

2009 SENATE JUDICIARY

SB 2117

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2117

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 14, 2009

Recorder Job Number: 6987

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

Relating to exception from licensure as a private investigator or private security officer.

Bill Butcher – Chair for the ND Private Investigation and Security Board. See written testimony.

Senator Lyson – Questions that small communities will have a problem with this and hamper their budgets.

Butcher – Says he doesn't see that it will be a problem because it should be a pass through expense.

Senator Lyson – Would like to see line 14 taken out so it wouldn't be paid directly to the agency.

Butcher – Says his Board wouldn't have a problem with that.

Senator Olafson – Relates how a group he is associated with handled an event that needed security. He was required by law to have a contract with the county sheriff's office for that event.

Senator Fiebiger – Asks what problems have arisen that prompts this bill.

Butcher – States a case in the Fargo Dome that relates to this.

Senator Lyson – Asked if Private Security is in the ND Century Code.

Butcher – Reads out of the Century Code relating to private security.

Senator Schneider – Asks if an amendment would work?

Jim Thorsen – Cass County Sheriff Dept. – States if they would eliminate line 14 it would resolve the problem for the small agencies.

Discussion on the amendment

Voted to amend, strike line 14 up to or.

Senator Lyson makes motion made to amend

Senator Nelson seconds

Pass amendment, 6 yes, 0 no

Senator Olafson will carry

PROPOSED AMENDMENTS TO SENATE BILL NO. 2117

Page 1, line 14, remove "with all remunerations paid directly to that agency"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2117, as amended, Judiciary Committee (Sen. Nething, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2117, as amended, was placed on the Sixth order on the calendar.

Page 1, line 14, remove "with all remunerations paid directly to that agency"

Renumber accordingly

2009 HOUSE JUDICIARY

SB 2117

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2117

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/3/09

Recorder Job Number: 10008, 10075

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2117.

Bill Butcher, Chair, Private Investigation & Security Board: Sponsor, support (attachment).

Rep. Wolf: Will this affect volunteers at events to be security, who instead of receiving wages; the facility will make a donation to their group. Will they still be able to do it?

Bill Butcher: Are you being provided with workmen's compensation or unemployment benefit coverage.

Rep. Wolf: No.

Bill Butcher: Maybe not, because they wouldn't have unemployment or workmen's compensation benefits. Francine Johnson is our Executive Director and she regulates this and she isn't here today. My response would be no.

Chairman DeKrey: We have Wizards basketball game and they have four guys show up with yellow shirts on each corner of the court during time-outs, and they say security on their shirt. I don't suppose they are covered under anything.

Rep. Koppelman: Is there a problem out there that we are trying to solve with this, what's the reason for bringing this issue forward.

Bill Butcher: We've had problems with law enforcement officers who work independently without compensation or any authority with the law enforcement agency or a private security agency. They don't have any coverage. This doesn't preclude them from working, just that they've got to be working for some organization that provides that needed coverage.

Rep. Koppelman: So your concern is for their welfare. You don't regulate them; it's a competitive issue mainly.

Bill Butcher: Yes, it is a competitive issue. We have a licensing procedure, and not just for law enforcement that we're talking about who carry guns. We want to make sure that background checks have been completed.

Rep. Koppelman: So it's more of a question of applying the same standard to everyone. It's not a question that there are law enforcement personnel out there or others that are a problem. It's just a matter of everyone having attained the same standards or requirements.

Bill Butcher: Yes.

Rep. Boehning: This is a good concept, the question I have though, is if the security person is a volunteer, he might have to stop a brawl or gets into a situation. If they're not trained and don't handle the situation right, you're going to probably be in a lot more trouble and get yourself hurt. There would also be a legal issue.

Bill Butcher: Correct, they wouldn't be equipped or trained to take care of a situation that might arise.

Rep. Griffin: Wouldn't a licensed peace officer already have had a background check to become a licensed peace officer.

