

2015 SENATE GOVERNMENT AND VETERANS AFFAIRS

SB 2299

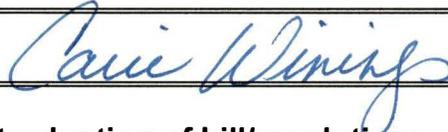
2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Missouri River Room, State Capitol

SB 2299
2/6/2015
Job # 23382

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact a new section to chapter 16.1-08.1 of the North Dakota Century Code, relating to campaign contributions through a conduit; to amend and reenact sections 16.1-08.1-01 and 16.1-08.1-06 of the North Dakota Century Code, relating to campaign contributions and reporting of contributions through a conduit; and to provide a penalty.

Minutes:

Attachments 1 - 3

Senator Dever: Opened the hearing on SB 2299.

Senator Oban, District 35: See Attachment #1 for testimony as sponsor and in support of the bill. See Attachment #2 for amendment proposed.

(6:17) Chairman Dever: If this bill is to require the individual reporting of those contributions, wouldn't that already fall under the requirements?

Senator Oban: We want to make clear to the conduit, even though we would be required to disclose that. If that was not required to be gathered by the conduit then we as candidates would be responsible with going to find that. We just wanted to make sure that at the time of the donation we were gathering that. That is currently already required with the service that we use.

Senator Poolman: Someone did point out to me that Act Blue is register as a pack in North Dakota. I am wondering if we should amend it to somehow say that these conduits cannot register as a pack, if that really is their purpose. Do we need some sort of clarification not only defining a conduit but also restricting conduits from registering as packs to get around this? I do think that regardless of party affiliation, I think that this is going to be the way that campaign financing starts to come in and even though we have not been quick enough on the Republican side, I am sure eventually we will be taking through conduits as well. Is that something you are agreeable to? If we amend that we are not trying to tinker with your bill in a bad way.

Senator Oban: I would agree with that. In my discussions with the Secretary of State's office and with Act Blue, essentially they did not know how to register. They just knew that

if they were not going to report it as the individuals, they had to have some way of being transparent with how they were sending money. This would not require them and they just needed somehow to file. In other states they have a box that either candidate or they could check saying that the check came from a conduit. If there was a way for them to just say what they are doing in the state. I think they wanted to be as transparent as possible and because we did not have something already in place, that was how they chose to do it. Essentially there was some double reporting going on. Whatever donations I reported, were also being reported by Act Blue. It looked as though there was twice as much money then there was. I would be more than open to an amendment.

Chairman Dever: You draw a comparison with Pay Pal and I suspect anyone can set up an account with them for any purpose. I don't think anyone would confuse that as not needing to be reported. Is that a fair comparison or is there some additional difference with Act Blue that might be construed differently?

Senator Oban: The difference with Act Blue is that they are a service that is specifically set up to promote progressive causes. So the transaction fees that they collect are essentially paying for progressive causes versus Pay Pal is just a traditional business that they would use to fund whatever their cause.

Chairman Dever: I have seen e mails from other organizations not necessarily on a partisan basis for similar purposes.

Senator Oban: I do not think this is a partisan issue. There were candidates in our party that disclosed those things differently. That was the problem and if neither of them is wrong, I think it should be clearer for candidates.

Chairman Dever: I think there was a perception on my part that Act Blue gave Democrats a real advantage.

Senator Oban: I think that is exactly why this will help clear it up. Act Blue does not donate money to anyone. It is just a pass through. It is a credit card service.

Senator Nelson: I also used Act Blue but not to the extent that Senator Oban did. My contributions were all under \$200 so I do not know if Act Blue put in something because the cumulative was more than \$200. The accumulation gets you to a level.

Senator Oban: You would have access to that information. That is another point. Regardless of whether it reaches that cumulative or not, obviously if you are getting donations under \$25 you would not have to disclose that because that is not what the disclosure laws are. However, there are candidates statewide that did get above \$200 limit and I do not think it should be a \$3500 check from Act Blue, if it is a number of donations that are above \$200 from individuals. It does give the appearance that you are hiding who you contributors are. I do not think that is why it was being done.

Chairman Dever: It is also confusing to me when we, as candidates, receive contributions and our campaign received contributions, and when we transfer our individual contributions

to the campaign, then we report it as individual contributions and then the campaign reports it also.

Senator Oban: Some of us hoarded our own money that we earned during our campaign.

(13:55) Jim Silrum, Deputy Secretary of State: See Attachment #3 for testimony in support of the bill.

(15:40)Chairman Dever: Would the law that you say already covers that are a part of sections that are in this bill?

Jim Silrum: Yes, some of the sections that are there. But almost every section of the campaign finance chapter deals with the reporting requirements of a particular filer. For every filer there is a statement that the filing must disclose who gave that money. If there truly is a pass-through account, that doesn't take away the need for the filer to say who that money originally came from. The only thing that Senator Oban said that concerns me is that you asked the question if Act Blue is the same as Pay Pal and the response that came was that sometime those fees that are collected are used for political purposes to put forward progressive causes. If Act Blue were to use any of those fees within for political purposes in North Dakota then we do believe that they would be more than just a conduit or a pass-through account. They would have to register as something; more than likely something along the lines of a multi-candidate committee or a pack if they qualify as that. We need to be cautious about what is done with those transaction fees. Originally I was under the impression that those transaction fees were to pay the cost of having the service provided.

Chairman Dever: That would already be covered as well?

Jim Silrum: It should be but I think there might be a question as to what type of a filer they would be. North Dakota differs a bit from federal law in terms of the definition of a political action committee. A political action committee in North Dakota seems to be specifically tied to a corporation, a cooperative corporation, or limited liability company etc. Those members of those groups can contribute to the segregated fund of the political action committee and then that political action committee can give to the people and causes of their choice for a political purpose. I don't know how Act Blue would qualify in that because it would not be the members that are giving. I hope I am not confusing the issue. North Dakota has specific laws that constitute political action committees and those are different from federal law which has caused some confusion with certain filers because of their interaction in both arenas.

