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ROLL NUMBER

DESCRIPTION

2417

2007 SENATE JUDICIARY

SB 2417

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2417**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2799 & 2809

Committee Clerk Signature *Maria L. Salley*

Minutes: Relating to employment verification for ND Century Code, relating to employment verification; provide penalty.

Job Number: 2799

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of Bill:

Sen. Randy Christmann, Dist. #33 (meter :10) Introduced the bill. Att. #1 Discussed fines and fees.

Sen. Nething asked what was "driving" the bill? He stated that there is a perception that when people come to ND and they look different than us, that they are not here legally. This allows us to say, let me see your paperwork and yes they are o.k. If for some reason they are not legal, currently we have no recourse.

Sen. Nething stated that this does not require any extra documentation. All the papers are currently required by Federal Law.

Sen. Olafson asked if this is in Federal Law why do we need to require it. We need a state law for prosecution purposes only and put "teeth" in ND Law. (meter 11:00) This bill does not

prosecute a person from hiring a person. Spoke of an example (meter 11:20) Under current Federal Law if a person is reported in violation there is no penalty. Correct.

Sen. Fiebiger asked if the Labor Commissioner indicate that this is an issue (meter 13:20) This bill is an evolution from a conversation with them. They have not seen the final draft. They do not want to be required to do even random checks, they do not have the staff to do this. The idea of this bill came from me after a conversation with them.

Sen. Lyson questioned how (meter 15:43 Beef Farmers keep records. The bill would only affect an employer with "more than 5 employees". They discussed Federal law. Unauthorized individual under Federal Law if exempt, would be exempt under the state law also. The Sugar Beet farmer is currently running under existing Federal law anyways. Spoke of it falling under the independent contractor. The trigger for the law is the illegal alien prosecution under Federal law.

Bill Butcher, N.F.I.B reviewed structure of organization. The part of the bill that we agree with is "knowingly & intentionally". Spoke of a situation in Bismarck, where an illegal worker hooked up with a young girl from Turtle Mountain. The contractor had 40 employees and only 1 was a legal worker.

John Risch United Transportation Union (meter 23:00) Spoke in support of the bill.

Additional Testimony Submitted:

Bill Shalhoob, ND Chamber of Commerce – Att #2

Testimony in Opposition of the Bill:

None

Testimony Neutral to the Bill:

None

Senator David Nething, Chairman closed the hearing.

Job Number 2809

Senator David Nething, Chairman reopened the hearing.

The committee discussed the perception and proactive but **Sen. Fiebiger** could not see where there was a problem. Why put this in law if this is a perception of a problem. **Sen. Nething** stated that **Mr. Butcher** did state that there was a problem and ND could not have a capability of addressing the problem. **Sen. Nelson** asked why the Labor Commissioner was not present. Find out why she was not here, if it was because she did not care about the bill or if she was unaware of it.

Sen. Nething appointed **Sen. Olafson** in charge of contacting the Labor Commissioner.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2417**

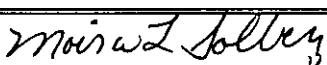
Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3044

Committee Clerk Signature



Minutes: Relating to employment verification for ND Century code, relating to employment verification; provide penalty.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Sen. Nething handed out a letter from the ND Chamber of Commerce in support of the bill.

Lisa McIver – ND Labor Commission (meter 1:48) I did not intend to speak at the original hearing, I had planned to be there only for questions. This bill should not have a great impact on me. My interpretation is that the bill would require employers to do what they are already doing.

The part that concerns me is how it will effect the department and how we as a department are going to enforce this law. I contacted the clerk of court and asked them how many cases we currently have in Federal Court. He said 76 cases prosecuted. This should be a relatively small effect. These were all Federal cases – including drugs ect. I tried to find out how many arrest. Immigrations stated that he did not have the number of arrested broken out it is combined in a three state area. I am waiting for another person to get back to me on an exact number.

The clerk of court said that it would be easy to put us on a system that would electronically mail us the information when it happens.

It should not have any other impact other then we will send a letter to the employer with our findings.

My concern is that we do not have the authority to fine anyone. It would have to be referred to the AG's office. Other concerns are how this law would be enforced; this bill does not state what we do. We are not a "court" nor do we want to be or have the statutory ability to do so.

Sen. Nething stated (meter 6:50) that she would do what they currently do, forward it on to the A.G's office. She stated that her impression, from the model from Colorado Law, gave the commission the enforcement.

Sen. Olafson asked if we put an amendment to clarify that they do not implement the enforcement. Yes, I am not against the law, I only have my concerns on the enforcement of it.

Sen. Fiebiger asked how wide spread this was (meter 8:35) and she cited some cases. Have the Feds done anything in respect to the cases? Two out of the five cases they were involved.

Sen. Lyson stated his interpretation of the bill was upon some investigation and you found something, you would turn it into a criminal case and forward it to the AG's office. She stated that this is not criminal it would be civil it does not make a reference to a criminal intent. ND does not have a criminal law in it's books that would cover this. It imposes a fine but it does not say it is an infraction-discussed this. This would be similar to a "wage claim" violation.

