

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2266

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2266

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2266**

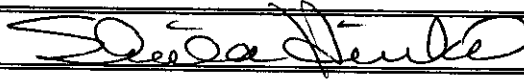
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1742**

Committee Clerk Signature



Minutes: Quorum present

Parrell Grossman – Director, Consumer Protection – In Favor

TESTIMONY # 1

Explained yellow page ad scam.

S Potter: You already consider this a deceptive practice.

P Grossman: That is correct.

S Potter: You want to put it into the code why?

P Grossman: We don't want to argue with these companies. We think the law should be clear and this new legislation has what is needed. Tennessee has this law.

S Potter: I receive these envelopes and I throw them, but I know they'll continue. So there is no penalty mechanism.

P Grossman: They will continue, we will have to enforce it, but it will be an easier task. We're suggesting 51.15 consumer fraud law, so that all the penalties, legal fees.

S Klein: Instead of being deceptive, you have clear, convincing rules to prove they are deceptive.

P Grossman: That's correct. These solicitations can be made clear and we currently have limited resources.

S Behm: How are you going to stop it?

P Grossman: Have a start with 2 companies. I think we're sending the message. IP.com and Yellow Pages, Inc. are 2 examples.

S Klein: Same thing as the Labor poster scam. It's a constant battle.

P Grossman: We are suing the company and it is in litigation.

S Andrist: Isn't it a deceptive practice to send a bill and say, "this is not a bill?"

P Grossman: We are plagued by that practice. We have argued that it is. In some cases, some people just pay the bill.

S Potter: Often the solicitations will look like they're coming from the government entity. It "looks" accurate. Are there companies that mask another company?

P Grossman: There is a Michigan company that does business called: "ND Labor Law Poster Company". They get a mail box at Mail Boxes Etc. There is no such agency, it is fabricated name. James Thomas suggested in his pleading that this may be a criminal act, that they may be representing themselves as Government officials when they're not.

S Wanzek: I was scammed. In the hectic pace, you take and deposit checks. If I don't pay, I didn't solicit it, the "enrollment fees" each month, do I run the risk of collection?

P Grossman: I think you do run the risk. We can't advise the public NOT to pay the bill. We try to tell them to read between the lines. We try to give the message that it is illegal. Attorney Generals office legally can not tell you not to pay it.

S Andrist: Would you welcome an amendment that states that it's defective actual practice to send invoices or documents which appear to invoice to personal or service contained on it.

P Grossman: We have no problem with that wording. Maybe need a little time to study it.

S Klein: It needs to be clear cut, easy to read, you've studied, understand.

S Grossman: Ready to enforce this.

S Hacker: If we were to at the amendment, are there other interested parties notified of this bill?

P Grossman: Maybe some that would come out of the woodwork. Haven't had enough time to say they would be legitimate concerns or not, 80% or more wouldn't be.

Q? F? Opposition? CLOSE

MOTION Do Pass – S Potter 7 – 0 passed

SECOND – S Behm

CARRIER – S Potter

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2266 B

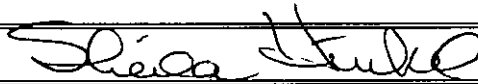
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 24, 2007**

Recorder Job Number: **1815**

Committee Clerk Signature



Minutes:

S Wanzek: I make a motion to reconsider and remove the motion to pass.

Motion to reconsider – S Wanzek

Second – S Hacker

S Wanzek suggested an amendment

S Andrist – We could add an amendment?

S Behm: What would that do?

S Wanzek: Involves getting invoice for things not ordered.

S Klein: We will keep the bill open for the amendment.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2266 C**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 29, 2007**

Recorder Job Number: **2177**

Committee Clerk Signature

Minutes:

S Klein: We brought it back as we were going to tweek it.

S Potter: We brought it back as we were going to add something about invoices and statements.

S Wanzek: I emailed Parrell for help in doing the amendment. I need to plan the Janguage in it. I can be ready Tuesday or Wednesday.

S Behm: I think there is confusion when you get it in the mail.

S Wanzek: It is intentionally sent to confuse people and appears intentional.

CLOSED until Tues or Weds.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2266 D**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 30, 2007**

Recorder Job Number: **2290**

Committee Clerk Signature



Minutes:

S Klein: 2266 which is the bill we've been holding back on a bit, S Wanzek had some bills drafted which would address the concerns Parrell Grossman brought up or S Wanzek brought up and Parrell addressed.

S Wanzek: Handed out amendment to 2266, simply put it added another section to the bill, which also includes as a deceptive act or practice with invoice or statement.