Chairman Dever: I do not know what processing fee they would charge, but if they took that and donated to candidates then it would be reportable?

Jim Silrum: It could be and without more information we are splitting hairs here. It is costly to set up these transaction services. It is very similar to processing credit cards.

Senator Poolman: If they under North Dakota law cannot qualify as a pack, why are the registered as one currently?

Jim Silrum: We believe that they filed as a pack unnecessarily. But the fact that some candidates reported their contributions as coming to them from Act Blue, then Act Blue really had to do something. Even under current North Dakota law, Act Blue, if they truly are a pass through account, should not have had to register at all. But everyone should have reported money coming from individuals not Act Blue.

Senator Nelson: When you sign up for Act Blue you are told straight off that they are going to take a percentage off the top for operating expenses. The amount they take off is about what they take off for a transaction you have with anyone. The problem I had was that when I looked on my opponents contributions, it was from the state political party. I do not know how the money got into the state political party. Who made those contributions? They are not covered by this. Both of our caucuses do the same thing, we give money, but where did that money come from originally? So there is still a lack of total transparency.

Jim Silrum: I will say that under current North Dakota law all political parties are allowed to receive money from people who agree with them and political parties are authorized to give to candidates from that. They are much the same as a political action committee. You could see where the money is coming from by looking at the state disclosure statements.

Chairman Dever: So the purpose of this bill is not to create transparency but to clear up confusion?

Jim Silrum: I think that is a correct statement. We believe it is already covered but if it makes it clearer that candidates should not report from Act Blue or like organizations, but instead disclose who gave to them through Act Blue, than we agree with it.

Chairman Dever: The candidate has to report it then. We cannot force Act Blue to provide the information but if Act Blue was to refuse to provide the information to the candidate, they would have to return the contribution?

Jim Silrum: Yes find it out or return it.

Senator Cook: Large contributions given at the end of a campaign have separate reporting requirements (within 48 hours) Do we lose that when they contribute a large contribution through someone like Act Blue?

Jim Silrum: No. Anyone using a pass through or a conduit would have to make sure that that company is aware that they have a reporting requirement of within 48 hours.

Senator Cook: Does it have to be in code?

Jim Silrum: I believe it already is.

Chairman Dever: Closed the hearing on SB 2299.

2015 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Missouri River Room, State Capitol

SB 2299
2/19/2015
Job # 24157

- Subcommittee
 Conference Committee

Committee Clerk Signature



Minutes:

No Attachments

Chairman Dever: Opened SB 2299 for committee discussion. The Secretary of State's office said that the law is the law and this bill does not provide additional transparency but it does provide clarification. That might be the justification for the bill.

Senator Marcellais: Moved Amendment 15.0626.02001.

Senator Nelson: Seconded.

A Roll Call Vote Was Taken: 7 yeas, 0 nays, 0 absent.

Motion Carried.

Senator Nelson: Moved a Do Pass As Amended.

Senator Marcellais: Seconded.

Senator Poolman: I have been thinking about this and how we can clarify. One of the reasons that the Secretary of State's office said that they did not need it is because they registered as a pack. I think the intention is to make sure that they do not register as a pack. Do we need to put that a conduit may not register as a political action committee in the state of North Dakota to insure that they are not falling into that category. It is more of a question to throw out there. I want to fix that and I am not sure what the best avenue is to fix that.

Senator Nelson: Is that not covered in the definition on page 2? That it is not a political committee or a candidate.

Senator Poolman: Yes, that is how we tried to do that.

Senator Nelson: There were only three choices were a committee, candidate, or a pack from the Secretary of State's office. You had to pick one.

Senator Poolman: So you feel that it is strong enough now?

Senator Nelson: Yes.

Senator Cook: We just had a study resolution introduced to study campaign laws. We could study this and make sure that we fully understand it.

Chairman Dever: I have seen other organizations that will offer to set up a credit card account in order for you to run your campaign through.

Senator Cook: The state party does it for nothing.

Senator Nelson: We do not do that.

Senator Cook: Could you?

Senator Nelson: I do not know. We have never asked.

A Roll Call Vote Was Taken: 6 yeas, 1 nay, 0 absent.

Motion Carried.

Senator Nelson will carry the bill.

January 22, 2015

PROPOSED AMENDMENTS TO SENATE BILL NO. 2299

Page 2, line 16, after "political" insert "party, political"

Page 2, line 16, after "committee" insert an underscored comma

Page 7, line 7, after the underscored period insert "The conduit also shall include on the statement the occupation, employer, and principal place of business of each contributor, or the political committee if not already registered according to state or federal law, which contributed five thousand dollars or more in the aggregate during a reporting period applicable to the candidate, political party, or political committee."

Renumber accordingly

TP
2/19/15

2/19

Date:
Roll Call Vote #: 1

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2299

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 15.0626.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Marcellais Seconded By Nelson

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook	✓				
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Date: 2/19
 Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2299**

Senate Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Nelson Seconded By Marcellais

Senators	Yes	No	Senators	Yes	No
Chairman Dever	✓		Senator Marcellais	✓	
Vice Chairman Poolman	✓		Senator Nelson	✓	
Senator Cook		✓			
Senator Davison	✓				
Senator Flakoll	✓				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Nelson

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

REPORT OF STANDING COMMITTEE

SB 2299: Government and Veterans Affairs Committee (Sen. Dever, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2299 was placed on the Sixth order on the calendar.

Page 2, line 16, after "political" insert "party, political"

Page 2, line 16, after "committee" insert an underscored comma

Page 7, line 7, after the underscored period insert "The conduit also shall include on the statement the occupation, employer, and principal place of business of each contributor, or the political committee if not already registered according to state or federal law, which contributed five thousand dollars or more in the aggregate during a reporting period applicable to the candidate, political party, or political committee."

