

2021 HOUSE HUMAN SERVICES

HB 1319

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee
Pioneer Room, State Capitol

HB 1319
1/18/2021 2:14 pm

Relating to spousal debts

Chairman Weisz opened the hearing at 2:14 p.m.

Representatives	Vote
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics:

- While-living-together language
- Mutually liability for husband and wife
- Spousal support

Representative Bill Devlin, District 23 (2:14) introduced the bill.

Shelly Peterson, President North Dakota Long Term Care Association (2:18) testified in favor and submitted testimony #2183.

Kim Granfor, Legislative Committee Representative ND Collector's Association (2:31) testified in favor and submitted testimony #1183.

Additional written testimony: #912

Chairman Weisz adjourned at 2:35 p.m.

Tamara Krause, Committee Clerk

Testimony on HB 1319
House Human Services Committee
January 18, 2021

Good afternoon Chairman Weisz and members of the House Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 assisted living, basic care, and skilled nursing facilities in North Dakota. I am here in support of HB 1319.

Representative Klemin, the primary sponsor of HB 1319, is Chair of the House Judiciary Committee. He is unable to be here because of his responsibility within that committee and their hearing schedule this afternoon. He asked me to extend his regrets. We worked with Representative Klemin on this legislation before you. We deeply appreciate his leadership in helping us find a solution to a situation that emerged in the final days' of 2019 session.

For long term care, this legislation will nip what we see as an emerging problem.

Our issue relates to spousal debts and what we as spouses are liable for. Before I get to far in my testimony, joining through zoom is Megan Flom, an attorney, with Camrud, Maddock, Olson & Larson, LTD Law Firm in Grand Forks. Megan is an expert on this issue and has been deeply involved in a nursing home case dealing with the issue of marital debts. I would like to defer to her for any questions that could be best addressed by an attorney.

There is no mistake under laws adopted in North Dakota, a husband and wife are mutually and severally liable for each other's items of necessity. Item of necessity are defined as household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children. But what is not clear is what the responsibility is when a couple is living apart?

14-07-08. Separate and mutual rights and liabilities of husband and wife.

The separate and mutual rights and liabilities of a husband and a wife are as follows:

1. Neither the husband nor the wife as such is answerable for the acts of the other.
2. Except for necessary expenses as provided in subsection 3, the earnings of one spouse are not liable for the debts of the other spouse, and the earnings and accumulations of either spouse and of any minor children living with either spouse or in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.
3. The husband and wife are liable jointly and severally for any debts contracted by either, **while living together**, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.
4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

While living together we as spouses are responsible for each other for our basic needs of food, shelter, clothing, and medical care. What does that mean when a couple is not living under the same roof because one selects and needs long term care?

Here presents our case. A resident passed away in a nursing home facility and at the time he was married and had a spouse living in the community. During his stay, his wife would pay a small portion of the bill each month, but upon his death she owed over \$80,000. The surviving spouse retained an attorney who sent a letter advising the facility that the community spouse was not liable for the debt accumulated by her late husband. The nursing home facility response, thru their attorney was, "The parties to a marriage are mutually liable to any person, who in good faith supplied either party with articles of necessary for their support."

NDCC 14-07-08(3) states, "The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children."

The spouse continued to deny responsibility stating, "they had not lived together for over a year". We agree they were not living together, however, the decision to live separately was not due to marital discord but rather due to declining health and the need for skilled nursing care. They were very much a marital unit despite living separately. The wife signed the admission agreement on behalf of her husband. She signed the consent for hospice on his behalf. She continued to visit regularly after his admission and remained actively involved in both his care and finances.

A literal, plain reading of the statute would indicate this spouse may be correct, as they were not physically living under the same roof, (while living together), at the time that services were contracted for and for the duration of his continued stay in the nursing home. However, is this what legislators intended when they included the "while living together" language? Did they intend "while living together" to mean spouses who are truly married and living apart because one needs medical or long term care to no longer be responsible for each other's necessities?

Generally speaking, spouses have always been viewed as responsible to each other for basic support, food, shelter, clothing, and medical care. The only exception to this support obligation is abandonment by one spouse or the other. In that case, the abandoned spouse is not held liable for the support of the other.

