

1999 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2064

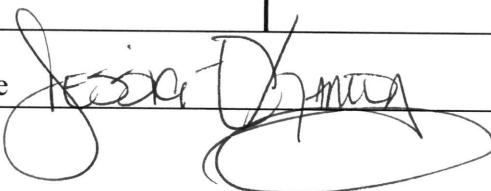
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2064

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 11, 1999

Tape Number	Side A	Side B	Meter #
2		x	0 - 1602
Committee Clerk Signature 			

Minutes:

SB2064 relates to the duty to disclose information on sexual offenders in a real estate transaction.

SENATOR MUTCH opened the hearing on SB2064.

SENATOR WATNE testified in support of SB2064. Testimony attached.

SENATOR TRAYNOR testified in support of SB2064. We need to be concerned about these real estate transactions. This would help the realtors do their job.

CLAUS LEMBKE, North Dakota Association of Realtors, testified in support of SB2064. We have researched these issues from how other states handle these transactions.

SENATOR MUTCH asked what the settlement amount was in the West Fargo case.

CLAUS LEMBKE stated he did not know.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB2064

Hearing Date January 11, 1999

MR. WATNE testified in support of SB2064. Testimony attached. Realtors want to remove some of the liability against them on disclosure. We are proposing something similar regarding two issues of Megan's Law.

SENATOR THOMPSON asked that what you really want us to look at is number 6 in this bill and have something similar.

MR. WATNE stated yes.

MARY FLICKLE, State Government Affairs Committee and Realtors Association, testified in support of SB2064. I think it holds a lot of community responsibility. Sometimes it does become a contingency of whether there are sexual predators living in this neighborhood. What if a week before closing a sexual predator has moved into the neighborhood. This law would somewhat limit the liability on realtors.

SENATOR MUTCH stated there is nothing you could do if there was one in the neighborhood.

MARY FLICKLE stated that is true but you could sue your realtor.

SENATOR THOMPSON asked what would be wrong if the prospective buyer checked with the law enforcement to see if there is a sexual predator in the area.

MARY FLICKLE stated that is the procedure that is done now. The concern is what if they get the information and it is all clear and find out later that a predator just moved in.

SENATOR MUTCH asked if the purchaser initials the Megan's Law this lets the realtor off the hook.

MARY FLICKLE stated that is what the bill would do, right now we are concerned that it does not. We feel this bill would help protect us from the liability.

SENATOR KLEIN asked if this is the standard purchase agreement across the state.

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB2064

Hearing Date January 11, 1999

MARY FLICKLE stated this is their own form, not all agencies use it.

SENATOR THOMPSON asked if this bill will not mandate that the disclosure is on. It just relieves you from financial liability.

SENATOR MUTCH asked that they wouldn't need the disclosure if this bill were passed.

MARY FLICKLE stated that we would not have to have the disclosure but I think we would still have it.

SENATOR KREBSBACH asked if it would be better to spell things out more clearly.

MARY FLICKLE stated not to detail it too much because of the exceptions.

SENATOR MUTCH CLOSED the hearing on SB2064.

Discussion took place.

Senator Sand moved for a do pass on SB2064. Senator Krebsbach seconded the motion.

Roll call vote took place. The bill passed. (5 yes, 0 no, 2 absent and not voting)

Senator Sand will carry the bill.

Date: 1/11/99
Roll Call Vote #: 2064

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____
or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By SAND Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp					
Senator Mathern					
Senator Thompson	X				

Total (Yes) 5 No 0

Absent 2

Floor Assignment SAND

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

REPORT OF STANDING COMMITTEE (410)
January 11, 1999 2:27 p.m.

Module No: SR-05-0480
Carrier: Sand
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2064: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2064 was placed on the Eleventh order on the calendar.

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2064

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2064

House Industry, Business and Labor Committee

Conference Committee

Hearing Date February 10, 1999

Tape Number	Side A	Side B	Meter #
1	x		0.6-12.0
Committee Clerk Signature <i>Lisa Horn</i>			

Minutes:

Senate Bill 2064: A Bill for an Act to create and enact a new section to chapter 43-23 of the North Dakota Century Code, relating to the duty to disclose information on sexual offenders in a real estate transaction.

Chairman Berg opened the hearing on Senate Bill 2064.