Renumber accordingly

2015 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2299

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee Fort Union, State Capitol

SB 2299
3/26/2015
25479

- Subcommittee
 Conference Committee

Amanda Muscha

Explanation or reason for introduction of bill/resolution:

Relating to campaign contributions and reporting of contributions through a conduit; and to provide a penalty

Minutes:

Attachments 1-2

Chairman Kasper opened the hearing on SB 2299.

Senator Erin Oban appeared in support of SB 2299. Attachment 1 and 2

Representative Laning: The ActBlue thing- should someone donate more than \$200 to your campaign you have to report all of that. Do the ActBlue people maintain enough records? Say you wait to the end of your campaign before you collect that information? Do they maintain files so that you can have that information or do they just give you a lump sum and if you haven't done your two week inquiry you lost that information? How do they work that?

Senator Oban: The second I signed up for this service I have access to it any time I want. I could see an amount of contribution and because we have to report an aggregate over a period of time, I would also be responsible for making sure that any person made a contribution to me over \$200 I have access to that all the time. That has never gone away. I could see any information made during the last campaign.

Representative Louser: I am a co-sponsor on this bill. Does ActBlue contribute funds to a campaign that were not directed specifically by the contributor? Is there ever a time where a donor can give to ActBlue and the ActBlue can direct that money as opposed to going to your sight within ActBlue?

Senator Oban: No, it is simply a pass through.

Representative Louser: If ActBlue is similar to PayPal and from the user standpoint it seems that it is, why is ActBlue registered as a PAC, or why is PayPal not registered as a PAC?

Senator Oban: ActBlue registered as a PAC because our secretary of state doesn't have an option for them to register as something else. For the sake of them being as transparent as they could under the laws we already had in place, which is what the secretary of state told them to register as. Jim Sorum was here earlier and he could answer questions. It was simply because we don't have another option for them, which is what the conduit would be creating: another option.

Representative Louser: One of my questions I answered for myself was PAC related because we don't say political action committee in our code, we just say political committee; which then would seem like a republican or democrat party. A definition of a pack is under political committee, so I think that is where they were going with that. They are also registered federally as a pack but not in every state I think. They registered here because they were directed to that by the secretary of state.

Senator Oban: They register in any state where they have candidates to sign up for their services. The second there is one candidate who signs up to use ActBlue, they have to register in the state where that candidate resides.

Representative Louser: Are there any restrictions? How does a candidate know that the credit card they receive the contribution from was not a corporate account? Are there any restrictions on corporate accounts?

Senator Oban: There is on there very clearly, you may not be a corporation to make that. The only proof would be in the way their reporting the credit card. I probably wouldn't have known is someone was suing a corporate credit card but registered as a person any more than I would know if they would do that through another service. They do have to register no matter what the service is because ActBlue provides services to so many federal candidates regardless of the contribution being made they have to provide the employer and the occupation just because federal regulations require that.

Representative Louser: Is there a requirement for the security number?

Senator Oban: I believe there is.

Representative Louser: On page 6, line 22- we are saying 'in reporting a contribution received through a conduit, a candidate, political party, or political committee shall list each reportable contribution'. Are we saying that the candidate, the party, or the committee is reporting each individual that contributed to the conduit or is this saying that each individual that contributes to a PAC also must be reported? Are we saying, unintentionally, that each person that gives to a PAC also has to be reported?

Senator Oban: We are not saying that. In reporting a contribution received through a conduit, myself as a candidate, I know our own party (the state party organization) utilizes this service; so the political party has to report it the same way. ActBlue is a service to progressive candidates and committees (Bismarck Mandan Democrats-Political Committee) that have to report the contributions as being from the individual not from ActBlue.

Representative Louser: If this were to pass, should the candidates that didn't do it the way you did it, amend their reports?

Senator Oban: They wouldn't but that speaks to why I think this should pass. I don't think anyone was trying to hid anything; one is just easier than the other. If you are a state wide candidate receiving more contributions it would be easier to say it is all from ActBlue.

Representative Laning: Are you saying that some candidates report it from ActBlue and didn't go into the detail of individuals?

Senator Oban: Yes

Chairman Kasper: If all this information were available and people were reporting it correctly with anything over \$200 they should have already been doing that anyway. Should they not?

Senator Oban: I think that helps speak to why I believe this is important. Zero candidates that I have spoke with have ever considered this a way to hide contributors. Campaigns are expensive and there are some state wide and some legislative candidates who reported it as ActBlue because they weren't well versed in the website itself. That is something I made sure I knew how to use before I signed up. They reported more money than they would have to report. They just reported it not from individuals. I don't think it is very transparent do it through ActBlue or through any other service that may come about for our friends on the right.

Representative Johnson: I understand your confusion because if somebody had 40 \$200 unreportable contributions, then it is not required to be reported individually under state law but it came from one source; so \$8,000 may be reportable. I don't think it is a dodge, I think there is just some definition that needs to happen.

Representative Mooney: This is a modernization of our existing laws to be more equipped for the 21st century methodology for campaign contributions, correct?

Senator Oban: Yes

Representative Koppelman: With ActBlue having registered as a PAC- as I understand it- when you donate to a PAC, I don't know if they individually report your contributions to the secretary of state or do they?

Senator Oban: I believe anything over \$200 donated to a PAC also has to be reported.

Representative Koppelman: Since they registered as a PAC it seems that they should be sending the list of the donors into the state and you should be putting ActBlue on your report, because they are a PAC. Like the Association of Homebuilders PAC donates to a candidate, they have to send their names in. By making this differentiation, since they are registered as a PAC, this is going to say we are a PAC but not really. It might make it tough to understand where as if they have their reporting with the synced, they could make a

report to the state for every candidate they use ActBlue from the PAC and you would list ActBlue. I wonder if this muddies the water instead of helping in some senses.

Senator Oban: I think if a service like PayPal or ActBlue was acting like a PAC that would be fine, but it's not. It is only allowing someone to make a credit card contribution to me.

