

Direct Dial: 701.356.6316
218 NP Avenue | PO Box 1389
Fargo, ND 58107-1389
rstock@vogellaw.com

March 13, 2023

Senator Diane Larson, Chairman
Members of Senate Judiciary Committee

Re: HB 1037

Dear Senator Larson and Judiciary Committee Members:

Please accept this letter as my written testimony regarding House Bill 1037 relating to spousal support laws in North Dakota. My name is Robert Stock and I submit this testimony in my personal capacity although I am a licensed practicing attorney in the State of North Dakota. I submit this testimony in support of HB 1037 but with proposed amendments that would apply HB 1037 to existing spousal support orders.

My personal divorce case and resulting judgment is one of the most egregious examples of what can happen without a bill like HB 1037 in place. Unfortunately, my ex-wife and I were not able to come to an agreement without judicial involvement. Our divorce was tried in State District Court and ultimately appealed to the North Dakota Supreme Court.

My now ex-wife was awarded permanent spousal support, with no durational limit, even though we had been married 14 years and were 36 and 35 years old at the time of our divorce. Although both of us were healthy, relatively young and only married for 14 years, the trial court ordered spousal support that could last 40 plus years, or over three times the length of our marriage.

Just as important is the fact that this result could have been different depending on the judge. The award could have been for zero; the award could have been for 2 years, 6 years, 12 years, or 40 years. The point is there must be a legislative check in place to provide some semblance of rationality and consistency in how spousal support is awarded. HB 1037 provides that legislative check while still allowing enough discretion to account for the exceptional case of medical disability or similar circumstances. As Justice Sandstrom aptly stated in his dissenting opinion in my personal divorce case, it is time to end the spousal support lottery.

However, the current version of HB 1037 does not adequately address my situation and hundreds like it. HB 1037 in its current form only applies to actions for divorce or legal separation that occur on or after August 1, 2023. I am proposing amendments to HB 1037 to clearly address the application of the statute to existing spousal support orders.

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I propose a new Section 6.c. that would read as follows:

Existing spousal support judgments that exceed the durational limits recited in Section 5 regarding length of marriage shall be deemed a material change in circumstance that warrants modification.

SECTION 2. APPLICATION would read as follows:

It is the intent of the sixty-eighth legislative assembly that this Act applies to any spousal support order, regardless of date of issuance, but applies only to spousal support payments accruing after the effective date of this Act.

The purpose of the proposed amendments is to clearly state that the new durational limits provided for in HB 1037 should apply to existing spousal support awards, whenever made. These amendments address the administration of justice under the previously broken spousal support system and address the unfettered discretion that the current Bill was drafted to control. The proposed amendments will also address the lack of consistency in previous spousal support awards that result in a perception of unfairness and lack of trust in the judicial system.

The proposed amendment to the application clause is important as it makes clear that the intent of the legislative assembly is that the Act applies to existing spousal support orders. This is an important clarification not only for the durational limits stated in Section 5, but also for the rebuttable presumption that spousal support terminates upon the payor attaining full retirement age, as stated in Section 11.

I believe that the proposed amendments are also consistent with the intent of SB 2069, which was previously sponsored by Senator Luick but withdrawn so that the current bill could be considered.

The proposed amendments will not invite a wave of litigation over prior orders where permanent support was awarded, as opponents to retroactive application might argue. The proposed amendments do not provide for across the board retroactive application. Importantly, the proposed amendments will not affect spousal support payments that have already been made. For example, if the original spousal support award exceeds the durational limit stated in Section 5, further spousal support would be terminated upon a motion to modify spousal support, but the receiving spouse would not be required to pay back any payments already received, regardless of whether the original duration far exceeded the new durational limits.

The modification contemplated by the proposed amendments would be accomplished through a simple motion to modify. This approach is consistent with the current state of North Dakota law with respect to modification of spousal support orders and will not cause any additional litigation than there would be in the normal course.

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I urge this Committee to adopt the proposed amendments as those with spousal support orders already in place deserve the same consistency as those orders yet to be decided. The issues are the same for everyone affected and this statute should be applied accordingly. Thank you to Senator Larson and this Committee for spending time on this important issue and considering my comments and proposed amendments.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert B. Stock". The signature is written in a cursive style with a large initial "R".

Robert B. Stock

Attachment: Proposed Amendments to House Bill No. 1037