1A: .7 Senator Watne, Minot District 5 Informed committee SB 2064 dealt with the Megan's Law, which requires sexual offenders to register. SB 2064 will help clarify language. SB 2064 is based on language adopted in bills that will pass in Minnesota and Pennsylvania. Presented an opinion from Attorney General to committee: providing an exemption for Real Estate Licensees. Feels that there is no way Realtors can keep track of sexual offenders. (See attached testimony)

1A: 2.8 Claus Lembke, North Dakota Association of Realtors Testified in favor of SB 2064.

Thinks bill language would help clarify issue. (See attached testimony)

1A: 3.6 Matt Watne, Broker Associate, Minot Testified in favor of SB 2064. Concerned about liability issues regarding lawsuits against Realtors due to a sexual offender living in

neighborhood. Realtors do not maintain lists of sexual offenders. Feels that it isn't the Realtors responsibility to inform other home owners of sexual offender living in area.

1A: 5.2 Rep. Johnson asked if Realtors give perspective buyers a form regarding issue? Matt Watne replied that it is a temporary fix until legislation is passed.

1A: 6.4 Rep. Koppang asked if Minnesota and Pennsylvania are the only two states passing legislation? Matt Watne replied he was not sure but knows that Oregon is also dealing with this issue. Rep. Koppang asked if there were any cases of this happening yet? Matt Watne replied no.

1A: 8.4 Mary Splichal Realtor, Bismarck Testified in favor of SB 2064. Involved with a task force concerning issue. (See attached testimony)

1A: 9.1 Rep. Eckstrom asked if she knew a sexual offender was located in a neighborhood, would she disclose the information? Mary Splichal replied yes, felt it is her obligation to let her clients know of material information. But, concerned about the liability and protection of Realtors. Informed committee there is protection for Police Force but none for Realtors, would like the same protection. She also commented she is not against Megan's Law, but just would like some clarification and statute.

There was no opposition to Senate Bill 2064. Chairman Berg closed the hearing.

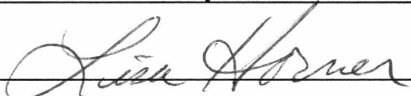
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2064

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-1-99

Tape Number	Side A	Side B	Meter #
2	x		4022 - end
2		x	0 - 321
Committee Clerk Signature 			

Minutes: **SB 2064**

Chairman Berg opened the discussion of SB 2064.

There was a lengthy discussion by the committee on the disclosure of information on sexual offenders by Realtors.

Rep. Severson made a motion for a Do Pass.

Vice Chairman Kempenich second the motion.

End of side A, tape 2. Start side B.

The roll call vote was 8 yea, 6 nay, 1 absent.

The motion carried.

Rep. Johnson will carry the bill.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2064 3-2-99

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-2-99

Tape Number	Side A	Side B	Meter #
3	x		33.7 -38.4
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **SB 2064**

Chairman Berg opened the discussion of SB 2064.

The bill was brought back to the committee for reconsideration.

Rep. Johnson handed out and explained the amendments to the committee.

Rep. Keiser made a motion to reconsider the bill.

Rep. Lemieux second the motion.

Rep. Johnson made a motion to adopt the amendments.

Rep. Klein second the motion.

The voice vote was 15 yea, 0 nay.

The motion carried.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number Sb 2064

Hearing Date 3-2-99

Rep. Klein made a motion for a Do Pass as Amended.

Rep. Ekstrom second the motion.

The roll call vote was 15 yea, 0 nay.

The motion carried.

Rep. Johnson will carry the bill.

Date: 3-1-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2064

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By ~~Severson~~ Severson Seconded By Kempnich Severson

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		/
Vice Chair - Kempnich	/				
Rep. Brekke		/			
Rep. Eckstrom		/			
Rep. Froseth	/				
Rep. Glassheim					
Rep. Johnson	/				
Rep. Keiser		/			
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux		/			
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz		/			

Total (Yes) 8 No 6

Absent 1

Floor Assignment Johnson

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

Date: 3-2-99
Roll Call Vote #: 2

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2064

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass as amended

Motion Made By Klein Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe	/	
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 15 No 2

Absent _____

Floor Assignment Johnson

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

REPORT OF STANDING COMMITTEE

SB 2064: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2064 was placed on the Sixth order on the calendar.

