

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
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ROLL NUMBER

DESCRIPTION

2154

2001 SENATE POLITICAL SUBDIVISIONS

SB 2154

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2154

Senate Political Subdivisions Committee

Conference Committee

Hearing Date January 12, 2001

Tape Number	Side A	Side B	Meter #
SB 2154 1	x		0.0-end
SB 2154		x	0.0- 26.40
SB 2078		x	26.4-end
Committee Clerk Signature			

Minutes:

The committee was called to order. All senators in attendance.

The hearing was opened on SB2154: Exempts records in housing discrimination complaints filed with the Department of Labor.

Mark Bachmeier, Commissioner of Labor, spoke in favor of SB2154. See attached testimony.

Senator Lyson: Question for Mark, Meter #19.8 "I don't know how anyone can pass a law that says words about to "Engage"? Mark Bachmeier, in course of this year we've never had an individual engaged in act of complaint. To add in this bill as an amendment, to add it back into the law is to affect our ability to gain the other benefits of substantial equivalency if we don't address the concern of the federal agencies. Senator Lyson, if we don't put this portion in the bill, what are they going to do to us? Mark Bachmeier responds, the issue is discussed in opening remarks, substantial equivalency does a number of things for us, if our laws deem to be substantial equivalent, one we can receive federal funds, two, people who have complaints filed

against them don't have to face two separate complaints one filed under the federal law and one filed under the state law, because they could have separate resolutions or penalties under state law or federal law. It consolidates the bills into a single investigation. Thirdly, we by being equivalent and being able to be the sole entity that investigates complaints filed in ND, we can have some control over how we can approach the investigation of some complaints which was part of the discussions two years ago, to work as much as we can to work with the parties to resolve complaints in an informal way that is acceptable to both parties, as opposed as trying to take a more punitive approach to impose sanctions on people who have discriminated against. We gain those benefits, and its the trade off, as the way he would put it. Senator Lyson " if you put this law into affect, you take the 1st amendments rights away from somebody else, it don't make any sense to me at all". Senator Cook, "ultimately you determine the whole complaint process, the penalty is determined, what do we do "? Mark Bachmeier responded, the most complaints will be resolved through conciliation. The penalty is that provided in the law are primarily applicable only if we issue a cause determination that evidence suggests to us a discriminatory practice has a occurred and we have not been able to resolve it in a formal way and at that time an administrative hearing is held or if the parties elect for it, a judicial proceeding is undertaken and in either case then certain penalties are applicable at that point. So we don't have authority to impose civil penalties, or those administratively and those can only be done in the context of an administrative hearing or judicial action. We can negotiate settlements that can include various kinds of relief and that's what we attempt to do in cases we find or feel there is discrimination. Other cases whether there isn't evidence, we would simply dismiss those complaints. Senator Cook, if you found a situation where somebody was about to commit discrimination, you're going then to do this process to come up with a record of

reconciliation, am I safe to assume that someone had better not do this? Mark Bachmeier, that's the underlying goal of the whole program to make sure that discrimination doesn't occur, that somebody some kind of harm that we can, that they are provided with housing the if they are not provided with housing. If that situation occurred certainly we would do, we would attempt to address it in an informal way, as you are suggesting, it would depend ultimately on the level of harm that there was evidence linking that action to in terms of that complainant. If evidence suggested, that significant harm was caused to an individual because of discriminatory action someone was about to engage in, we would address it like any other respondent. In terms of their liability for it and trying to resolve it. But certainly it would be informal, and if it was about the former example, and somebody was making comments, yes in all likelihood, it would be unlawful activity, and that if it was carried through, the unlawful activity carried through, a suggestion that some kind of training on fair housing laws of those actions. The goal is to always to handle every situation as informally as possibly and having to get to the point of having a hearing to instill the penalties on those people. Senator Lee I understand why we need to consider this, I feel like the feeds are holding us hostage, I think its the 10th amendment they've forgotten which allows the states to have this authority that is not specially delegated to the feds. Two questions: Whether or not we have to permit groups and organizations to bring suit and that goes together with the idea of an individuals about to engage in discriminatory practice". Ex. Meter #27.8 I don't believe that familial status is currently a protective class in North Dakota. Is familial status a new protective class in the state of ND, and are groups and organizations whether or not allowed to do that because that is very different from having individuals? And I see newspaper ads as being an example as "about to engage in", because some well meaning ad that doesn't know the regulations of these stuff, just rent a place, who is