Senator David Nething, Chairman closed the hearing.

Sen. Fiebiger stated that this bill had a lot of holes and I have a hard time seeing how it would be enforced. I do not believe there is enough of a problem to warrant this. The committee discussed if it is a problem or the perception of a problem.

Sen. Nelson made the motion to Do NOT Pass and **Sen. Marcellais** seconded the motion.

Sen. Lyson stated that his view was that it is not a perception that it is a real issue. Spoke of hail damage and the illegal aliens and the shoddy work that was done. Would this bill solve it? Upon discussion they withdrew there motion of the DO NOT PASS to make an amendment.

Sen. Olafson will work on an amendment to address the committees concerns and get it back to the committee.

Senator David Nething, Chairman closed the hearing.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2417**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3357

Committee Clerk Signature



Minutes: Relating to employment verification for ND Century Code, relating to employment verification; provide penalty.

Senator David Nething, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following committee work:

Sen. Olafson presented an amendment – Att. #1 prepared with Ms. McEvers and the Attorney Generals office, they reviewed (meter 1:00)

Sen. Olafson made the motion to Do Pass Amendment – Att. #1 and **Sen. Fiebiger** seconded the motion. All members were in favor and the motion passes.

Sen. Fiebiger stated again that he was not sure what this bill would do (meter 3:04) to help the current process. He asked if this was a vehicle for the labor department to go after a violator. The committee discussed that currently there is no enforceability for the state, discussion of enforcement and penalty and the process of it being a civil penalty.

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Senate Judiciary Committee
Bill/Resolution No. SB 2417
Hearing Date: February 12, 2007

Sen. Olafson made the motion to Do Pass as amended and Sen. Lyson seconded the motion. All members except for Sen. Fiebiger and Sen. Nelson were in favor and the motion passes. 4-2

Carrier: **Sen. Olafson**

Senator David Nething, Chairman closed the hearing.

FISCAL NOTE

Requested by Legislative Council

02/14/2007

Amendment to: SB 2417

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	\$88,592	\$0	\$92,290	\$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 2417 would require the Dept of Labor to investigate the Form I-9 requirement compliance of employers who've employed an employee(s) who has been deported or arrested for being an unauthorized alien.

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.

Section 3 of the bill, which requires the department's investigation into I-9 matters, would have fiscal impact. The department estimates that 1 FTE will need to be added to accomplish the mandate of the bill. This is based on estimates that less than 1000 aliens are arrested each year in North Dakota. Recent estimates on prosecutions of all illegal aliens (for any violation) in the United States District Court is approximately 75 per year. Even considering that the vast majority are not likely employed in North Dakota it is believed that the number of investigations required will impact department operations.

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 effect on revenues.

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.

Fiscal note reflects one additional FTE for a compliance investigator. Salary and benefits of \$83,942 for 2007-09 biennium and \$90,790 for 2009-11. This factors salary increases of 4% per year.

Equipment for a new employee is estimated at \$3150 for the 2007-09 biennium and no funds for equipment in the 2009-11 biennium.

Monthly computer port and telephone port charges are estimated at \$1500 per biennium.

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.

The Department of Labor's appropriation in the Executive Budget Recommendation does not include funding for the costs associated with SB 2417.

Name:	Lisa K. Fair McEvers	Agency:	ND Department of Labor
Phone Number:	(701)328-2660	Date Prepared:	02/14/2007

Date: 2-7-07

Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2417

Senate _____ **Judiciary** _____ **Committee**

Check here for Conference Committee

Action Taken Do NOT pass

Motion Made By *Sen. Nelson* Seconded By *Sen. Marce 1/2015*

Total Yes _____ No _____

Absent _____

Floor Assignment _____

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

Motion withdrawn for an amendment

February 9, 2007

[Signature]
2-12-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2417

Page 2, line 8, after the underscored period insert "The commissioner shall investigate and determine whether there is probable cause to believe that there has been a violation of this section. If there is probable cause, the commissioner shall institute an action to impose the penalties provided by this section."

Page 2, line 11, replace "fine" with "penalty"

Renumber accordingly

Date: 2-12-07

Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2417

Senate _____ **Judiciary** _____ **Committee**

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass Amend - AH #1 2/2

Motion Made By Sen. Olafson Seconded By Sen. Fiebiger

Total Yes 6 No 0

Absent 6

Floor Assignment _____

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

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

Date: 24/2-07

Roll Call Vote #

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2417

Senate _____ **Judiciary** _____ **Committee**

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass - As Amended

Motion Made By Sen. Olafson Seconded By Sen. Lyson

Total Yes 4 No 2

Absent _____

Floor Assignment Sen. Olafson.

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

REPORT OF STANDING COMMITTEE

SB 2417: Judiciary Committee (Sen. Nethling, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2417 was placed on the Sixth order on the calendar.