The problem we are encountering with the statute is that with the reality of aging, spouses are not going to age equally. In reality one will need care, support and services before the other. Spouses care for years for each other but when it becomes too much, a very personal decision for each of us, and they select nursing home care and they are not physically able to live together, (by their choice), does that obligation to support each other suddenly end? The statute is being used to argue a spouse can not be held responsible for the medical bills of the other spouse if they are not physically living together. The bill before you will ensure that spouses are held liable for the necessary household supplies of food, clothing, fuel, medical care, and shelter for each other even in situations where the spouses are living apart solely because one is receiving medical or behavioral health treatment. Furthermore, the bill would clarify that an individual is not "abandoned" simply because his or her spouse resides elsewhere in order to receive medical or behavioral health treatment.

We ask for your support of HB 1319. This will help clarify spousal responsibility for medical and behavioral health care. I would be happy to answer any questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660



North Dakota Collectors Association

an association of collection specialists

**TESTIMONY IN SUPPORT OF
HOUSE BILL NO. 1319
HOUSE HUMAN SERVICES COMMITTEE
January 18, 2021**

Chairman Weisz and members of the House Human Services Committee, I am Kim Granfor and I am representing the ND Collectors Association, which is an association that includes several ND owned collections agencies who assist with the recovery of debts owed to a creditor. Each of the agencies within our Association, assist medical providers in the recovery of their bad debt accounts.

There is no mistake that a husband and wife are mutually and individually liable for each other's items of necessity such as food, clothing, fuel, medical care and shelter. But there is an issue of defining when that responsibility ends. Section 14-07-08 limits this responsibility during the time a couple is living together; but does not define what exactly that means. Does it mean while living together 7 days a week, 365 days a year? I am aware of a case that was tried in Bismarck under Judge Romanick, where the spousal responsibility ended the minute the husband moved out of the marital home, claiming that he was living in his car.

These three words "while living together" have caused problems in the recovery of monies owed to businesses and medical facilities. We have seen a husband deny responsibility for a medical debt of his wife because she lived in Fargo and he lived in Watford City for the sole purpose of employment. What was not admitted was that he was working in the oil field for a period of ten (10) days on and then went back to Fargo for his six (6) days off.

Section 14-07-08 could be abused by spouses who are working for long periods of time away from the marital home – such as long-haul truckers, salesman who travel extensively, construction workers, oil field workers and so on.

These three words "while living together" encourage a spouse to move out temporarily to avoid being responsible for a marital obligation such as a large medical bill. These three words "while living together" can eliminate a spouse from being responsible in paying the nursing home bill of the spouse.

The removal of "while living together" will eliminate the potential for spouses to negate their financial responsibility for each other.

We ask that you give a favorable **DO PASS** recommendation to HB 1319. I would be happy to try to answer any questions.

Megan J. Flom | Attorney

CAMRUD, MADDOCK, OLSON, & LARSON, LTD. | Attorneys at Law

Phone (701) 775-5595 | Cell: (218) 791-2680

Email: mflom@camrudlaw.com

Consultant for Shelly Peterson, North Dakota Long Term Care
Association on HB 1319

2021 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Pioneer Room, State Capitol

HB 1319
1/18/2021 3pm

Relating to spousal debts

Chairman Weisz opened the hearing at 3:00 p.m.

Representatives	Roll Call
Representative Robin Weisz	P
Representative Karen M. Rohr	P
Representative Mike Beltz	P
Representative Chuck Damschen	P
Representative Bill Devlin	P
Representative Gretchen Dobervich	P
Representative Clayton Fegley	P
Representative Dwight Kiefert	P
Representative Todd Porter	P
Representative Matthew Ruby	P
Representative Mary Schneider	P
Representative Kathy Skroch	P
Representative Bill Tveit	P
Representative Greg Westlind	P

Discussion Topics: HB 1319 committee action

Rep. Todd Porter made a motion for **Do Pass**.

Rep. Matthew Ruby second.

