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H.B. 1527

House Industry, Business, and Labor

Rep. Scott Louser, Chairman
Rep. Mitch Ostlie, Vice Chairman

Testimony of Nathan Svihovec

Commissioner of Labor
N.D. Department of Labor and Human Rights

NEUTRAL

February 6, 2023

I. Introductory Summary

Chairman Louser, Vice Chairman Ostlie, and members of the House Industry, Business, and Labor Committee, my name is Nathan Svihovec and I was appointed as the North Dakota Department of Labor and Human Rights Commissioner beginning December 2022. I am a licensed attorney in the State and prior to my appointment, primarily practiced in labor and employment law as well as other civil litigation areas. I have been fortunate to formerly represent the Department as an Assistant Attorney General and to represent private businesses and individuals before the Department while I was in private practice.

Chapter (Ch.) 34-05 of the North Dakota Century Code (N.D.C.C.) created the North Dakota Department of Labor and Human Rights and prescribes the powers and duties of the Commissioner of Labor (Labor Commissioner). The Department's statutory duties can be most concisely summarized as ensuring citizens can live, work, and prosper in North Dakota. It is my deeply held belief that the mission of the Department is an essential service to the public.

II. Points for Consideration by Page and Line Number

Subsection 3 of § 34-16-01 (Page 1, Lines 11-17): This subsection excludes "a professional license" from the definition of "license." I presume that phrase encompasses licenses issued pursuant to: (1) N.D.C.C. Title 43 (occupational licensing boards); (2) N.D.C.C. ch. 15.1-13 (Education Standards and Practices Board), and (3) N.D.C.C. ch. 27-11 (State Board of Law Examiners).

Subsection 2 of § 34-16-02 (Page 2, Lines 14-17): The bill discusses the requirements of the U.S. Citizenship and Immigration Services Form I-9 Employment Eligibility Verification.

The Department does not currently regulate or administer any services related to employment eligibility verifications.

Subsection 3 of § 34-16-02 (Page 2, Lines 20-22): The bill requires the Department to provide “technical advice” on a federal government website over which the Department has no authority or control. It is also unclear to what extent the Department is required to give advice.

Subsection 5 of § 34-16-02 (Pages 2-3, Lines 30-1): The bill requires the Department to “send written notice” to all N.D. employers. Currently, it is estimated there are over 100,000 employers in the State. Accordingly, compliance with this provision would cost an estimated \$75,000 just in paper, ink, and postage. It is likely compliance with this provision would require a significant amount of time on the Department, which would pull staff from our core duties. Additionally, it is unclear if the bill requires the Department to issue written notice to every newly registered employer in perpetuity. The second primary requirement under this section would merely require the Department to publish notice on its website, which is significantly more efficient and less costly to achieve.

Subsection 1 of § 34-16-05 (Page 3, Lines 17-24): It appears anyone can submit a complaint. The absence of some limitation on who may file a complaint could result in an unpredictable number of complaints filed. This subsection also requires the Department to perform verification duties with the federal government. It is unclear the duration of these verifications and the extent of impact on the Department.

Subsection 4 of § 34-16-05 (Pages 4-7, Lines 11-2): Outlines the disciplinary levels depending on the number of violations committed and the process to obtain a provisional

license. Nothing in the bill would require any update to the Secretary of State's statuses of whether a business is currently in good standing if an employer's license under this bill was suspended or revoked.

Subdivision (b) of § 34-16-05(4) (Page 6, Lines 17-27): Prohibits an employer from seeking a license for five years. While there are numerous Constitutional issues at play in the disciplinary actions, the Department does not have a position on the levels of discipline imposed.

§ 34-16-11 (Page 8, Lines 26-30): This requirement could significantly impact the Department depending on the extent of the auditing program and resulting number of violations. Currently, our investigators are stationed at various cities in the State and cost to travel to random employer locations would be significant. Thus, it is unlikely the Department would develop administrative rules requiring the physical inspection of businesses. Rather, any administrative rules implementing the auditing program would likely consist of document review. Such a review may not result in the findings intended by this bill and, consequently, would likely be a poor use of funds.

In addition, the Secretary of State's Office ("SOS") has expressed concerns related to the language within the bill. As I understand, the SOS's current statutory authority, processes, and automated system would be rendered inconsistent with the effects of this bill. To accomplish this, the SOS has estimated it would cost over \$100,000 to allow for the necessary changes to its systems. The SOS also only places current business licenses in "not good standing" for failure to file an annual report or maintain a registered agent but does not proactively prevent a business from operating or penalize it for noncompliance. Indeed,

although the SOS can administratively dissolve an entity, the current language expressly prohibits such an action for any violations.

The bill mirrors a statute in place in South Carolina since 2008. It is difficult to estimate what impact, if any, this bill would have. There is certainly a potential that several employers are currently employing undocumented aliens. There is equally a potential that North Dakota employers are currently complying with immigration laws.

III. Suggested Amendments

Please see the attached suggested revisions.

IV. Fiscal Impact

It is estimated up to two FTEs may be needed to accomplish the duties of H.B. 1527, depending on the number of claims filed. Each FTE is anticipated to cost approximately \$87,500 in salary and benefits for a total of \$175,000 per year. The initial mailing of over 100,000 notices will cost an estimated \$75,000 in supplies and postage. Depending on the ongoing requirements of H.B. 1527, additional costs to mail notice to each newly registered business will carry additional costs in supplies and postage. This estimate is conservative given the difficulty anticipating and calculating the extent of the problem.

The Secretary of State's Office has indicate a minimum cost of \$100,000 to ensure its current systems and processes are consistent with the effects of this bill.

V. Conclusion

Thank you for your consideration and for your service to North Dakota.