

MICROFILM DIVIDER

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



ROLL NUMBER

DESCRIPTION

2076

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2076

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2076**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 10, 2007**

Recorder Job Number: **870 ends at 15:25**

Committee Clerk Signature 

Minutes:

A BILL for an Act to amend and reenact section 14-02.4-22 of the NDCC, relating to the duties and powers of the labor department relating to human rights enforcement.

Kathy Kulesa, Human Rights Director at Dept. of Labor – *In Favor*

TESTIMONY #1

Fiscal Note attached.

S Klein: Currently without the subpoena power, you haven't been able to get to the root of the issue? It must have come up.

Kathy K: Yes, it comes up very rarely, in one case, the EEOC, Equal Employment Opportunity Commission with which we have a federal contract to investigate employment discrimination claims with the required numbers of employers to meet federal jurisdiction, has subpoena authority. On one occasion, has a responding party that simply did not respond to the charge of discrimination. When we contact the EEOC, with their subpoena power they could get a response, so they said, "well, if you're going to go through the trouble of doing that, you might as well transfer the case to us and we'll do the case under the contractual arrangement."

Ultimately that's what happened and we didn't receive payment for the investigation

S. Wanzek: Every case is unique, can you give me an example of a typical case?

Kathy K: The documented material presented is a classic example. When a grievant comes to us and files a charge of discrimination, employment in this case, they file a charge alleging that they were treated differently than a co-worker or someone else because of their race, color, religion or one of the categories. Allegation example: " I received a disciplinary warning for being late for work, but because of my race, so-n-so who is not of my race did not receive a disciplinary warning and they're late way more often than I am." There would be a case where we would want to be the replying party for the employers file and say, are there other occasions where you have been issued disciplinary warnings for being tardy to work, and if so, how many times was that individual tardy? What's the race of that individual? Are you applying your policy concerning disciplinary action for tardiness equally across the board without the board without regard to someone's status . That would be evidence requested.

S. Wanzek: Received an email about discrimination against non-smokers. Feels smokers are getting more breaks than non-smokers.

S. Klein: We need an amendment to add smokers to that list?

S. Andrus: Right now you don't have enough [heat] to make a satisfactory investigation? If an employer refuses or ignores your request for records, you have no way of compelling them to do it.

Kathy K: That's correct. We have no subpoena authority to compel them to give us the information that we requested. Did research prior to this bill and EEOC has subpoena power but if they're going to take our case and ask it to be transferred, if they are going to do the subpoena work, they want the case. Some of the other boards and agencies already have subpoena power. [Uniform Athletes Agents Act] Board of Barber Examiners, Cosmetology, Healthcare Examiners, Securities Commissioner, Workforce Safety also have subpoena

power as well. Rare occasion when we have uncooperative responding party. At this point in state law we have no way to compel them to cooperate with us.

S. Andrus: You would not use this subpoena power except if you had an uncooperative person.

Kathy K: That's correct.

S. Klein: You slashed [line 3, second page] - Now if you have subpoena power, is that why you want to eliminate that language?

Kathy K: That section was just moved, not deleted. We would continue.

S. Klein: So that's why we have it first instead of last?

FAVOR?

Cheryl Bergian, Executive Director of ND Human Rights – *In Favor*

TESTIMONY #2

Dave Kemnitz, NDAFL-CIO – *In Favor*

D. Kemnitz: Read from the "good book" [Century Code] This bill is so that there is a thorough and timely investigation. So that the board is not tied up or the accused is not tied up so that the investigation is thorough enough so that there is not an injustice, or not done at all.

I would like to put particular interest on this particular request.

MORE FAVOR?

OPPOSITION?

Senator Andrus made a motion for a **DO PASS**

Second by Senator Wanzek.

SB 2076 was placed on the Eleventh order on the calendar.

Senator Andrus carried the bill.

FISCAL NOTE
 Requested by Legislative Council
 02/28/2007

Amendment to: SB 2076

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2076 would grant the Dept of Labor the authority to subpoena persons and/or documents related to investigations under the ND Human Rights Act. It is anticipated the bill would not likely have any fiscal impact, as the authority to subpoena persons is expected to be rarely exercised.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

N/A - Although subsection 4 provides that a witness who is subpoenaed and appears at a hearing or whose deposition is taken is entitled to receive the same fees and mileage as a witness in a civil case, it is anticipated this authority would be exercised in only very rare circumstances. Therefore, the estimated fiscal impact is effectively zero.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A - This bill would have no impact on revenue.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A - This bill is not expected to impact department expenditures.

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A - Since there is no anticipated fiscal impact, no funds related to this bill are included in the department's appropriations bill.

