory process and claim filing charge, the charge filing process is designed actually for people not to have lawyers and have Dept of Labor do the investigation. If we were to follow with your amendment, the victim would have to try and find a lawyer and if she couldn't, she would go down to court on her own and file a civil cause of action and she would not know how to conduct an investigation to get the information that she needs. She would not be aware of deadlines or the crazy motions and paperwork that we complete. She would be at a distinct disadvantage and I don't know that she can afford a lawyer. I am concerned about that vs. the charge process. I do a large percentages of charges that are filed are conciliated. Conciliation works in a huge number of cases. We are talking about a very small number that make it all the way through the process and where a victim has actually filed a private lawsuit, so that the need for a lawyer is almost non-existent. It is designed to minimize costs for both parties. That's actually the purpose. I don't disagree with what you're saying. If the victim were to go through all the process and still not get what she wants, she can file a civil claim in court and the damages available that way are the same, but actually through conciliation, it's sometimes possible to get things that you can't get in court as well. I think that's important to keep in mind.

Chairman DeKrey: Thank you. Further testimony in support. We will close the hearing. We will take a look at SB 2195. Rep. Klemin has an amendment that we will look at.

Rep. Delmore: Did you just write this up as we were in committee today, or did you have an idea before we came in here.

Rep. Klemin: I just wrote it up after it was suggested by Mr. Thompson, so it was spontaneous. Explained the amendment. I think it seems that both sides admitted that there really isn't any remedy specified in the statute for a violation of this statute. The question is, what the remedy should be. On the one hand, the representatives of the victims want to have it as a discriminatory housing practice and that has its

own procedures that would follow if that was the case. On the other hand, the people representing the landlords don't think there is a problem since there haven't been any cases in the last 18 months. I guess they are suggesting that there aren't going to be any problems in the future either. But they don't want to have it as a discriminatory housing practice because they see this as creating another class of protected persons, like race, sex, religion, etc. Instead they proposed a civil penalty for violation of the statute. I drafted while the hearing was going on, a remedy to add to the statute instead of the one that is in the bill, and that would say that in an action for violation of this section, a tenant may receive statutory damages of \$1,000, together with actual damages, reasonable attorney fees, costs and disbursements to be determined by the court. It seems like we get to the same end result, either way. The difference is that we are going through an administrative agency, with the potential for an administrative hearing and also potential for court action. In the other, we're going directly to court without going through the administrative agency and we're providing for statutory damages that they suggested, which there are no statutory damages that I see under the housing act, there are compensatory damages, but this amendment allows for actual damages, whatever they may be, loss of rent, etc. It also allows for reasonable attorney fees which we don't normally in any civil action in court as a rule allow parties to recover their attorney fees. We have, what's called the American rule, which means you pay your own way in court. This amendment would allow the person making the claim of a violation of the statute, to also recover attorney fees. I can tell you, if an attorney is going to be able to recover his fees, it's much easier to find an attorney than if you have someone that comes in and has no money to pay an attorney. Attorney fees are a good provision in here that will negate the suggestion that these people aren't going to be able to find an attorney. Costs and disbursements, those are routine, those are such things as court filing fees, etc. I think it is important to note that, in any civil action, there's going to be some exchange of communication usually before you start a lawsuit. It will probably will in most cases gets resolved without ever going to court. Secondly if you did have to go to court, and the court procedures now require alternative dispute resolution be considered before, and you have to file a form with the court saying that you considered it and that you are going to do some form of alternative dispute resolution, which is the conciliatory action that was talked about with the Labor Commissioner, but the parties have to do it on their own in all civil actions now, unless they can say that there is a reason for not doing it. I proposed this amendment, which I believe is palatable to the Apt Association, they suggested it to start with; and it also has the same end result as though we went through housing discrimination procedures, except that it's not housing discrimination. I move the amendment.

Rep. Kretschmar: Second the motion.

Rep. Delmore: It seems to me that the original intent, in putting it under the Housing Authority was so that we wouldn't have to involve the courts. Does this take away from that.

Rep. Klemin: The court is only going to get involved if the parties aren't able to resolve this. The court is not going to get involved in any event, even at the beginning of a case because cases get filed in court all the time, they get resolved before a judge has to get into the case and make a decision. So, 95% of the cases that are filed never make it to trial. If, a tenant has jumped through all those hoops, and a landlord still doesn't follow the statute, Mr. Thompson is going to be advising the landlord saying, "What are you doing"; the tenant had to follow all these hoops and you violated the statute. I think any landlord attorney is going to do that to start with and if they don't for some reason, because some people are kind of stubborn, then this provides a remedy even beyond what the housing discriminatory act, because of the statutory damages of the \$1,000. There's nothing in the housing discrimination act that I heard of that applies for that. They proposed it. I think this gives the victims a better remedy even than what is in the discriminatory housing act.

Chairman DeKrey: Voice vote on the amendment. Motion carried. We now have the bill before us as amended.

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

Rep. Maragos: Second the motion.

11 YES 1 NO 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Delmore

March 23, 2011

VR
3/23/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2195

Page 1, replace lines 6 and 7 with "In an action for a violation of this section, the court may award statutory damages of one thousand dollars. The court also may award actual damages, reasonable attorney's fees, costs, and disbursements."

Renumber accordingly

Date: 3/23/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2195

House JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0476.01001 02000

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	/		Rep. Delmore	/	
Rep. Klemin	/		Rep. Guggisberg	/	
Rep. Beadle	/		Rep. Hogan	/	
Rep. Boehning		.	Rep. Onstad	/	
Rep. Brabandt	.	/			
Rep. Kingsbury	/				
Rep. Koppelman					
Rep. Kretschmar	/				
Rep. Maragos	/				
Rep. Steiner	/				

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

REPORT OF STANDING COMMITTEE

SB 2195: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 1 NAYS, 2 ABSENT AND NOT VOTING). SB 2195 was placed on the Sixth order on the calendar.

Page 1, replace lines 6 and 7 with "In an action for a violation of this section, the court may award statutory damages of one thousand dollars. The court also may award actual damages, reasonable attorney's fees, costs, and disbursements."

