

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1195

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Doreen G. Ballarath  
Operator's Signature

10/2/03  
Date

2003 HOUSE JUDICIARY

HB 1195

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*Domenec Ballarín*  
Operator's Signature

10/2/03  
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1195

House Judiciary Committee

Conference Committee

Hearing Date 1-28-03

Tape Number	Side A	Side B	Meter #
2		x	27-30

Committee Clerk Signature *D Penrose*

**Minutes:** 13 members present.

**Chairman DeKrey:** We will open the hearing on HB 1195.

**Rep. Klemm:** Introduced the bill.

**Christine Hogan, Exec. Dir. of State Bar Association:** (see attached testimony) Support.

**Chairman DeKrey:** Thank you. Anyone wishing to testify in support? Opposition? We will close the hearing. What are the committee's wishes.

**Rep. Wrangham:** Move a Do Pass.

**Rep. Grande:** Seconded.

13 YES 0 NO 0 ABSENT DO PASS

CARRIER: Rep. Wrangham

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*Danna Ballantyne*  
Operator's Signature

1/28/03  
Date

Date: 1/28/03  
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1195

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken De Pass

Motion Made By Rep. Wrangham Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Rep. Delmore	/	
Vice Chairman Maragos	/		Rep. Eckre	/	
Rep. Bernstein	/		Rep. Onstad	/	
Rep. Boehning	/				
Rep. Galvin	/				
Rep. Grande	/				
Rep. Kingsbury	/				
Rep. Klemin	/				
Rep. Kretschmar	/				
Rep. Wrangham	/				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Wrangham

If the vote is on an amendment, briefly indicate intent:

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Dorena Ballarín Operator's Signature 1/28/03 Date

REPORT OF STANDING COMMITTEE (410)  
January 29, 2003 12:09 p.m.

Module No: HR-17-1247  
Carrier: Wrangham  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
HB 1195: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1195 was placed on the  
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-17-1247

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Deanna Holbrook  
Operator's Signature

10/2/03  
Date

2003 SENATE JUDICIARY

HB 1195

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*Dennis J. Halloran*  
Operator's Signature

10/2/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1195

Senate Judiciary Committee

Conference Committee

Hearing Date 03/17/03

Tape Number	Side A	Side B	Meter #
1	X		28-36

Committee Clerk Signature *Mira Solberg*

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

**Testimony in Support of HB 1195**

Rep Klemin- Dist 47. Co-introduced bill with Sen. Trenbeath at the request of the State Bar Assoc.

Sen. Dever asked if we heard this last session? Yes, it was a bill that effected another statute last session and this one was overlooked.

Christina Hogan - Executive Director, State Bar Association (meter 30) Read testimony - Attachment #1.

**Testimony in Opposition of HB 1195**

None

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*Debra M. Hall*  
Operator's Signature

*10/2/03*  
Date

Page 2  
Senate Judiciary Committee  
Bill/Resolution Number HB1195  
Hearing Date 03/17/03

Testimony Neutral to HB 1195

None

Motion Made to DO PASS HB 1195 Sen. Lyson and seconded by Sen. Dever

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion Passed

Floor Assignment: Sen. Traynor

Senator John T. Traynor, Chairman closed the hearing

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Deanna Holbrook  
Operator's Signature

10/2/03  
Date



Date: March 17, 2003  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1195

Senate JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Sen. Lyson Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	A	A
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment Sen. Traynor

If the vote is on an amendment, briefly indicate intent:

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Dennis Bercier 10/2/03  
Operator's Signature Date

**REPORT OF STANDING COMMITTEE (410)**  
March 17, 2003 12:42 p.m.

Module No: SR-47-4911  
Carrier: Traynor  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1195: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS**  
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1195 was placed on the  
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-47-4911

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*Dorinda G. Hall*  
Operator's Signature

10/2/03  
Date

2003 TESTIMONY

HB 1195

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*Doreen G. Ball*  
Operator's Signature

*10/2/03*  
Date

**Testimony on HB 1195**  
**House Judiciary Committee**

**Christine Hogan**  
**Executive Director**  
**State Bar Association of North Dakota**

The State Bar Association of North Dakota requests your favorable consideration of House Bill 1195. Representative Larry Klemin introduced this bill at the request of the Board of Governors of the State Bar Association.

The Association is requesting that subsection 1 of Section 35-20-08, North Dakota Century Code, which allows an attorney to assert a lien on a client's papers and files, be repealed. Repeal of this attorney retaining lien statute is necessary because it has been held unethical in this state for lawyers to withhold client files on the condition that copying charges be paid. In the past, there have been recurring complaints that lawyers did not return files to clients and some lawyers charged excessively for providing copies of a file after the lawyer's services were terminated by the client.

During the last legislative session in 2001, at the request of the Association, three statutes allowing attorney retaining liens against client files were repealed. However, due to an oversight on our part, Section 35-20-08(1) was not included in the repealing legislation last session and it remains in the Code.

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Operator's Signature

10/2/03  
Date


It is necessary to repeal this statute now because, if it remains on the books, the appearance of statutory authority for retaining liens causes continuing confusion for lawyers. Even though the statute purports to allow attorneys to assert retaining liens, this very conduct has been held unethical by the Ethics Committee of the State Bar Association and also by the North Dakota Supreme Court in a 1997 case entitled *Disciplinary Board vs. Anseth*.

The Joint Attorney Standards Committee, which is made up of lawyers and lay people appointed by the Supreme Court and by the State Bar Association of North Dakota studied the issue of client access to files. The Committee determined that it is not appropriate for a lawyer to assert a retaining lien against a client's files, papers, or property. The Committee developed a new draft rule of professional conduct to address the issue. The proposed rule change is currently pending consideration by the North Dakota Supreme Court. We anticipate that the rule will be adopted as soon as this remaining statute allowing the retaining lien is repealed. The rule will, in the future, provide guidance to lawyers on the proper handling of client files.

In order to bring the Century Code into compliance with current ethical decisions and with the proposed new rule of professional conduct, the State Bar Association of North Dakota recommends House Bill 1195 be passed.

Thank you for this opportunity to appear before you.

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10/2/03  
Date

AH #1

**Testimony on HB 1195**  
**Senate Judiciary Committee**


**Christine Hogan**  
**Executive Director**  
**State Bar Association of North Dakota**

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Dorinda Bell  
Operator's Signature

10/2/03  
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