MOTION TO MOVE THE AMMENDMENTS by S Wanzek

Second by S Hacker

S Potter: I want to make sure we somehow haven't prohibited purchase orders. I guess it says, "And not yet ordered." So it should be ok then.

S Hacker: Is that for CD's that you didn't order and they send them to you?

Vote on DO PASS AMMENDMENTS 6 - 0 - 1

Vote on DO PASS AS AMMENDED SB 2266 6 - 0 - 1

Motion by S Wanzek

Second by S Hacker

Carrier: S. Wanze

Date: 1-24-07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2266

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number DO PASS

Action Taken _____

Motion Made By Potter Seconded By Behm

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur	✓	
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel	✓	
Senator Andrist, John	✓		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 7 No 0

Absent _____

Floor Assignment potter

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

A 1st

PROPOSED AMENDMENTS TO SENATE BILL NO. 2266

Page 1, line 1, replace "section" with "sections" and after "51-15-02.1" insert "and 51-15-02.2"

Page 1, line 7, replace "15-15-02.1" with "51-15-02.1"

Page 1, line 9, replace "which" with "that"

Page 1, after line 10, insert:

"SECTION 2. Section 51-15-02.2 of the North Dakota Century Code is created and enacted as follows:

51-15-02.2. Solicitation of payment by bill, invoice, or statement of account due. It is a deceptive act or practice in violation of this chapter for a person to send, deliver, or transmit a bill, an invoice, or a statement of account due, or a writing that could reasonably be interpreted as a bill, an invoice, or a statement of account due, to solicit payment of money by another person for goods not yet ordered or for services not yet performed and not yet ordered.

Renumber accordingly

JB
1-30-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2266

Page 1, line 1, replace "section" with "sections" and after "51-15-02.1" insert "and 51-15-02.2"

Page 1, line 2, after "check" insert "and to solicitations of payments due"

Page 1, line 7, replace "15-15-02.1" with "51-15-02.1"

Page 1, line 9, replace "which" with "that"

Page 1, after line 10, insert:

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Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2266: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2266 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections" and after "51-15-02.1" insert "and 51-15-02.2"

Page 1, line 2, after "check" insert "and to solicitations of payments due"

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Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2266

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2266

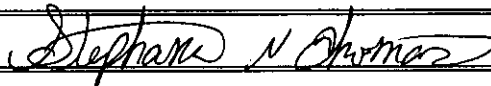
House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 7, 2007

Recorder Job Number: 4530

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2266.

Parrell Grossman, Attorney General's Consumer Protection & Antitrust Division:

Support SB 2266. See written testimony #1.

Rep. Kasper: Is it the intent that the ND businesses are defrauded in the future under this type of scenario that when you make a recovery, you will reimburse the business persons for their losses?

Parrell: I would say yes, we almost always seek restitution for the business. Our intent is to make restitution available.

Rep. Kasper: If you don't contact the businesses that you're aware of, and the business owner doesn't know this has occurred, how does the business owner ever get their money back?

Parrell: I'll use the example of the fake invoices, we think it's a deceptive practice, but it's not all that clear under the statute, so you have to make a decision to either litigate, or reach a settlement. All of those companies are going to litigate with you if right out of the box you say what we'd like is a refund for every ND business that paid an invoice to you in the last 2 years.

They will readily agree to resolve the complaints with the consumers who come forward, and complain.

Rep. Kasper: That is precisely why your department ought to be representing those business people, all of them. If you need to litigate so you get a judgment against them for all of those business people, rather than just the ones that come forward, or the ones that contact the company again. If they have no knowledge of it, then you're putting the ones on that business person who has been defrauded under ND law to take his or her own action, rather than you getting the action done under one case. If you have the ability to impose fines and penalties, as well as restitution, why wouldn't you want to look at every case like this, and do the best you can to recover all the dollars for all the business people in ND?

Parrell: First, I would mention that the practice I have described is similar throughout the country. In networking with all of my colleagues throughout the country, and in most situations on these kinds of questionable cases where there isn't a specific law prohibiting a practice, they often reach similar agreements, and find that these companies won't intern to these settlements. You make an excellent point about the litigation, and we do our best to prioritize our cases, and our workload to go after all of those companies, but the reality is we simply don't have resources for a case like that. I have 10 other cases that are much better cases where I could get recoveries, where I can prove my case, where I can get penalties, and restitution, as opposed to a situation like this to litigate for 2 years with a company when you don't have a clearly defined statutory prohibition.

Rep. Kasper: My questions were under the assumption that this bill passes, not under current law.