Renumber accordingly

2011 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2195

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2195
4/8/11
Job #16451

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to remedies for termination of a lease due to domestic violence

Minutes:

Senators:

Olafson
Lyson
Nething

Representatives:

Maragos
Steiner
Delmore

Senator Olafson asks Rep. Maragos to explain the changes that they made to the bill. He said they worried that if they didn't come to a compromise they would lose the whole bill so what they attempted to do was to put some teeth into the bill by putting a penalty for any type of discrimination with regard to somebody involved with domestic violence. He said they amended to include statutory damages of \$1000, and allows the court to award actual damages and reasonable attorney fees. Senator Olafson informs them of the original intent of the bill when it was passed two years ago. He says that bill 2 years ago did not provide a process by which a victim could file a claim if the landlord did not comply with the provisions of the 2009 legislation. He says there is no mechanism for them to file a complaint. This bill as introduced was to provide that mechanism to file a complaint if they are discriminated against and this bill as introduced would have no effect on the landlord as long as they are complying. He believes the new amendments completely change the intent of the bill and takes away the opportunity for domestic violence victim to file a complaint which can be followed up by the proper authorities. Rep. Delmore agrees but all the amendment says is if they go to a court system this is what they are entitled to and it does bypass what Senator Olafson talked about. She said the landlords felt it was creating a special class of people. She said it was very clear to their committee if they didn't do something with the bill it would have failed on the floor. She said this is a result of a compromise they reached. Senator Nething says he looks at this has movement and this is an asset to the current law even if it doesn't deal with the original intent. He says it is

preference to concur with this and treat it as a step and see how it goes in another two years with a little history behind it. Senator Olafson still has a problem with the House amendments because it is easy to file a claim with the Labor Dept. but much more difficult to have to go through a court case. Senator Nething says he looks at this as a deterrent. Rep. Maragos said he agrees with Senator Nething and what really bothers them on the House side is the unspecificity of what the penalty will be in an investigation conducted by the Labor Dept. He says that is what everyone was objecting to. He says here is a certain penalty for a violation. Senator Olafson asks if there is any merit to adding both the Senate and House language and having both processes available. Rep. Maragos said he does not think the floor debate would be successful with that language added back in. Senator Lyson wants to know how the information gets out to the victim. The committee discusses the process the victim would go through. Senator Olafson asks Tony Weiler, Commissioner of Labor up to explain the process. He says there is no law to address this scenario. He explains how a housing complaint is handled in his office.

Representative Maragos moves the Senate accede to the House amendments and further amend Senator Lysons suggestion to change to "up to" in line 8, after damages.

Representative Steiner seconded

Representative Maragos withdraws his motion till the next meeting.

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2195
4/11/11
Job #16488

☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to remedies for termination of a lease due to domestic violence

Minutes:

Senators:

Olafson
Lyson
Nething

Representatives:

Maragos
Steiner
Delmore

Representative Maragos moves that the Senate accede to the House amendments

Senator Nething seconded

Discussion

Rep. Maragos doesn't think there is much more to be said. He said they are most interested in moving this along and believes the amendment gives this some strength. He said they want to keep improving the climate for those that are subjected to domestic violence. He said he thinks they can pass it this way. Senator Nething said he looks at this as an improvement. Senator Lyson thinks this is a great step and if it needs to be changed then can look at it again in two years. Senator Olafson says he still believes the bill with these amendments take the bill in a significantly different direction than it was intended. It is his opinion that by adding a remedy which requires filing of court action does not uncomplicate the lives of people whose lives are already quite complicated.

Roll call vote – 5 yes, 1 no
Motion passes

Senator Olafson will carry

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 2195 as (re) engrossed

Date: 1-11

Roll Call Vote #: 1

Action Taken

- ☒ SENATE accede to House amendments
☐ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 996

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) _____ was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Maragos Seconded by: Sen. Nothing

Senators	4/8	4/11	Yes	No		Representatives	4/8	4/11	Yes	No
<u>Olafson</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>		<u>Maragos</u>	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Lysen</u>	<u>X</u>	<u>X</u>	<u>X</u>			<u>Sturmer</u>	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Nothing</u>	<u>X</u>	<u>X</u>	<u>X</u>			<u>Belmore</u>	<u>X</u>	<u>X</u>	<u>X</u>	

Vote Count: Yes 5 No 1 Absent _____

Senate Carrier S. Olafson House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Judiciary

Bill/Resolution No. 2195 as (re) engrossed

Date: 4-8-11

Roll Call Vote #: _____

Action Taken

- ☐ SENATE accede to House amendments
☒ SENATE accede to House amendments and further amend
☐ HOUSE recede from House amendments
☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 996 ..

- ☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) ✓ was placed on the Seventh order of business on the calendar

Motion Made by: Maragos Seconded by: Steiner

Senators		4/	Yes	No		Representatives			Yes	No
Olafson	X					Maragos	X			
Lyson	X					Steiner	X			
Nothing	X					Delmore	X			

Vote Count: Yes _____ No _____ Absent _____

Senate Carrier _____ House Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

SB 2195: Your conference committee (Sens. Olafson, Lyson, Nething and Reps. Maragos, Steiner, Delmore) recommends that the **SENATE ACCEDE** to the House amendments as printed on SJ page 996 and place SB 2195 on the Seventh order.

SB 2195 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2195

1. When the lessor does not fulfill the lessor's obligations, if any, within a reasonable time after request, as to placing and securing the lessee in the quiet possession of the property leased, or putting it into a good condition, or repairing it; or
2. When the greater part of the property leased, or that part which was, and which the lessor had reason to believe was, the material inducement to the lessee to enter into the contract, perishes from any cause other than the ordinary negligence of the lessee.

47-16-17.1. Termination due to domestic abuse.

