

Testimony of DeAnn M. Pladson
January 3, 2023



The Honorable Lawrence R. Klemin, Chairman
House Judiciary Committee
State Capital Building
600 E. Boulevard Ave.
Bismarck, ND 58505

RE: HB 1037

Dear Mr. Klemin:

Please accept this letter as my testimony regarding House Bill 1037 relating to our spousal support laws in North Dakota. I was very grateful for being allowed to share my thoughts and research, and participate in the interim study of spousal support. It was a pleasure working with the interim committee and I am pleased that much of the work done remained in tact for HB 1037.

Past legislative assemblies have considered changes to our spousal support laws. There is no doubt that from a practitioner's standpoint, there are problems associated with determining the appropriate amount of spousal support. The first is a lack of consistency in the spousal support awards which results in a perception of unfairness. The second is an inability to accurately predict an outcome in any given case. The lack of consistency and predictability undermines confidence in the judicial system. Without a reliable way to predict an outcome, clients are left facing a difficult decision and attorneys can only offer forecasts based on their own research and experience.

House Bill 1037 makes great progress in addressing many of the concerns, including creating a threshold question which must be evaluated before spousal support is awarded; clear factors for evaluating all of the facts relevant to spousal support awards; and a directive to the court to apply durational limits on spousal support awards.

I am offering this testimony in support of amending a few areas of HB 1037.

Page 1, Line 13-14 “The court may not award permanent support.” I would urge the committee to delete this sentence from HB 1037. It is unnecessary and may have unintended consequences for those citizens who have been awarded permanent support in the past. The statute is clear that spousal support may be awarded “for a limited period of time.” The North Dakota Supreme Court has held that a court will err, as a matter of law, if a court awards support for an indefinite period of time. Kaspari v. Kaspari, 958 N.W. 2d 139 (ND 2021). The Supreme Court is properly interpreting the statutory mandate that spousal support awards must be time limited.

Although HB 1037 is clear that no retro-active application of the law is intended, I believe that this language will invite litigation of prior orders where permanent support was awarded. House Bill 1037 allows practitioners to advise clients that any support award will be time limited. We will further be able to advise our clients to prepare for retirement because of the presumption that spousal support will terminate at that time. It would be devastating to a recipient who was awarded permanent support in the past, to have that taken away arbitrarily, without the ability to plan for such an event. Because “permanent support” has meaning in our prior case law, this language could be used to re-open divorce matter asking for modification as to the duration of support because “permanent support” is abolished. I do not think that is the intent of the legislation, and taking the language out would help to minimize litigation over the duration of past awards.

Page 2, Line 29, “Duration agreed upon by the parties.” This is the durational limit for spousal support for a long-term marriage or one that has lasted more than 20 years. Perhaps this is a drafting issue that I do not understand, but I think that the language should address the event where the parties cannot agree. I am proposing that the language read, “Duration agreed upon by the parties or for a limited time as determined by the court.” This puts the decision making in the hands of the parties wherever possible. However, when the parties cannot agree, the court will have discretion to make a time-limited award of spousal support in the longest-term marriages. Section 5 addresses what the court must do in order to deviate from the guidelines. If the court is making this determination of whether or not to deviate, it is highly unlikely that the parties have reached an agreement. Adding this language provides additional clarity to the statute. It makes it clear that marriages of long duration may not fit neatly into a category, rather judicial discretion is expected in these circumstances, where the parties are unable to agree.

Page 3, Line 17, "...the court shall terminate spousal support." I am proposing that the court have discretion to terminate spousal support in the event of cohabitation, and I am urging the committee to revise the word "shall" to state "may." I was not active with the legislative process back in 2015, when this law was adopted. I regret that very much. I am hoping that you will see my actions in advocating for sweeping changes in our law, comes out of concerns for our citizens and court litigants who need the assistance from the courts to decide their future. I have agreed that the administration of justice as it relates to spousal support is broken and needs reform. However, I feel very strongly that our current law regarding cohabitation is far more stringent than other states, and very unfair to recipients of spousal support.

Since the beginning of this nation, marriage has been considered more than a private contract. Rather, it is considered a legal "status." An old, but still cited U.S. Supreme Court decision explains the significance of granting legal "status" to what is also a consensual personal relationship. In the 1888 case of *Maynard v. Hill*, the Court wrote:

The [marriage] relation once formed, the law steps in and holds the parties to various obligations and liabilities. It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress. [As] expressed by the supreme court of Maine in *Adams v. Palmer*[citation omitted]: 'When the contracting parties have entered into the married state, they have not so much entered into a contract as into a new relation, the rights, duties, and obligations of which rest not upon their agreement, but upon the general law of the state, statutory or common, which defines and prescribes those rights, duties, and obligations.'

By distinction, entering into cohabitation does not automatically create legal rights and obligations for matters such as property distribution or financial support or inheritance rights. Most states have maintained a bright line between marriage and cohabitation. For example, unlike the married, cohabitants do not obtain rights and obligations respecting inheritance or testimonial privilege. Nor are third parties required to treat currently cohabiting couples like spouses. Cohabitants, therefore, may not generally recover for wrongful death or loss of consortium. Cohabitants almost never receive private insurance survivors' benefits or unemployment benefits related to a relocating partner. Health insurance companies are legally free to allow or disallow insuring a cohabiting partner as part of an employer-provided health insurance benefit. The federal government offers Social Security survivors' benefits only to formally married spouses and not to cohabitants. States also regularly decline to grant survivor benefits for cohabiting partners of state employees. Unmarried couples do not have the same legal protection as married

couples; and they also have no legal responsibility for each other in the event of a breakup. A “relationship analogous to a marriage” does not exist.

I support having laws in place which addresses cohabitation. When a couple hold themselves out as married to the public, but privately they do not marry to retain the right to collect spousal support, our laws should be able to address this unfairness. However, I firmly believe that our current law is too stringent and does not afford the court with the discretion necessary to fully evaluate these cases. I am prepared to research this for the committee if you so desire. My limited and initial research indicates that many states give the court the discretion to terminate, suspend or reduce spousal support after considering various factors such as whether or not the parties share joint assets or accounts, whether or not they hold themselves out as a couple, the mutual benefits received from the cohabitants and the level of economic interdependence. Our current laws create a rigidity which may not be fair to the litigants before the court. I am urging the committee to allow the court to have some discretion when deciding these matters.

I thank you and the Committee for your time.

Very truly yours,



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