Page 1, line 7, replace "does not have a duty to disclose" with "is not liable for any action resulting from any disclosure or nondisclosure relating to the registration of sexual offenders"

Page 1, remove line 8

Page 1, line 9, remove "made"

Renumber accordingly

1999 TESTIMONY

SB 2064



102. BUYER AND SELLER ACKNOWLEDGE THEY HAVE REVIEWED TERMS AND CONDITIONS SPECIFIED ON PAGE 2 OF THIS AGREEMENT. BUYER AND SELLER INITIAL: Buyer(s) _____ Seller(s) _____

104. CLOSING AND POSSESSION: The date of closing shall be on or before _____. Seller shall deliver possession of property on _____. Settlement fee to be paid by _____.

106. SELLER WARRANTS THAT THE PROPERTY IS DIRECTLY CONNECTED TO:
107. City Sewer yes no City/Rural Water System yes no Well yes no
108. Rural Water Membership yes no Will it be transferred? yes no
109. Seller/Buyer agrees to provide water quality test results if required by governing authority and/or lender.
110. Seller/Buyer agrees to provide septic system certification if required by governing authority and/or lender.

111. MEGAN'S LAW DISCLOSURE: If you, the Buyer, desire to obtain information regarding persons required to register as sexual offenders under North Dakota Law, you should contact your local chief of police or your county sheriff, or the ND Attorney General's office. (Buyer's Initials) _____

113. Buyer has / has not received a Real Estate Property Condition Disclosure Statement. Buyer has been made aware of the availability of property inspections. Buyer elects / declines to have a property inspection performed at Buyer's expense.
115. BUYER HAS THE RIGHT TO A WALK-THROUGH REVIEW OF THE PROPERTY PRIOR TO CLOSING AND TO ESTABLISH THAT THE PROPERTY IS IN SUBSTANTIALLY THE SAME CONDITION AS OF THE DATE OF PURCHASE AGREEMENT.
117. Buyer has been made aware of the availability of home warranty plans. Buyer elects / declines to have a home warranty plan.
118. LEAD-BASED PAINT ADDENDUM IS ATTACHED AS REQUIRED ON PRE-1978 PROPERTIES.

119. SPECIAL CONDITIONS: _____
120. _____
121. _____
122. _____

123. AGENCY DISCLOSURE: _____ (Agent Broker) _____ Company
124. STIPULATES THAT S/HE IS REPRESENTING THE BUYER/SELLER IN THIS TRANSACTION. THE LISTING AGENT OR BROKER
125. STIPULATES THAT S/HE IS REPRESENTING THE SELLER IN THIS TRANSACTION.

126. DUAL AGENCY REPRESENTATION: Dual agency representation does / does not apply in this transaction. Broker represents both the Seller(s) and the Buyer(s) of the property involved in this transaction, which creates dual agency. This means that Broker and its salespersons owe fiduciary duties to both Seller(s) and Buyer(s). Because the parties may have conflicting interests, Broker and its salespersons are prohibited from advocating exclusively for either party. Broker cannot act as a dual agent in this transaction without consent of both Seller(s) and Buyer(s). Seller(s) and Buyer(s) acknowledge that:
131. (1) confidential information communicated to Broker which regards price, terms, or motivation to buy or sell will remain confidential unless Seller(s) or Buyer(s) instructs Broker in writing to disclose this information. Other information will be shared;
133. (2) Broker and its salespersons will not represent the interest of either party to the detriment of the other; and
134. (3) within the limits of dual agency, Broker and the salespersons will work diligently to facilitate the mechanics of the sale.
135. With the knowledge and understanding of the explanation above, Seller(s) and Buyer(s) authorize and instruct Broker and its salespersons to act as dual agents in the transaction.

137. _____ (Date) (Buyer) _____ (Date)
(Seller)

138. _____ (Date) (Buyer) _____ (Date)
(Seller)

139. APPOINTED AGENCY: Appointed agency does / does not apply.
140. If Broker has adopted appointed agency policy, dual agency may not apply. However, an appointed agent who singularly represents both Seller(s) and Buyer(s) in the same transaction is considered to be a disclosed dual agent owing fiduciary duties to both parties and must get permission from both parties to act.

143. This offer shall remain available for acceptance for a period of _____ days or until revoked by Buyer prior to Seller acceptance.

