

# MICROFILM DIVIDER

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2062

2007 SENATE JUDICIARY

SB 2062

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2062

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: January 8, 2007

Recorder Job Number: 735

Committee Clerk Signature

*Mona L. Solbey*

**Minutes:** Relating to criminal history background checks for proprietary security officers.

**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:

**Mr. Russell Hons**, Chairman, ND Private Investigation & Security Board. Attachment #1.

**Sen. Lyson**, V. Chm. (meter 7:36) discussed the merits of training verses regulation. **Mr. Hons** reviewed the current process.

**Sen. Lyson** (meter 9:45) questioned what the current training requirements are. They are stated in Ch 43-30 and in the administrative rule.

**Sen. Lyson** (meter 10:55) discussed what the merits of doing DNA testing along with the background checks. While this was well received Mr. Hon was concerned about the additional costs and the concern DNA testing has on the general public and their rights.

**Sen. Olafson** asked if this bill is a direct reflection of liability issues-to help minimize companies responsibilities? Yes.

The committee review the "Proprietary Security Officer" (meter 13:38) Insurance definition.

**Sen. Marcellais** asked why mandatory drug testing (meter 14.23) was not a part of this bill?

**Mr. Hons** replied that while this is a very good idea, but they need to take one step at a time.

He also reviewed what the board's current responsibilities are.

**Sen. Fiebiger** (meter 15:16) asked if someone was not in compliancy to the regulation what was the penalty? Class B misdemeanor. We do not have a compliance officer, we have yet to have a complaint. Discussed what the Boards obligations are. (meter 16:20)

**Testimony in Opposition of the Bill:**

None

**Testimony Neutral to the Bill:**

None

**Senator David Nething**, Chairman closed the hearing.

**Sen. Lyson**, V. Chm. Made the motion to Do Pass SB 2062 and **Sen. Olafson** seconded the motion. All members were in favor of the motion, non oppose, motion passes.

**Carrier: Sen. Nelson**

**Senator David Nething**, Chairman closed the hearing



**REPORT OF STANDING COMMITTEE (410)**  
January 8, 2007 12:19 p.m.

**Module No: SR-04-0295**  
**Carrier: Nelson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2062: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS**  
**(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2062 was placed on the**  
**Eleventh order on the calendar.**

2007 HOUSE JUDICIARY

SB 2062

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2062

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/5/07

Recorder Job Number: 4310

Committee Clerk Signature

*D. P. Mose*

Minutes:

**Chairman DeKrey:** We will open the hearing on SB 2062.

**Bill Butcher, Vice Chair, ND Private Investigation and Security Board:** (see attached testimony).

**Rep. Delmore:** How many people are registered with you and what is the function of the Board.

**Bill Butcher:** There are 1,000+ security officers and 100+ private investigators that are registered or licensed.

**Rep. Delmore:** What is the function of the Board and how many members.

**Bill Butcher:** Our Board presently consists of 6, we hope to get it up to 7, but we had one person retire and hence resigned. Everyone on the Board is either private security or private investigative business, with one exception. We have a member who is a law enforcement officer, that's Chief Rasmussen from West Fargo. Our function is to regulate the private investigation and private security industries in ND.

**Rep. Delmore:** Is there a fee to be registered with you.

**Bill Butcher:** To be registered there is a fee that would affect the second part of this bill, the voluntary part. Regarding the first part of the bill, to submit the results of the background check there would be no charge.

**Rep. Klemin:** In the first part of the bill here, let's say someone wants a bodyguard, he would have to follow this process here in order for him to hire his own bodyguard.

**Bill Butcher:** That would be a private security person, yes the person would have to be registered.

**Rep. Klemin:** So this is to protect the person from himself.

**Bill Butcher:** The Target store, or a large department store, would hire a security guard to guard against shoplifting and perhaps a young woman, or girl was seen to be shoplifting. If there was a sex offender that had gotten a job as a security guard, they take them back to do a search, and to hold them for questioning, that would be a subject of concern. This is simply addressing the concern that the public has that private security people are without a blemish on their background.

