

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

2313

2005 SENATE JUDICIARY

SB 2313

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2313

Senate Judiciary Committee

Conference Committee

Hearing Date January 25, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 2580
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: Relating to theft of services for unpaid wages.

Senator Syverson, Vice- Chairman called the Judiciary committee to order. Sen. Traynor was absent but came in during the hearing. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen April Fairfield - Dist 29. Introduced the bill. Attachment #1. and submitted Amendment Attachment #2. Along with the case from Minot is the issue of economic development reform and liability. This bill could have additional benefit. While this bill is not about economic development and accountability it could be an enhancement to that concept because there have been some examples of unsuccessful economic development projects. It happens. If an economic project that receives tax payers finance public subsidies fails as did the case that inspired this, and that is coupled with the inability to prosecute cases of theft of services or in some way prosecute for that. It could jeopardizes the important aspect, which is public confidence and the support of our citizens and our communities. I see this as a companion to

that. I believe that this session we will make economic development more accountable to the citizens of ND. That is a good thing and I think this will fall nicely into that effort. **Senator Syverson** questioned the definition of employers? Is the term too narrow in the amendment. **Sen. Syverson** cited a case for a company waiting on a contract. The contract never appears. If he knew that if he did not get the contract he would not be able to pay the employees and he kept them also. **Sen. Fairfield** stated that this is adequately covered in the Labor and Wage part of the code. This would not negate this. This allows someone who prosecutes this it builds intent. **Senator Syverson** questioned too broad of an interpretation. **Sen. Fairfield** responded, too broad for whom. **Sen. Senator Syverson** replied that the bill is brought forth from one instance. For example a large transportation company is functioning, they have no money but still pay and say they plan to seize payment at midnight Tuesday the 15th. They do not get notice till the 15th, but the pay stopped on the 10th, is that an intent to deprive according to this. Yes it could be. It is still at the discretion of the States Attorney to prosecute. **Senator Hacker** asked how this subdivision applies to share holders, partners, members or other owners of the firm? Would this intent to say as the benefit of the company you invest as a shareholder and that company has withholdings that does not disperse the dividends. **Sen. Fairfield** replied that while visiting with attorneys their answer was that this is a two part test and this is the second part. If they had intent to deprive than that takes them to the second part of this. If they were not involved with any type of intent. **Senator Hacker** discussed dividend and how this would be effected (meter 1161) With the discrepancy of the states attorney they will be focusing on piercing the corporate veil, they are going to be focusing on finding a majority share holder or a controlling interest in that. I

would be O.K. with the removal of the definition of employer entirely because it is found in the labor section.

Sen. Trenbeath I to have the problem of Shareholders. I am a not very proud owner of some 7 MCI stock. With some accounting practices a lot of employees have been left with out money earned. It concerns me a little that by participating in a corporation, even in a minor sense of signing a proxy that was used to vote for the people that defrauded other people that I might leave myself open. I do have a question of redundancy with the type of activity that you are talking about is covered under sub A "intentionally obtaining services" and I do not know why that was not usable and secondly we have a criminal fraud statute that would be applicable and usable in this situation. In economic development these questions will also be raised by companies thinking of moving to ND. Even though we would not condone people coming to our state with the intent to defraud of people, adding another two statute to an already adequate for those purposes is sending the wrong signal to these businesses. **Sen Fairfield** agreed with many of his line of reasoning but we have to be deterring the ones who have this act in mind then it is good. Stated a Colorado case of the corporate vale being pierced. **Sen. Trenbeath** stated that if you have a partner had intent of fraud that person will be sued for civil liability or charged with a crime and the judge will order restitution of the amounts. **Sen Fairfield** stated that yes it could be done now but that this bill makes it very specific. (meter 1790)

Don Morrison, Ex Dir ND Progressive Coalition (meter 1882) Gave Testimony Attachment #3. Current ND law did not work in WebSmart case. Current officials said that they could not do anything to this company. Not even the police department. The workers spoke to the city

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Senate Judiciary Committee

Bill/Resolution Number SB 2313

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commisionors. You have a responsibility to ballance this picture. Gave a WebSmart employees

testimony. Att. #4.