Bill Butcher: Yes, they would have had a background check done. The thing that applies to them is #3 that they need to be employed by an agency with the needed coverage.

Rep. Griffin: Why must a licensed peace officer if hired by the Fargo Dome have to have this coverage?

Bill Butcher: If they were hired by the Fargo Dome as an employee, they would. But if they were hired as independent contractors, they would not be covered.

Rep. Koppelman: The second item in your testimony, you said that one of the purposes is to ensure that officers who are working security as you described, have worker's comp and unemployment, and liability covered by their law enforcement agency or by a licensed security agency. What about if the Fargo Dome says we need five people for this concert that is coming to town for security and they hire them. I'm not sure that unemployment coverage is an issue. They are only working one job for four hours; I can understand worker's comp because if there was an accident or injury. Again, wouldn't they have coverage, and is that how it's typically done, or are they hiring other third party entities that employ these folks.

Bill Butcher: The only way that they could have any coverage for liability is if they are working for somebody who does cover that for them. If someone were to go to the Bismarck Civic Center and work for this concert, they would not have coverage, and they wouldn't have the background check.

Rep. Griffin: What is the definition of an auxiliary officer? I know a licensed peace officer would have a background check.

Bill Butcher: I don't know.

Rep. Koppelman: What were the differences between the original bill and the engrossed bill?

Bill Butcher: Item b, they couldn't pay the officer directly, that was the change.

Rep. Vig: I was wondering about proprietary security, is that the bouncer at the bar, or a rodeo coming into the Winter Show this week, so some rodeo guys come in from out of state,

are they subject to this or do they have their own operations in private security. How do you handle out of state people?

Bill Butcher: I'm not sure.

Rep. Vig: Say someone travels to ND like a singer and they travel with their own private security, etc. does this apply to them.

Bill Butcher: No, they would be exempt. The private security is hired by that person and aren't subject to this bill.

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

(Reopened later in the afternoon with more information from Bill Butcher.)

Chairman DeKrey: We will take more information on SB 2117.

Bill Butcher: In response to Rep. Wolf's question, if something went wrong in exercising the responsibility of being security for an event, etc. if they have no training, no background checks, this would pose a risk to the public. This can be remedied by having the HIT volunteers wear vests that say volunteers, or whatever, as long as it doesn't say security; because if it says security on the vest, that would be a violation of the statute.

Rep. Wolf: We don't wear vests that say security.

Chairman DeKrey: The people wearing the security shirts at the Wizards' games are employees of the city.

Rep. Griffin: What is the definition of the word "auxiliary officer"?

Bill Butcher: I checked with some law enforcement officials after our session this morning; I found out that it's a term in some law enforcement circles. It also appeared to be the same type of people that are a reserve officer. We don't have any locally in Burleigh or Morton County. The Post Board has set the premium standards for auxiliary officers and you can find

it referenced in 12-63-03, it's the same definition for an auxiliary officer and a reserve officer and provides that the officer can be appointed to serve under certain emergency circumstances. I had looked it up, but I was told by Mark ____, on the post board that that is where it is defined. They use them in Cass County and some of the border counties along the northern part of the state. They use them for mounted patrols, etc. They have no arrest authority; they are under the specific direction of their law enforcement supervisor. One of the reasons that they have them in this bill is because they have access to department records, state radio, a 1028, which is information on a vehicle; that's why they are included. That was a new term to me, and I'm sorry that I didn't have more information on it earlier.

Rep. Koppelman: It looks like, under the bill, if it were passed, that a peace officer or auxiliary officer couldn't be hired to do this unless their agency were contracted to do this, or unless he/she was employed by a private security service that was licensed. For example, if the Bismarck Civic Center decided to hire off-duty Bismarck policemen, to work security at the Civic Center, they couldn't do that. Is that accurate.