144. I/We the owner(s) of the property, accept this agreement and authorize the Listing Broker to discontinue marketing said property, unless instructed otherwise in writing.
145. I/We agree to purchase the property for the price and on the terms and conditions as set forth above.

147. X _____ (Date) X _____ (Date)
(Seller's Signature) (Buyer's Signature)

148. _____ (Social Security Number) _____ (Social Security Number)
(Seller's Printed Name) (Buyer's Printed Name)

149. X _____ (Date) X _____ (Date)
(Seller's Signature) (Buyer's Signature)

150. _____ (Social Security Number) _____ (Social Security Number)
(Seller's Printed Name) (Buyer's Printed Name)

151. _____ (Seller's Phone) _____ (Buyer's Phone)
(Seller's Address) (Buyer's Address)

152. DELIVERY OF ACCEPTANCE: The undersigned acknowledge receipt of signed contract. _____ (Date)

MEGAN'S LAW: THE POTENTIAL IMPACT ON NORTH DAKOTA REAL ESTATE LICENSEES



David E. Reich
Legal Counsel to the
ND Real Estate Commission

Introduction. On May 17, 1996, President Clinton signed into law federal legislation modeled after a New Jersey state statute known as Megan's law. The law is named after Megan Kanka, a seven year old girl from New Jersey who was raped and murdered by a twice convicted sex offender who, unknown to her parents, lived in her neighborhood. The federal Megan's Law contains requirements for the registration of convicted sex offenders and the release of this information to the public. The federal law requires each state to enact legislation in compliance with the federal law.

The North Dakota version of Megan's Law is contained in Section 12.1-32-15 N.D.C.C. The 1997 amendments to this section became effective August 1, 1997. Subsection 3 of § 12.1-32-15 N.D.C.C. provides that any person who pleads or has been found guilty of a crime against a child or as a sexual offender shall register with the chief of police of the city in which the person resides or is temporarily domiciled, or the sheriff of the county if the person resides in an area other than a city. Registration consists of a written statement signed by the offender, and the fingerprints and a photograph of the person.

Section 12.1-32-15(11) N.D.C.C. provides, in part, that "[r]elevant and necessary registration information shall be disclosed to the public by a law enforcement agency if the agency determines that the individual registered under this section is a public risk and disclosure of the registration information is necessary for public protection." This subsection provides immunity from civil and criminal liability to law enforcement agencies, and their officials and employees, for disclosing or failing to disclose information as permitted by this subsection. Nonregistration

information concerning an offender, consisting of the offender's name, last known address, the offenses to which the offender has pled guilty or been found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed, and any disposition of the sentence or order, may be disclosed to the public. Nonregistration information for registered offenders is compiled by the attorney general's office and is available to the public upon request at no cost.

Discussion. The mandatory disclosure and notification requirements of § 12.1-32-15 N.D.C.C. are imposed only upon law enforcement agencies. This section does not require disclosure of information regarding registered sex offenders by real estate licensees. However, the requirements regarding disclosure of such information under the statutes and regulations governing real estate licensees in North Dakota are not clear.

Section 70-02-03-15(7)(d) N.D. Admin. Code requires a licensee to disclose any material facts to the buyer that may adversely and significantly affect a person's use or enjoyment of the property. Section 43-23-11.1(l)(b) N.D.C.C. makes it improper for a licensee to make any substantial and willful misrepresentation with reference to a real estate transaction which is injurious to any party.

The requirements of Megan's Law, and the statutes and regulations governing real estate licensees, create some interesting challenges for licensees. The following are examples of situations in which questions have arisen.

- (1) You are the listing agent representing the seller and you obtain information that a convicted child molester is living in the neighborhood. Do you have an obligation to disclose this information to prospective buyers?
- (2) If you are a buyer's agent, do you have a duty to investigate, or at a minimum ask, if there are any convicted sex offenders living in the neighborhood? What are your obligations if your buyer asks you this question? Do your obligations differ depending upon whether or not your buyer has children? (Section 12.1-32-15 N.D.C.C. requires registration for all sexual offenders who are defined as those persons who have been convicted or pled guilty to those offenses listed in Subsection (l)(f) of the statute. These include offenses against adults as well as children.)