Senator Syverson asked what the make-up of WebSmart (meter 2225)

Testimony in Opposition of the Bill:

none

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2313

Senate Judiciary Committee

Conference Committee

Hearing Date February 1, 2005

Tape Number	Side A	Side B	Meter #
1		X	4732 - End
Committee Clerk Signature <i>Mina L Solberg</i>			

Minutes: Relating to theft of services for unpaid wages.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following:

Senator Hacker stated that for some time now the environment has been created and it has been a struggle to create this environment and that is an environment of Entrepreneur. Encouraging people to start up a business and take risks. Some of those business many times, from my knowledge in working in this industry don't know what tomorrow is going to bring. It could be a home run, it could be a strike out. This bill would be one more reason people would not take risks and try and expand business and ultimately the economy in ND has to deal with if you were an investor and you invested with a company, that you should be held liable and brought to court beyond your investment because services or wages were unpaid. I think that this would encourage people not to invest in companies in ND. I don't think this bill has entrepreneur initiatives.

Sen. Trenbeath: I think Mr. Chairman that it comes down to "intent" and the fact that you have to prove intent negates the argument that the average shareholder might somehow be liable under this statute. Still in all it is a matter of proving intent and if intent is difficult to prove under the theft statute, it would be equally difficult to prove under this one. My main objective is that it is redundant to existing law.

Senator Triplett: I can accept Sen. Trenbeath argument that it may be redundant and maybe a state attorney could use existing law although they did not for what ever reason in the current situation. I absolutely reject Senator Hacker argument and the one Senator Syverson was making yesterday that somehow this is detrimental to the entrepreneurial spirit that we are all trying to develop. It is completely repugnant that anyone would think that someone would use the notion that they could go out and leave employees unpaid at the reason to do business or the incentive to do business in ND. Anybody who is doing business under any circumstances if they ask an employee to work owes them the wages. That is the beginning and the end of the concept. It has nothing to do with wither you get a grant/ or having a bad day. A lot of people pay employees with borrowed money, while waiting for the next project. If you do not have the credit or the money in the bank you do not have the right to ask people to come to work the next day. It has nothing to do with limiting business, it is just the law. If we are going to reject this we need to reject it on the grounds that is not a necessary bill and that the current law would do this. If we can come to agree with this. I stated to talk to the Attorney General when he was in the room, but it did not seem the right time to do this. Before we vote on this, I would like one more day to discuss this... I would just repress that when we get to the floor that we do not use the argument as the reason for doing. I think that it is repugnant.

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Senate Judiciary Committee

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Sen. Trenbeath: I agree with your argument that no person should provide there labor for nothing knowing full well that they were not going to pay them. I just think that there are statutes in place that would be able to address that situation.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2313

Senate Judiciary Committee

Conference Committee

Hearing Date February 7, 2005

Tape Number	Side A	Side B	Meter #
1		X	2555 - 3031
Committee Clerk Signature <i>Mina L Solberg</i>			

Minutes: Relating to theft of services for unpaid wage.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present and opened with the following: **Sen. Trenbeath** stated that we have had a full hearing of information pertaining to this bill. We were on the verge of making a motion when **Senator Triplett** wanted to further discuss it with the Attorney General Office and we put it on hold. **Senator Triplett** stated that she did have this conversation and the Attorney General sited that the current law would allow someone to be found in violation of theft of services if intent was proven. He was under the impression that the "intent" was the issue in the "WebSmart" case not the existing law.

Sen. Trenbeath made the motion to do not pass and **Senator Hacker** seconded the motion.

Sen. Nelson and **Senator Triplett** voted against the motion. Majority rules and motion passes

Carrier: **Sen. Trenbeath**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

REPORT OF STANDING COMMITTEE (410)
February 7, 2005 1:30 p.m.

Module No: SR-24-1988
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2313: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2313 was placed on the
Eleventh order on the calendar.

2005 TESTIMONY

SB 2313

Att #1

SB 2313

Chairman Traynor and members of the Senate Judiciary committee, for the record, I am April Fairfield District 29 State Senator.

SB 2313 is aimed at addressing an issue brought to light after the dramatic and well publicized closure of a business that left employees unpaid for work completed.