**Rep. Klemin:** But it does cover the situation I described too.

**Bill Butcher:** Yes, anybody that is proprietary would be covered.

**Rep. Klemin:** This seems like a lot of meddling in private business, you want to protect them from themselves in case they don't have good policies in place for hiring their own security people. It would seem like the business would have policies in place. Is this sent in to anybody. Have you had contact with businesses on this.

**Bill Butcher:** I know we have been contacted by some businesses inquiring about this, and suggesting that we do this. I'm not specifically aware, Christine Johnson is our Executive Director, and she was not able to be here this morning, so I can't answer specifically who has contacted us. Clearly it is a reaction to things that have happened in the past year, in regards

to security. To the fact that a security officer for a law enforcement department, for example, was found not to have had an adequate background investigation.

**Rep. Klemin:** This doesn't address the government's security, which I think is clearly understandable in the situation you described. It doesn't seem to be apropos to the bill. We're talking about private business hiring private security to guard their private property. We're making it requirement that they do all of this, which probably makes good sense, but on the other hand, how far do we go as the government in regulating the internal operation of private business. It seems kind of contrary. I'm not certain if the costs here are accurate, I have a concealed weapons permit for instance. I had to go to the police department to get a form to get the background check, they charged me \$25 to check their own local records, before I had this other statewide check which cost me extra, and I couldn't get fingerprinted at the Police Department, they sent me to the Sheriff's department, which is at the courthouse. They charged me a separate fee which was close to \$25. Now, you don't mention the local police department for doing their own check on here, so we're probably totaling up about \$100 in costs to do this. What if they don't do this. Are you going to go in there and check to see if they have done this.

**Bill Butcher:** Right now, we have a requirement that all licensed security agencies and private investigative agencies have their employees be registered. It's a self-policing operation.

**Rep. Klemin:** This doesn't cover that situation, this covers a private employer who's got an unregistered security guard.

**Bill Butcher:** In the same sense that the private investigative and security are licensed agencies are self-policing, I guess it's our feeling that the private, proprietarily employers would be self-policing if they found that someone was not having their employees registered or go

through background checks, that they would report that. We rely on that. That's the only enforcement we have. There is no penalty.

**Rep. Kretschmar:** In the Code, is there a definition of a private security employee.

**Bill Butcher:** I don't know. I do want to point out that the AG's representative just pointed out to me that there it is a Class B misdemeanor to not register.

**Rep. Boehning:** Can Target do these background checks currently.

**Bill Butcher:** Yes, any employer can do a background check on their employees. My business is a private investigator and I do that a lot for companies around ND.

**Rep. Boehning:** I know of a case across the river in Moorhead, they had a security officer and another fellow employee, and they were stealing out of the store. I don't know if they had a federal background check or not, but I don't know how that works. Would this prevent that from taking place. This isn't a very high price, but it could cost more than what is stated in here.

**Bill Butcher:** The prices in here, that we stated, are estimated. I don't know what costs you encountered when you got your concealed weapon permit, but to get a fingerprint taken at the police department, I don't think it is more than \$10.

**Rep. Klemin:** But you can't get your fingerprints done at the police department, you had to go to the Sheriff's department.

**Bill Butcher:** I don't know, I haven't been fingerprinted in a long time.

**Chairman DeKrey:** My wife just got fingerprinted at Jamestown Police or Sheriff, and it was for employment, and they mailed it in to the FBI and the FBI rejected them.

**Bill Butcher:** I happen to be a former FBI agent and I'm really familiar with that. They reject probably half of the fingerprints that FBI agents send in.

**Rep. Koppelman:** Is the Board that you are representing, charged with regulating all personnel, including private personnel not employed by the private security companies, but employed by other kinds of businesses now.

**Bill Butcher:** Right now, our function is to regulate licensed private investigation and security, proprietary would not be licensed. This would be an expansion of our duties.

**Rep. Koppelman:** In subsections 1 and 2 of section 1 of the bill, it appears that under section 1, you're sort of acting like a regulatory board that has the authority to regulate these folks, in that you are requiring them to have the background checks, you're also requiring an employer to have a copy and file a copy with the Board. So it's an expansion of the Board's purview or responsibility in that regard. Is that correct?