- (3) Whether acting as an agent for the buyer or seller, if you obtain information that a registered sexual offender may be living in the neighborhood, do you have a duty to verify or confirm this information? If so, how should this be accomplished and to what extent are you required to act?

- (4) What potential liability does a licensee face if he or she fails to disclose information known regarding a registered sexual offender? What is the licensee's exposure to liability if the information disclosed turns out to be incorrect?

At this point, there are no conclusive answers to most of the above questions. However, the issues raised by Megan's Law are significant and serious and likely to appear with increasing frequency. Some possible ways to address these issues are through legislation, regulation, or through adequate disclosure.

A few states, including Minnesota, have specifically exempted real estate licensees from the Megan Law's disclosure requirements. However, because §12.1-32-15 N.D.C.C. clearly imposes its notification and disclosure requirements only on law enforcement agencies, legislation which specifically exempts real estate licensees from its requirements would not address many of the questions raised above. Another problem with legislation is that it will not provide any immediate solutions to the problems facing real estate licensees in this area. The notification requirements of §12.1-32-15 N.D.C.C. took effect August 1, 1997. The Legislature is not scheduled to convene until 1999. A similar time problem exists for attempts to deal with this matter through amendments to the administrative code regulations.

Until this matter is addressed by either legislation or regulation, the best way to deal with these issues may be the use of standard disclosure language which could be provided to parties in all real estate transactions. Any proposed disclosure language should advise prospective buyers generally of the registration requirements of Megan's law, advise the buyer where such information can be obtained, and inform the buyer that if he or she is interested in obtaining such information it is the buyer's obligation to request and obtain the information. While such standard disclosure language would not provide answers to all of the questions in this area, it would address many of the concerns raised and provide for uniformity in how this matter is addressed by licensees.

The following suggested disclosure language could be used:

MEGAN'S LAW DISCLOSURE

North Dakota law requires that all

persons who plead guilty or have been found guilty of a crime against a child or as a sexual offender must register with the chief of police of the city in which the person resides or is temporarily domiciled, or the sheriff of the county if the person resides in an area other than a city. Registration consists of a written statement signed by the offender, and the fingerprints and a photograph of the person. A law enforcement agency is required to disclose to the public relevant and necessary registration information if the agency determines that the individual registered is a public risk and disclosure of the registration information is necessary for public protection.

North Dakota law also provides that nonregistration information concerning registered sexual offenders may be disclosed to the public. Nonregistration information is defined by statute as information consisting of the offender's name, last known address, the offenses to which the offender has pled guilty or been found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed, and any disposition of a sentence or probation. Nonregistration information for all registered offenders is compiled by the attorney general's office and is available to the public upon request at no cost.

If you desire to obtain further information regarding persons required to register as sexual offenders under North Dakota law, you should contact your local chief of police or your county sheriff, or the North Dakota Attorney General's office.

I/We hereby acknowledge that I/we have been provided with the foregoing disclosure and that I/we have read and understand the same.

Dated _____

Conclusion. There are no definitive answers to many of the questions raised in this article. Until issues raised by Megan's Law, as they pertain to real estate licensees, are addressed by statute or regulation, it appears that the best way for a licensee to deal with these issues is through the use of disclosure language similar to that suggested above. However, merely providing the suggested disclosure may not be sufficient in all cases. The appropriate course of action for the real estate licensee will depend upon the specific facts of each individual transaction. Licensees will need to exercise their best professional judgment in these difficult situations, and should not hesitate to seek guidance from their brokers and from legal counsel, if necessary.

MEGAN'S LAW DISCLOSURE

North Dakota law requires that all persons who plead guilty or have been found guilty of a crime against a child or as a sexual offender must register with the chief of police of the city in which the person resides or is temporarily domiciled, or the sheriff of the county if the person resides in an area other than a city. Registration consists of a written statement signed by the offender, and the fingerprints and a photograph of the person. A law enforcement agency is required to disclose to the public relevant and necessary registration information if the agency determines that the individual registered is a public risk and disclosure of the registration information is necessary for public protection.

North Dakota law also provides that nonregistration information concerning registered sexual offenders may be disclosed to the public. Nonregistration information is defined by statute as information consisting of the offender's name, last known address, the offenses to which the offender has pled guilty or been found guilty, the date of the judgment or order imposing a sentence or probation and the court entering the judgment or order, the sentence or probation imposed, and any disposition of a sentence or probation. Nonregistration information for all registered offenders is compiled by the attorney general's office and is available to the public upon request at no cost.