Representative Koppelman: I would maybe say that fact was failed to report, but if I can go oh ActBlue and I can look over here and see what Act Blue took in then I probably wouldn't find any more than I would if the Homebuilders Association that donated to a campaign. That individual candidate says the Homebuilders and then I say who donated to the Homebuilders PAC. If we would have this in law, would it be reasonable to expect ActBlue to declare they are not PAC to the state? That would almost have to happen because otherwise they would have a dual identity in the state. Wouldn't you agree?

Senator Oban: I would agree and that is why a conduit would now be an option. Right not there is technically reporting happening because ActBlue is reporting all these individuals, some people are reporting the individuals, others are reporting it as a chunk from ActBlue, and so there were posts from conservative bloggers, rightly so, that were questioning whether the money coming in was accurately reported or not; and it is because there was some duplications from the end of ActBlue who had to report it as well. A regular PAC, people under law, are not supposed to make a contribution to Homebuilders specifically for one candidate. That would be the difference. When people provide a contribution to a campaign through ActBlue they think it is directly going to me and that is a major differential between what a PAC serves as and what ActBlue serves as.

Representative Koppelman: That kind of goes to my point as to why I think they would have to no longer be a PAC, because otherwise theoretically they could claim some donations in lump and say this is for whatever candidate needs help and the other is for this person's campaign. They could be playing this dual role and then it would make things fuzzier than they are currently or under this bill.

Senator Oban: I would agree, and they would no longer, if a conduit was an option, register as a PAC because that is not the service they are providing.

Representative Louser: You probably answered that it would muddy the waters if the next step wasn't taken. By providing the definition and the clarity of a conduit in ND law then gives them the proper option to be a conduit and not a PAC, but on the secretary of state sight are you listed as some sort of contact for ActBlue or officer or something? Wouldn't you have the ability to force that to happen?

Senator Oban: Are you talking about the Erin Hill on there?

Representative Louser: Yes

Senator Oban: That is a different person.

Representative Louser: Would that person registered here, have the ability to withdraw the PAC status for ActBlue in ND since the conduit would now exist for them to exist under? If we pass this bill and we leave the option open for ActBlue to be a PAC it makes it worse.

Senator Oban: It's not that it was an option for them to register as a PAC, it's that they didn't have anything else to register as. The secretary of state's office, to my understanding, told them to register as a PAC because there was nothing else for them, and because they registered as a PAC they reported everything like a PAC while the candidates were reporting in two different ways. I was reporting all the individuals while some reported as sums from ActBlue.

Representative Louser: The effectiveness of the passage of this bill would only come into play if ActBlue was no longer a PAC in ND. Somebody would have to take that action in order for this to happen. How do we, as a committee, assure ourselves of that happening by passage of this bill?

Senator Oban: I would say the only way this is effective is if the secretary of state's office follows the laws that we pass. It will be on them. Whether or not we feel they will do that would be our responsibility to make sure that happens too.

Representative Louser: That passage of this bill just gives that entity another option. It doesn't require them to not be a PAC so I don't think they are violating the law by being registered as a PAC. I think the effectiveness of this bill only goes into play if they choose to not be a PAC. They can't be forced not to be because they are already following the law.

Senator Oban: I guess I would agree. I sat on the phone with them and LC asking why they registered as a PAC because that's not what they are and they said they didn't have anything else to do. To be legal they had to register as something if they were going to provide candidates that service.

Representative Wallman: It seems like it would be in ActBlue's best interest not to be registered as a PAC because there is more work and reporting on their part. If they were notified that they had this other option, it would be cost effective to choose the other option. There is a built in incentive, and the issues is only a matter of making them aware of the new option.

Senator Oban: This has happened in other states so they are aware of how to make that change. I will take it upon myself to make sure ActBlue is aware. I think that is totally right. If they were not registering as many different things, that is going to make it terrible, confusing, and less transparent, when they goal is transparency.

Representative Koppelman: Would we need an amendment to get to this issue to make sure that it is clear that says a pass through entity or whatever terminology may not register as a PAC and as a conduit. Then if ActBlue never chose to change away from a PAC, no individuals like you would any longer be able to use them as a conduit because they have refused to go away from their PAC registration and become a conduit. They would then be treated like a PAC regardless of what they did because they have not changed what they are. Does that make sense? I think we need a little more than I think of an incentive

because we also have to make it clear for the outside entities that any candidates can use that you are one are the other. You can't say you're one and act like a different.

Senator Oban: I would be open to that and potentially the secretary of state's office could help now that they are here.

Representative Steiner: Do you know what percent ActBlue keeps off your contribution?

Senator Oban: It is a flat fee of 3.5-4%. It would be similar to a credit card transaction or PayPal.

Representative Steiner: This is the first time I have hear of this. How much did you raise in your campaign through this?

Senator Oban: When a candidate registers to use those services it reports on that section of the sight that would be devoted to my campaign how much total has been collected through there.

Chairman Kasper: Being you had to disclose, you could disclose the amount you disclosed being in a public record anyway.

Senator Oban: I probably raised \$50,000 through ActBlue.

Chairman Kasper: Will they take Republicans?

Representative Louser: We are not suggesting that the term conduit is an entity that registers. It is just a definition of what a conduit is. ActBlue would not be essentially registering as a conduit. They would just not be a PAC anymore and be defined as a conduit in ND law.

Senator Oban: Correct

Chairman Kasper: You indicated you had been in contact with ActBlue. Do you have any written verification from them on how they operate to meet the laws of the state of ND or do they have some bi-laws in the state of ND that says how they will operate? How do you know through your investigation that they are doing what they say they will do according to ND law?

Senator Oban: Jim might be able to answer that- how their interactions with the secretary of state's office has gone cause I am not certain on that.

Chairman Kasper: You didn't check out whether or not they are what they say they are when you decided to use them?

Senator Oban: I have used them for many years prior to even me being a candidate.

