

House Judiciary Committee
To: Chairman Lawrence Klemin
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HB 1384

Chairman Klemin and members of the House Judiciary committee, my name is Shane Goettle and I am appearing today as a lobbyist for the State Association of Nonpublic Schools. There are over 6770 students in nonpublic schools across this state.

Our business is teaching and protecting students. There is nothing more important. We all agree that sexually abusing a child is unconscionable—something we should never tolerate. At the same time, a child in a public school has a three-year statute of limitations in which to make a claim of sexual abuse while a child in a nonpublic school has 10 years. I am sure that statement will surprise many.

I will get right to the point. HB 1384 would resurrect claims long barred by the passage of time for churches and nonpublic schools, but not for public schools, juvenile detention centers, and other government entities.

The bottom line for my client: To open up previously barred claims against private, nonpublic schools, while leaving public schools protected is patently and severely unjust.

Now, it is not obvious from the face of the bill that it ends up producing the result I have just pointed out to you. That takes some legal analysis. Please indulge me while I walk through that with you.

This bill focusses on amending section 28-01-25.1 of the North Dakota Century Code. Reading that section we see that a:

“claim for relief resulting from childhood sexual abuse must be commenced within ten years after the plaintiff knew or should have known that a potential claim exists resulting from alleged childhood sexual abuse.”

Here is the main point: the “ten years” referenced in this section only applies to private parties and institutions.

HB 1384 proposes to start that 10 year-clock from the time a person first learns from an attorney that he or she may have a claim. Now, if a child was victimized at age 8 years, and then at age 22 learns from attorney that there is a potential claim, that person would then have until age 32 to bring the claim. But what if that same person waits until he or she is 52 years old before every talking to attorney? Then, that person would have until 62 years. This effectively ends any statute of limitations for sexual abuse claims.

At the same time, while private persons and private entities would, in effect, never enjoy a statute of limitations on sexual abuse claims, the change you are considering would not apply to state entities and political subdivisions, including public schools, which have statute of limitations separate from section 28-01-25.1.

- Actions against the state must be commenced within three years (NDCC § 28-01-22.1)
- Actions against political subdivisions¹ must be commenced within three years (NDCC § 32-12.1-10)

The North Dakota Supreme Court has repeatedly held that these statutes of limitation apply even if another statute provides a longer period of time. *Dimond v. State Board of Higher Education*, 2001 ND 208, 637 N.W.2d 692. See also, *Olson v University*, 488 N.W.2d 386 (N.D. 1992), *O'Fallon v. Pollard*, 427 N.W.2d 809 (N.D. 1988), *Burr v. Kulas*, 532 N.W.2d 388 (N.D. 1995), *Burr v. Kulas*, 1997 ND 98, 564 N.W.2d 631.

In 2016, the *Fargo Forum* found that from 1979 to 2015, the teaching licenses of 74 teachers were revoked. Fifty-seven percent of them involved sexual misconduct. HB 1382 does nothing to address those instances of possible abuse if they occurred in a public school.

Mr. Chairman, and members of the committee, as written, HB 1384 effectively ends any statute of limitations for private, nonpublic schools while leaving public schools protected from such claims. I doubt this result was intended by the sponsors, but it nevertheless exists and it unfairly and unjustly discriminates between private and public institutions. For that reason, the State Association of Nonpublic Schools opposes this bill.

¹ The term "political subdivision" includes school districts. NDCC § 32-12.1-02(6)(a).