Page 2, line 8, after the underscored period insert "The commissioner shall investigate and determine whether there is probable cause to believe that there has been a violation of this section. If there is probable cause, the commissioner shall institute an action to impose the penalties provided by this section."

Page 2, line 11, replace "fine" with "penalty"

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2417

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2417

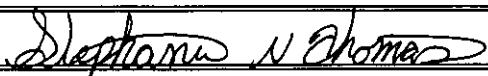
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3838

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2417.

Sen. Randy Christmann, District 33: See handout A. This legislation has to do with employers, and the hiring of illegal immigrants. I want to emphasize that a lot of people I talk to find it surprising, but it's very clear in federal law that we are preempted from passing any laws on the hiring of illegal aliens. However, Colorado has a law that this is roughly based on, and I found a need for this when I heard a lot of antidotal stories about all these illegals that are here. If you recall last fall there were some arrested over at the new ethanol plant that is being built in Underwood, and there are certainly immigrants working in the area, most of whom I am pretty confident are legal. They are doing it right, they're filling the job needs that we have, and their employers are doing things right. Unfortunately, because of what happened at Underwood, and in a few other instances, the employers are being mistreated by a lot of the public, because there is this assumption that they are all illegals. Some of the employers are having their reputations sully by the fact that they have these minorities hired, and I really find that troubling. We, of course, don't have any way of knowing, because we have no state law dealing with it. The Colorado law I found was something that would kind of deal with that, give us something to work with, and I think help to clear the air to those people

who are following the law, and doing things right. Let me go through some points on what this bill does not do. It does not require new record keeping for employers. Federal law has the I-9, and they require a number of items out of the list of potential documents to be verified when you hire. This bill just follows along with that. This does not harass employers; this would not call for any random checking of people. The only way that you will be required under this law to submit the information is if the Labor Commissioner is made aware of the fact that some of your employees have either been deported, or arrested for being here illegally. This does not conflict with federal law; this has to do with the record keeping. This does not discriminate against minorities, there's no profiling going on here, we're not going out and picking out all the people that speak or look differently, and checking into their employers or backgrounds. The only way this gets checked is if the commissioner is made aware that employees have been deported, or arrested for being illegal. This does not punish employers for making an honest mistake. In the bill it has the word intentional; I'm told that is the highest standard in the law. In order to penalize someone under this statute, it would have to be very clear that they are intentionally hiring illegals. So, the bill requires employers whose employees are deported, or arrested for being here illegally to provide the documentation that they already have. That documentation is already required by federal law, and assesses those penalties against those employers if they refuse to show the documents, or if they intentionally alter them. It's a \$1,000 penalty, not more, because I felt at least in the initial stages we're not going to do something huge and dramatic, we're trying to get our teeth into this, and see what kind of problems we have here, and so I tried to keep the fine pretty reasonable. Most importantly, I think this protects honest ND employers, and employees from unscrupulous competitors. I think that most ND employers are trying to do things right. Those that are hiring people from out of the area, I think most of those cases, they are here legally, and those that

are probably here illegally the employers have checked, and have done the best they can, but how do you know if they have phony documents, you really don't. Those that are doing it right, should not face competition from people who are benefiting from the fact that they have an illegal workforce, and are probably paying just a pit of salaries, because they have employees that are here, and are desperate to stay here, and stay out of the mainstream economy, and not be noticed. There is no reason why our good employer group in ND should face competition from those. Finally, I think this will go along ways in protecting the reputations of our ND employers, and their minority employees, because when something happens like at the ethanol plant, instead of the buzz going around that we have no law dealing with this in ND, the assumption is created that they're all illegal. This would protect those employees and employers. We have estimates of people who have been apprehended in the state for the last federal fiscal year at around 440-470. It sounds like most of them are caught at the border, I did here that there were less than 10 employers that were prosecuted. I think the commissioner feels that some staff would be needed. In Colorado, they are able to keep the penalties in order to operate the program. I'm not really sure how we can do that in ND law, but maybe there is someway that you can set it up where the Labor Commissioner would keep the penalties, or anything that you can do.

Rep. Amerman: In this committee here we heard of PEO's, Professional Employer Organizations, where they contract with a business, and then send them employees out. Are you familiar with those?

Sen. Christmann: I'm not so familiar with that.

Rep. Amerman: Who would be obligated, would it be the PEO's or the employer that they send the employees to?

Sen. Christmann: All I can say is whoever is now required to check into this federal documentation is the one that would be responsible under this.

Rep. Thorpe: Do you feel that the \$1,000 figure is enough?

Sen. Christmann: I think the important thing is to get something on the books, and lets try this out. I don't want to go after, and unnecessarily punish someone who gets caught up in something. Right now we don't know what kind of a problem this is in ND. I think we keep it low, and see how this works out for awhile, and then in 2 or 4 years we can look at it if it's being abused.

Rep. Thorpe: It's kind of ongoing now. Should we sunset this, so we'd be sure to look at this again, or wouldn't that be necessary?

