

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2044

2001 SENATE JUDICIARY

SB 2044

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2044

Senate Judiciary Committee

Conference Committee

Hearing Date January 24th, 2001

Tape Number	Side A	Side B	Meter #
1	X		0-33.8
Committee Clerk Signature			

Minutes: Senator Traynor opened the hearing on SB 2044: A BILL FOR AN ACT TO AMEND AND REENACT SECTION 14-05-24 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO THE DIVISION OF PROPERTY IN A DIVORCE ACTION.

Yonette Richter, representing the legislative council, (presented a copy of the final report to the committee). The committee broke into a subcommittee and a task force with practicing attorneys and judges. There were four working groups; property division and spousal support, mediation, guardians, statutory revision. Bill relates to divorce action relating to division of property. Line 14 -21, page 1. "Except upon a finding that excluding the property is inequitable to the other party, property acquired by an individual spouse through inheritance or by gift, if titled and maintained in the sole name of the donee spouse, is the property of that party and is not subject to division under this section. Gifted and inherited property excluded from division is defined as property acquired by an individual spouse by gift or inheritance or property acquired in exchange for gifted or inherited property and includes the increase in value of the property acquired by the

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individual spouse by gift or inheritance." 3rd subsection line 22, "Property acquired by gift from the other spouse is subject to property division under this section." 4th subsection line 1-4, page

2. The court may redistribute property in a postjudgment proceeding if a party has failed to disclose property and debts as required by rules adopted by the supreme court, or the party fails to comply with the terms of a court order distributing property and debts."

Senator Traynor: Apparently it makes no difference if property were acquired before or after a marriage.

Vonette Richter: That's my understanding.

Richard Knutson, testified in favor of SB 2044. (testimony attached)

Senator Traynor: Have you made any gifts for your daughter?

Richard Knutson: Yes I have. Under IRS law its limited to under \$10,000.

Senator Lyson: How many states have this law?

Richard Knutson: I was told approximately 27 states.

Paul Bernabucci, speaks in favor of SB 2044. (testimony attached)

Leroy Triblebold, supports SB 2044. (Testimony attached)

Sherry Mills Moore, testifies for the Bar Association. First part of bill states there are two sides to every story. This bill will put current law upside down. New law gives special treatment to inheritance. Laws are intended to be fair. This bill is a policy decision which came out of committee with a split vote. Those who get married don't think of divorce. Prenuptial agreement will definitely cast a shadow on a marriage as Mr. Knuston states. Look at family the family farm situation, they need not incumber the land. Laws dealing with this will come into play. Courts always had power to divide divorce spouses inheritance. You will need to do a rule change with in this state. Paragraph 3 is a companion to paragraph 2 where everything is

equal. Paragraph 4 is less controversial, which protects a spouse from a sneaky spouse. Court can also do redistribution of property. Section 1 of this bill is directed to a cleanup bill, which is 2046.

Senator Traynor: If this law becomes enacted could we open up old laws?

Sherry Moore: no.

Senator Traynor: There would be no retroactive effect?

Sherry Moore: yes.

Senator Trenbeath: What about the situation when there is an inheritance. This doesn't address the situation where the inheriting spouse at one time has a CD in joint tenancy, then because of joint tenancy reverts to sole ownership. Is that then in the sole name or not? Once it's out of the sole name is it always out of that name, or can it come back to a sole name again.

Sherry Moore: This specifically directed to property in the sole title. It will not foreclose on someone from arguing that it came from my parents and I want it back.

Senator Trenbeath: Why is that in there? Making a financial decision that isn't good for the marriage, but is good for a divorce. You voiced this concern.

Sherry Moore: Those arguments will be continued to be made.

Senator Trenbeath: CD situation, inheriting spouse puts that in a CD for purposes other than a gift, an agency relationship. That presumption is that it is no longer inheritance. It's not protected anymore.

Sherry Moore: It would be and it would lose its protection.

Senator Trenbeath: What is the intent of the language that says "property acquired by the individual spouse by gift or inheritance." (line 20-21, page 2) Is the intent the inheritance is prior to marriage or during one.

Sherry Moore: Premarital property is not included in this provision. We are trying to make baby steps.

Senator Trenbeath: people will try to make a distinction.

Senator Dever: Except upon a finding that excluding the property is inequitable to the other party. Line 14, page 1. Could you give me an example?

Sherry Moore: Farmland inherited is inequitable. Wife says its not inequitable.

Susan Beehle, testifies against SB 2044. Represents R-Kids. A custodial parent not in favor of the bill as it is currently written. This doesn't give total protection of inheritance to a child. If you have been given a gift if shouldn't be given to another in a divorce. We wanted to know of the effect on the child.

Bonnie Polleck, represents CAW. Members of the coalition had discussion over this bill. With shifting of burden of proof with saying they are sole benefactors of the land. More detrimint to shift burden of proof.

Senator Traynor closed the hearing on SB 2046.

Tape 2, side A meter # 35.5

There was discussion on the bill before a vote was taken.

MOTION TO DO PASS WAS MADE BY SENATOR TRENBEATH. SECONDED BY SENATOR LYSON. VOTE INDICATED 3 YEAS, 4 NAYS, AND 0 ABSENT AND NOT VOTING. SECOND MOTION TO DO NOT PASS WAS MADE BY SENATOR WATNE, SECONDED BY SENATOR NELSON. VOTE INDICATED 3 YEAS, 4 NAYS AND 0 ABSENT AND NOT VOTING. THIRD MOTION TO DO PASS WAS MADE BY SENATOR TRENBEATH, SECONDED BY SENATOR LYSON. VOTE INDICATED 3 YEAS, 4 NAYS AND 0 ABSENT AND NOT VOTING. FOURTH MOTION TO

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DELETE SUBSECTIONS 2 AND 3 WAS MADE BY SENATOR NELSON, SECONDED BY SENATOR BERCIER. VOTE INDICATED 3 YEAS, 4 NAYS AND 0 ABSENT AND NOT VOTING. FIFTH MOTION WAS MADE BY SENATOR WATNE TO AMEND SECTION 1, KEPP IN "AND DEPTS" REINSTATE LINES 8 - 13. SECONDED BY SENATOR NELSON. VOTE INDICATED 3 YEAS, 4 NAYS AND ZERO ABSENT AND NOT VOTING. SIXTH MOTION WAS MADE BY SENATOR DEVER TO SEND TO FLOOR WITHOUT RECOMMENDATION. SECONDED BY SENATOR TRENBEATH. VOTE INDICATED 5 YEAS, 2 NAYS AND 0 ABSENT AND NOT VOTING.