Chairman Kasper: For you to have done diligence in the past to be sure they do what they say they will and they do it according to the letter of the law to the best of their ability. I just

want to know if you had done any checking into them because it sounds like it is a pretty big operation.

Senator Oban: It is a big operation and the only way I personally know they do what they say is because every dollar that is donated to my campaign showed up on my doorstep.

Chairman Kasper: You got the money.

Senator Oban: Yes. Minus the transaction fee.

Chairman Kasper: What about your ability to verify the source of the contribution potentially being a corporate contribution that would be hidden some way or a foreign contribution? Do you have any way to verify or do they certify to you when they provide those dollars and report to you that there is no corporate contributions involved and no foreign contributions involved?

Senator Oban: That would all have to be checked on their end. I know that there is a very clear responsibility on their website that you not be a foreign or a corporation. The only way for me to verify that would be to reach out. The amount of information that a donor has to provide on that back end is pretty extensive and I have all of that at my access at any time. I don't know how anybody collects credit card contributions, so I am sure the only way to verify would be to the same way anyone else would be verifying whether or not their contributions were somewhere down the line either foreign or from a corporate entity.

Chairman Kasper: Would you object if the bill were amended to prohibit the conduit collecting foreign contributions or corporate contributions that were paid to any candidate in the state of ND? We are not going to tell them how to do business outside of ND but would that be an objection of yours?

Senator Oban: It wouldn't be an objection of mine but I think they have to follow any other ND regulation that they have on donations. If that clarification was put in there for every single contribution whether or not it was collected through a conduit, absolutely.

Chairman Kasper: You talked about the fees. Do you have any knowledge on how ActBlue uses those fees that they collect from their contributors across the state? Are they using those fees for other political purposes?

Senator Oban: I don't know.

Chairman Kasper: You are offering the amendment for our consideration?

Senator Oban: Correct

Rick Claybrough: I am president CEO of the ND Bankers Association and we are here in support of the amendment and I am also speaking on behalf of the independent community banks of ND. We are not here in support or opposition to the purpose of the legislation. Trying to define or determine what a conduit is, is an interesting issue. I look back in my own time in the political arena and I registered in a merchant account and worked with local

financial institution on accepting credit cards when I was a federal candidate. In that situation operating much like the way the conduit operates, a person would go to my website, fill in their information, provide occupation, other information, and we add our disclosures that it couldn't be a corporate contribution, they would fill that out and every so often the contributions then would be provided to me but we would have that information and would disclose that individual's specific information and specifically saying we can't accept corporate contributions. A challenge for any of you whether you are going through a conduit or if you have some way that you accept corporate contributions, I am just holding my ND bankers association corporate card and it has my name on it but when I go to a hotel or a restaurant it is coming through as my name and you don't know that I am the one that has to take the responsibility as the donor not necessarily you need to ensure that it is not coming in, but if you have no way of knowing just my credit card number and my name appearing on it. There are some confusions there. Where we are concerned about this term conduit and the reason we are asking that we remove the definition of a financial institution- under federal law a federal bank cannot be a conduit and I don't know if that conduit definition is the same as this conduit definition but we just don't want to put into ND century code something that is potentially in conflict with federal law that our financial institutions can't be a conduit. Our banks have credit card operations. They provide merchant services and that is different than a conduit. All they do then is deal with the credit card, transaction, and they are providing that to the candidate just the same way we would be doing it to a target store or Starbucks or whatever. They are treated as a merchant and that is not a conduit in our definition of what our banks offer. We are specifically concerned about the terminology conduit and how it relates to a financial institution. We have no objection on a side note as a bank PAC. We have a federal registered PAC for the ND Bankers Association and we also have a state PAC and we follow all the rules at the federal and state government in how we deal with receipts and contributions. It is a complex issue itself but we are concerned about the conduit terminology.

Representative Koppelman: In the case that you were talking about it being the donor's responsibility and that sort of thing and the Chairman asked the bill sponsor if she objected to having the language in there that talks about the conduit- at least in a corporate sake when you use your corporate credit card- for example I would get my statement from US Bank I would get charged percentages from the credit card company on various different levels and you could always identify business cards; now whether or not that was a sole provider or a corporation I suppose you couldn't tell but at least you would be suspicious that these are all business cards and that's information that ActBlue would have information like that on their receipts. That is where the candidate would never get that annual information because they are paying ActBlue a flat rate and ActBlue might be paying the credit card company. We almost would have to put it in there because they are the only ones who could see that merchant level detail. Does that make sense? Where if we require that it is a reasonable requirement because they can see those things?

Jim Claybourn: On the specifics of the credit card information and how the merchant picks up that information, I don't know the inside to that and I don't know ActBlue's business model or business plan. Our concern just came on the issue of conduit. I just looked to all of you not even in terms of credit cards if you ever got a campaign contribution written on a check and it is from "George DBA Whatever" you start asking the question well DBA, you can call yourself something without ever being a corporate or a limited liability. You can just

say I am doing business as "George Smith Motors" and it is still under your personal security number and I am not a corporation. You have questions there. Just as a candidate you have to look at all the information you receive. Credit card transactions through PayPal is how you set your website up and how you collect the information of the individual donor where they are located and all of that. That information can flow through as I am listening to Senator Oban. I don't think see the concern, I just see this as a different business model and we want to make sure it is properly addressed in the ND code for processing campaign contributions.

Representative Louser: We are getting at is to remove financial institutions because financial institutions provide other services and the conduit is a specific service that is being provided through a web site. It makes sense that a financial institution should not be defined as a conduit and that is what you're getting at. The difference is I set up my sight and use my local bank as the merchant but that local bank provides other services that I may or may not use. You are just saying financial institutions should not be defined as a conduit.

