

1999 SENATE JUDICIARY

SB 2255

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2255

Senate Judiciary Committee

Conference Committee

Hearing Date January 26, 1999

Tape Number	Side A	Side B	Meter #
1	x		1630 - 4590
1		x	5587 - 5992
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SB2255 relates to theft by nonresidents.

SENATOR STENEHJEM opened the hearing on SB2255 at 9:30 A.M.

All were present.

SENATOR TRAYNOR testified in support of SB2255. I am also a sponsor of SB2256 and SB2255 relates to this other bill. SB2256 is a telemarketing bill. The purpose of SB2255 is to give the state jurisdiction to enforce violations.

SENATOR NELSON asked if there is a penalty stated somewhere.

SENATOR TRAYNOR stated that the penalty may be stated in SB2256.

SENATOR NELSON asked what if the telemarketers didn't buy the list and still called me.

SENATOR TRAYNOR stated that he still thought it would be a violation.

PARRELL GROSSMAN, Attorney General's Office, testified in support of SB2255. Testimony attached.

SENATOR WATNE asked approximately how many complaints there have been.

PARRELL GROSSMAN stated that about 3 or 4 a year.

SENATOR STENEHJEM asked if you have brought any civil prosecutions.

PARRELL GROSSMAN stated that yes they have if they have been able to locate them.

SENATOR WATNE asked about this being a very common thing in North Dakota and why there isn't a fiscal note.

PARRELL GROSSMAN stated there may be an impact.

SENATOR NELSON asked if there is a registry of telemarketers who use a fake address.

PARRELL GROSSMAN stated that they do try to keep track of this but it is hard because they are very migratory.

SENATOR STENEHJEM asked why they are amending 12.1-23 rather than amending 29-03.

PARRELL GROSSMAN stated that Bob Bennett could explain that better.

BOB BENNETT, Attorney General's Office, testified in support of SB2255. He explained some of the amendments. We wanted this to be left in the theft statute. It will be more accessible. This will help with other situations other than telemarketing. This will give us authority, such as a civil long-arm statute. The terms are defined in the theft statute. With the question of the cost of extradition, I don't know if that will be a problem. This will also give us the ability to prosecute corporations.

SENATOR STENEHJEM asked is there any reason to include only thefts that would be felonies rather than misdemeanors.

BOB BENNETT stated the reason that there are not extraditions for misdemeanors is because counties have to pay for extraditions but they can with bordering states.

SENATOR TRAYNOR asked if this would be the basis for extraditions in other states.

BOB BENNETT stated this would be the basis for bringing the charge in North Dakota on which the extradition is based. This statute would give us the authority to charge someone.

DICK PECK, North Dakota Peace Officer's Association, testified in support of SB2255.

SENATOR STENEHJEM CLOSED the hearing on SB2255.

SENATOR TRAYNOR made a motion for DO PASS, SENATOR BERCIER seconded.

Discussion. Motion carried.

SENATOR TRAYNOR will carry this bill.

6 - 0 - 0

REPORT OF STANDING COMMITTEE (410)
January 26, 1999 12:54 p.m.

Module No: SR-16-1208
Carrier: Traynor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2255: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2255 was placed on the
Eleventh order on the calendar.

1999 HOUSE JUDICIARY

SB 2255

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2255

House Judiciary Committee

Conference Committee

Hearing Date : March 3, 1999

Tape Number	Side A	Side B	Meter #
1	X		50
Committee Clerk Signature <i>Alan Gindberg</i>			

Minutes:

DICK PECK (NDPOA) The peace officers support this bill.

PARRELL GROSSMAN Presented written testimony, a copy of which is attached.

SEN. TRAYNOR This bill is needed to go after persons from out of state who use the mails, phone or internet to steal from our citizens.

COMMITTEE ACTION

REP. KOPPELMAN moved to amend the bill to add the emergency clause. Rep. Maragos seconded and the motion carried on a unanimous voice vote.

REP. HAWKEN moved that the committee recommend that the bill DO PASS AS AMENDED.

Rep. Fairfield seconded and the motion passed on a roll call vote with 15 ayes, 0 nays and 0 absent. Rep. Koppelman was assigned to carry the bill.

Date: 3/3/99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2253

House JUDICIARY Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number Do pass as Amend

Action Taken _____

Motion Made By Hawken Seconded By Fairfield

Representatives	Yes	No	Representatives	Yes	No
REP. DEKREY	✓		REP. KELSH	✓	
REP. CLEARY	✓		REP. KLEMIN	✓	
REP. DELMORE	✓		REP. KOPPELMAN	✓	
REP. DISRUD	✓		REP. MAHONEY	✓	
REP. FAIRFIELD	✓		REP. MARAGOS	✓	
REP. GORDER	✓		REP. MEYER	✓	
REP. GUNTER	✓		REP. SVEEN	✓	
REP. HAWKEN	✓				

Total Yes 15 No 0

Absent 0

Floor Assignment Koppelman

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

REPORT OF STANDING COMMITTEE

SB 2255: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2255 was placed on the Sixth order on the calendar.

Page 1, line 2, after "nonresidents" insert "; and to declare an emergency"

Page 1, after line 11, insert:

"SECTION 2. EMERGENCY. This Act is declared to be an emergency measure."