1. A tenant to a residential lease who is a victim of domestic violence as defined in section 14-07.1-01 or fears imminent domestic violence against the tenant or the tenant's minor children if the tenant or the tenant's minor children remain in the leased premises may terminate a lease agreement, as provided in this section, without penalty or liability.
2. The tenant must provide advance written notice to the landlord stating that the tenant fears imminent domestic violence from a person named in a protection order after a hearing under section 14-07.1-02 or an order prohibiting contact, the tenant needs to terminate the tenancy, and the specific date the tenancy will terminate. The notice must be delivered by mail, facsimile communication, or in person before the termination of the tenancy, and be accompanied by the protection order or the order prohibiting contact.
3. A landlord may not disclose information provided to the landlord by a tenant documenting domestic violence under this section. The information may not be entered into any shared data base or provided to any person, but may be used as evidence in an eviction proceeding, in a claim for unpaid rent or damages arising out of the tenancy, or as otherwise required by law.
4. A tenant terminating a lease under this section is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent, subject to the landlord's duty to mitigate. The tenant is relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section.
5. This section does not affect a tenant's liability for delinquent, unpaid rent, or other amounts owed to the landlord before the lease was terminated by the tenant under this section.
6. The tenancy terminates, including the right of possession of the premises, on the termination date stated in the notice under subsection 2. The amount equal to one month's rent must be paid on or before the termination of the tenancy for the tenant to be relieved of the contractual obligations for the remaining term of the lease as provided in this section.
7. For purposes of this section, timing for the payment of the lessee's security deposit under section 47-16-07.1 is triggered by either of the following:
 - a. If the only tenant, including the tenant's minor children, is the tenant who is the victim of domestic violence, upon the first day of the month following the date the tenant vacates the premises.
 - b. If there are additional tenants bound by the lease, upon the expiration of the lease.
8. Notwithstanding the release of a tenant from a lease agreement under this section, the tenancy continues for any remaining tenants.

9. A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section.

47-16-18. When lease of real property is terminated by death. Only a lease of real property which is terminable at the pleasure of one of the parties to the contract is terminated by the notice to one party of the death or incapacity of the other party to contract. Upon the death of a lessee of real property for residential purposes, however, and at the option of any surviving lessee or of 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.

47-16-19. Term of lease governed by manner of payment of rent. The renting of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus renting at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent, the leasing is presumed to be monthly.

47-16-20. Rents - When payable. When there is no contract or usage to the contrary, the rent of agricultural and wild land shall be payable yearly at the end of each year. Rents of lodgings shall be payable monthly at the end of each month. Other rents shall be payable quarterly at the end of each quarter from the time the lease takes effect. The rent for a lease shorter than the periods herein specified shall be payable at the termination of the lease.

47-16-21. When proportionate part of lease paid by lessee. When the leasing of real property is terminated before the time originally agreed upon, the lessee must pay the due proportion of the lease for such use as the lessee actually has made of the property unless such use is merely nominal and of no benefit to the lessee.

47-16-22. Rent due upon lease for life - Recovery. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

47-16-23. Rent dependent on life of person - Collection after death. Rent dependent on the life of a person may be recovered after as well as before that person's death.

47-16-24. Lessee must give written notice before removal of property from premises. Repealed by S.L. 1975, ch. 106, § 673.

47-16-25. Notice of adverse proceedings to landlord. Every tenant who receives notice of any proceeding to recover the real property occupied by the tenant, or the possession thereof, must:

1. Inform the tenant's landlord immediately of the notice; and
2. Deliver the notice to the landlord.

The tenant shall be responsible to the landlord for all damages which the landlord may sustain by reason of any omission by the tenant to inform the landlord of the notice or to deliver it to the landlord, if such notice is in writing. The attornment to a stranger is void unless made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

47-16-26. Double letting of room prohibited. One who rents part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary. If a landlord rents a room as a dwelling for more than one family, the person to whom the landlord first rents any part of it is entitled to the possession of the whole room for the term agreed upon. Every tenant in the building under the same landlord is relieved from all obligation to pay rent to the landlord while such double letting of any room continues.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

418 [REDACTED] Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Testimony on SB 2195

Senate Judiciary Committee

January 24, 2011

Chair Nething and Members of the Committee:


My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of SB 2195.

Access to safe and affordable housing is essential to victims of domestic violence and their kids when choosing to leave an abusive relationship. Many victims report losing their housing due to, at least in part, to the violence in their lives. Many states have enacted laws specifically protecting victims from housing discrimination; permitting victims to terminate leases; and/or permitting victims to have their locks changed.

During the 2009 legislative session, North Dakota joined other states by enacting a law that created provisions under which victims of domestic violence could terminate their lease. SB 2195 expands on this important law by creating and enacting a new subsection (10) of chapter 47-16-17.1 to include a process for tenants who have been denied a rental or experienced retaliation under subsection 9 to file a complaint under section 14-02.5-18. By creating and enacting this new subsection applicants will be able to have complaints investigated and processed under the current chapter that outlines the process by which the Department of Labor investigates cases of reported housing discrimination.

Over the last six months, our programs have identified housing as an emerging need for victims in their communities. In one community, low income housing, or Section 8 housing, has a 2-6 year waiting list. In yet another community, victims are told to not waste time filling out an application. Other communities report that longtime residents have had to move out of their apartments because landlords are increasing their rent in hopes of attracting oil and energy industry workers.

The severe shortage of affordable housing is creating a crisis situation all over the state. Many victims who choose to leave an abusive relationship are often faced with the difficult decision of either returning to their abuser or be homeless after they complete their stay in shelter or transitional housing. Chapter 47-16-17.1 provides the much needed protection for victims that seek assistance by securing a protection order to terminate their lease without penalty or liability. It's important that we enact provisions that allow victims to file complaints if necessary and have them investigated by the Department of Labor if they feel they have been discriminated against because they opted to terminate their lease, especially in light of the current shortage of housing.



Domestic violence is a crime- not a lifestyle, not a choice. Victims who choose to leave should have a process available to them if they feel they have been denied a rental or experienced retaliation and therefore, I urge you to support SB 2195.

Thank you.





Jack Dalrymple
Governor

Tony J. Weiler
Commissioner




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

www.nd.gov/labor
www.nd.gov/humanrights

Testimony on SB 2195
Prepared for the
Senate Judiciary Committee
January 25, 2011

Good Morning Chairman Nething and members of the Judiciary Committee, my name is Tony J. Weiler, and I am the Commissioner of Labor. I appear before you today neutral on SB 2195. I am here to provide information on how SB 2195 may affect the Department of Labor (DOL) in the area of Housing Discrimination.