Jim Claybrough: What occurs if you have a merchant account set up and you're running that through your campaign web site. You have your campaign's web site and have a relationship with the local financial institution who is action as your merchant account, you are the one who is collecting all the information so you are getting the donor's name, occupation, address, and all that; and then there is a little area on the bottom that the person is putting in their credit card number and expiration date and potentially the code. It's that communication that goes through the merchant process; you as a candidate are controlling the upper portion of it. That is the bank in that process. PayPal and ActBlue take that information and that's being provided to them and that's coming back through. It might not be a campaign; it could be any retail business. The information comes back differently. A federal bank cannot be involved in that process of taking and collecting that information, decimating it from an issue back like that. We can't be conduits. I don't know about state law but it is an issue federally.

Jeff Olson: I am with the Credit Union Association of the Dakotas. I am also here in support of the amendment. Representative Koppelman talked about the networks and the fees that get across. There is a thing called interchange and the electronic payment system. There are multiple networks out there and anytime a transaction crosses a network there is an interchange-somebody gets paid. I don't know how the donations work on that but that is how that works. One of the practices that are put in place- gift cards have a 3 digit code on the back and they also have the expiration date when that is run through most electronic systems know that it is a gift card and a gift card could be purchased by someone at a corporate level and they could be trying to make a contribution with that. When I gift card is trying to be used it can be kicked out. There are precautions put in place but a lot of times it is put on the donor and the receiver that those are compline.

Jim Silrum: I serve as Deputy Secretary of State. I will stand for any question you may have.

Chairman Kasper: Did ActBlue file a report appropriately for 2014 with your department?

Jim Silrum: ActBlue did not consult with us as to what they were but they did utilize the system to register as a PAC. They did file statements. We would agree as this bill tries to report that they never should have registered at all because they were a pass through agency much like PayPal would be. They did register and report, but they should not have.

Chairman Kasper: It was indicated that ActBlue was instructed by the secretary of state's office to register as a PAC because there was no other way to register. Is that what you told them or someone in your department told them to do?

Jim Silrum: I didn't tell them that and the people that I work with most closely have not consult me in that question so I say that ActBlue never contacted us but I would have to question each one of my staff members.

Chairman Kasper: How long would it take to do that?

Jim Silrum: One is out on medical leave and won't be back until next Wednesday.

Chairman Kasper: Unable to be contacted by telephone?

Jim Silrum: I will do that if the committee wishes, I am not sure if I understand the necessity for it.

Chairman Kasper: The necessity is that they were told by your department to register as a PAC so I would like to clarify if anyone in your department told them to do so or not.

Jim Silrum: I didn't tell them to register as anything. They didn't ask me about anything and I didn't converse with them. I will ask my staff members but I can tell you now that based on the conversations that I have had with my staff, none of us have had conversations with ActBlue.

Chairman Kasper: You said they filed a report with your department. Did they file as a PAC?

Jim Silrum: Yes

Chairman Kasper: Did they register as a PAC?

Jim Silrum: Yes

Chairman Kasper: Can we get copies of the registration?

Jim Silrum: Yes

Chairman Kasper: As far as their report is that like 200 pages?

Jim Silrum: It is available to any member of the public free of charge so I can provide a digital copy or hard copy. Like you they had to file electronically.

Chairman Kasper: Are you aware if ActBlue registered as you said in ND as a PAC, are you aware if they registered in any other state as a conduit if it was available to them? Is it a potential for the same business entity that doesn't have two entities a conduit or a PAC to register in one state as a PAC and in another as a conduit but it was the same organization. Would that be a problem under ND law if they filed that was in other states?

Jim Silrum: I can only speak to what they have or have not done in ND.

Representative Schneider: Information to us indicates that ActBlue was trying to be as transparent as they knew how to be with what we have available for them to register. Is there any reason for you to disbelieve that they were trying to be transparent and is there any advantage to them otherwise registering as a PAC?

Jim Silrum: Understanding what ActBlue is and what they do, we would say that they should not have registered because they are not involved in making contributions or expenditure for political purposes. As ND law requires now (before this bill is passed) if a contribution from me as an individual goes to you as a candidate, whether it comes through a conduit such as ActBlue or directly to you it doesn't matter. As a PAC they have no advantages whatsoever. They only have more disclosure requirements.

Representative Mooney: Do we currently have any currently existing structure in laws a better place where they should have registered had they asked?

Jim Silrum: The only reason anyone should ever register is because of the political activity with they are involved. So they should not have registered.

Representative Mooney: In any way, shape, or form they shouldn't have registered at all?

Jim Silrum: Correct

Chairman Kasper: If they are a conduit and they shouldn't have registered but they registered wrong, do we need this bill if they shouldn't have registered and the conduit should not register? Why do we need this bill?

Jim Silrum: We and the secretary of state's office do believe that under current law this bill is already covered but this bill does a major thing within terms of clarification, making sure that those organizations that do that sort of thing know what they need to do. We stand in support.

Chairman Kasper: Closed the hearing on SB 2299

2015 HOUSE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Fort Union, State Capitol

SB 2299
3/27/2015
25562

- Subcommittee
 Conference Committee

Ammalata Muscha

Explanation or reason for introduction of bill/resolution:

Relating to campaign contributions and reporting of contributions through a conduit; and to provide a penalty

Minutes:

Chairman Kasper: Opened the meeting on SB 2299.

Representative Louser: I think there was an amendment offered to remove 'financial institution' from line 21. I would move the amendment.

Representative Dockter: Second

A Voice Vote Was Taken: Motion carries

Representative Koppelman: I brought up a possible amendment. An entity that registers as a PAC may not be considered a conduit because the scenario we had here would have to not be a PAC if they want to be a conduit. I would move that we out that in there and it would probably go under the definition of conduit on page 2.

Chairman Kasper: It doesn't say PAC.

Representative Koppelman: In the main point even if those are one of the same is that an entity that registers a political party, political committee or candidate may not be considered a conduit.

Representative Louser: Under the definition of political committee, a PAC is a version of a political committee in century code. If an entity is a political committee according to this, you can't be both.

Chairman Kasper: A conduit means a person that is not a political committee which means it is not a PAC according to the definition.