Representatives	Vote
Representative Robin Weisz	Y
Representative Karen M. Rohr	Y
Representative Mike Beltz	Y
Representative Chuck Damschen	Y
Representative Bill Devlin	Y
Representative Gretchen Dobervich	Y
Representative Clayton Fegley	Y
Representative Dwight Kiefert	Y
Representative Todd Porter	Y
Representative Matthew Ruby	Y
Representative Mary Schneider	Y
Representative Kathy Skroch	Y
Representative Bill Tveit	Y

Representative Greg Westlind	Y
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Motion Carried 14-0-0

Bill Carrier: Rep. Clayton Fegley

Chairman Weisz adjourned at 3:03 p.m.

Tamara Krause, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1319: Human Services Committee (Rep. Weisz, Chairman) recommends **DO PASS**
(14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1319 was placed on the
Eleventh order on the calendar.

2021 SENATE HUMAN SERVICES

HB 1319

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Sakakawea Room, State Capitol

HB 1319
3/17/2021 AM

A BILL for an Act to amend and reenact sections 14-07-08 and 14-07-11 of the North Dakota Century Code, relating to spousal debts.
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Madam Chair Lee opened the hearing on HB 1319 at 11:44 a.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- While living together language

[11:44] Representative Lawrence Klemin, District 47. Introduced HB 1319 and provided testimony #9824 in favor.

[11:50] Shelly Peterson, Executive Director, Long Term Care Association. Provided testimony #9842 in favor.

[11:59] Kim Granfor, ND Collectors Association. Provided testimony #9633 in favor.

Additional written testimony: (1)

Mitchell S. Sanderson, Park River Resident. Written testimony #9652 in opposition.

Madam Chair Lee closed the hearing on HB 1319 at 12:04 p.m.

Justin Velez, Committee Clerk

TESTIMONY OF REP. LAWRENCE R. KLEMIN
HOUSE BILL NO. 1319
SENATE HUMAN SERVICES COMMITTEE
MARCH 17, 2021

Members of the Senate Human Services Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am here to testify in support of HB 1319 and to introduce the bill to you. HB 1319 relates to the obligation to pay spousal debts. There are others who will follow me who will testify in more detail about the reason for this bill.

As you know, American jurisprudence is mainly derived from the English common law that developed over the course of many centuries. It was brought here by the colonists who originally settled in this country. When you study the history of law, you become aware that much of the common law was about finding loopholes in the law as established by the English Kings. Although we have statutory law in North Dakota, supplemented by our own common law as developed in the courts, things haven't changed all that much from ancient times. People are still looking for loopholes in our laws for ways to get around obligations. The Kings tried to close those loopholes through additional statutes, but then more loopholes were found, and so it goes.

HB 1319 is about closing a loophole in the North Dakota law relating to the obligation to pay spousal debts. In Section 1 of the bill, under North Dakota law in subsection 3 of Section 14-07-08, a husband and wife are jointly and severally liable for any debts contracted by either "while living together" for necessary food, clothing, medical care, and shelter. The loophole is the phrase "while living together".

This loophole is now affecting long term care facilities in North Dakota when one spouse is living in a nursing home and the other spouse is living in what was the marital home. The situation arises when there is no insurance or government program coverage for the spouse in the nursing home, who is in a private pay status. The spouse living in what was the marital home may have sufficient assets to pay for the care of the other spouse living in the nursing home but refuses to pay for the care because they are technically not "living together". This causes a major problem for our long term care facilities, which are tasked with the duty to care for the spouse in the nursing home without being compensated.

Section 1 of HB 1319 closes that loophole by removing the "while living together" phrase, subject to the abandoned spouse statute in Section 14-07-11.

Section 2 of the bill amends Section 14-07-11, which contains an exception for the liability of one spouse to support the other when there has been an abandonment. If a spouse has truly been abandoned by the other spouse, the exception still applies. However, the amendment to this section provides that a spouse is not deemed to have been abandoned merely because the spouse is residing in a nursing home for medical or behavioral health treatment.

