

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2075

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2075

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2075**

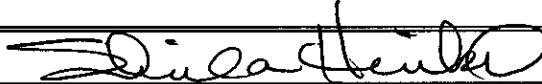
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 10, 2007**

Recorder Job Number: **#872**

Committee Clerk Signature



Minutes:

A BILL for an Act to amend and reenact subsection 6 of section 14-02.4-02 of the NDCC, relating to the definition of the term discriminatory practice for human rights purposes.

Kathy Kulesa – director of Human Rights for the Dept. of Labor *In Favor*

TESTIMONY #1

S Klein: Can you give me an example how this applies?

Kathy K: First example political activity where you have an employee who is not of the same political persuasion as the employer. The employees buddy may be running for office, and not during work, not using work resources after work hours, let's assume the employer makes political widgets and isn't political lobbying employer, they would like to help their buddy with their campaign and the employer comes in and say, "You're fired." Because, that's it.

That would be an example of lawful activity.

S Potter: Subsection 1, does this apply to government agencies? Are they considered to have essential business related interests, would a public employee ever run a foul of this, political activities of this, I think there is a clear distinction between government and private sector.

Kathy K: I believe it would and could affect state entities. We've had complaints of discrimination which is what the lawful activity falls under, filed against other state agencies.

S Potter: Are government agencies considered to have essential to having business-related interests?

Kathy K: Essential business-related interests would be looked at on every individual case-by-case basis. What one employer's essential business-related interest may not be the others,

Q? Favor of 2075?

CHERYL BERGIAN, Executive Director of ND Human Rights Coalition – *In Favor*

TESTIMONY #2

Testimony read

Things that come to mind, all of the things we do in our free time that aren't against the interest of our employer, like people who smoke, have a question whether they can be fired, or employers think they don't want their employee, and take action against them.

S Potter: If a government agency has a policy, they've issued their policy and an employee of that agency disagrees with it, would they be able to protest that or would this allow the employer to discriminate against them?

Kathy K: The question, what are the interests be of the state agency? This entity would be included, state agencies are under the public service of entities are forgiven from discriminating, tax dept. example. As long as the employee isn't doing something that doesn't interfere with the business interests of the tax department enforcing the tax laws of the state, then the employee can file a claim of discrimination, if the employee's activities are not conflicting with the business interests of the tax department.

What are the business interests of the state agencies, and are the employees activities, are they conflicting with that business.

Q?

S. Wanzek: Maybe question for Kathy, can it be construed if you have an employee involved in a lawful activity that is in conflict, that the employers need to be within the legal bound too? Discriminate or release somebody that is working and conflicting with their business?

Kathy K: Yes, that is what the definition is.

Example: If I work for the ND Human Rights Coalition, I am an employee of the NDHRC, if I were engaging in activity such as hurling racial epithets, that would be in direct conflict with the business interests, the NDHRC and they would then have the authority to fire me. Or if I were running a side line business in my free hours and refused to hire Native Americans, obviously this would be against the business interests of my employer.

S Wanzek: Not hiring native Americans, that would be an illegal. If you're hurling epithets, that would be a legal right whether it was ethical...

Kathy K: It may be a legal right, but it is a conflict of the business interests of my employer.

Q? In Favor? Opposition 2075?

CLOSE HEARING

Senator Wanzek made a motion for a **Do Pass**. Second by **Senator Andrus**.

S Potter: I am troubled that this bill would inhibit free speech activities. Not this particular bill, but this could be the vehicle for fixing the problem.

S Klein: I think that would be the opportunity to find another Legislative Avenue.

S Potter: as opposed to amending this to introducing a separate bill?

S Klein: Be my recommendation as we have a Motion and a Second. I think that would be more of a stand-alone issue. We have people in favor of the bill, I don't think we want to

If we were farther down the road in this vehicle.

S Andrus: Comment, Fed Gov. through the Hatch Act, I don't know if we've got a similar statute in ND or not.

S. Klein: Any other discussion?

Roll call vote – 7-0-0

Passed

Floor carrier: **S Behm**

REPORT OF STANDING COMMITTEE (410)
January 10, 2007 1:04 p.m.

Module No: SR-06-0402
Carrier: Behm
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2075: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2075 was placed on the Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2075

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2075

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3796

Committee Clerk Signature

R. Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2075.

Lisa Fair McEvers, Dept of Labor, Commissioner of Labor: (see attached testimony).

This is clean up language requested by the AG's office.

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2075

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3872

Committee Clerk Signature

D. Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2075. What are the committee's wishes in regard to SB 2075.

Rep. Delmore: I move a Do Pass.