Sen. Christmann: I think its fine.

Rep. Ruby: You're correct with the I-9 form where employers are required to have on file, and can be audited whether there's a violation not to be a random audit. If I understand your bill correctly, this wouldn't be enforced necessarily immediately by the state, it would be a violation through a federal action of either an arrest, or deportation, and I'm assuming that the federal government would already impose a penalty on the employer that they found in violation. Now you're proposing another \$88,592 amount in this biennium, and \$92,000 plus there, and I'm sure it's going to continue to grow to do basically the same thing, and be another level of penalty on the employer that settled on what was already in place. Tell me where I'm wrong.

Sen. Christmann: Where I think you're probably wrong, but not necessarily sure is the question of how vigorously the federal government cares about this. Frankly, I don't believe that they much care. I think they arrest, or deport people, and that is certainly the end of it. I think they're far to overwhelmed to worry about a ND contractor that is out here and has 10 or 15 employees.

Rep. Ruby: Then I guess my interpretation with the bill is correct, that it would be redundant if that's the case, because if the federal government isn't doing enough. You're not going to catch anybody, because you're not requiring the department to go after and seek these out on whether somebody would file a report. This is still based on federal action, so if the federal government doesn't do anything over and above what they are doing now, it isn't going to be any more effective than what's been done. I'm just wondering why we should spend this kind of money to do the same thing as the federal government is doing.

Sen. Christmann: I think that the answer to that lies in a question. We can all name off cases where we know they're all being deported, but I can't name any employers who have been prosecuted, and that's where I think the federal government is not keeping up with their workload. They arrest them, and send them home, and that's just the end of it, and the employer, I think in some cases goes out and hires some different ones, and this would give us the ability to deal with that.

Rep. Nottestad: You're talking about the employers here; you're also including the agriculture community, correct?

Sen. Christmann: Just the employers with more than 5 employees.

Rep. Nottestad: So then anyone in the potato industry, or the sugar beat industry would certainly qualify, and they would be under this bill.

Sen. Christmann: I believe so. If they have to check an I-9, they would be under the provisions of this law.

Rep. Zaiser: Could this be abused by inaccurate information given out about another employer, or about employees that there's some vindictiveness out there?

Sen. Christmann: I think that's something that we'd rely is our Labor Commissioner to make the decisions. People can accuse a competitor, or a disgruntled employee can accuse an

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House Industry, Business and Labor Committee

Bill/Resolution No. SB 2417

Hearing Date: February 26, 2007

employer of racial things, or whatever, and the Labor Commissioner, and their staff are very good at separating these things out in an investigation before they ever file charges.

Rep. Dosch: On page 1 of the bill line 18, what is meant by shall affirm, or what actions are required on behalf of an employer to affirm?

Sen. Christmann: Those are words legislative council put in, and I guess as I read it, I'm thinking that you have 20 days here, so I'm thinking the affirming is telling your new employee that they have to bring you this, and then keep it or make a copy of it.

Rep. Keiser: There'll be a 5 person limit. What is the reason for not making that higher?

Sen. Christmann: I came up with that. I think the problem is when we're dealing with volume here. I was imagining someone who maybe is a single person business, or something like that, and really isn't aware of all these laws possibly, and hires their neighbor down the street, and had a perfectly good faith, and just doesn't even know that they have to check off these things. Once you get up top where you have 5 or 6 employees, you have enough other record keeping to do that you are probably aware of these things, and so that is why I drew the line there.

Bill Butcher, National Federation of Independent Business: Support SB 2417. The key items, as far as I was concerned are the terms knowingly, and intentionally. There is no requirement either for verification, and I think that is important to point out as well. This bill protects legitimate employers.

Rep. Ruby: I understand there are problems, and I'm just wondering how you believe this bill solves that, because it isn't going to solve that unless the federal government reports, or arrests them for being an illegal alien. I'm wondering where you see it's a major benefit, and I'm also wondering if you surveyed your members to come to the conclusion, and support this.

Bill: I did not survey our members. What I did do is check with NFIB nationally and in particular the state of Colorado, and they had pulled their members, and supported it. That's where I got the language, and supported it with Sen. Christmann, and became aware of the issues of knowingly, and intentionally hiring illegal aliens.

Rep. Thorpe: You are representing the small business owners, could you explain to me the procedure they do now when they hire. I would assume for your withholding that they need to have the proper credentials from each worker social security, etc., and I've been told that some of these people get really sophisticated illegal certificates that are pretty hard to determine.

What do the employers do presently to determine that these credentials are legitimate?

Bill: As far as I am aware, there is no verification process. You use your best judgment, you look at the documentation that they present to you, and if you're being duped, that happens I guess. They are required to look at documentation, and to keep the I-9, and the information on file.

Rep. Thorpe: If they're there that long, after the first month when they turn in withholding, wouldn't something show up then if they were illegal, and it didn't jive?