The people who will follow my testimony will describe to you a real life situation where a wife, who is residing in what was the marital home, is claiming through her attorney that she is not liable for the cost of her husband's care in a nursing home because they are not "living together". If she and her attorney are technically correct, then this loophole will also be used by others who may be similarly situated when word gets around through legal channels. The long term care facilities could spend a lot in attorney fees contesting this claim in court, but they might lose if the courts agree that the wife and her attorney are technically correct.

Consequently, the long term care facilities are here asking you to close this loophole. It's really a matter of fundamental fairness. If a spouse has the resources to pay for the care of the other spouse in a nursing home, then why shouldn't she do it? Why should the nursing homes bear the cost? I encourage you to recommend "do pass" on HB 1319.

I am available to answer your questions, but those who follow me will have the answers. Thank you.

Rep. Lawrence R. Klemin
Chairman, House Judiciary Committee
District 47, Bismarck

Testimony on HB 1319
Senate Human Services Committee
March 17, 2021

Good morning Chairman Lee and members of the Senate Human Services Committee. My name is Shelly Peterson, President of the North Dakota Long Term Care Association. We represent 211 assisted living, basic care, and skilled nursing facilities in North Dakota. I am here in support of HB 1319.

We worked with Representative Klemin on this legislation before you. We deeply appreciate his leadership in helping us find a solution to a situation that emerged in the final days' of 2019 session.

For long term care, this legislation will nip what we see as an emerging problem.

Our issue relates to spousal debts and what we as spouses are liable for.

There is no mistake under laws adopted in North Dakota, a husband and wife are mutually and severally liable for each other's items of necessity. Item of necessity are defined as household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children. But what is not clear is what the responsibility is when a couple is living apart?

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in one spouse's custody, while the husband and wife are living separate from each other, are the separate property of each spouse.

3. The husband and wife are liable jointly and severally for any debts contracted by either, **while living together**, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children.

4. The separate property of the husband or wife is not liable for the debts of the other spouse but each is liable for their own debts contracted before or after marriage.

While living together we as spouses are responsible for each other for our basic needs of food, shelter, clothing, and medical care. What does that mean when a couple is not living under the same roof because one selects and needs long term care?

Here presents our case. A resident passed away in a nursing home facility and at the time he was married and had a spouse living in the community. During his stay, his wife would pay a small portion of the bill each month, but upon his death she owed over \$80,000. The surviving spouse retained an attorney who sent a letter advising the facility that the community spouse was not liable for the debt accumulated by her late husband. The nursing home facility response, thru their attorney was, "The parties to a marriage are mutually liable to any person, who in good faith supplied either party with articles of necessary for their support." NDCC 14-07-08(3) states, "The husband and wife are liable jointly and severally for any debts contracted by either, while living together, for necessary household supplies of food, clothing, and fuel, medical care, and for shelter for themselves and family, and for the education of their minor children."

The spouse continued to deny responsibility stating, "they had not lived together for over a year". We agree they were not living together, however, the decision to live separately was not due to marital discord but rather due to declining health and the need for skilled nursing care.

The were very much a marital unit despite living separately. The wife signed the admission agreement on behalf of her husband. She signed the consent for hospice on his behalf. She continued to visit regularly after his admission and remained actively involved in both his care and finances.

A literal, plain reading of the statute would indicate this spouse may be correct, as they were not physically living under the same roof, (while living together), at the time that services were contracted for and for the duration of his continued stay in the nursing home. However, is this what legislators intended when they included the “while living together” language? Did they intend “while living together” to mean spouses who are truly married and living apart because one needs medical or long term care to no longer be responsible for each other’s necessities?

Generally speaking, spouses have always been viewed as responsible to each other for basic support, food, shelter, clothing, and medical care. The only exception to this support obligation is abandonment by one spouse or the other. In that case, the abandoned spouse is not held liable for the support of the other.