Rep. Meyer: Second.

12 YES 0 NO 2 ABSENT

DO PASS

CARRIER: Rep. Dahl

Date: 2/26/07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2075

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Rep. Delmore Seconded By Rep. Meyer

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning			Rep. Meyer	✓	
Rep. Charging	✓		Rep. Onstad	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Heller	✓				
Rep. Kingsbury	✓				
Rep. Koppelman					
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Rep. Dahl

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

REPORT OF STANDING COMMITTEE

SB 2075: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2075 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

SB 2075

John Hoeven
Governor

Lisa K. Fair McEvers
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

nd.gov/labor
nd.gov/humanrights

*Same
Swen to
Hours*

Testimony on SB 2075
Prepared for the
Industry, Business and Labor Committee

January 10, 2007

Chairman Klein and members of the Industry, Business and Labor Committee. For the record, I am Kathy Kulesa, Director of Human Rights for the department of Labor.

SB 2075 proposes a simple change to subsection 6 of N.D.C.C. § 14-02.4-02 of the Human Rights Act. The Human Rights Act prohibits discrimination on the basis of a person's membership of one or more protected category. Most people are familiar with the protected categories of race, color, religion, sex, national origin, age, or disability, as they are protected under both federal and state law. In addition, state only protections under North Dakota law provide employees additional protection in three additional protected categories: status with regard to marriage, status with regard to public assistance, and participation in lawful activity off the employer's premises during nonworking hours which is not in direct conflict with the essential business-related interests of the employer.

This last protected category, which at times is referred to as the "lawful activity" protection was added to the Human Rights Act in two steps during the 1991 and 1993 legislative sessions. In 1991, the legislature added the first part of the protection, which was: **"participation in lawful activity off the employer's premises during nonworking hours"** by passing Senate Bill No. 2498. This language was added to a number of sections of the Human Rights Act in 1991, including: N.D.C.C. §§ 14-02.4-01, 14-02.4-02, 14-02.4-03, 14-02.4-06, 14-02.4-08, 14-02.4-09, and 14-02.4-18.

In 1993, the legislature added language to this protected category in Senate Bill No. 2367, which added: **"which is not in direct conflict with the essential business-related interests of the employer"** to four of the above statutory references, including: N.D.C.C. §§ 14-02.4-01, 14-02.4-03, 14-02.4-06, and 14-02.4-08.

Sections 14-02.4-02, 14-02.4-09 and 14-02.4-18, for reasons I cannot explain, were not amended in 1993 along with the other provisions listing this protected category. According to a summary in the legislative history in 1993 of SB 2367, it was noted by Attorney Feder: "that the phrase 'lawful activity off the employer's premises' appears in the bill in two or three places. His amendment would be that any time the phrase 'unlawful activity off the employer's premises during nonworking hours' is utilized that it be followed by 'which is not in direct conflict with the essential work-related interests of the employer.'" This proposed amendment was moved, seconded and unanimously passed. It seems clear to me that failing to amend N.D.C.C. §§ 14-02.4-02, 14-02.4-09 and 14-02.4-18 was inadvertent.

I do not believe that it is critical that N.D.C.C. § 14-02.4-09 be amended, as it deals exceptions to what is considered a discriminatory practice based on seniority, merit or measuring systems for setting methods of compensation. Arguably it should be amended as well, but amendment may have little effect.

Section 14-02.4-18 has already been amended in 2005 in House Bill No. 1130, refining the retaliation statute under the Human Rights Act. In doing so, the legislature deleted all of the references to individual protected categories, and instead, referred to unlawful discrimination under the chapter. In doing so, the "unlawful activity" language was deleted in its entirety from N.D.C.C. § 14.02.4-18. Therefore, there is no need to further amend this section.

This leaves only N.D.C.C. § 14-02.4-02 where the absence of the second part of the category makes a huge difference, as I believe the term "discriminatory practice" under N.D.C.C. § 14-02.4-02(6) without the amending language leaves an inconsistency in the Human Rights chapter. Again, I believe this exclusion in N.D.C.C. § 14-02.4-02(6) was an oversight, and ask for the full language of the protected category be included in the definition of discriminatory practice.

Thank you for your time. I would be happy to answer any questions you have.

North Dakota Human Rights Coalition

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Testimony
Senate Bill 2075
Senate Industry, Business & Labor Committee
January 10, 2007

Chairman Klein and members of the Committee, thank you for the opportunity to present testimony in favor of Senate Bill 2075. I am Cheryl Bergian, Executive Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights.