Name:	Lisa K. Fair McEvers	Agency:	ND Department of Labor
Phone Number:	(701)328-2660	Date Prepared:	02/28/2007

FISCAL NOTE
Requested by Legislative Council
12/27/2006

Bill/Resolution No.: SB 2076

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2076 would grant the Dept of Labor the authority to subpoena persons and/or documents related to investigations under the ND Human Rights Act. It is anticipated the bill would not likely have any fiscal impact, as the authority to subpoena persons is expected to be rarely exercised.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

N/A - Although subsection 4 provides that a witness who is subpoenaed and appears at a hearing or whose deposition is taken is entitled to receive the same fees and mileage as a witness in a civil case, it is anticipated this authority would be exercised in only very rare circumstances. Therefore, the estimated fiscal impact is effectively zero.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A - This bill would have no impact on revenue.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

N/A - This bill is not expected to impact department expenditures.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

N/A - Since there is no anticipated fiscal impact, no funds related to this bill are included in the department's appropriations bill.

Name:	Lisa K. Fair McEvers	Agency:	ND Department of Labor
Phone Number:	328-2660	Date Prepared:	01/03/2007

REPORT OF STANDING COMMITTEE (410)
January 10, 2007 1:01 p.m.

Module No: SR-06-0401
Carrier: Andrist
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2076: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2076 was placed on the Eleventh order on the calendar.

2007 HOUSE JUDICIARY

SB 2076

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2076

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3795

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on SB 2076.

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

We are asking for subpoena power under the Human Rights Act, that 14-02.4.

Rep. Delmore: In the past, we've seen a lot of these cases go to federal court, because sometimes the state hasn't done a real good job. Have we seen fewer of those now than in the past.

Lisa Fair McEvers: I really can't answer that question, because they aren't required to file with us. If somebody has a case of their own, that they believe discrimination occurred, and they have good facts that they believe that they want to go to an attorney and file, we wouldn't even necessarily know about that. They aren't required to go through us in order to file in court under ND law. They may be required in some employment instances if they want to file in federal district court under federal law. They might be required to do that in some instances, from my understanding of how things are working now, things are better, and the Dept. of Labor is looked upon more favorably in the present, than it has been in recent years. The lawsuit that was filed against the Dept. was resolved. It was dismissed. Right now, there isn't anything filed against us at the present moment.

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 2076

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 2/26/07

Recorder Job Number: 3869

Committee Clerk Signature

DeMose

Minutes:

Chairman DeKrey: We will take a look at SB 2076.

Rep. Klemin: This is exactly the same amendment that we passed in SB 2074. I move the amendment.

Rep. Meyer: Second.

Chairman DeKrey: We will take a voice vote. Motion carried. We now have the bill before us as amended. What are the committee's wishes.

Rep. Kingsbury: I move a Do Pass as amended.

Rep. Dahl: Second.

12 YES 0 NO 2 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Klemin

House Amendments to SB 2076 (78178.0101) - Judiciary Committee 02/23/2007

Page 1, replace lines 9 through 14 with:

"2. For the purpose of thoroughly investigating a complaint, the department may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the department has the authority to investigate. If under this subsection a witness fails or refuses to appear or to produce, the department may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object."

Renumber accordingly

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

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2076

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Rep. Kingsbury Seconded By Rep. Dahl

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. Klemin

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

REPORT OF STANDING COMMITTEE

SB 2076: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2076 was placed on the Sixth order on the calendar.

Page 1, replace lines 9 through 14 with:

"2. For the purpose of thoroughly investigating a complaint, the department may require the attendance of a witness and the production of a book, record, document, data, or other object at any hearing or with reference to any matter the department has the authority to investigate. If under this subsection a witness fails or refuses to appear or to produce, the department may issue a subpoena to compel the witness to appear or a subpoena duces tecum to compel the witness to appear and produce a relevant book, record, document, data, or other object."

Renumber accordingly

2007 TESTIMONY

SB 2076

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

Testimony on SB 2076
Prepared for the
Industry, Business and Labor Committee

January 10, 2007

Good morning Chairman Klein and members of the Industry, Business and Labor Committee. For the record, I am Kathy Kulesa, Human Rights Director at the Department of Labor. Commissioner McEvers extends her apologies for not being present, but she is currently appearing at a hearing of the Senate Judiciary Committee on another bill proposed by the department of labor.

It is the policy of the state of North Dakota to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking which is not in direct conflict with the essential business-related interests of the employer. The department of labor is charged with the duty to investigate complaints of alleged unlawful discrimination in employment, public accommodations, public services and credit transactions under N.D.C.C. chapter 14-02.4, commonly referred to as the Human Rights Act.

The duty to investigate complaints alleging discrimination is one of the most crucial duties the department has been assigned, and is the basis through which the department makes its determination of whether or not probable cause exists to believe that unlawful discrimination has occurred. When a complaint alleging unlawful discrimination is filed with the department, the person or entity alleged to have committed a discriminatory practice, known as the responding party, is given an opportunity to respond to the allegation and provide evidence to dispute the claim.

While most responding parties involved in a human rights investigation are fully cooperative, from time to time the responding party is not fully cooperative. Because a responding party is most often a business or other service provider, the responding party is likely to have documentary evidence of the day to day workings of the entity. Comparative data, which may show how the responding party treated the aggrieved person, as compared to other persons, can be crucial evidence in determining whether the evidence supports a finding of probable cause. As you can imagine, without the power to demand that an uncooperative responding party provide testimonial or documentary evidence, the department may only have evidence as provided by the aggrieved person.