Representative Koppelman: So I guess we don't need it. I only brought it up for the concern of many candidates that use that company still would allow to treat them as a conduit even though they registered as a PAC and we were told by Senator Oban that that was neither legal or illegal which I don't understand.

Representative Louser: That is before we had the definition of conduit so they didn't have a choice.

Representative Rohr: Can you give the century code?

Representative Louser: I'll get it.

Chairman Kasper: I think it is 16.108.1-0305-- it is on line 23 on page 4

Representative Koppelman: I withdraw my motion then.

Representative Seibel: I move a do pass as amended

Representative Wallman: Second

A Roll Call Vote Was Taken: Yes 14, No 0, Absent 0

Motion carries

Representative Louser will carry the bill

15.0626.03001
Title.04000

Prepared by the Legislative Council staff for
Senator Oban

March 11, 2015

HH
3-27-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2299

Page 2, line 21, remove "a financial institution."

Renumber accordingly

Date: 3-27-15
 Roll Call Vote #: 1

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2299**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: 15.0626.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Louser Seconded By Dockter

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper			Rep. Bill Amerman		
Vice Chair Karen Rohr			Rep. Gail Mooney		
Rep. Jason Dockter			Rep. Mary Schneider		
Rep. Mary C. Johnson			Rep. Kris Wallman		
Rep. Karen Karls					
Rep. Ben Koppelman					
Rep. Vernon Laning					
Rep. Scott Louser					
Rep. Jay Seibel					
Rep. Vicky Steiner					

Vote motion continues

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

Date: 3-27-15
 Roll Call Vote #: 2

**2015 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 2299**

House Government and Veterans Affairs Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Seibel Seconded By Wallman

Representatives	Yes	No	Representatives	Yes	No
Chairman Jim Kasper	X		Rep. Bill Amerman	X	
Vice Chair Karen Rohr	X		Rep. Gail Mooney	X	
Rep. Jason Dockter	X		Rep. Mary Schneider	X	
Rep. Mary C. Johnson	X		Rep. Kris Wallman	X	
Rep. Karen Karls	X				
Rep. Ben Koppelman	X				
Rep. Vernon Laning	X				
Rep. Scott Louser	X				
Rep. Jay Seibel	X				
Rep. Vicky Steiner	X				

Total (Yes) 14 No 0

Absent _____

Floor Assignment Louser

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

REPORT OF STANDING COMMITTEE

SB 2299, as engrossed: Government and Veterans Affairs Committee (Rep. Kasper, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2299 was placed on the Sixth order on the calendar.

Page 2, line 21, remove "a financial institution."

Renumber accordingly

2015 TESTIMONY

SB 2299

SB 2299

Friday, February 6, 2015 - 9:15 am
Senate GVA Committee

Chairman Dever, members of the Committee - for the record, I'm Erin Oban, Senator from District 35 here in the middle of Bismarck. I'm with you this morning to introduce SB 2299, to explain the reasoning for this bill, and to provide some context that will clear up what is likely and understandably confusion on the language you have in front of you.

SB 2299 was drafted to provide direction and clarification to candidates for public office who raise campaign donations through what we have called a "conduit", a term we borrowed from other states with similar legislation. Now, let me describe what that means using an experience many of us, as candidates, experienced this last election cycle.

Democratic candidates for public office, upon filing the necessary paperwork with the Secretary of State's office, get access to a free national service called "ActBlue". As a candidate, I utilized this service by creating an account through their website and publishing a page with my campaign information where I could direct supporters to do one major thing: make a campaign contribution using a credit card. ActBlue provides nothing more to us as candidates than a service like PayPal would.

If someone wanted to make a contribution to my campaign using a credit card, they would go to my page on the ActBlue website, enter their contact information, the amount they wished to contribute, their credit card information, and then hit the "contribute" button. From a donor's perspective, that's it for them.

From that donation made, ActBlue keeps a percentage - as would PayPal - as a transaction fee.

As a user of ActBlue's services, I have online access to view a spreadsheet of each individual who has made a donation, their contact information, the amount of the contribution they made to me, and the transaction fee ActBlue will withhold from that contribution. At the end of a two-week period, the total of those contributions made to me, less the transaction fees ActBlue has collected, got sent to me as one check written to my campaign from ActBlue.

None of that is or has been an issue. The problem comes in when we complete our disclosure reports with the Secretary of State's office.

Some Democratic candidates - me included - disclosed the contributions we received via ActBlue from the individuals who donated through ActBlue. Some Democratic candidates disclosed the lump sum of donations as a single donation from ActBlue.

Obviously one of those is more transparent than the other. However, neither of them is right or wrong, illegal or legal, under current law. It's THAT problem that this bill attempts to correct, and in doing so, correcting it in the MORE transparent of the options.

After working with Legislative Council, ActBlue, who shared with us language that has been used in other states that wanted to clarify this issue, and the Secretary of State's office, I've come up with this result.

So, in the text of the bill on Page 2, lines 16-23, ActBlue is the "conduit". We wanted to make clear that this does not include a PAC, candidate, or political party. The distinction between a PAC and what a conduit like ActBlue is that a PAC collects donations and then determines to whom those contributions will be donated. A conduit doesn't make that determination; they simply provide a pass-through service.

Moving to Page 6, lines 22-26, this details what is expected of the candidate (or political party or PAC, should they use conduit services as well) - that they are to report, following the same dollar amounts that are required to be reported, those donations from individuals who made them, NOT from the conduit.

And finally, on Page 7, lines 3-9, this requires the conduit to provide the details - contributor's name, contact information, amount of donation, and the date - to the recipient of the donation.

That concludes the bill summary, but I also have an amendment I'd request for your consideration. In addition to essentially a grammatical fix, the amendment would add to the language required of conduits to provide, in addition to contact info, etc, the occupation, employer, and place of business for donations over \$5,000 as required by state and federal law.

