

SB2236 – Senate Judiciary

Madam Chair Larson and members of the Senate Judiciary, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. Today, I am here in opposition of SB2236 as it is written.

SB2236 aims to reduce an employee's negligence when injuries are caused by negligence, wrongful acts or omissions within the scope of their employment. This bill will require civil action to only be brought against the organization this employee works for unless the acts are reckless, grossly negligent, or willful and wanton misconduct.

Workplace negligence is a legal term that often comes up in workers' compensation cases that describes **a person or entity that fails to act reasonably, given the circumstance**. Employer negligence refers to actions and omissions by employers that lead to property damage, loss, theft, illness, injury, or wrongful death.

Most civil lawsuits for injuries allege the wrongdoer was negligent. To win in a negligence lawsuit, the victim must establish 4 elements:

- (1) the wrongdoer owed a duty to the victim**
- (2) the wrongdoer breached the duty**
- (3) the breach caused the injury**
- (4) the victim suffered damages.**

Today, the question I ask the committee is this – Should employees be held accountable for negligent behavior? If so, how egregious of an act should they be held liable for? On one hand, holding employees accountable for their actions can serve as a deterrent for negligent behavior and can hold individuals responsible for their actions. This can also provide a sense of justice for the victim and ensure that the employee is held responsible for the harm they have caused.

Employees are trained in their line of work and the victim depends on

the employee to provide the utmost care to support them in their daily lives.

Organizations should be held liable for the actions of their employees. This is because organizations have a responsibility to ensure the safety and well-being of their employees and those affected by their actions. Holding organizations liable can also ensure that they take steps to prevent similar incidents from occurring in the future.

It is important to consider both the actions of the individual employee and the actions of the organization when determining liability.

1. The employee's actions should be evaluated to see if they are in violation of any laws, policies, or regulations, and if the organization had proper oversight and monitoring in place.

2. The organization's liability should be determined based on whether it failed to provide a safe working environment, failed to properly train or supervise its employees, or failed to take appropriate action when it knew or should have known about the employee's behavior.

For example, if an employee is employed by a charitable organization and is caring for a disabled client and while transitioning the client from the bed to a chair, drops the client. This causes a severe injury to the client. Should the employee be held liable? Or, should only the organization be held liable?

SB2236 increases the required negligence of the employee to a higher level. In this example, the employee needs to be grossly negligent – which means then intended to drop the client – before charges can be brought against the employee. Is this fair to the victim?

Three other things to consider –

1. What happens if the employee is volunteering at a local soup kitchen or food pantry and negligence occurs. Are these individuals' employees? Or are they volunteers?

2. Many times, employees are included in civil litigation personally because they were either involved in the negligence, or the victim is unsure the employee still works for the organization or entity. If the employee is determined to not be at fault during the deposition and fact finding, they will be removed from the lawsuit.

3. This change is only for charitable organizations. So, we are increasing the threshold for these organizations who work with clients, but not for profit entities or those that do not fall under the threshold of charitable as defined in the NDCC?

Under 32-03.3-01. "Charitable organization" means a nonprofit organization whose primary purpose is for relief of poor, disabled, underprivileged, or abused persons, support of youth and youth programs, or the prevention of abuse to children and vulnerable adults.

If passed, SB2236 will endanger the most vulnerable of our population. The disabled, underprivileged and those who are abuse and vulnerable. Employees are trained professionally and in their scope of work to support these individuals. By increasing the threshold of their negligence, are you allowing negligence to occur?

The current statute for negligence for charitable organizations requires the organization and their employees to care for the clients as they were trained. Accidents happen, but if negligence occurs, the victim deserves to receive justice from the individual who harmed them.

Thank you for the opportunity to speak today. I will stand for any questions.

CHAPTER 32-03.3
CHARITABLE ORGANIZATION IMMUNITY

32-03.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Charitable organization" means a nonprofit organization whose primary purpose is for relief of poor, disabled, underprivileged, or abused persons, support of youth and youth programs, or the prevention of abuse to children and vulnerable adults.
2. "Claim" means any claim for money damages brought against a charitable organization or an employee of the charitable organization for an injury caused by the charitable organization or an employee of the charitable organization acting within the scope of the employee's employment.
3. "Employee" means every present or former officer or employee of the charitable organization or any person acting on behalf of the charitable organization in an official capacity, temporarily or permanently, with or without compensation.
4. "Injury" means personal injury, death, or property damage.
5. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.
6. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.
7. "Property damage" includes injury to or destruction of tangible or intangible property.
8. "Scope of employment" means the employee was acting on behalf of the charitable organization in the performance of duties or tasks of the charitable organization assigned to the employee by the charitable organization.

32-03.3-02. Liability of charitable organizations - Limitations - Statute of limitations.

1. A charitable organization may be only held liable for money damages for a personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.
2. The liability of the charitable organization under this chapter is limited to a total of two hundred fifty thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The charitable organization may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.
3. An action brought under this chapter must be commenced within the period provided in chapter 28-01.