Currently, the DOL receives and investigates complaints of discrimination in housing under North Dakota's Housing Discrimination Act found at N.D.C.C. ch. 14-02.5. The Act states that it is unlawful in North Dakota for someone to discriminate in numerous housing related areas based on a person's sex, race, color, national origin, religion, disability, familial status, age, receipt of public assistance, and marital status. In all categories but the last three, the DOL has dual jurisdiction with the Federal Government through Housing and Urban Development (HUD). HUD pays the DOL for handling those cases, and that becomes part of the DOL's funding.

This bill, if it becomes law, will require the DOL to accept and investigate claims based on the person having suffered domestic violence, invoking N.D.C.C. § 47-16-17.1 to terminate a lease, and then being discriminated against in housing as a result. While my office does not anticipate that we will receive many claims under this category, I wanted to point out that we will not receive federal funding to investigate and handle these claims.

Please let me know if you have any questions.

Olafson, Curtis

From: Rocky Gordon [rockyg@rockygordoncompany.com]
Sent: Wednesday, January 26, 2011 2:28 PM
To: Olafson, Curtis
Subject: Re: Bill 2195

Senator Olafson

As you requested yesterday, I have made a number of inquiries as to how many leases have been terminated under the domestic violence law.

As I suspected management companies don't really keep hard statistics on why leases are terminated.

Here is what I found:

A large management company in Fargo said 5 to 7 times.

A large management company in Bismarck said 2 times.

A large management company in Minot could not recall any, but they do not do tracking.

While the numbers appear low this is far from a comprehensive survey and the law has only been in effect since August of 2009.

Our group will continue to oppose expansion of the protected classes under Fair Housing laws, particularly where there is no evidence the law is not being followed. We see the process, and the potential for it to be abused, as burdensome on our industry.

Senator, I truly appreciate your taking extra time on this, but we will be disappointed if the state of North Dakota continues to expand protected classes.

Thank You

Rocky Gordon

/

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

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Testimony on SB 2195

House Judiciary Committee

March 9, 2011

Chair DeKry and Members of the Committee:


My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of SB 2195.

Access to safe and affordable housing is essential to victims of domestic violence and their kids when choosing to leave an abusive relationship. Many victims report losing their housing due to, at least in part, to the violence in their lives. Many states have enacted laws specifically protecting victims from housing discrimination; permitting victims to terminate leases; and/or permitting victims to have their locks changed.

[REDACTED] During the 2009 legislative session, North Dakota joined other states by enacting a law that created provisions under which victims of domestic violence could terminate their lease. SB 2195 expands on this important law by creating and enacting a new subsection (10) of chapter 47-16-17.1 to include a process for tenants who have been denied a rental or experienced retaliation under subsection 9 to file a complaint under section 14-02.5-18. By creating and enacting this new subsection applicants will be able to have complaints investigated and processed under the current chapter that outlines the process by which the Department of Labor investigates cases of reported housing discrimination.



Over the last six months, our programs have identified housing as an emerging need for victims in their communities. In one community, low income housing, or Section 8 housing, has a 2-6 year waiting list. In yet another community, victims are told to not waste time filling out an application. Other communities report that longtime residents have had to move out of their apartments because landlords are increasing their rent in hopes of attracting oil and energy industry workers.

[REDACTED] The severe shortage of affordable housing is creating a crisis situation all over the state. Many victims who choose to leave an abusive relationship are often faced with the difficult decision of either returning to their abuser or be homeless after they complete their stay in shelter or transitional housing. Chapter 47-16-17.1 provides the much needed protection for victims that seek assistance by securing a protection order to terminate their lease without penalty or liability. It's important that we enact provisions that allow victims to file complaints if necessary and have them investigated by the Department of Labor if they feel they have been discriminated against because they opted to terminate their lease, especially in light of the current shortage of housing.



Domestic violence is a crime- not a lifestyle, not a choice. Victims who choose to leave should have a process available to them if they feel they have been denied a rental or experienced retaliation and therefore, I urge you to support SB 2195.

Thank you.



publishers, realtors, brokers, lenders, and sellers on the rights and responsibilities provided under this chapter and ways to respect those protected rights.

6. The department shall emphasize conciliation to resolve complaints.

14-02.5-14. Complaints. As provided by sections 14-02.5-18 through 14-02.5-35, the department shall receive, investigate, seek to conciliate, and act on complaints alleging violations of this chapter.

14-02.5-15. Reports and studies. The department shall publish in even-numbered years a written report recommending legislative or other action to carry out the purposes of this chapter. The department shall make studies relating to the nature and extent of discriminatory housing practices in this state.

14-02.5-16. Cooperation with other entities. The department shall cooperate with and may provide technical and other assistance to federal, state, local, and other public or private entities that are designing or operating programs to prevent or eliminate discriminatory housing practices.

14-02.5-17. Gifts and grants - Fair housing fund - Continuing appropriation. The department may accept grants from the federal government for administering this chapter. Grants received must be deposited to the credit of the fair housing fund in the state treasury. Moneys deposited to the credit of the fund are appropriated to the department on a continuing basis for the purposes of administering this chapter.

14-02.5-18. Complaint.

1. The department shall investigate complaints of alleged discriminatory housing practices. An aggrieved person may file a complaint with the department alleging the discriminatory housing practice. The department may file a complaint. A complaint must be in writing and must contain such information and be in such form as prescribed by the department. A complaint must be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later. A complaint may be amended at any time.
2. On the filing of a complaint, the department shall give the aggrieved person notice that the complaint has been received, advise the aggrieved person of the time limits and choice of forums under this chapter, and not later than the tenth day after the date of the filing of the complaint or the identification of an additional or substitute respondent under section 14-02.5-21, serve on each respondent a notice identifying the alleged discriminatory housing practice and advising the respondent of the procedural rights and obligations of a respondent under this chapter and a copy of the original complaint.

14-02.5-19. Answer.