Mr. Chairman, I hope this summary provided clarity and not confusion. While the example I provided has only, as far as I know, pertains to candidates in my own party, it has caused confusion for Dem-NPL candidates in reporting and criticism - rightly or wrongly - by our opposition in how we report campaign contributions. It is for that reason that I invited fellow legislators from a wide range of political philosophies to join me on this bill.

I will always be on the side of more transparency than less in politics and government, and I hope this committee will agree. I encourage you to support SB 2299 and will be glad to answer any questions of the committee.

January 23, 2015

2/6 #2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2299

Page 2, line 16, after "political" insert "party, political"

Page 2, line 16, after "committee" insert an underscored comma

Page 7, line 7, after the underscored period insert "The conduit also shall include on the statement the occupation, employer, and principal place of business of each person, or the political committee if not already registered according to state or federal law, which contributed five thousand dollars or more in the aggregate during a reporting period applicable to the candidate, political party, or political committee."

Renumber accordingly

3

ALVIN A. JAEGER
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SECRETARY OF STATE

STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

February 6, 2015

TO: Senator Dever, Chairman, and Members of the Senate Government and Veterans Affairs Committee

FR: Jim Silrum, Deputy Secretary of State

RE: SB 2299 – Relating to the Disclosure of Campaign Contributions Made Through a Conduit

The Secretary of State's office understands transparency to be the intent of campaign disclosure laws found in Chapter 08.1 of the Elections Title. For contributions that exceed the reporting threshold, the name and full address of the contributor is to be disclosed along with the date the contribution was made and the aggregated amount. This bill seeks to clarify that contributions made online or otherwise through a pass-through or conduit account, must still be disclosed with the information of the original contributor.

Since this bill is in concert with the transparency already existing in law, the Secretary of State stands in support of this bill with its current wording.



North Dakota Senate

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Erin Oban
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Committees:
Agriculture
Education

#1 2299
3-26-15

SB 2299 Testimony House Government & Veterans Affairs Committee Thursday, March 26, 2015

Chairman Kasper, members of the Committee - for the record, I'm Erin Oban, Senator from District 35 here in the middle of Bismarck. I'm with you this morning to introduce SB 2299, to explain the reasoning for this bill, and to provide some context that will clear up what is potentially and understandably confusion on the language you have in front of you.

SB 2299 was drafted to provide direction and clarification to candidates for public office who raise campaign donations through what we have called a "conduit", a term we borrowed from other states with similar legislation. Now, let me describe what that means using an experience many of us, as candidates, experienced this last election cycle.

Democratic candidates for public office, upon filing the necessary paperwork with the Secretary of State's office, have access to a free national service called "ActBlue". As a candidate, I utilized this service by creating an account through their website and publishing a page with my campaign information where I could direct supporters to do one major thing: make a campaign contribution using a credit card. ActBlue provides nothing more to candidates who utilize their service than a service like PayPal would.

If someone wanted to make a contribution to my campaign using a credit card, they would go to my page on the ActBlue website, enter their contact information, the amount they wished to contribute, their credit card information, and then hit the "contribute" button. From a donor's perspective, that's it for them.

From any donation made, ActBlue keeps a percentage - as would PayPal - as a transaction fee.

As a user of ActBlue's services, I have online access to view a spreadsheet of each individual who has made a donation, their contact information, the amount of the contribution they made to me, and the transaction fee ActBlue withholds from that contribution. At the end of a two-week period, the sum of those contributions made to me, less the transaction fees ActBlue has collected, were sent to me as one check written to my campaign from ActBlue.

None of that is or has been an issue. The problem comes in when we complete our disclosure reports with the Secretary of State's office.

Some Democratic candidates - me included - disclosed the contributions we received via ActBlue from the individual donors. Some Democratic candidates disclosed the donations as contributions from ActBlue.

P.2

Obviously one of those is more transparent than the other. However, neither of them is right or wrong, illegal or legal, under current law. It's THAT problem that this bill attempts to correct, and in doing so, correcting it in the MORE transparent of the options.

After working with Legislative Council, ActBlue, who shared with us language that has been used in other states that wanted to clarify this issue, and the Secretary of State's office, you have in front of you this result.

So, in the text of the bill on Page 2, lines 16-23, ActBlue is the "conduit". We wanted to make clear that this does not include a PAC, candidate, or political party. The distinction between a PAC and what a conduit like ActBlue is that a PAC collects donations and then determines to whom those contributions will be donated. A conduit doesn't make that determination; they simply provide a pass-through service.

Moving to Page 6, lines 22-26, this details what is expected of the candidate (or political party or PAC, should they use conduit services as well) - that they are to report, following the same dollar amounts that are required to be reported, those donations from individuals who made them, NOT from the conduit.

And finally, on Page 7, lines 3-13, this requires the conduit to provide the details - contributor's name, contact information, amount of donation, and the date - to the recipient of the donation.

That concludes the bill summary, but I also have an amendment I'd request for your consideration. At the request of the Bankers Association, this amendment would remove "a financial institution" from Page 2, line 21. Removing this language doesn't change the fact that they would still be considered a conduit and would have to follow this law, but they are already subject to lots of federal regulations with regard to campaign finance. For the sake of trying to avoid any complication from their perspective, I would be perfectly comfortable removing that.

Mr. Chairman, I hope this summary provided clarity and not confusion. While the example I provided has only, as far as I know, pertained to candidates in my own party, it has caused confusion for Dem-NPL candidates in reporting and criticism - rightly or wrongly - by our opposition in how we report campaign contributions. It is for that reason that I invited fellow legislators from a wide range of political philosophies to join me on this bill.

I will always be on the side of more transparency than less in politics and government, and I hope this committee will agree. I encourage you to support SB 2299 and will gladly respond to any questions of the committee.

15.0626.03001
Title.

Prepared by the Legislative Council staff for
Senator Oban

March 11, 2015

1 2299
3-26-15

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2299

Page 2, line 21, remove "a financial institution."

Renumber accordingly