Without delving into the specifics of that case, the inability of authorities to prosecute such employers because of an ambiguity in the law raised questions as to whether the intentional failure of an employer to pay employees for work done in the final days of operations, is a crime.

SB 2313 clarifies in code that work provided by an employee to an employer is protected from theft and places the willful or intentional failure of an employer to pay their employees for work performed under the Theft of Services section of Century Code (12.1 - 23 - 03.)

This is necessary because, although the Century Code contains numerous sections that address the value of work, nowhere is the ability of the inherent value of work to be stolen from an employee specifically included.

Now I am the first to admit, that when I read the statute, I did not see the deficiency. It read as though it would cover theft of services as it applies to an employer / employee relationship. However, apparently in practice, it is not clear as to whether it is covered.

It is clear that if one accepts or obtains services and fails to pay, it is a crime. However, because it does not expressly include employers, there is some reluctance to use this statute for that purpose.

North Dakotans know that asking someone to work for wages, enjoying the benefits of that labor, yet intentionally seeking to deprive them of those wages is wrong. SB 2313 would establish this common sense knowledge in Century Code, specifically.

Att #2

Amendment - page 1, line 17, after the period insert - An employer intends to deprive an employee of wages or compensation if, at the time that employee is performing services, the employer knows that the employer cannot pay for those services.

AH #3

Testimony SB 2313
~~Senate Finance and Taxation Committee~~
Don Morrison, North Dakota Progressive Coalition
January 25, 2005

Mr. Chairman and members of the Senate Finance and Taxation Committee, my name is Don Morrison and I am Executive Director of the North Dakota Progressive Coalition.

Thank you for this opportunity to provide information on SB 2313.

We all want North Dakota's economy to be strong. We want our economic development efforts to be successful. One of the most important reasons is that we want a high quality of our life for people in our community. We certainly agree on that. One of the most important criteria is that workers earn enough to take care of themselves and their families. We should not be spending taxpayers money, if we are not raising the income of working families in our state.

This bill addresses one of the holes in our current economic development efforts. Workers should be paid what they've earned.

The North Dakota Progressive Coalition has talked with and listened to many of the former employees of WebSmart. These workers are not able to be here this morning, but I do have brief testimony that I would like to read that was written by one of the former workers at WebSmart.

Again, thank you for the opportunity to provide information about SB 2313. We urge you to vote a "do pass" on this bill.

AH #4

January 24, 2004

I am a former WebSmart employee. In April 2003 I showed up to work to find a sign taped to the door stating that WebSmart had closed it's doors - this was on a Wednesday morning. On Friday of that same week I, along with all the other newly unemployed WebSmart employees, was supposed to get paid, but those checks were never issued. This left me not being paid for 3 1/2 weeks worth of work. I was unable to get unemployment benefits for 3 weeks.

Losing a job is scary enough, but losing a job and not getting paid for the time that I worked truly brought a whole different dimension to an already difficult situation. I had a daycare bill from the time that I was working, along with all the other normal expenses of living. Almost a full 2 years later I am still waiting to get paid, but have very little expectation that this will ever happen.

In order to make ends meet I had to cash in what little retirement I had saved and borrow money from my parents. I was lucky. Others did not have any sort of savings that they could dip into or family members that were able to help them out. I would have lost my house if it had not been for the help of my parents - Just to be clear, I would have struggled but made it without my parents help if WebSmart had paid me the \$2500 plus (this is 3 1/2 weeks of pay plus unused vacation time) that I am still owed.

Any economic plan that is being considered needs to have enforceable, mandatory clawback provisions. The average worker can barely make ends meet as it is, but adding on not getting paid for time worked when a company shuts it's doors makes an already dire situation a complete financial failure for those who are already getting the least. Economic development is not there just to ensure the ability for companies to come into our state and benefit from high quality workers. True economic development should not aid companies in the financial raping of North Dakota workers. Enforceable, mandatory clawback provisions would go a long way in preventing another WebSmart scenario.

Economic development should be a tool that nurtures and protects the very resource that makes North Dakota such a great state to come in and seek business opportunities, it's people!