Bill: I really can't answer that question. I don't know what the INS process is. I think they simply depend on the employer to view the documentation, and only take action if something goes wrong.

Rep. Clark: Is the small employer going to have to defend himself against the Labor Department if one of his employees gets picked up and deported, or several of them say?

Bill: The key thing in this situation is there's nothing new that is required. They are presently required to keep documentation by INS, and now in this case they're just required to produce it at the request of the Labor Commissioner. As far as defending themselves, I guess if they are

found to have illegal employers they have the choice to pay the \$1,000 or defend themselves, and I don't know if it goes beyond that.

Rep. Thorpe: I've read a lot about the problems concerning illegal employees. Somewhere I read that in this country we were excepting their country of origin status, qualifications cards, and green card. Would that suffice to this? Would we qualify that as a qualification, or what?

Bill: I'm not familiar specifically with the requirements of INS. I do know that they require documentation to show citizenship, and to show residency, and those sorts of things referring to a green card. I assume that we probably know as little about this as the other.

John Risch, United Transportation Union: Support SB 2417. Businesses face sometimes an unfair competition, because the employed people are willing to work for very little wages, and if they don't work for those very low wages, they might face the threat of deportation. So, it's not just businesses that are forced to compete against unfair competition in regards to illegal workers, its workers as well. Perhaps, the penalties and reporting should be stronger, but maybe this is all we can afford at this time.

Bill Shalhoob, ND Chamber of Commerce: Support SB 2417. See written testimony #1.

Rep. Nottestad: Did the Colorado bill include or exclude agriculture?

Bill: I don't remember.

Rep. Ruby: Did you poll your members on whether they would like to have another agency to report to?

Bill: No, we did not since this bill came up before this was made at the board level.

Kevin Herrmann, Beulah, ND: Support SB 2417. This summer there was a lot of workers that do have concerns. On the federal level, they're not doing the current law that they have. A lot of us support this bill as a start, and some way we have to. As time goes on you're going to see more and more of this happening, because of these subcontractors that come in from

out of state. Some of these projects have contractors that win the bid, but then may have subcontractors under them, and sometimes those subcontractors are coming out of state. In the 90's there was a subcontractor that came from Chicago, and they couldn't speak any English, and they were deported. I believe in the future, we're going to have more instances come about.

Rep. Zaiser: How do the employers of these folks get around the minimum wage laws that exist? Are they getting around that?

Kevin: That I don't know.

David Kemnitz, AFLCIO: Support SB 2417. We think it's time to do something about the follow up on this issue, and I think it's a good start.

Rep. Zaiser: Do you know how they get around the minimum wage laws?

David: I think they get around more of the benefits than the minimum wage, healthcare and other services that we provide as a community.

Rep. Keiser: What do you think about the limit of the 5 employees? Should it be higher, or lower, or is your group confident with 5?

David: 5 is a number, I suppose, that is a compromise in the first place. If you go higher, I think you jeopardize the intent and the enforcement of how many, so if you can get by with 5. Below that you might be talking roofers, above that you're talking impact on all of our industrial plants, and our commercial and industrial complexes in the entire state.

Ed Christenson, Injured Worker: Support SB 2417.

Lisa Fair McEvers, Commissioner of Labor: Overview of the fiscal note. Originally, I didn't think there was going to be any requirement to add to staff, and as more information kept coming down from the federal government, and my most recent communication from the United States Immigration & Customs Enforcement Unit. I received a letter which indicated to

me that they have about 470 arrests for immigration violations, and they said there are just a small number that are actually filed against the employers. So, I don't really know how much work this is going to affect the department, but when I here of approximately 450-500 cases a year, I have to think to myself that even if I check out half of those, just checking on the records would take some additional staff then what we have. The Department of labor is a small department. We have 6 investigators, and the human rights director to do all the investigations currently in the state. The reason for the fiscal note is that I was concerned that this would add to our caseload, and I wouldn't have adequate staff to carry out the mandate of this bill.

Rep. Keiser: Where's the money? It's not in your budget, and there is none in the appropriation on this bill.

Lisa: That is correct; it's not in my budget. If this passes I'll have to go in, and ask for an appropriation to fund that. The other way is perhaps there could be a special line designated for some overtime for my current staff, but I would have to increase funding one way or another, either by additional staff, or by overtime for my current staff in order to carry out the mandate.

Rep. Dietrich: Could you walk me through the duties of a compliance officer in this case? Is it only in house, or do they go out and see the employer's places of business?

Lisa: How I envision this happening is that we would become aware of the deportation, or that the person was arrested probably by contacting federal government. In my contacts with the federal court system, they said it would be quite easy for them to give the department a link to the federal filings, and those types of information. So, if it comes to our attention that there's been someone arrested, or deported, we would then follow up using administrative staff, then the letter to the employer asking for the information, and if they don't provide that it would get

assigned to an investigator. I doubt that we would go out in most instances, because we just don't have the people. So, onsite investigations are where we do most of our investigations by telephone, correspondence, or email of that nature.