**Bill Butcher:** You're right. That has come about because we have been approached by private proprietary businesses.

**Rep. Koppelman:** Then in subsection 2, it almost seems voluntary, because it says proprietary security employees may voluntarily register, etc. If they choose not to be registered, you're still requiring them to file this information with you. I'm trying to figure out how this exactly works.

**Bill Butcher:** The first part of the bill applies to in-house security officers.

**Edward Erickson, AG's office:** I work with the Private Investigation & Security Board. The first step of a background check is intended to be mandatory for everyone. The additional step of going to full registration was intended to be voluntary. We didn't want to put a mandate on private business any more than was necessary. We felt that the background checks were necessary. But this additional voluntary registration is being done at the request of a couple of businesses, Bill alluded to a hospital and one of the electric utilities. They wanted to be able to register their employees. The benefit of registering an employee is that now they have a work

history of being a registered security person. The employer gets the benefit of being able to ascertain that the person meets all the standards of a regular hired private security individual. The employee gets the benefit that if they choose to move to a different position or different business, or different employer in the security field, they have the background of having been a registered security officer for the number of years they worked there. It is a benefit both ways; the employer and employee. The Board's discussion, when we were working on this bill, they did not want to require the additional step on all the private proprietary security people. That wasn't something that the Board wanted to go to at this point in time in recommending remedies to the legislature for the problem of security guards who might be abusive.

**Rep. Koppelman:** It sounds like the Board is asking to expand its area of regulatory authority, in other words, we want to regulate all private investigators and all security firms, but also every private security guard in the state of ND, at least to the extent that we are going to require them all to get checks and file the results with the Board. On the other hand, they are saying if registration equals regulation, in other words, if the folks that the Board registers are the registered folks, they are saying well, we kind of regulate you, it's optional if you choose to register or not to.

**Bill Butcher:** For registration, there is a pretty stringent training requirements. So the first part of the bill requires the filing of the background checks. The second part of the bill, not only requires background checks but it presents the proprietary businesses with an opportunity to register their employees, and hence require the training for the employees.

**Rep. Koppelman:** What if the private security guard chooses not to be registered, what are you going to do with his file, what is the point of having it. You are requiring him to have this background check to do this work in ND.

**Bill Butcher:** That would be the employer's responsibility.

**Rep. Koppelman:** The employer has to require a check of the person, the employee files it with the employer and with the Board.

**Bill Butcher:** The employer needs to file it with the Board.

**Rep. Koppelman:** You are building a database then of every employer in ND that has a security person, included in that file is whatever the results of the background check are. I'm wondering what's the purpose of that unless they want to be registered and regulated by your Board, which Mr. Erickson just testified that it's optional.

**Bill Butcher:** We would require that everyone working with security in the state to have a background check, and that would be on file, and it would be self-regulating by other employers who would report that someone was in violation. The second part of it, it provides for voluntary registration and we would require the background check, but we would also require the training standards.

**Rep. Koppelman:** When you require the filing with the Board of this background check, you, as a Board, it seems to me, you are taking on some kind of responsibility or authority over every security person in ND, no matter who they are employed by, whether by a private security service or any other kind of business or individual. But you aren't requiring that all those folks be registered and regulated. It's one thing to say that you need to have a background check, but then it should be the responsibility of the employer to determine what to do with the results of that check, unless that employee decides I want to be a registered security agent.

**Bill Butcher:** It certainly is the responsibility of the employer, my business does lots of background checks for many companies.

**Rep. Koppelman:** Why does the Board want the responsibility. It's one thing to require the background check.

**Bill Butcher:** Because we would then require that be done to work in the security industry.

**Rep. Koppelman:** Is there a fiscal note. I don't see one.

**Bill Butcher:** There is not, because we would simply keep the record on file, we won't file for that. If there's a registration, we do have a fee and that's a standing fee that we have for anyone that registers.

**Rep. Koppelman:** There is another bill we will hear this morning regarding background checks and there is a fiscal note, mainly because, how many security people are there in the state, including the private ones.

