

Good afternoon, Mr. Chairman, and members of the Committee.

My name is Casey Chapman. I am an attorney with offices in Bismarck and Fargo. I appear before you today as the representative for Dan Frank, who is the owner of two mobile home parks in Bismarck and who has concerns about the current wording in Senate Bill 2385. I speak to you today in opposition to portions of that bill.

Some background on Dan's business will be helpful. Dan is the owner of two relatively small mobile home parks in Bismarck, which he has operated for many years. Most of the mobile homes are older single-wide homes, which Dan owns. These mobile homes accommodate many people who benefit from government assistance programs and who presumably enjoy a free-standing home, rather than a second-floor apartment. Located in an older section of Bismarck, his parks are not fancy, but they are functional. There are some residential areas near the parks but there is also commercial development in the area. One of the parks is across the street from a nonprofit which assists the needy, including the homeless. Unlike many of the larger mobile home parks, these parks offer basic housing for people who need a place to live.

This is not the story of a large out of state mobile home park owner. Dan is a "hands on" owner who oversees the maintenance of the mobile homes and the parks. He has taken many steps to ensure the habitability of these mobile homes, in spite of their age. In compliance with assistance programs which benefit some tenants, the applicable mobile homes are subject to inspection. He also cooperates with, and meets with, the City of Bismarck in an effort to maintain compliance with applicable ordinances. I know this to be a fact, because I recently attended one of those meetings. Given the location of the parks, they are sometimes vulnerable to break-ins if a mobile

home is vacant. As an example, during the meeting which I attended, the City representatives offered Dan a suggestion for an additional way to securely board windows and doors on vacant homes against intruders.

What is the relevance of this background, one might ask? The reality is that Senate Bill 2385, as now worded, poses a concern for Dan and his mobile home parks and presumably for others in his situation.

Certainly, the need for oversight in licensing is an important government function. The existing provisions of Section 23-10-12, North Dakota Century Code, provided the Department of Health and Human Services with the authority to suspend the license of a mobile home park. With the proposed changes under Section 7 of Senate Bill 2385, the Department will have the authority to revoke the license of a mobile home park. That authority is not unreasonable in the effort to protect North Dakota citizens. However, the concern is the manner in which revocation is achieved. Dan, on behalf of himself and others in his position, asks for an adjustment in the process which can lead to revocation. We remember that Dan's parks, and his mobile homes, are old, are subject to occasional intrusion and vandalism, and accommodate people who need housing. There are times when maintenance and repairs will be needed. Dan asks for a fair opportunity to meet any concerns. Therefore, we request an amendment to the wording in Section 7, as follows:

- a. The law says that the Department must give reasons prior to a revocation.

We propose that the word "specific" be added so that Dan has no doubt regarding the needed action. If the mobile home park's license is at risk, fairness requires that any claimed violations must be specifically identified.

b. In addition, we propose that the law be adjusted so that the time allowed for correction must be reasonable "under all of the circumstances". Whether hampered by the unpredictable circumstances of weather or by the difficulties associated with procuring labor and materials for improvements or repairs, mandated timelines could become difficult to meet. However, where the existence of the mobile home park is threatened, this slight enhancement of procedural requirements is not unduly burdensome.

The proposed language in Section 1 of Senate Bill 2385 is triggered by a revocation of a mobile home park license. Under this language, the Department, upon revocation of a license, is authorized to file a petition with the court to put the mobile home park into receivership. In very basic terms, a receivership means that the court orders the complete "take over" of the business under the authority of a court-ordered manager. All expenses of the receivership are the financial burden of the business. Over the course of almost 48 years of practicing law, I can tell you that, especially with small businesses such as a smaller mobile home park, the imposition of a receivership, along with its substantial administrative expense, could easily result in the destruction of the business. Correction, not destruction, should be the hallmark of this legislation. If there is work to be done to bring the mobile home park back into compliance, with the hope of re-licensure, it is only fair to give the owner the first opportunity to complete the work. Our proposal is not to eliminate the receivership model but instead to provide more protection for the property owner, who has built this private business with investment and hard work. Thus, we propose the following amendments to Section 1 of Senate Bill 2385:

c. First, set the required standard of proof as “clear and convincing”. In a typical legal proceeding, the person requesting action by the court need only show that it is more probable than not, that a particular circumstance exists. By requiring a showing of clear and convincing evidence, the property rights of the owner are better protected, and receivership will only be imposed in compelling circumstances.

d. Second, we ask that the law clearly requires the judge to hold a full hearing so that the judge can make an independent determination on the facts. Often, when a state agency, such as the Department, makes a decision, the law, Section 28-32-46 of the North Dakota Century Code, limits the ability of the judge to dig into the facts. Instead, the judge is required to accept, with very limited exceptions, the findings of the Department. With this proposed amendment, it will be clear that the Department is required to present evidence before the judge to justify its request for a receivership. Although the mobile home park owner will be better protected, the court will retain authority, where clearly needed, to impose the receivership.

Members of the Committee, government has the right to regulate but, in pursuit of that regulation, there is a need to assure fairness to the business owner. These proposed amendments are intended to enhance that fairness.

Respectfully submitted,

Casey Chapman
Chapman & Chapman, P.C.
Attorney for Dan Frank
701-258-6030
chapmanlaw@chaplawnd.com