A nice Christian person, or religious reasons may share philosophical views. Mark Bachmeier response on familial status. Familial status is protected under law and it has been protective under state law since 1983. It prohibits discrimination based on familial status which is defined under the law as having children under 18, not a single vs. married issue, that's a marital issue. Marital status is also protective category under state law but not under federal law, that the issue relating to that one, that's the one to what you are referring, and it does not discriminate against marital status. Advertising in and of itself is a violation of housing and discrimination law, federal and state. Senator Lee, Individuals and Groups, are we required to allow groups and organizations to bring to be federally substantially equivalent under the law. It is a much narrower concept that to say that individuals can bring complaints under our law, while persons can bring complaints under federal law, and that certainly doesn't provide the same protections as the federal law because groups don't expand in it under the definition is for defined individuals, that certainly is a factor. It is required for equivalency. Senator Lee, It is required for equivalency? Senator Cook, The majority of this bill deals with equivalency, what sections do not? What sections for that? Mark Bachmeier, The issues that do not have to do with equivalency are the exempt records, the final section that something that simply cannot investigated cases that recognizes the law doesn't address the issue of records relating to an investigation, and that's something that is not required for an equivalency. In addition, the Section 7 as relating to providing information or upon a completion of an investigation is related to the open records, that's not an issue that a substantial equivalency issue, and the public notice of dismissal of complaints is not. I believe the remaining issues are relating to the law. Senator Christenson, Do I understand that given a laundry this list of things that are protected that gay rights is not one

of them? Mark Bachmeier, you are correct, in that assumption. Senator Flakoll, Mark, again, to get back "to engage in" question of an example if you have a situation of a 4-plex and you have fully occupied, but the person who is in charge of it, the owner, makes the statement in effect that I will never rent to state senators because they leave messes, whatever, is that an example something where they are about to engage in. Mark Bachmeier, Senators are not a protected category, that's a bad example, but if the preference that was stated, was, I will never rent with anyone with kids, that statement, would be a violation, so it wouldn't be because it was evidence that they were about to engage in a discriminatory act, it could be, if a vacancy came up and then they, but I don't know who whatever, or how a complaint would come to us at that point, its' much more likely, number one that if statement was made publicly or in some way somebody brought that complaint to our attention that statement itself if discriminatory advertising, even if you say it to your neighbor, I'll never rent to someone with children, that's a discriminatory advertisement under the law because it is a statement expressing a preference based on a category that's protected under the law, if a vacancy occurs and then your criteria for filling that vacancy is in fact children, then its refusal to rent, its to despair treatment based on protected category, again yes, there could be an element that, but also what you discussed is another violation in and of itself. There could be other factors relating to that example as well. More likely the way the issue would be addressed. Senator FLAKOLL, an issue of a 3 bedroom apartment for sixteen people, how does that work? Mark Bachmeier, you can have occupancy standards. Occupancy standards are not prohibited by the law or super cede by protections under the law based on familial status. As long as it applies to everyone your allowed to have reasonable occupancy standards two per bedroom. Standard for occupancy of any dwelling that your renting, and you don't have to make an exception to those standards. Senator Cook, Mark