**Bill Butcher:** I said about 1,000+.

**Eric Erickson:** I don't know the number of people currently registered.

**Rep. Koppelman:** You are expanding this to the bill to a much larger pool of people, anyone who works as a security guard, in a store or business, or as private bodyguard. My concern is that in this other legislation, the folks in the AG's office needs an expansive fiscal note because the AG's office has to hire people to do these checks and I understand that those are special funds because they are reimbursed by the fees that the people will pay for having themselves tested, but there are staff requirements for doing the tests.

**Bill Butcher:** We're not doing the background checks. The employer is. We're simply reporting the fact that it's been done.

**Rep. Koppelman:** But they still have to be done. So the AG's office may need more staff to do this is what I'm saying.

**Rep. Klemin:** What does the employer do once they receive the results of the background checks. Do they still decide if the person had problems in the past, are they still going to hire the person. Can they still hire the person, or are they going to get some kind of prescription on here as to whether they can hire them or not.

**Bill Butcher:** Absolutely not, we do not have a requirement that restricts the employer.

**Rep. Klemin:** So what's the point, just so you know.

**Bill Butcher:** So that there is someone making a judgment on this, so that they know, exactly.

**Rep. Delmore:** The people who are registering with you now, seem to be exempt in here. You have anyone who is hired after July 31, 2007, I'm not sure if that was your intent. I do agree with Rep. Koppelman that there is a fiscal note on this, if you are putting 1,000 people through security checks and that's not without cost. I'm wondering why you put in there hired after July 31, 2007. Is it because those people who are registered with you now are required to do the background checks. Do you require them to do that now, in order to be part of your organization.

**Bill Butcher:** It is simply a start date. Our intent is not to go back and do these checks or require employers to do these checks on people who are already employed, it would simply establish a start date.

**Rep. Delmore:** Are those people who are already security checked?

**Bill Butcher:** No, they are not. This would be a start date. Is there a cost. Yes, it would be borne by the employer, not by the Board.

**Rep. Delmore:** There is still a cost to the AG's office to do these background checks and we have a backlog of people right now. All teachers have to go through this. We've added a whole laundry list already of other people that need to go through it. I'm saying, I don't understand why you are only requiring it of new forces coming in. If this is something that should really have been required, why haven't you asked the people who are registered with you now to do this type of security check before, grandfathering, I guess bothers me as much as anything.

**Bill Butcher:** I think a lot of employers are doing this now. We do a lot of them within my company. This would require them to do it, and I can't answer the question as to grandfathering. We just decided that instead of going back and requiring background checks on every security officer that there is in the state, we would say as of this date, from now on everybody has to be registered.

**Rep. Delmore:** I say we start with the people who are now registered now, and say within the next three years, or six months whatever, you need to meet these same standards; just because somebody has been doing this doesn't mean that they are any cleaner than somebody new coming in.

**Bill Butcher:** You're absolutely right.

**Rep. Onstad:** Whose concern was it that they not have background checks. Was that the Board or the employer.

**Bill Butcher:** Who is expressly concerned, the concern has been expressed by employers.

**Rep. Onstad:** If the concern is by the employers, why don't they do background checks. Why is the Board having it required.

**Bill Butcher:** They do and they can.

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

# 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2062

House Judiciary Committee

Check here for Conference Committee

Hearing Date: 3/7/07

Recorder Job Number: 4578

Committee Clerk Signature

*Penrose*

Minutes:

**Chairman DeKrey:** We will take a look at SB 2062.

**Rep. Klemin:** Explained his amendment.

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

**Rep. Dahl:** I move a Do Pass as amended.

**Rep. Koppelman:** Second.

**14 YES 0 NO 0 ABSENT**

**DO PASS AS AMENDED**

**CARRIER: Rep. Klemin**

**House Amendments to SB 2062 (78072.0101) - Judiciary Committee 03/09/2007**

Page 1, line 2, remove "criminal history background checks for"

Page 1, line 6, replace "person may employ individuals" with "proprietary employer is a person who employs an individual"

Page 1, remove lines 9 through 14

Page 1, line 15, remove "2." and remove "also"

Page 1, line 19, replace "a." with "1."

