

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2417

2007 SENATE JUDICIARY

SB 2417

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2417**

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 5, 2007

Recorder Job Number: 2799 & 2809

Committee Clerk Signature *Mona L. Salby*

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

**Job Number: 2799**

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

#### **Testimony In Support of Bill:**

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

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

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

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

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

**Sen. Fiebiger** asked if the Labor Commissioner indicate that this is an issue (meter 13:20)

This bill is an evolution from a conversation with them. They have not seen the final draft.

They do not want to be required to do even random checks, they do not have the staff to do this. The idea of this bill came from me after a conversation with them.

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

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

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

**Additional Testimony Submitted:**

**Bill Shalhoob**, ND Chamber of Commerce – Att #2

**Testimony in Opposition of the Bill:**

None

**Testimony Neutral to the Bill:**

None

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

**Job Number 2809**

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

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

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

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

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2417**

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3044

Committee Clerk Signature *Maria L. Solley*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

discussed if it is a problem or the perception of a problem.

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

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

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

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



## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2417**

### Senate Judiciary Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3357

Committee Clerk Signature *Maria L Solbey*

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

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

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

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

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

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

Carrier: **Sen. Olafson**

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

# FISCAL NOTE

Requested by Legislative Council

02/14/2007

Amendment to: SB 2417

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Expenditures</b>	\$0	\$0	\$88,592	\$0	\$92,290	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

SB 2417 would require the Dept of Labor to investigate the Form I-9 requirement compliance of employers who've employed an employee(s) who has been deported or arrested for being an unauthorized alien.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

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

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

N/A - This bill would have no effect on revenues.

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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

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

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

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

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

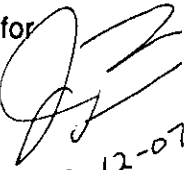
<b>Name:</b>	Lisa K. Fair McEvers	<b>Agency:</b>	ND Department of Labor
<b>Phone Number:</b>	(701)328-2660	<b>Date Prepared:</b>	02/14/2007



70867.0201  
Title.0300

Prepared by the Legislative Council staff for  
Senator Olafson

February 9, 2007

  
2-12-07

PROPOSED AMENDMENTS TO SENATE BILL NO. 2417

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

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

Renumber accordingly







**REPORT OF STANDING COMMITTEE**

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

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

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

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2417

## 2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2417

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3838

Committee Clerk Signature

*Stephanie N Thomas*

Minutes:

**Chair Keiser** opened the hearing on SB 2417.

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

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

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

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

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

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

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

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

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

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

**Sen. Christmann:** I think it's fine.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

**Bill:** I don't remember.

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

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

**Kevin Herrmann, Beulah, ND:** Support SB 2417. This summer there was a lot of workers that do have concerns. On the federal level, they're not doing the current law that they have.

A lot of us support this bill as a start, and some way we have to. As time goes on you're going to see more and more of this happening, because of these subcontractors that come in from