Rep. Keiser: Say it's brought to your attention there's a roofing crew in where there was a health response, and they're in violation. You send a letter, and say you want to see the documentation for the people, and those people leave the state overnight. What authority do you have to go after them, and what happens to all of the projects that are in process?

Lisa: I don't envision that it would happen that way that I would be notified by the public. I think I would have to have some notification that someone has been arrested, or deported.

Rep. Johnson: In the bill it talks about the \$1,000 penalty per employee, but I don't know where that \$1,000 goes.

Lisa: I don't know where the fund goes either.

Rep. Dosch: The 400 you said that were arrested, was that within ND, and how many different employers made that up?

Lisa: The letter says that during FY 2006 approximately 470 illegal aliens were arrested by the United States agencies for being there illegally. He is unable to provide a number of those who are actually employees in ND working at an out of state company. In an earlier email he estimated that about 250 of them were actually employed here, and I think about 10 of the employers were prosecuted by the court system.

Rep. Dosch: I'm just trying to justify the system out on this. We're talking 10 employers that would have been 10 contacts that would have to be made in 2006. The job as I understand this is simply verifying whether they have completed I-9 documentation in their file. So, if there are 10 cases, 10 times where you'd ask to contact an employer, they either have them or they

don't. I'm just trying to reconcile the workload for the requirement of another full time employee to handle 10-12 cases a year.

Lisa: Part of the answer of that is timing. The fiscal note came to me the evening before this was to be voted on the floor, and I had not been asked for a fiscal note prior to that. So, I was scrambling to contact people at the immigration service who had not gotten back to me. The information that I had going into preparing the fiscal note was that there could be up to 1,000 employees, so the fiscal note is speculative. It might be inflated, and that's why it might be a good idea to use overtime until they find out how much work there actually is.

Rep. Keiser: If there are only 10 per year, what would that fiscal impact be?

Lisa: It would be zero.

Rep. Nottestad: I've asked a couple of questions and it would occur that ag would be included in this. In the eastern part of the state, the border patrol works with the beet and potato industry in the fall very heavily and there are a lot of arrests made. The point is almost ever one of these employers have 5 or more, so in that perspective, I would guess that you would have a large number of investigations across the state. Would that impact your workload, the fact that they were that far away?

Lisa: Maybe I'm not envisioning the right type of investigation, but I don't see us doing onsite. This is a request for documents, and if they provide them to us and they look like they're in order, that'll be the end of it, as far as we are concerned.

Rep. Nottestad: The difference here is the federal government picks up the individual, they leave the employers alone. This says that if an individual is arrested, then an investigation of sorts would be done by your department.

Lisa: That's correct, but the investigation that I envision when that comes to my attention is I send a letter to them, and if they provide me the documentation, and it appears to be in order, I don't see us going any further with it.

Rep. Clark: In your opinion, would this be a better bill if there was an equal penalty against an employee who presents fraudulent documents?

Lisa: I believe that might have some issues with the preemption of the federal government. I don't think we would have the authority to go in, and mess with what the requirements are of the employee. That is a federal question, and the only reason that this becomes a state question is because we're asking them now just to provide some documents, not for them to actually enforce the immigration laws.

Rep. Thorpe: If the sponsor of the bill would agree to it, and if we'd direct that fine to go to the Labor Department, would that help a little bit on the fiscal note?

Lisa: Yes, that would help.

Rep. Keiser: Let's say the INS comes here, and they do an investigation, and they say whoops, you've got 30 people out there who are illegal, and could have false documentation.

Lisa: These are two separate issues. You can be here illegally, and still have presented false documents that appear to be legitimate, so the employer might not be on the hook even though those folks are getting deported, because the documentation that he had might look legitimate.

Rep. Keiser: So, as long as I can say that I looked at them, I collected them and they look legitimate to me, there's nothing that would happen to that employer.

Lisa: I believe that is the intent of the bill, because it says intentionally. The terms are in there, and I think that would be very difficult to try to prove. I think it would be quite easy for employers to hire illegal aliens, and not comply with minimum wage laws, because the only

way the minimum wage violations come to our attention it through wage claims that are filed with us, and if you're an illegal alien, I think it's highly unlikely that you're going to file with the State Labor Department if you haven't been paid your full wage. I think that would be another issue that they could start by having these illegal aliens.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2417

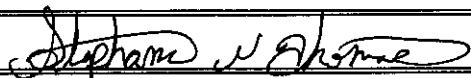
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4537

Committee Clerk Signature



Minutes:

Chair Keiser opened the discussion on SB 2417.

Rep. Clark: After our committee hearing on this bill, I called the Greater ND Association, and asked Dave McIver if he was really in support of this bill. He brought me a copy of the federal legislation referred to in this bill, and this federal legislation completely preempts this bill. So, the consideration is why duplicate this in state law, let's just kill the bill. There were some things I didn't like either, the fact that if an employer had false documentation in his file, there was no penalty, and all he had to do was prove he had some documentation in his file, and then if he didn't have that documentation, it would trigger this \$1,000 penalty. There's already a \$1,000 penalty in the federal bill. I don't like this bill, because it seems to have burden on the employer. The Labor Commissioner indicated that she had no objection either to this particular bill, so I think with that I make a motion for a do not pass.