Page 1, line 20, replace "b." with "2."

Renumber accordingly

Date: 3/7/07  
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2062

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass as Amended

Motion Made By Rep. Dahl Seconded By Rep. Koppelman

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

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Klemin

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

**REPORT OF STANDING COMMITTEE**

**SB 2062: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2062 was placed on the Sixth order on the calendar.

Page 1, line 2, remove "criminal history background checks for"

Page 1, line 6, replace "person may employ individuals" with "proprietary employer is a person who employs an individual"

Page 1, remove lines 9 through 14

Page 1, line 15, remove "2." and remove "also"

Page 1, line 19, replace "a." with "1."

Page 1, line 20, replace "b." with "2."

Renumber accordingly

2007 SENATE JUDICIARY

CONFERENCE COMMITTEE

SB 2062

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2062**

Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: April 2, 2007

Recorder Job Number: 5670

Committee Clerk Signature

*Mona R Salby*

**Minutes:** Relating to criminal history background checks for proprietary security officers.

**Senator Nething**, Chairman of the conference committee called the members to order. All Senators and Representatives were present. The hearing opened with the following work:

**Sen. Nething** reviewed the bill for the amendments.

**Rep. Klemin** stated the requirement of the private investigator's board would file the a background check for there own employees and keep it in there own file. The state should not require them to file a report to keep in there own file to do nothing with it. We took all of that out and made it optional. Allowing them to use there own process.

**Sen. Nething** stated that the bill came from the board itself. We have a stand off with the proprietary employees and the board. The board governs the private investigators and the propriatery security people are a different group. For example the would be a security guard for a store, who are not private investigators. They wanted the P.I. Board to license them and file there information. **Sen. Nething** stated that the Board is to regulate the Private Investigation and Security Guard industry of ND. They discussed as an industry they are to oversee: security guard for other people vs. a security guard for self.

**Sen. Lyson** stated that if Walmart hires someone should they not have a background check. He spoke of shop lifters and searches and they discussed how Wal Mart has there own policy's and protocol for procedures. He discussed how investigation and security are two

different issues. They discussed in detail "proprietary" employee, ability to do an FBI check and what was done in the house. Sen. Nething discussed line 7, of the bill and if a service is provided that service should be subject to the background check. (meter 9:11)

The definition of "proprietary employer" was discussed.

**Sen. Lyson** stated that this bill better defines the definition of the requirements.

**Sen. Nelson** made the motion that the Senate accedes to the house amendment and **Rep.**

**Koppelman** seconded the motion all members were in favor and the motion passes.

**Senator Nething**, Chairman closed the hearing.



**REPORT OF CONFERENCE COMMITTEE**

**SB 2062:** Your conference committee (Sens. Nething, Lyson, Nelson and Reps. Klemin, Koppelman, Onstad) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 824-826 and place SB 2062 on the Seventh order.

SB 2062 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2062

# # |

Senate Bill 2062  
Before the Senate Judiciary Committee  
Russell Hons, Chairman, North Dakota Private Investigation & Security Board  
January 8, 2007

Members of Committee :  
Dave Nething – Chairman  
Stanley Lyson – Vice Chairman  
Tom Fiebiger  
Richard Marcellais  
Carolyn Nelson  
Curtis Olafson

Chairman Nething and members of the committee, I am here to ask for a Do Pass on Senate Bill 2062.

The purpose of the North Dakota Private Investigation and Security Board is to regulate the Private Investigation and Security Guard Industry in North Dakota. This is to protect the public from unscrupulous or dangerous people who could take a position as a private investigator or security guard. One of the ways that we do that is to require State and Federal Background checks on all security guards and private investigators.

There has been an ever increasing need for security guards within the state since 9/11. Some companies hire their own "in-house" security officers rather than contract with a licensed security company. By doing this, they are not covered under the laws and rules of the Private Investigation and Security Board, and therefore, the guards that they hire to protect their staff, their customers, the public, and their property, may not have a thorough, or for that matter any background checks conducted on them.

This has become a major issue before the board. Several companies, including a large hospital and an electrical company have even approached our board about finding a way for them to register their security guards with the board, so that they know they