Bill Butcher: They could hire law enforcement officers individually as employees that would be proprietary; they would not have to be full-time. What they can't do, is get a group of law enforcement and contract to provide security at a facility without being employed by someone with these benefits.

Rep. Koppelman: Here it says "a licensed peace officer or auxiliary officer employed by a law enforcement agency may not work as a security officer unless: a) the officer's law enforcement agency has been contracted to provide security; or b) the officer is employed by a private security service licensed under this chapter and the officer is registered as required by this chapter". I think it says they couldn't do that.

Bill Butcher: Attached to that is the section on the back page that addresses the proprietary employment; it doesn't differentiate between law enforcement and anyone else who is a private security person.

Rep. Koppelman: Then it seems like there is a conflict with 43-30 because that defines what proprietary security is, but this restricts a peace officer from work.

Bill Butcher: We don't feel it is a conflict, if anything we could add a c) section that says we don't regulate employment.

Rep. Koppelman: But you don't regulate law enforcement personnel either, but this is specifically spelled out in the bill.

Rep. Klemin: I've got 12-63-03 here, and that's exactly not a definition. It's an exception to the post board requirements. If we were to rely on this, we'd have another problem because those kinds of persons are not employed by a law enforcement agency the way this reads. For example, a reserve officer is someone who provides services on a non-salaried basis. I don't know if that person is employed as the usual meaning of the term because the word "employed" is on line 11 of this bill. Auxiliary personnel are such people as the posse, search and rescue, those people may not be employed either and so if we were to say that none of those people that provide any of these other services could work as a security officer unless the law enforcement agency has been contracted to provide those services, etc. Why would we want to do that? They aren't employed by the law enforcement agency to start with. They just come in to help when needed.

Bill Butcher: Again, I just had a call on that just before I came here, so I didn't have a chance to look it up. I guess they could be employed and have access to law enforcement information.

Rep. Klemin: So what, if they have access to the information; what does that have to do with them working as a security officer someplace?

Bill Butcher: Having access to law enforcement information, and that is information that the public doesn't have access to. I don't know how else to answer your question.

Rep. Klemin: I'm thinking if you took out "or auxiliary officer" it probably wouldn't do any damage to your bill.

Bill Butcher: I don't think that would be a problem.

Rep. Wolf: I talked to a lot of people during the break and everyone I talked to from the private, but not licensed security firms through your agency if that's what they do, they contract with us to work the events, to supervise the areas, but we're volunteers and don't wear anything that says security. They're having a real issue with it, my school system hires off-duty police officers to monitor school dances, sporting events, etc and they are effective. Under this bill, the school district would not be able to hire any off-duty police officer any longer for any events. So they would not be able to do this any longer, is that correct.

Bill Butcher: If they hire them as employees, they can be hired as proprietary employees.

Rep. Wolf: But if just stand alone.

Bill Butcher: This would apply to them.

Rep. Dahl: This provision is put into the section that applies to exemptions. I'm just wondering why it was written that way because if you go to the laundry list of who is exempted, but in section 1, we're not really talking about exemptions here; we are talking about a certain category of person that you're requiring an additional requirement. Why is it written that way?

Bill Butcher: The state's attorney in Cass County prosecuted a person over this, they were not licensed but they were having off-duty law enforcement officers, and some were not law

enforcement officers, and they were contracted to provide services. This was made at the request of the industry, so we brought it forward.

Rep. Koppelman: What was the prosecution based on, if they can prosecute now, do you need the bill.

Bill Butcher: They did prosecute one individual for it, the state's attorney made a determination that it fit within the criteria of the existing bill, this is just to make it stronger.

Rep. Wolf: There is currently a House Bill 1020, it's a water commissioner's budget, on page 2, line 2, of that budget, the Game & Fish is going to be using ____ to coordinate with local enforcement coverage along the Missouri River, and the first thing I thought of, was that this another important part on water. There is going to be a \$200,000 appropriation from the General Fund to hire off-duty police officers to do this.