Parrell: If this bill passes and becomes law then yes, we would require absolute complete restitution for every business, and same thing with the promotional check solicitation.

Rep. Johnson: On sections 3 and 4, because an emergency are in the ones that are effective June 1, if it's signed by the Governor, and declared an emergency, it would go into effect then. Is there a conflict there?

Parrell: I think the legislation initially had the provision for the act to become effective June 1, and then the Senate IB&L committee added the emergency clause, so it would be my understanding that if it is now passed by the House, that it would take effect immediately upon signature of the bill.

Rep. Keiser: I don't disagree, but this is a contradictor. You've got 2 days in effect, section 3 should be struck, and section 4 should be renumbered section 3.

Rep. Kasper: Doesn't that mean that if the emergency clause does not pass, the act becomes effective June 1.

Rep. Keiser: Yes, it is in that type of predicament. I don't know, we'll check on it.

Rep. Zaiser: We're talking about business fraud. I'm assuming this would apply as well to all residential or individual fraud cases as well.

Parrell: Yes, and I focused on business fraud, because these two scans are targeted at business, but it's certainly possible that an individual who operates his, or her business under his, or her individual name could be targeted by this. It's not necessarily something that would impact a consumer, because consumers typically wouldn't advertise for services through a company like an internet, or yellow pages.

Rep. Zaiser: I got one of these false invoices as a consumer for some magazines that I didn't order, and I was billed for them.

Parrell: That already would be prohibited, or would be a deceptive practice, and something you can file a complaint about.

Rep. Vigesaa: I have gotten these at our business several times, and if we just notify the Attorney General's office if we're actually receiving, because it says here it's a violation if they even send them out. Would you pursue that company, even if I did not sign the check, or pay the invoice?

Parrell: Yes, exactly. By passing this legislation, and having a clear statute to prohibit the practice, we would immediately contact the company, and inform them that they're in violation, as opposed to waiting until they conducted business over a period of a month, and then contacting them to enforce the violations.

Rep. Keiser: What's the penalty for this? This isn't under the fraud division.

Parrell: The penalty would be that the court could impose fines of up to \$5,000 per violation, and the reason that is the penalty is that these sections would be under the Consumer Fraud Law, and subject to all of the sanctions in that particular chapter.

Rep. Keiser: Why isn't this behavior fraudulent under our current code?

Parrell: We would argue it is, and that's why we've been involved in a number of multi-state investigations with a number of states throughout the country, and have entered into a number of agreements for restitution, and penalties. Unfortunately, because there isn't any law that specifically prohibits these practices, these companies litigate with us.

Rep. Ruby: Doesn't that put you at risk with the cases that you have pending? They would say you admit it wasn't in your law previously, because you would advocate the afterwards, and of course you can't apply new laws to something that wasn't supposedly against the law at the time when it was committed.

Parrell: We hear that all the time, as well as the other states hear those same kinds of things. If this was prohibited, surely there would be a statute in your state prohibiting this, and those are the claims they make.

Rep. Ruby: I understand that, but I'm saying your cases pending at this time.

Parrell: We do have a couple of investigations pending, as well as the cases we've already settled. We would just argue that the practice was illegal, and now the legislature has spoken more clearly on the issue.

Rep. Keiser: We have fraud law, and it should be general, and cover all fraud. Now, you're telling us that we now have to go through and say this is, and this is, instead of it being fraud. So, we're going to have to add to the Century Code every specific instance, so that we can say that we did address it in our code as fraud.

Parrell: I've been in this position for 11 years, and I think this is the first session that the Attorney General, or I have ever brought forward specific provisions that we thought needed to be now included in the statute. One of the most difficult things about the enforcement by consumer protection is often looking at something, realizing it's deceptive, realizing it's wrong, but then deciding how you're going to prove that. In many cases that's what happens with our analysis under the Consumer Fraud Law is you just generally have to go in, and argue that something is deceptive. We're always comfortable with that, but the trends seem to be that if you can put your finger on it, and specifically prohibit it, then why have to argue some of these cases.

Rep. Johnson: In order for it to become effective June 1, you have to add emergency clause language in there also. I would move a do pass.

Rep. Thorpe: Second.

Rep. Nottestad: If that section 3 were not there, and with the emergency clause, wouldn't it become effective immediately?

Rep. Keiser: If the emergency clause passes it will carry. If the emergency clause fails by the 2/3 vote, it would go into affect on June 1. If you take out section 3, it would become effective in August.

Rep. Boe: I understood it different. In order for us to have an effective date other then August, we have to have the emergency, in order to make this June 1 work.

Rep. Keiser: So, you think it's going to go June 1, even if the emergency clause passes?