The problem we are encountering with the statute is that with the reality of aging, spouses are not going to age equally. In reality one will need care, support and services before the other. Spouses care for years for each other but when it becomes too much, a very personal decision for each of us, and they select nursing home care and they are not physically able to live together, (by their choice), does that obligation to support each other suddenly end? The statue is being used to argue a spouse can not be held responsible for the medical bills of the other spouse if they are not physically living together. The bill before you will ensure that spouses are held liable for the necessary household supplies of food,

clothing, fuel, medical care, and shelter for each other even in situations where the spouses are living apart solely because one is receiving medical or behavioral health treatment. Furthermore, the bill would clarify that an individual is not “abandoned” simply because his or her spouse resides elsewhere in order to receive medical or behavioral health treatment.

We ask for your support of HB 1319. This will help clarify spousal responsibility for medical and behavioral health care. I would be happy to answer any questions you may have.

Shelly Peterson, President
North Dakota Long Term Care Association
1900 North 11th Street
Bismarck, ND 58501
(701) 222-0660

**TESTIMONY IN SUPPORT OF
HOUSE BILL NO. 1319
SENATE HUMAN SERVICES COMMITTEE
MARCH 17, 2021**

Chairman Lee and members of the Senate Human Services Committee, I am Kim Granfor and I am representing the ND Collectors Association, which is an association that includes several ND owned collections agencies who assist with the recovery of debts owed to a creditor. Each of the agencies within our Association, assist medical providers in the recovery of their bad debt accounts.

There is no mistake that a husband and wife are mutually and individually liable for each other's items of necessity such as food, clothing, fuel, medical care and shelter. But there is an issue of defining when that responsibility ends. Section 14-07-08 limits this responsibility during the time a couple is living together; but does not define what exactly that means. Does it mean while living together 7 days a week, 365 days a year? I am aware of a case that was tried in Bismarck, where the spousal responsibility ended the minute the husband moved out of the marital home abandoning the wife, the family and marital responsibilities.

These three words "while living together" have caused problems in the recovery of monies owed to a businesses and medical facilities. We have seen a husband deny responsibility for a medical debt of his wife because she lived in Fargo and he lived in Watford City for the sole purpose of employment. What was not admitted was that he was working in the oil field for a period of ten (10) days on and then went back to Fargo for his six (6) days off.

Section 14-07-08 could be abused by spouses who are working for long periods of time away from the marital home – such as long-haul truckers, salesman who travel extensively, construction workers, oil field workers and so on.

These three words "while living together" encourage a spouse to move out temporarily to avoid being responsible for a marital obligation such as a large medical bill. These three words "while living together" can eliminate a spouse from being responsible in paying the nursing home bill of the spouse.

The removal of "while living together" will eliminate the potential for spouses to negate their financial responsibility for each other.

We ask that you give a favorable **DO PASS** recommendation to HB 1319. I would be happy to try to answer any questions.

Kim Granfor
701-471-4226 (cell)

Senator,

This bill would violate many prenuptials and post nuptials when two agree that any debt they occur is their debt and not the debt of the other spouse.

No spouse should be responsible for the unknown debt the other created such as a large credit card debt or gambling debts.

Thank you,

Mr. Mitchell S. Sanderson

2021 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Sakakawea Room, State Capitol

HB 1319
3/17/2021 PM

A BILL for an Act to amend and reenact sections 14-07-08 and 14-07-11 of the North Dakota Century Code, relating to spousal debts.
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Madam Chair Lee opened the discussion on HB 1319 at 3:16 p.m. Members present: Lee, K. Roers, Hogan, Anderson, Clemens, O. Larsen.

Discussion Topics:

- Spousal support exception
- Legal separation
- Nursing home stays
- Unintended consequences

Senator K. Roers moves **DO PASS**.

Senator Anderson seconded.

Senators	Vote
Senator Judy Lee	Y
Senator Kristin Roers	Y
Senator Howard C. Anderson, Jr.	Y
Senator David A. Clemens	Y
Senator Kathy Hogan	Y
Senator Oley Larsen	Y

The motion passed 6-0-0

Senator K. Roers will carry HB 1319.

Additional written testimony: N/A

Madam Chair Lee closed the discussion on HB 1319 at 3:24 p.m.

Justin Velez, Committee Clerk

REPORT OF STANDING COMMITTEE

HB 1319: Human Services Committee (Sen. Lee, Chairman) recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1319 was placed on the Fourteenth order on the calendar.