1. Not later than the tenth day after the date of receipt of the notice and copy of the complaint under subsection 2 of section 14-02.5-18, a respondent may file an answer to the complaint. An answer must be in writing, under oath, and in the form prescribed by the department.
2. An answer may be amended at any time. An answer does not inhibit the investigation of a complaint.

14-02.5-20. Investigation.

1. If the federal government has referred a complaint to the department or has deferred jurisdiction over the subject matter of the complaint to the department, the department shall investigate the allegations set forth in the complaint.

- 2b
1. When the lessor does not fulfill the lessor's obligations, if any, within a reasonable time after request, as to placing and securing the lessee in the quiet possession of the property leased, or putting it into a good condition, or repairing it; or
 2. When the greater part of the property leased, or that part which was, and which the lessor had reason to believe was, the material inducement to the lessee to enter into the contract, perishes from any cause other than the ordinary negligence of the lessee.

47-16-17.1. Termination due to domestic abuse.

1. A tenant to a residential lease who is a victim of domestic violence as defined in section 14-07.1-01 or fears imminent domestic violence against the tenant or the tenant's minor children if the tenant or the tenant's minor children remain in the leased premises may terminate a lease agreement, as provided in this section, without penalty or liability.
2. The tenant must provide advance written notice to the landlord stating that the tenant fears imminent domestic violence from a person named in a protection order after a hearing under section 14-07.1-02 or an order prohibiting contact, the tenant needs to terminate the tenancy, and the specific date the tenancy will terminate. The notice must be delivered by mail, facsimile communication, or in person before the termination of the tenancy, and be accompanied by the protection order or the order prohibiting contact.
3. A landlord may not disclose information provided to the landlord by a tenant documenting domestic violence under this section. The information may not be entered into any shared data base or provided to any person, but may be used as evidence in an eviction proceeding, in a claim for unpaid rent or damages arising out of the tenancy, or as otherwise required by law.
4. A tenant terminating a lease under this section is responsible for the rent payment for the full month in which the tenancy terminates and an additional amount equal to one month's rent, subject to the landlord's duty to mitigate. The tenant is relieved of any other contractual obligation for payment of rent or any other charges for the remaining term of the lease, except as provided in this section.
5. This section does not affect a tenant's liability for delinquent, unpaid rent, or other amounts owed to the landlord before the lease was terminated by the tenant under this section.
6. The tenancy terminates, including the right of possession of the premises, on the termination date stated in the notice under subsection 2. The amount equal to one month's rent must be paid on or before the termination of the tenancy for the tenant to be relieved of the contractual obligations for the remaining term of the lease as provided in this section.
7. For purposes of this section, timing for the payment of the lessee's security deposit under section 47-16-07.1 is triggered by either of the following:
 - a. If the only tenant, including the tenant's minor children, is the tenant who is the victim of domestic violence, upon the first day of the month following the date the tenant vacates the premises.
 - b. If there are additional tenants bound by the lease, upon the expiration of the lease.
8. Notwithstanding the release of a tenant from a lease agreement under this section, the tenancy continues for any remaining tenants.

- 2c
9. A person may not refuse to rent, refuse to negotiate for the rental of, or in any other manner make unavailable or deny a dwelling to an individual, or otherwise retaliate in the rental of a dwelling solely because a tenant or applicant or a household member of the tenant or applicant exercised the right to terminate a lease under this section.

47-16-18. When lease of real property is terminated by death. Only a lease of real property which is terminable at the pleasure of one of the parties to the contract is terminated by the notice to one party of the death or incapacity of the other party to contract. Upon the death of a lessee of real property for residential purposes, however, and at the option of any surviving lessee or of 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.

47-16-19. Term of lease governed by manner of payment of rent. The renting of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus renting at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent, the leasing is presumed to be monthly.

47-16-20. Rents - When payable. When there is no contract or usage to the contrary, the rent of agricultural and wild land shall be payable yearly at the end of each year. Rents of lodgings shall be payable monthly at the end of each month. Other rents shall be payable quarterly at the end of each quarter from the time the lease takes effect. The rent for a lease shorter than the periods herein specified shall be payable at the termination of the lease.

47-16-21. When proportionate part of lease paid by lessee. When the leasing of real property is terminated before the time originally agreed upon, the lessee must pay the due proportion of the lease for such use as the lessee actually has made of the property unless such use is merely nominal and of no benefit to the lessee.

47-16-22. Rent due upon lease for life - Recovery. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years.

47-16-23. Rent dependent on life of person - Collection after death. Rent dependent on the life of a person may be recovered after as well as before that person's death.

47-16-24. Lessee must give written notice before removal of property from premises. Repealed by S.L. 1975, ch. 106, § 673.

47-16-25. Notice of adverse proceedings to landlord. Every tenant who receives notice of any proceeding to recover the real property occupied by the tenant, or the possession thereof, must:

1. Inform the tenant's landlord immediately of the notice; and
2. Deliver the notice to the landlord.

The tenant shall be responsible to the landlord for all damages which the landlord may sustain by reason of any omission by the tenant to inform the landlord of the notice or to deliver it to the landlord, if such notice is in writing. The attornment to a stranger is void unless made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction.

47-16-26. Double letting of room prohibited. One who rents part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary. If a landlord rents a room as a dwelling for more than one family, the person to whom the landlord first rents any part of it is entitled to the possession of the whole room for the term agreed upon. Every tenant in the building under the same landlord is relieved from all obligation to pay rent to the landlord while such double letting of any room continues.

Jack Dalrymple
Governor

Tony J. Weiler
Commissioner



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

www.nd.gov/labor
www.nd.gov/humanrights

Testimony on SB 2195
Prepared for the
House Judiciary Committee
March 8, 2011

Good Morning Chairman DeKrey and members of the Judiciary Committee, my name is Tony J. Weiler, and I am the Commissioner of Labor. I appear before you today neutral on SB 2195. I am here to provide information on how SB 2195 may affect the Department of Labor (DOL) in the area of Housing Discrimination.