SB 2076 proposes granting the department of labor the authority to issue subpoenas under 14-02.4-22 of the North Dakota Century Code for the purpose of fulfilling its duty to thoroughly investigate complaints of unlawful discrimination.

#1
2076

A fiscal note has been attached to this bill, which I believe merits some explanation. Under subsection 4 of the proposed statute there is a provision which would require the payment of a witness fee and mileage if a person is subpoenaed to appear. It is anticipated that this power, if utilized, would be most likely be used most to subpoena persons to provide documentary evidence rather than requiring a personal appearance. Based on this premise, the department does not believe that the subpoena power would have any fiscal impact.

Thank you for your time and I ask for your support of this bill. I would be happy to answer any questions you may have.

#1
2076

North Dakota Human Rights Coalition

P.O. Box 1961, Fargo, ND 58107-1961 (701) 239-9323 Fax (701) 478-4452 www.ndhrc.org



Testimony
Senate Bill 2076
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 2076. 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 for subpoena power under the North Dakota Human Rights Act by the North Dakota Department of Labor. It is important that the Department have the resources it needs to carry out its statutory mandate to prevent and eliminate discrimination under the North Dakota Human Rights Act and North Dakota Housing Discrimination Act, and the ability to subpoena information from respondents is a necessary resource for the Department to carry out its investigations in a timely and thorough manner.

We ask for a do pass recommendation on Senate Bill 2076. I appreciate this opportunity to testify on behalf of the North Dakota Human Rights Coalition.

#2
2076

John Hoeven
Governor

Lisa K. Fair McEvers
Commissioner



State Capitol - 13th
600 E Boulevard Ave
Bismarck, ND 5850

nd.gov/labor
nd.gov/humanrig

Testimony on SB 2076
Prepared for the
Judiciary Committee

February 26, 2007

Chairman DeKrey and members of the Judiciary Committee, I am Lisa Fair McEvers, Commissioner of Labor. SB 2076 asks for subpoena power for the department of labor under the Humans Rights Act which is identical to that requested for the Housing Discrimination Act in SB 2074.

It is the policy of the state of North Dakota to prohibit discrimination on the basis of race, color, religion, sex, national origin, age, the presence of any mental or physical disability, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during nonworking which is not in direct conflict with the essential business-related interests of the employer. The department of labor is charged with the duty to investigate complaints of alleged unlawful discrimination in employment, public accommodations, public services and credit transactions under N.D.C.C. chapter 14-02.4, commonly referred to as the Human Rights Act.

The duty to investigate complaints alleging discrimination is one of the most crucial duties the department has been assigned, and is the basis through which the department makes its determination of whether or not probable cause exists to believe that unlawful discrimination has occurred. When a complaint alleging unlawful discrimination is filed with the department, the person or entity alleged to have committed a discriminatory practice, known as the responding party, is given an opportunity to respond to the allegation and provide evidence to dispute the claim.

While most responding parties involved in a human rights investigation are fully cooperative, from time to time the responding party is not fully cooperative. Because a responding party is most often a business or other service provider, the responding party is likely to have documentary evidence of the day to day workings of the entity. Comparative data, which may show how the responding party treated the aggrieved person, as compared to other persons, can be crucial evidence in determining whether the evidence supports a finding of probable cause. As you can imagine, without the power to demand that an uncooperative responding party provide testimonial or documentary evidence, the department may only have evidence as provided by the aggrieved person.

SB 2076 proposes granting the department of labor the authority to issue subpoenas under 14-02.4-22 of the North Dakota Century Code for the purpose of fulfilling its duty to thoroughly investigate complaints of unlawful discrimination.

A fiscal note has been attached to this bill, which I believe merits some explanation. Under subsection 4 of the proposed statute there is a provision which would require the payment of a witness fee and mileage if a person is subpoenaed to appear. It is anticipated that this power, if utilized, would be most likely be used most to subpoena persons to provide documentary evidence rather than requiring a personal appearance. Based on this premise, the department does not believe that the subpoena power would have any fiscal impact.

Thank you for your time and I ask for your support of this bill. I would be happy to answer any questions you may have.

Chairman DeKrey and members of the Committee, I apologize that I wasn't able to attend the hearing on SB 2074 & SB 2076 earlier this week. Please accept this belated support for both bills.

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 for subpoena power under the North Dakota Human Rights Act and North Dakota Housing Discrimination Act by the North Dakota Department of Labor. It is important that the Department have the resources it needs to carry out its statutory mandate to prevent and eliminate discrimination under the North Dakota Human Rights Act and North Dakota Housing Discrimination Act, and the ability to subpoena information from respondents is a necessary resource for the Department to carry out its investigations in a timely and thorough manner.

Please convey our support for these two bills to the other members of the House of Representative, if that information would be helpful. I appreciate this opportunity to provide information on behalf of the North Dakota Human Rights Coalition.

Cheryl Bergian
Executive Director
North Dakota Human Rights Coalition
P.O. Box 1961
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The North Dakota Human Rights Coalition works to effect change so that all people in North Dakota enjoy full human rights.