Rep. Dosch: Second.

Rep. Thorpe: This bill addresses what's been becoming a national problem. It was also brought out that there are 400-440 illegal aliens annually in ND. The main reason those people are here is they're looking for jobs, and I don't blame them for that, but traditionally in the United States, we've went through the immigration services, and the people that want to do

it legally, and I have no qualms with that whatsoever. We've been turning a blind eye to all of them that are in here illegally, and they're here to get the jobs, and we still do have people that are legitimate residents of the United States. Unless we go after people that are hiring them, I don't know how else we're going to attack that problem as long as we look the other way when they're coming into this country. For that reason I will certainly support this bill.

Rep. Nottestad: I certainly will support the do not pass. I feel this bill is a feel good bill, because is it really going to do anything. It could have some much unintended circumstances, as far as the eastern part of the state for the potato and beet industry. As part of the bill states if somebody is picked up that is illegal, it could trigger something off if somebody would take and report it, then they would investigate it. The drivers in the potato and beet industry are predominantly Hispanic, and there's a code that they take care of each other, and there may be many reasons why they would leave. I could see under this bill a number of potato and beet people who could find out that they have no crews when they come to work on Monday morning. I would not in any way want to be a part of something like that.

Rep. Zaiser: I understand the point that Rep. Nottestad makes, but we all have to live under those same laws. Every business, anybody could quit, and there could be a labor action or something like that. I really think this is a huge problem for us in the United States, and the only way to nip it is to destroy the market for those people to come across. Hiring those people is the market. That is where this bill talks about both ways, both the illegal immigrant, and the people hiring these people. So, until we address the market, we're not going to address the problem.

Rep. Dosch: What Rep. Zaiser says is correct, but the problem is this bill has no teeth. All the employer has to do is show that they have documentation. Any employer out there, if he is hiring these illegal aliens, he's going to have an I-9 form, and he's going to have a green card,

whether it's valid or not, he really isn't going to care. All this bill says is that they have the documents on hand. They have a fiscal note of \$88,000 that we're going to add to the Labor Department to do a paperwork shuffle, and it's as simple as that. If I hired someone who was illegal, I would just say I thought this paperwork was accurate, and there's nothing the Labor Department can do.

Rep. Ruby: I oppose it for the same reasons as Rep. Dosch. I spoke to Sen. Christmann last night, and he really wants the bill, because of what it seems to say. My point to him was that there's no action under this provision, until the federal government gets involved, or somebody gets arrested, and then the Labor Commissioner gets involved with it. It is a federal law, so it is going to be implemented first over these companies, and if they're not enforcing it, then they should be. The problem is people are going to be calling the Labor Commissioner on a constant basis if this bill gets passed, because the impression is now there's something they can do. They will be calling constantly saying we believe that there are people here that are illegal, and the Labor Commissioner is going to say I can't do anything about it unless somebody has been arrested. The frustration is going to build, because she will have no ability to do a thing about it.

Rep. Clark: I think in this illegal community, those people know the immigration laws better than we do, and they know full well what kind of documentation they're supposed to have. They know where to buy it illegally; they have it when they come to the employer, and any employer that is even halfway knowledgeable about this knows he has to have those documents, because of the federal penalty. This bill will not destroy the market. In regard to the \$88,000 we discussed that with the Labor Commissioner, and she did waffle on that a bit. She said maybe she could handle it with overtime in her department, and she wouldn't have to

go to appropriations for another full time employee, but she did acknowledge it was highly doubtful she would ever collect any money under this statute.

Rep. Zaiser: I think this does do some good, granted there are no teeth in this. I think it is an intermediate step where she becomes aware of this, via paperwork. Nobody is out to get any business, that's not the objective. The bottom line is to keep the illegal aliens out.

Rep. Thorpe: I certainly hear your arguments, and I'm not sure what this bill would really do if you pass it, but I do feel that it's a step in the right direction. If it would cost the Labor Commissioner to go after somebody that had been employing illegal aliens, it doesn't bother me that they get an extra \$1,000 fine, because they shouldn't be doing it. Personally, I don't own a business right now, but when I did the two things I was pretty cognizant about was I wanted to hire people that were citizens of this country, and I wanted to hire people at a wage that they could afford to live on, and if I couldn't do that, I wanted out. There is another way of what we're trying to do here that could be accomplished if the citizens when they do business with the places that are hiring ethnics that could be illegal aliens, if they go in there, and see these folks around, maybe they'd say they can't do business with that particular business, because they see these ethnics that could be illegal aliens. They also could be here legally, and so then they would be avoiding that business, and they probably shouldn't have been. I think we all understand the situation; it's not just predominant to ND. I thought we were kind of isolated up here in the northland, but now we find out it's also here, and if we can do anything to start to address the problem, I'm certainly going to support the bill.