Currently, the DOL receives and investigates complaints of discrimination in housing under North Dakota's Housing Discrimination Act found at N.D.C.C. ch. 14-02.5. The Act states that it is unlawful in North Dakota for someone to discriminate in numerous housing related areas based on a person's sex, race, color, national origin, religion, disability, familial status, age, receipt of public assistance, and marital status. In all categories but the last three, the DOL has dual jurisdiction with the Federal Government through Housing and Urban Development (HUD). HUD pays the DOL for handling those cases, and that becomes part of the DOL's funding.

This bill, if it becomes law, will require the DOL to accept and investigate claims based on the person having suffered domestic violence, invoking N.D.C.C. § 47-16-17.1 to terminate a lease, and then being discriminated against in housing as a result. While my office does not anticipate that we will receive many claims under this category, I wanted to point out that we will not receive federal funding to investigate and handle these claims.

Please let me know if you have any questions.

Testimony Opposing SB 2195
By Rocky Gordon, Lobbyist, North Dakota Apartment Association

Background - In the 2009 session a bill was introduced to allow victim of domestic violence to terminate a lease for term early and the a victim who terminated early could not be penalized when they went to lease another unit. The Association worked with the Senate Judiciary Committee and domestic violence groups to insure that the early termination was legitimate and proper. We got language inserted that said only after a hearing and a permanent protection order was issued could the termination take place. With this change we supported the bill as being good for the victim, the other residents, and the property. We haven't changed our opinion on the original bill.

Bill 2195 – It amends the bill as follows “It is a discriminatory housing practice for a person to violate Sub section 9 and a tenant may seek remedy through Chapter 14-02,5.” It in essence makes the victim a protected class under North Dakotas Fair Housing Statute.

We oppose the bill because:

1. There has been no evidence that the current statute is not being followed
2. Once you're a protected class you're a protected class forever.
3. It may put us in a situation where we are violating Fair Housing Laws and we don't even know it. (That's especially true when it comes to re-rental to a victim)
4. We oppose that expansion of protected classes.
5. If we continue everyone will a protected class.

4a

A \$15.00 PER ADULT NON-REFUNDABLE CASH FEE WILL BE CHARGED TO ALL APPLICANTS.

IT IS IMPORTANT THAT ALL OF THE FOLLOWING INFORMATION BE GIVEN:

PLEASE PRINT ALL INFORMATION

1. Name _____
2. Date of Birth: _____ Social Security Number: _____
3. Number of occupants: Adults _____ Children _____ Ages of Children _____
4. How long in Bismarck area? _____ When can you take possession? _____
5. Present Address _____ Phone _____
6. How long have you lived at above address? _____ Rent per month _____
7. Landlord's name and address _____ Phone _____
8. Reason for leaving? _____
9. Previous Rental Reference (if different from above) _____

10. Applicant employed by _____ How long _____
11. Business Address _____ Phone _____ ext _____
12. Position _____ Present Net Salary (per month) _____
Name & Title of Supervisor _____ Phone _____
14. Other Income \$ _____ Source _____
15. Spouse or Other Occupants Name _____
16. Date of Birth _____ Social Security Number: _____
17. Present address _____ Phone _____
18. Previous Rental Reference _____
19. Employed By _____ How long _____
20. Position _____ Present Net Salary (per month) _____
21. Name & Title of Supervisor _____ Phone _____
22. Other Income \$ _____ Source _____
23. Where do you Bank? _____
24. License # and Make of Auto _____

Name of nearest relative not living with you? (In Case of an Emergency)
Name _____ Phone _____
Name _____ Phone _____

Rocky Gordon & Company

Rocky Gordon C.P.M.
(701) 223-8568
E-mail rgordonco@gcentral .com

723 Memorial Hwy
PO Box 1774
Bismarck ND 58502

I understand I must meet the following criteria before this application is approved.

1. An acceptable previous rental record
2. An ability to pay the rent-adequate monthly income
3. A minimum credit score of 600
4. The applicant must not have any outstanding public record judgments.

I _____ give my permission for Rocky Gordon & Company to check my credit as well as my current & past rental history.

Signature

Date

STOP HERE OFFICE USE ONLY

To Whom It May Concern:

Please answer the following questions as reference for the tenant(s) listed above.

How long did the tenant rent from you? _____

Was the rent paid on time? ____ yes ____ no If no please explain _____

Was proper notice given? (if required) ____ yes ____ no

Were there any problems, damage to the property, or police reports? ____ yes ____ no

Are there any unpaid balances for rent or damages? ____ yes ____ no If yes please explain _____

If the tenant has vacated the property was the property clean, and in good condition?
____ yes ____ no

Was the tenants deposit refunded? ____ yes ____ no

Would you rent to the tenant again? ____ yes ____ no

Comments: _____

Thank you for taking the time to provide the above information.

Please fax back to us @ 701-223-3959.

Good morning Chairman Dekrey and committee members:

Intro – My title and affiliation

Jeremy Petron

Bis-Man Apartment Association

We are not opposed to laws protecting victims of domestic violence, nor renting to victims, but we are opposed to the expansion of a classification of an additional protected class under the law.

Reason being that Fair Housing law rightfully protects people in protected classes the ability to find housing who would otherwise have a history of being discriminated against.

I don't think that is the case regarding domestic violence victims if they are producing a permanent protection court order to their current or prospective future landlord.

If this law were to pass as is, in the case of a victim looking for new housing, we could find ourselves in situations where we would be breaking the law without even knowing it, if we were given limited information from the rental prospect and a past landlord rental reference.

Landlords typically do not divulge specific information on past tenants for privacy concerns even for rental references. A typical rental reference would have limited information such as 'there were police call disturbances at that apartment'.

In this situation, if a victim looking for housing did not show us a court order or divulge the situation why they are looking for new housing we would more than likely deny their application based on a poor rental history, and we would be breaking the law due to limited information not in our control.

If the intent of this law is simply to bring awareness to the rights of victims of domestic violence, perhaps a better solution is to add civil penalty remedies on the books; but we feel that adding to the expansion of protected classes in this case, is over-reaching and burdensome.

Jack Dairymple
Governor

Tony J. Weiler
Commissioner



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

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March 9, 2011

Chairman DeKrey and
Members of the House Judiciary Committee

Re: SB2195

Dear Chairman Dekrey:

I wanted to provide the Committee some information based on the questions I was asked at the Hearing that took place on March 9, 2011.