Rep. Boehning: The school gets off duty police officers, do they wear their uniforms.

Rep. Wolf: Yes.

Rep. Boehning: I don't think it's right if they are off-duty that they should be wearing their uniforms.

Rep. Klemin: I move that we amend the bill as follows: to strike on page 1, line 11, "or auxiliary officer".

Rep. Boehning: Second.

Chairman DeKrey: Further discussion. Voice vote, motion carried. We now have the bill before us amended.

Rep. Griffin: I would also propose an amendment to create a new subsection (c) that would state this section does not apply to a licensed police officer employed by a proprietary employer under 43-30-02.2.

Rep. Klemin: I don't think there should be a subsection (c) because that goes up to the word "unless". Maybe where the language has been lined out already put it in there.

Chairman DeKrey: We will appoint a subcommittee; Rep. Klemin, Rep. Dahl, and Rep. Griffin sort it out and fix the language.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2117

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/4/09

Recorder Job Number: 10126

Committee Clerk Signature

Penrose

Minutes:

Chairman DeKrey: We will take a look at SB 2117.

Rep. Griffin: Explained the amendment. We removed the auxiliary officer and the second part would just add the word "except when employed by a proprietary employer under section

43-30-02.2a on page 1, line 11.

Rep. Delmore: Second.

Chairman DeKrey: Voice vote. Motion carried. We now the bill before us amended.

Rep. Zaiser: I move a Do Not Pass.

Rep. Wolf: Second.

11 YES 2 NO 0 ABSENT

DO NOT PASS AS AMENDED CARRIER: Rep. Wolf

PROPOSED AMENDMENTS TO SENATE BILL NO. 2117

Page 1, line 11, remove "or auxiliary officer"

Page 1, line 12, after "officer" insert ", except when employed by a proprietary employer under section 43-30-02.2,"

Renumber accordingly

VR
3/4/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2117

Page 1, line 11, replace "A" with "Except when employed by a proprietary employer under section 43-30-02.2, a" and remove "or auxiliary officer"

Renumber accordingly

Date: 3/4/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2117

HOUSE JUDICIARY COMMITTEE

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DP DNP DP AS AMEND DNP AS AMEND

Motion Made By Rep. Zaiser Seconded By Rep. Wolf

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin		✓	Rep. Griffin	✓	
Rep. Boehning		✓	Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 11 No 2

Absent 0

Floor Carrier: Rep. Wolf

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

REPORT OF STANDING COMMITTEE

SB 2117, as engrossed: Judiciary Committee (Rep. DeKrey, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2117 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "A" with "Except when employed by a proprietary employer under section 43-30-02.2, a" and remove "or auxiliary officer"

Renumber accordingly

2009 TESTIMONY

SB 2117

Attachment 1

SB 2117

Senate Bill 2117

Senate Judiciary Committee

January 14, 2009

*Same given
to House
3-3-09.*

Testimony by Bill Butcher, Chair of the ND Private Investigation & Security Board

Relating to 43-30-02.(1) of the North Dakota Century Code.

Purposes:

1. To eliminate an exemption for companies that are hired by government agencies at any level, and then subcontract services to those who have not been subject to background investigations.
2. To insure that officers who are working security at the Fargo Dome (ie.), civic centers, fairs, dances, etc. have workers comp, unemployment and liability covered by their law enforcement agency or by a licensed security agency.
3. To specify that law enforcement officers who are employed to work security must operate either as employees of their law enforcement agency or as employees of a licensed security agency.

Proprietary security is covered by Section 43-30-02.2 of the Century Code (attached). It states that any individual can be hired to protect the proprietary interests of their employer.

or consumer issues so long as the evaluation is not for purposes of litigation or discovering violations of law.