Rep. Boe: That's the way I understood that.

Jordan Schuetzle. Intern: Anytime you have an effective date before the constitution, and the act of the effective date need to declare, and write it in the emergency. If that effective date June 1 is eliminated, then it would go to the law upon on the Governor signing it. As it is now, it'll go into effect on June 1.

Parrell: Can I suggest that the committee just remove the effective date June 1. That's originally what we placed in there, and then the committee added the emergency clause, and we'd like to see that emergency clause.

Rep. Keiser: To do that we'd have to have the person making the motion, and the one that seconded it to withdraw their motion.

Rep. Johnson: I withdraw my motion.

Rep. Thorpe: I withdraw my second.

Rep. Johnson: I would move an amendment to delete section 3.

Rep. Boe: Second.

Voice vote was taken, amendment adopted.

Rep. Johnson: I would move a do pass, as amended.

Rep. Thorpe: Second.

Roll call vote was taken. 14 Yeas, 0 Nays, 0 Absent, Carrier: Rep. Dosch

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

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2226

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, as amended

Motion Made By Rep Johnson Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep Dosch

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

REPORT OF STANDING COMMITTEE

SB 2266, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2266 was placed on the Sixth order on the calendar.

Page 1, line 3, remove "to provide an effective date;"

Page 1, remove line 18

Renumber accordingly

2007 TESTIMONY

SB 2266

SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE
SENATOR JERRY KLEIN, CHAIRMAN
JANUARY 24, 2007

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL

Mr. Chairman and members of the Senate Industry, Business, and Labor Committee. I am Parrell Grossman, Director of the Attorney General's Consumer Protection and Antitrust Division. I appear on the Attorney General's behalf in support of Senate Bill 2266.

This legislation prohibits a deceptive practice that targets North Dakota businesses. These generic "yellow page" companies, offer "yellow-page" advertisements in both print and on-line directories. The solicitations are conducted through "live" activation or promotional checks. Businesses receive the small checks, usually for about \$3.50. On the back of the checks in fine print above the endorsement line, is language stating that by depositing the check the recipient is agreeing to purchase advertising in a print or online directory. The fine print also authorizes the company to bill the North Dakota businesses the monthly or annual fees in advance. The charges, for example, might be \$39.99 a month, or \$199 a year. Attached is a sample promotional check solicitation.

When the Attorney General uses the term "North Dakota businesses," the term includes other North Dakota entities such as churches, which are targeted and victimized by these promotional check solicitations.

These promotional check solicitation companies trick a business into unwittingly purchasing advertising services that the business did not intend to authorize and would not consider worthwhile if the business actually reviewed the services offered or provided. Most, if not all, of the businesses that file complaints with our office, or that we contacted during our investigations, have no idea they "purchased" such services or otherwise were not aware they were advertising in these directories. Some of these North Dakota businesses have been paying the advertising fees for months, or even years. Businesses simply routinely stamp or endorse these checks without realizing they are authorizing the services and the billing of the fees.

The Attorney General's Consumer Protection Division has investigated several of these companies, and is continuing to investigate other similar companies using similar promotional check solicitations. I have attached two News Releases that explain the Attorney General's investigations and/or legal actions in two instances. Please note that, including North Dakota, 34 states participated in one legal action, and 26 in the other. This demonstrates broad disapproval of these promotional check solicitations and a combined belief these practices are deceptive. In both of these cases, the companies agreed to discontinue the use of the promotional or "live" activation checks.

#1

2/2/06

The Attorney General would like you to realize how rampant these promotional check solicitations are and the significant adverse economic impact on our businesses.

First, the Yellow Pages, Inc. (YPI) case: Between January 1, 2003 and October 21, 2005, over 60,000 checks were sent to North Dakota businesses. 1,010 were cashed, resulting in billed charges to North Dakota businesses of approximately \$181,000. 276 businesses paid YPI \$40,000 for these advertisements.

Next, YP.com: From January 1, 2001 to August, 2006, YP.com sent 171,311 checks into North Dakota. 4753 checks were cashed by North Dakota businesses. YP.com received 1984 requests to cancel accounts.

The Attorney General believes we should not have to continue to investigate, litigate, and enjoin these deceptive practices. The Attorney General, instead, believes it is time to enhance protections for the North Dakota business and other victims and prohibit these promotional check solicitations for advertising services.

The Attorney General respectfully asks the Senate Industry, Business and Labor Committee to give Senate Bill 2266, a "Do Pass" recommendation.

Thank you for your time and consideration. I would be pleased to try and answer any questions.

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