Rep. Zaiser: I do in part feel that it is a feel good bill, but also in part we've talked about insurance bills that move us in the right direction. I think creating greater awareness, and I think the fact that the Labor Commissioner is the appropriate agency to contact the US Labor Department, I think it can be a benefit. I think we need to address this, I mean the Bush

Administration is trying to, and there is even stronger pushes from members of that party within Congress. I don't think this can hurt us.

Rep. Keiser: We have not heard anybody suggest an amendment that would have put in this bill the Colorado law, which has teeth in it. When we get a bill in, if it's going to cost something we put a fiscal note on it, and the agency writes the fiscal note. Right now despite what the Commissioner has said, this bill has a fiscal note on it, and it will have a fiscal note of \$88,592, until we get a new fiscal note that says I can do it with overtime. I ask to the committee for anybody who's supporting the bill if he wants us to spend \$88,592 out of the general fund. Before I go before appropriations with this bill, or any other one, do you want the money to come from Higher ED, K-12, or Human Services, because that's where it's going to come from.

Rep. Thorpe: It can come out of the funding for a new prison.

Rep. Zaiser: I don't recall the Colorado bill, but if it does have teeth, and it wouldn't be too extensive if you could summarize it, I mean how many more FTE's would it require?

Rep. Keiser: I know Sen. Christmann said he modeled this somewhat after that, but he took all of the aggressive enforcement, and everything else out.

Rep. Zaiser: I would consider that, but I think stating if you want this bill you have to take it out of such and such. Earlier in when there was fiscal notes on bills, nobody was required to do that, so I don't think that's fair.

Rep. Keiser: You're not required; I just want your direction is all I'm telling you.

Rep. Gruchalla: Since 29% of the population and the prison population is illegal aliens, I think it could really come out of the prison fund.

Rep. Clark: Sen. Christmann had brought this to the ND Chamber of Commerce, and it originally had the Colorado provisions in it. McIver's comment to me was there was no way he could support that bill, it was really a mess. So, what you see is a compromise that came out

of that, so to further amend this bill to meet the Colorado statutes, I think your support would really evaporate.

Rep. Zaiser: Back to the point about the Colorado bill, I can imagine why the business community would be opposed if the guy is the state chamber. That's no surprise to me given where they've been at on other legislation, but that doesn't make it a bad idea. Nationally, it's recognized as a huge issue, and I think if we don't address it, I think we're just saying that we're going to fall behind, ignore it, and be one of those states that has a less than fair attitude about it.

Roll call vote was taken. 8 Yeas, 5 Nays, 1 Absent, Carrier: Rep. Clark

Hearing closed.

Date: 3-7-07
Roll Call Vote #:

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2417

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Clark Seconded By Rep. Dosch

Total Yes  No 

Absent |

Floor Assignment Rep. Clark

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

REPORT OF STANDING COMMITTEE

SB 2417, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO NOT PASS (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2417 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

SB 2417

AH #1
2-5-07

SB 2417
Sen. Randy Christmann

Same to House

This bill does not:

Require extra new record keeping for employers

Harass employers

Conflict with federal law

Discriminate against minorities

Punish employers for honest mistakes

This bill does:

Require employers whose employees are deported or arrested for being here illegally to provide the documentation they are already required to have I-9's

Assess penalties against employers who refuse to provide documentation or alter those documents

Protect honest North Dakota employers from unscrupulous competitors

Att #1
2-7-07
Same to House



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2417
February 5, 2007

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing sixteen local chambers with a total membership of 7,236. A list of the specific chambers is attached.

The requirements and guidelines outlined in SB 2417 seem to us to be reasonable in their effort to address the growing illegal alien problem. We believe all of our members do their best to follow current laws and would willingly work within the steps in this bill to insure compliance should a question arise.

Thank you for the opportunity to appear before you today in support of SB 2417. I would be happy to answer any questions.



**The following chambers are members of a coalition that support our 2007
Legislative Policy Statements:**

Beulah Chamber of Commerce - 107

Bismarck - Mandan Chamber of Commerce - 1080

Cando Area Chamber of Commerce - 51

Chamber of Commerce Fargo Moorhead - 1800

Crosby Area Chamber of Commerce - 50

Devils Lake Area Chamber of Commerce - 276

Dickinson Chamber of Commerce - 527

Greater Bottineau Area Chamber of Commerce - 153

Hettinger Area Chamber of Commerce - 144

Langdon Chamber of Commerce - 112

Minot Chamber of Commerce - 700

North Dakota Chamber of Commerce - 1058

Wahpeton Breckenridge Area Chamber of Commerce - 293

Watford City Area Chamber of Commerce - 84

Williston Chamber of Commerce - 401

West Fargo Chamber of Commerce - 400

Total Businesses Represented = 7236 members