would you clarify something for me, Senator Flakoll calls a press conference, and at that press conference he announces he is about to build an exclusive housing development for white, married people with no children only, Is he about to commit discrimination, or has he already committed discrimination? Mark Bachmeier, At this point at which he makes that statement, he has committed a discriminatory housing practice under the law, because he has advertised in an discriminatory fashion. He also expresses his intent to discriminate, but again as a practical matter its a difficult thing to have a complaint on, and say their was evidence to engage in when actually he hadn't engaged in it yet. Senator Mathern, So in this press conference, if Mr. Flakoll is thinking about this thing, is it about to occur? It shows the ambiguity of the statement that I might think he is going to say that, and its about to occur. Not very well defined in most law, its a good definition. Senator Lee, I don't have a tremendous amount of worries about the logical people of ND might interpret this, and I realize our hands are tied in a lot this area, but I do, really fear what will happen when groups and organizations are allowed to bring suits or things they are thinking about doing, because that is a whole different level. Example given Side A Meter #41.7. Mark Bachmeier, Senator Lee, one thing to keep in mind with the standing of groups and organizations beyond the individuals bringing complaints is that those complaints could then be filed with the Department of Labor and there would still be a standard of evidence that they would have to show harm. Needs to show that they were harmed by the occurrence of discriminatory housing practice, when it was first occurred and showing when the organization was harmed by that practice. Senator Lee, if decedents of Vikings who all lived in an apartment building so they could watch the Super Bowl together and now the apartment owner is another football team fan, if they establish an organization obviously the group is not hurt ,however, but the individuals within the group are, so if I am a member of that group, but I don't want to get

sued and all the other people are my friends, are going to support me in this, what happens if an individual is harmed but a group now is able to sue also and are a party to this suit, there the ones with the money, do they have a different position of influence? Mark Bachmeier, its different for the members of the group to individually be harmed by these complaints, and the group per say, and I think there would be some standard and the group would have to show that "it" the entity of the organization had been harmed by the practice, not just by the individual members were harmed by the practice. Senator Flakoll, I'm not sure if I understand the range of outcomes in the event someone is in violation of this, what types of litigation outcomes do occur in terms of either single individual, both or in terms of a group. Mark Bachmeier, there are several common outcomes, one, to a complaint filed after completion of an investigation. If the evidence doesn't support the allegation, a dismissal obviously. If there is evidence that leads us to believe that discrimination may have occurred, we can negotiate a conciliation in a section of the law in conciliation, it identifies things that are included in that, but it doesn't include any kind of civil penalties, only relief to the party, compensatory. The specific items in part of a complaint in terms of a remedy, a conciliation may authorize appropriate relief including monetary relief, is what it states. In that case, in which the evidence is supporting the allegation, if we're not able to reach some kind of a negotiated settlement that is acceptable to both parties, that when we issue a finding, that the discrimination occurred, that's where the case can go beyond the informal stage. That is at that point, we're required under the law to issue a charge of discrimination. When we do that we have to then provide for an administrative hearing on that charge. An administrative law judge can impose greater penalties, more types of remedy, including civil penalties under certain conditions. But the department doesn't have any discretion to do that. We can only negotiate settlements, or issue a charge and let, a hearing officer or administrative law judge

decide it or if we issue a charge and either of the parties to the charge, I would rather have this in court than an administrative hearing than it could proceed to district court, instead of the administrative hearing. And in again in district court there are greater penalties imposed by the court and those again are outlined in Section 32 of the law deals with what can be imposed in administrative penalties in administrative hearings and those same penalties are available to courts. In some cases substantial. Senator Flakoll, Example of a gentlemen who was a class 3 sex offender, and in this case was protected. Mark Bachmeier, the status of being convicted of any felony is not protected under the law. It's not a protected category under the law. It can be used as a basis for making housing decisions, its not prohibited. So that status is not protected status under state or federal housing law. Senator Watne, We worked very hard to get this into the Department of Labor, and we are very concerned with landlord-tenant rights and I think it is very interesting to see how

the feds have told us how we should get in line with them and do you see the rest of the bill we created before put into your division as a good move and is your department comfortable with it? How many filings have you read this past year since the new law? Mark Bachmeier, We've had 18 complaints filed, took effect October 1, 1999, but the first complaint was January 2000. Our agreement with HUD didn't get into place later in the year 2000, some complaints continued to go to HUD, so 18 is not the representative number for the year. We projected about 35 complaints in a year in addition to other questions that would come to us that would not be fileable, or addressable complaints under the law. We had about 35 filed complaints or investigations ,based on the history of complaints filed with HUD from ND and a bit of a projected increase in that number because when you establish a place for people to go they may be more likely to file complaints because we don't know how many complaints were taken to