We support the work of the Division of Human Rights in the North Dakota Department of Labor for the enforcement of the North Dakota Human Rights Act and North Dakota Housing Discrimination Act. The request of our Coalition for enforcement of the anti-discrimination law in North Dakota was the impetus for the creation of the Division of Human Rights in 2000 and the assignment of its regulatory responsibilities in 2001. It is my understanding that a significant amount of the work of the North Dakota Department of Labor now consists of activity for those two chapters of state law, as opposed to enforcement of the Wage and Hour laws and other duties of the department.

We support the request to amend the North Dakota Human Rights Act by the North Dakota Department of Labor to clarify the exception for participation in a lawful activity by employees. This change will clarify the definition of that exception, and will benefit those looking for information on discriminatory acts in North Dakota.

We ask for a do pass recommendation on Senate Bill 2075. I appreciate this opportunity to testify on behalf of the North Dakota Human Rights Coalition.

Workforce Safety & Insurance 2005-06 Quick Facts

Category	1999	2000	2001	2002	2003	2004	2005	2006
Employer accounts	22,108	22,659	20,142	20,006	19,781	19,672	19,586	19,756
Earned premiums (\$millions)	\$112.4	\$112.1	\$99.0	\$93.1	\$89.6	\$96.8	\$108.4	\$121.6
Fund surplus, with 5% discount on liabilities (\$millions)	\$206.3	\$332.9	\$332.6	\$341.1	\$337.4	\$403.7	\$469.2	\$501.3
Restricted surplus, based on 2005 legislation (\$millions)	\$206.3	\$217.2	\$224.4	\$218.3	\$252.0	\$263.7	\$272.2	\$274.7
Declared Premium Dividends (\$millions)	\$0.0	\$0.0	\$12.0	\$12.0	\$0.0	\$0.0	\$46.0	\$54.0
Investments (\$millions)	\$776	\$900	\$925	\$907	\$980	\$1,078	\$1,169	\$1,201
Investment returns	7.4%	12.2%	1.4%	-1.7%	9.0%	9.6%	7.3%	3.5%
Covered workforce	292,868	296,663	299,714	301,913	301,777	304,287	311,200	318,240
Medical-only claims filed	17,194	17,399	17,727	17,396	16,311	16,722	17,424	19,268
Wage-loss claims filed	2,840	2,646	2,593	2,554	2,442	2,462	2,463	2,320
Total claims filed	20,034	20,045	20,320	19,950	18,753	19,184	19,887	21,588
Total claims filed per 100 Covered Workers	6.84	6.76	6.78	6.61	6.21	6.30	6.39	6.78
Wage-loss claims filed per 100 Covered Workers	0.97	0.89	0.87	0.85	0.81	0.81	0.79	0.73
General Administrative and ULAE Expenses (\$millions)	\$11.8	\$11.5	\$13.0	\$13.9	\$17.1	\$15.4	\$16.7	\$17.4
General Administrative Expense and ULAE Ratio	10.5%	10.3%	13.1%	14.9%	19.1%	15.9%	15.4%	14.3%
Indemnity benefits paid (\$millions)	\$31.6	\$32.2	\$34.1	\$33.6	\$34.8	\$35.6	\$36.9	\$37.0
Medical benefits paid (\$millions)	\$27.8	\$32.7	\$36.5	\$37.9	\$40.3	\$45.7	\$47.8	\$42.4
Allocated Loss Adjustment Expense (ALAE) paid (\$millions)	\$8.2	\$6.5	\$5.9	\$3.9	\$4.2	\$4.3	\$3.8	\$3.3
Total paid benefits (\$millions)	\$67.6	\$71.4	\$76.5	\$75.4	\$79.3	\$85.6	\$88.5	\$82.7
Maximum weekly wage-loss benefit	\$417	\$480	\$497	\$516	\$537	\$555	\$577	\$624
Minimum weekly wage-loss benefit	\$251	\$262	\$271	\$282	\$293	\$303	\$315	\$341
Claims accepted/denied within 14 days	na	67%	72%	74%	74%	75%	72%	63%
Claims Reported within 14 days	na	na	na	na	68%	72%	75%	83%
Callers' average time on hold (seconds)	17	22	26	20	20	22	29	27
Litigation requests	325	226	183	209	201	170	224	209
Injured Worker Independent Customer Satisfaction Survey (1 to 5 scale)	4.09	4.29	4.18	4.34	4.37	4.38	4.35	4.38
Employer Independent Customer Satisfaction Survey (1 to 5 scale)	na	na	na	4.14	4.17	4.21	4.20	4.21
/SI employee turnover rate	9%	15%	10%	10%	5%	7%	8%	12%