One thing I want to clear up, and I attempted to do so during the hearing, was whether a landlord's knowledge is relevant in our determinations. In analyzing whether there has been discrimination in housing, the law requires my office to apply law to fact to see if the complainant can establish what is known as a prima facie case. The first element of that case is whether the complainant belongs to a protected class. If the landlord does not know the complainant is a member of a class, i.e., that he or she had invoked N.D.C.C. section 47-16-17.1, then the first element of the prima facie case cannot be met.

If the landlord could show my office that it did not know the claimant had ever invoked that section to break a lease, then it's unlikely that any finding of discrimination would be reached. Therefore, I don't see how a landlord could violate this section without knowing it.

Further, I was asked what a landlord could ask on a housing application. Specifically, could the question be asked whether a person has ever utilized the above section to break a lease? I have talked to my staff, and did some quick research on North Dakota and the federal law. The answer is yes, you can ask that question. In practice, however, we would encourage that you not do so because it could provide information about that person's being a member of a protected class. Once you have that knowledge, it is arguable that it could be used against the applicant, or that it was if the rental is denied. This goes for any of the protected categories.

I hope this answers your questions. Our website, found at www.nd.gov/labor, has links to brochures that provide information on North Dakota's housing laws.

Sincerely,

Tony J. Weiler
Commissioner of Labor

/

MEMORANDUM

To: Janelle Moos, Executive Director, North Dakota Council on Abused Women's Services

From: Beth Ebert, Abraham Wingrove, Robin Runge, University of North Dakota Law Clinic

Re: SB 2195 Talking Points

Date: March 15, 2011

The purpose of SB 2195 is to provide an enforcement mechanism for a small subset of victims of domestic violence who experience discrimination or retaliation in seeking rental housing based upon the fact that they previously successfully terminated a previous lease as described in N.D.C.C. § 47-16-17.1 by stating that such discrimination or retaliation is a discriminatory housing practice and a tenant may seek remedy through the North Dakota Housing Discrimination Act.

SB 2195 DOES NOT EXPAND CURRENT LEGAL PROTECTIONS FOR VICTIMS OF DOMESTIC VIOLENCE NOR DOES IT CREATE A NEW PROTECTED CLASS OF VICTIMS OF DOMESTIC VIOLENCE. IT SIMPLY PROVIDES A WAY TO ENFORCE RIGHTS UNDER EXISTING NORTH DAKOTA LAW FOR A SMALL SUBSET OF VICTIMS OF DOMESTIC VIOLENCE.

- SB 2195 does not create a new protected class under the North Dakota Housing Discrimination Act by prohibiting discrimination or retaliation against all victims of domestic violence in rental housing in North Dakota.
- Under current North Dakota law, a small group of individuals who have a protection order and are tenants to a residential lease may terminate a lease agreement, under very limited circumstances and a person may not refuse to rent to or retaliate against an individual who has previously terminated a lease in these limited circumstances. N.D.C.C. § 47-16-17.1.
- If a tenant experiences discrimination or retaliation for previously having terminated a lease in these limited circumstances in violation of existing law, there is currently no legal enforcement mechanism. **By stating that violation of this law is a housing practice and that a tenant may seek remedy through the North Dakota Housing Discrimination Act, SB 2195 simply creates an enforcement mechanism for this limited purpose.**

- Under N.D.C.C. § 47-16-17.1, a tenant may terminate a residential lease agreement if the tenant:
 - (1) establishes that he or she is a victim of domestic violence as defined under N.D.C.C. § 14-07.1.01 or
 - (2) fears imminent domestic violence against him or herself or his or her minor children if they remain in the leased premises. N.D.C.C. 14-07.1.01(1) **AND;**
 - (3) has a protection order after a hearing as defined under N.D.C.C. 14-07.1-02 **AND;**
 - (4) provides advance written notice to the landlord stating:
 - (1) that the tenant fears imminent domestic violence from a person named in the protection order; and
 - (2) the tenant needs to terminate the tenancy and
 - (3) the specific date the tenancy will terminate **AND;**
 - (5) delivers this advance, written notice to the landlord by mail, fax, or in person before the termination of the tenancy with a copy of the protection order **AND;**
 - (6) pays rent for the entire month in which the tenancy terminates and an additional amount equal to another month's rent before the tenancy terminates.
- **Only** if a tenant successfully meets each of the requirements above and legally terminates his or her lease, may the individual be protected from discrimination or retaliation in seeking future residential rental housing based upon the fact that he or she previously terminated a lease under this section 47-16-17.1(9) of the North Dakota Century Code.
- Because the existing law requires that the individual seeking to terminate the lease under this provision must possess a protection order, it does not provide this remedy to all victims of domestic violence. **Rather, it provides protection only to victims of domestic violence who successfully petition the civil court for a protection order or has one issued by the criminal court and then seeks rental housing again AND experiences discrimination or retaliation for terminating the previous lease under these circumstances.**
- It is well-documented that the vast majority of victims of domestic violence do not obtain a protection order or interact with the legal system at all. There are many reasons why

individuals who are experiencing domestic violence as defined under North Dakota law many not seek a protection order including:

- lack of awareness that it exists as an option, and
 - fear that the violence that they are experiencing will increase or become more lethal, which has been found to occur
 - not wanting the courts involved
- Moreover, there are many individuals who have protection orders because they fear for their safety and that of their children and are thus considered victims of domestic violence, who do not possess the requisite amount of money to pay two months rent prior to terminating their lease under this section, so they may not be able to avail themselves of this option.
- By stating that individuals who experience discrimination or retaliation in seeking to rent housing because they previously terminated a lease pursuant to N.D.C.C. 74-16-17-1(9), is a housing violation under the North Dakota Housing Discrimination Act, SB 2195 is simply providing a mechanism through which a small number of individuals may enforce their rights.
- Under the North Dakota Human Rights Act, this small group of individuals who experience discrimination or retaliation in these circumstances will be able to file a complaint with the North Dakota Department of Labor, who will investigate seek to conciliate and act on the complaint, N.D.C.C. § 14-02.5-14, or file a civil action in district court. N.D.C.C. § 14-02.4-39.