If you desire to obtain further information regarding persons required to register as sexual offenders under North Dakota law, you should contact your local chief of police or your county sheriff, or the North Dakota Attorney General's office.

I/We hereby acknowledge that I/we have been provided with the foregoing disclosure and that I/we have read and understand the same.

Dated: _____



NORTH DAKOTA SENATE

STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

COMMITTEES:
Judiciary, Vice Chairman
Political Subdivisions

Senator Darlene Watne
District 5
228th Avenue SW
Minot, ND 58701

Chairman Mutch and Members of Industry, Business & Labor:

Senate Bill 2064 has to do with Megan's Law. Remember that legislation? It required sexual offenders to register.

Megan's Law gave Realtors a concern around the country and many states have enacted legislation to clarify the issue. Our bill is based on language adopted in bills that were passed in Minnesota and Pennsylvania.

The ND Real Estate Commission sought an Attorney General's Opinion regarding the issue, and a copy of her response is attached herewith. Please note the final paragraph of her Opinion where she states, "You may wish to pursue legislation which will provide an exemption for real estate licensees . . ." So, we are here seeking approval of Senate Bill 2064.

The basis of our concern is our Code of Ethics which imposes a duty upon us to disclose all material facts about a property, and the possible presence of a sexual offender may be considered a material fact in a court of law. We're not sure, but we don't want to take a chance and shouldn't have to take such a chance. We're not selling the neighbors, we're selling a piece of property.

There is no way a Realtor could keep track of all sexual offenders as they relate to a neighborhood where a home is for sale. There are thousands of homes for sale in our state and sexual offenders move about. It would be impossible to keep track during the pendency of a sale - - which can be a lengthy time. At the present time most Realtors are handing a prospective buyer a form telling them how and where they can get such information if they so desire. However, this form is not required and not all Realtors are so diligent.

I thank you for your time and attention and urge a DO PASS recommendation on this important legislation.

Respectfully,

Darlene Watne
Senator, Fifth District



STATE OF NORTH DAKOTA
OFFICE OF ATTORNEY GENERAL

FILE

STATE CAPITOL
600 E BOULEVARD AVENUE
BISMARCK, NORTH DAKOTA 58505-0040
701-224-2210

Heidi Heitkamp
ATTORNEY GENERAL

August 21, 1997

Dennis Schulz, Secretary
ND Real Estate Commission
PO Box 727
Bismarck ND 58502-0727

Dear Mr. Schulz:

Thank you for your June 23, 1997, letter. My staff has been working during the past three years to make sure that North Dakota is in compliance with the Jacob Wetterling Act and Megan's Law amendment. Under the Wetterling Act, as amended by Megan's Law, states must adopt sex offender registration and notification systems meeting specified minimum standards. We have recently submitted a packet to the Department of Justice which I believe demonstrates North Dakota's compliance with these federal mandates.

N.D.C.C. § 12.1-32-15, as recently amended, requires that a law enforcement agency notify the public if the agency determines that an individual registered in their jurisdiction is a public risk and disclosure of the registration information is necessary for public protection. I am enclosing a copy of enrolled House Bill 1048 for your information.

N.D.C.C. § 12.1-32-15 places all of the public notification responsibility on law enforcement agencies. Therefore, immunity from civil and criminal liability is only provided to law enforcement.

Although there is no statutory responsibility for a real estate agent to notify a potential buyer of a sex offender in the neighborhood, the National Association of Realtors appears to be cognizant of the fact that professional licensing standards are quite a different story. What a real estate agent should do when the agent receives information on a location of a sex offender, and whether there is additional liability for disclosing information that later turns out to be incorrect, are questions that need to be discussed in detail with David Reich, the special assistant attorney general assigned to the Real Estate Commission.

You may wish to pursue legislation which would provide an exemption for real estate licensees, similar to the Pennsylvania and Minnesota provisions which are mentioned in the attachment to your letter.