*Same
handover
given
to
House.*

43-30-02.1. Fair housing law compliance - Exception - Penalty. This chapter does not apply to a person testing for fair housing law compliance who is employed by or volunteers with an organization recognized for this purpose under federal or state law and who meets the requirements, except for actual registration, of a registered private investigator established by the board. These requirements include a state and nationwide criminal history background check conducted by the bureau of criminal investigation and the federal bureau of investigation. The results of the state and nationwide criminal history background check must be on file with the organization. The board, at its request, may review the criminal history background check and other information related to any person conducting the compliance test. Any person who knowingly violates the requirements for an exception under this section is guilty of a class B misdemeanor.

43-30-02.2. Proprietary security. A proprietary employer is a person who employs an individual to provide security for that person's own property or protection. A proprietary employer is not required to be licensed as a private security service if the employer does not offer or provide security services to others. Proprietary security employees may be voluntarily registered as security officers under section 43-30-06. In order to be registered as a proprietary security officer, an employee must meet all of the requirements to be registered as a security officer except for:

1. Employment by a licensed private security service; and
2. Supervision by an individual who is licensed to provide security services.

43-30-03. Private investigative and security board. The governor shall appoint a private investigative and security board. The board must consist of not less than five nor more than eleven members appointed for staggered four-year terms. Appointees to the board must be knowledgeable in private investigative or private security matters. A majority of the members of the board must be actively engaged in the private investigative or security profession, with at least one member actively engaged in law enforcement. Members of the board may not receive any compensation for their service on the board, but they are entitled to be reimbursed for their expenses incurred in performing their duties in the amounts provided by law for state employees.

43-30-04. Powers of the board. The board shall establish by rule the qualifications and procedures for classifying, qualifying, licensing, bonding, and regulating persons providing private investigative and security services, including armed security personnel. All rules adopted by the board and appeals therefrom must be in accordance with chapter 28-32. The board may hire office personnel deemed necessary by it for carrying on its official duties and shall set the compensation to be paid to the personnel.

43-30-04.1. Continuing education requirements. The board may adopt rules establishing the requirements for the continuing education of persons licensed under this chapter. The board may refuse to renew, suspend, or revoke any license issued under this chapter or place on probationary status any licensee on proof that the licensee has failed to meet the applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee as determined by the board.

43-30-05. License required to provide private investigative or security services - Exclusivity. A person may not provide private investigative or security services without a license issued by the board. Notwithstanding any other law or ordinance, a person may not be required to obtain a license to provide private investigative or security services in this state other than the license required by this chapter.

43-30-05.1. Temporary license or registration. The board may issue a temporary license or registration upon payment of the required application fee and satisfaction of all other

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NDCC, 12-63-03

West's North Dakota Century Code Annotated Currentness

Title 12. Corrections, Parole, and Probation

Part IX. Paroles and Modifications of Sentences

Chapter 12-63. Peace Officer Standards, Training and Licensing

➔§ 12-63-03. Persons and practices not affected

This chapter does not prevent or restrict the practice of peace officer duties or activities of:

1. Auxiliary personnel such as members of organized groups for purposes such as posse, search and rescue, and security at dances, if the group operates as adjunct to the police or sheriff's department, and does not have arrest powers or peace officer authority delegated to its members by the department.
2. A reserve officer such as an individual used by a municipal, county, or state law enforcement agency to provide services to that jurisdiction on a nonsalaried basis and who is granted full arrest authority.
3. A person who provides private investigative services in this state.
4. A person doing private security work or any private security agency.
5. A person performing peace officer duties in an official capacity as a federal officer.

CREDIT(S)

S.L. 1987, ch. 154, § 4; S.L. 2003, ch. 101, § 9.

LIBRARY REFERENCES

Municipal Corporations ¶184.

Westlaw Topic No. 268k184.

C.J.S. Municipal Corporations §§ 450 to 453, 474 to 476, 478 to 485, 504 to 505, 508.

NDCC 12-63-03, ND ST 12-63-03

Current through the 2008 general election

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