**Testimony of Robin R. Runge In Support of SB 2195
Before the North Dakota House Judiciary Committee
March 23, 2011**

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify before you today.

My name is Robin Runge. I am an Assistant Professor at the University of North Dakota School of Law where I teach in the Housing and Employment Law Clinic and domestic violence law. I am also a member of the board of directors of the North Dakota Council on Abused Women's Services.

I am here today with Denise Jones, a second year law student from the Housing and Employment Law Clinic at UND School of Law. Denise, along with fellow UND Law Clinic students, Abraham Wingrove, and Beth Ebert, assisted me in preparing and drafting my testimony today in support of SB 2195. I want to thank them and recognize them for their work.

Prior to joining the faculty of the University of North Dakota School of Law, I directed the Commission on Domestic Violence at the American Bar Association, where I provided technical assistance, training, and policy advocacy to attorneys, policy makers, and the judiciary on a national level regarding the legal response to domestic violence. My work included advocating for increased access to housing for victims of domestic violence to ensure their safety and that of their children. It is in my capacity as a national expert on domestic violence and the housing rights and needs of victims of domestic violence that I appear before you today.

The purpose of my testimony is to explain the practical and legal impact of SB 2195 and to encourage your vote in support of this important piece of legislation.

SB 2195 provides a critically-needed enforcement mechanism for a small group of individuals who experience discrimination or retaliation in seeking rental housing based upon the fact that they previously terminated a lease as permitted under existing North Dakota law by establishing that such discrimination or retaliation is a discriminatory housing practice as defined by the North Dakota Housing Discrimination Act.

SB 2195 does not expand current legal protections for victims of domestic violence, nor does it create a new protected class under the North Dakota Housing Discrimination Act. It simply provides a way to enforce protections currently provided under existing North Dakota law for a small group of individuals who are victims of domestic violence.

In 2009, a law was adopted creating North Dakota Century Code Section 47-16-17.1, which states that a tenant may terminate a residential lease agreement if the tenant is able to meet the following long list of requirements. In order to terminate a residential lease agreement under this section, the tenant must:

- (1) establish that he or she is a victim of domestic violence as defined under N.D.C.C. § 14-07.1.01 OR
- (2) establish that he or she fears imminent domestic violence against him or herself or his or her minor children if they remain in the leased premises N.D.C.C. 14-07.1.01(1) **AND**;
- (3) have a protection order after a hearing as defined under N.D.C.C. 14-07.1-02 **AND**;
- (4) provide advance written notice to the landlord stating:
 - (1) that the tenant fears imminent domestic violence from a person named in the protection order; and
 - (2) the tenant needs to terminate the tenancy and
 - (3) the specific date the tenancy will terminate **AND**;
- (5) deliver this advance, written notice to the landlord by mail, fax, or in person before the termination of the tenancy with a copy of the protection order **AND**;
- (6) pay rent for the entire month in which the tenancy terminates and an additional amount equal to another month's rent before the tenancy terminates.

Only if a tenant successfully meets each and every one of these requirements may the individual be protected from discrimination or retaliation in seeking future residential rental housing based upon the fact that he or she previously terminated a lease under section 47-16-17.1(9) of the North Dakota Century Code. Notably, the individual is only protected from discrimination or retaliation based upon the fact that he or she terminated a lease under this subdivision previously, not based on their status as a victim of domestic violence.

Given the long list of requirements that must be met to qualify for the protection from discrimination and retaliation in this subsection of the North Dakota Century Code, it is clear that not all victims of domestic violence will be able to terminate their leases under this statute. As a result not all victims of domestic violence are entitled to protection from discrimination and retaliation in seeking future residential rental housing, and thus no new protected class will be created in the North Dakota Housing Discrimination Act with the passage of SB 2195.

Any lack of data regarding those who have exercised their rights under N.D.C.C. § 47-16-17.1 since it was passed in 2009 is not an indication that this protection is unnecessary. It is most likely due to the fact that (1) the law is new and few victims are even aware it exists; (2) if they do learn about it, they don't have the financial resources to pay the rent required to terminate the lease; or (3) they do not have a protection order and thus are ineligible.

It is well documented that many victims of domestic violence do not obtain civil protection orders or interact with the legal system at all. There are many reasons why individuals who are experiencing domestic violence many not seek a protection order including a lack of awareness that it exists as an option and/or fear that the violence that they are experiencing will increase or become more lethal if they seek assistance from the justice system.

Finally, it is important to note that there is a large number of victims of domestic violence who experience discrimination in obtaining, maintaining or seeking housing because of their status as victims of domestic violence who are not expressly protected by existing North Dakota law nor would they have enforcement rights under SB 2195.

In fact, a woman recently called the UND Law Clinic because her boyfriend, with whom she lived, hit her. She obtained a temporary protection order against her boyfriend. Then the next day, she received a 3-day notice of eviction from her landlord. If SB 2195 created a protected class under the North Dakota Housing Discrimination Act, victims of domestic violence such as this woman would have a claim of housing discrimination based on her status as a victim of domestic violence. However, because "victim of domestic violence" is not a protected class under the North Dakota Housing Discrimination Act, she does not currently have an express remedy under North Dakota Law, nor would SB 2195 provide her with one.

I urge you to vote in favor of passing SB 2195. Although it will not provide protection from discrimination for all victims of domestic violence seeking housing, it will provide a much-needed enforcement mechanism for a small group of victims who desperately need a way to enforce their already existing rights. Thank you again for this opportunity. I am happy to answer any questions.

Prepared for: House Judiciary Committee

Prepared by: Jessica Braun, Legislative Intern, House Judiciary Committee

PROPOSED AMENDMENTS TO SENATE BILL 2195

Page 1, remove lines 6 through 7 and insert immediately thereafter "In an action for a violation of this section, a tenant may receive statutory damages of one thousand dollars, together with actual damages, reasonable attorney fees, costs, and disbursements to be determined by the court."

Renumber accordingly