Sincerely,

Heidi Heitkamp

Heidi Heitkamp
ATTORNEY GENERAL

JB/ah
Enclosure
e:\97byers\schulz.ltr

Post-It™ brand fax transmittal memo 7671		# of pages ▶ 1
To <i>Claus Lemke</i>	From <i>Jim Dawson</i>	
Co.	Cap <i>DRG Council</i>	
Dept.	Phone # <i>328-2916</i>	
Fax # <i>223-8746</i>	Fax #	



North Dakota
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1998-99

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Senator Duane Mutch
Chairman, Senate Industry - Business & Labor Committee

RE: SB 2064 -- Disclosure of Registered Sexual Offenders by Real Estate Licensees

Dear Senator Mutch:

As you may already know the above mentioned bill was amended in the House.

The Legislative Leadership of the ND Association of REALTORS® **"SUPPORTS"** the amendment and we are asking your committee and the full Senate to concur with the House amendment.

The bill as amended is better than its original form. The original bill left some doubt over having to disclose the whereabouts of a registered sexual offender. If it's a material fact and important to a purchaser of a property, they should be told about the existence of such a list of sexual offenders. The House amendment does not remove the requirement of disclosure, while at the same time provide a small amount of protection to the real estate licensee in cases where such lists are incomplete or inaccurate.

We would appreciate your concurrence of SB 2064 as amended by the House.

Sincerely,

Claus H. Lembke, CAE
Executive Vice President





North Dakota ASSOCIATION of REALTORS®

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Jill Beck

Testimony on SB2064
House Industry, Business and Labor
February 10, 1999

Mr. Chairman and Members of the House Industry, Business and Labor Committee, my name is Claus Lembke and I represent the North Dakota Association of REALTORS®.

We are asking for your support and passage of SB2064.

Background: In 1969, Federal Legislation was signed into law modeled after a New Jersey State Statute known as Megans Law. The law is named after Megan Kanka, a seven year old girl from New Jersey who was raped and murdered by a twice convicted sex offender who, unknown to her parents, lived in her neighborhood. The Federal Law requires each state to enact legislation for the registration of convicted sex offenders and the release of this information to the public. You have passed such a law (12.1-31-15(11)) which became effective August 1, 1997. However, the requirements regarding disclosure of such information governing real estate licensees in North Dakota is not clear.

This bill, SB 2064, provides the clarity that we are seeking and we would appreciate your support.





MINOT BOARD OF REALTORS®

Testimony of SB2064
House Industry, Business and Labor
February 10, 1999

Mr. Chairman and Members of the House Industry, Business and Labor Committee, my name is Matt Watne and I am a REALTOR® affiliated with Watne REALTORS®, Better Homes and Gardens in Minot.

In 1998 I served as the President of the Minot Board of REALTORS®. We discussed the issue of disclosure of the whereabouts of sexual predators at length and how this may affect any seller or potential buyer.

When does disclosure become a relevant factor? For example: When a registered sexual predator lives 2 houses away or 2 blocks away - or 2 miles away - how about across the YMCA or across from the grandparents house?

To what extent are we liable for incorrect data from law enforcement?

To us in Minot, we could not find a good answer and therefore we asked our State Association to initiate this legislation. We feel that it will give us, even if only in a small way, a degree of better protection of liability. We would appreciate your vote in support of this legislation.



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Testimony of SB2064
House Industry, Business and Labor
February 10, 1999

Mr. Chairman and Members of the House Industry, Business and Labor Committee, my name is Mary Splichal from Logan Hill Realty, Better Homes and Gardens of Bismarck.

I am a member of the North Dakota Association of REALTORS® (NDAR), a member of the NDAR Political Affairs Committee and was part of a special Task Force that studied the implication of both Federal and State law regarding the disclosure of the whereabouts of convicted sexual offenders.

We are concerned over inaccurate or incomplete lists of sexual predators and what liability it could place on REALTORS®. What would a REALTOR® do if a registered sex offender moved across the street after the buyer signed an agreement to purchase the home but before they actually moved in?

Because of these uncertainties, our Task Force recommended that NDAR seek legislation that provides REALTORS® with a small degree of protection from liability.

We think that SB2064 will be of help to our industry and we would appreciate your passage of SB2064.



SB 2064

7 **Disclosure of sexual offenders.** A licensee ~~does not have a duty to disclose~~
8 ~~information regarding an individual who is required to register or about whom notification is~~
9 ~~made~~ shall not be liable for any action resulting from any disclosure or non-disclosure relating to the
10 registration of sexual offenders under section 12.1-32-15.