Renumber accordingly

1999 TESTIMONY

SB 2255

SENATE JUDICIARY COMMITTEE
WAYNE STENEHJEM, CHAIRMAN
JANUARY 26, 1999

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2255

Mr. Chairman and members of the Senate Judiciary Committee. I am Parrell Grossman, Director of the Consumer Protection and Antitrust Division of the Attorney General's Office. The Attorney General and the Consumer Protection Division support Senate Bill No. 2255.

Theft by deception, including telemarketing fraud that occurs by telephone, other electronic means or through the mails, etc. has become a serious problem in North Dakota, as elsewhere throughout the country. Unfortunately, North Dakota's current law arguably may not allow prosecution of such crimes or theft where the crime was commenced outside the state but consummated within the state. I have attached for your review a copy of N.D.C.C. § 29-03-01.1.

This proposed legislation would provide in North Dakota's criminal code a statute that would grant jurisdiction for the prosecution of theft by deception, etc. initiated outside the state but completed in this state.

Prosecution under this statute would not substitute for or be used in lieu of civil enforcement under consumer fraud authority, where such conduct may have been deceptive, misleading, etc. but did not constitute serious criminal activity such as theft. However, in those instances in which the elements of the crime meet the requirements of a theft by deception, local law enforcement in North Dakota would now have the ability or tools to prosecute and attempt to recover restitution for our victims.

The Consumer Protection Division and law enforcement are aware of many instances in which our citizens, often the elderly, have been bilked out of \$5000-\$30,000 or more through some slick con artist or crook through the telephone, express mail carrier, etc. There are many more victims than actually come forward or report the crime. This isn't fraud. This is theft and should be prosecuted as and given the attention of theft. This is, in fact, what is now occurring in other states through the process of educating victims, law enforcement, the courts, etc. These states are now vigorously prosecuting telemarketing fraud that originated outside their states but impacted victims in their states.

The state of Iowa, for instance, has been very successful in prosecuting such crimes that were initiated by crooks and scam artists outside their state. These criminals felt safe in the knowledge that such victims in Iowa were at the mercy of the busy courts in the other states in which they were located. That lasted until Iowa started charging the crimes out, and when appropriate extraditing, prosecuting and recovering restitution for its victims. What priority would a Florida prosecutor give a North Dakota victim in a theft by a Florida individual? Certainly not the same priority as one of our state's attorney's. or our courts.

Many of these defendants were living well and thought they couldn't be bothered by authorities in a state such as Iowa. First, they often were stunned to be charged criminally at all and brought into an Iowa courtroom to answer the criminal charges. Next, they showed up in court with their attorney prepared to argue it was merely some civil matter in which reasonable minds could disagree. Guess what? They were in an Iowa court with an Iowa judge and Iowa jury. The Iowa authorities successfully prosecuted these crimes and the Iowa juries convicted under these circumstances. We would like to ensure this same protection and enforcement authority in our state of North Dakota.

The Consumer Protection Division will continue civil enforcement in those appropriate instances that involve lesser dollar amounts and otherwise do not constitute a crime such as theft by deception. However, we also would like our citizens to have additional and necessary protection provided in other states. This proposed legislation will provide that if our prosecutors decide a crime commenced outside North Dakota has occurred in North Dakota, they can prosecute.

Because I am not an authority in criminal law, Mr. Bob Bennett, Director of the Attorney General's Criminal and Regulatory Division, is here also and may be able to answer some of your questions.

Mr. Chairman and members of the committee, for these reasons, on behalf of the Attorney General and the Consumer Protection Division, I respectfully urge this committee to give Senate Bill 2255, a "Do Pass" recommendation. Thank you. I am willing to try and answer any questions.

HOUSE JUDICIARY COMMITTEE
DUANE DEKREY, CHAIRMAN
MARCH 3, 1999

TESTIMONY BY
PARRELL D. GROSSMAN
DIRECTOR, CONSUMER PROTECTION AND ANTITRUST DIVISION
OFFICE OF ATTORNEY GENERAL
IN SUPPORT OF
SENATE BILL NO. 2255

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The Consumer Protection Division and law enforcement are aware of many instances in which our citizens, often the elderly, have been bilked out of thousands of dollars by some slick con artist or crook through the telephone, express mail carrier, etc. We just learned that an elderly citizen in Minot was bilked out of \$50,000 last week in a scam in which she wired the \$50,000 to a bank in New York that then wired the money to Russia. There are many more victims than actually come forward or report the crime. This isn't fraud. This is theft and should be prosecuted as and given the attention of theft. This is, in fact, what is now occurring in other states through the process of educating victims, law enforcement, the courts, etc. These states are now vigorously prosecuting telemarketing fraud that originated outside their states but impacted victims in their states.

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***11826 N.D. Code § 29-03-01.1**

**WEST'S NORTH DAKOTA CODE
TITLE 29. JUDICIAL PROCEDURE, CRIMINAL
CHAPTER 29-03. LOCAL JURISDICTION OF PUBLIC OFFENSES**

Current through the 1997 Regular Session of the 55th Legislative Assembly (1997)

§ 29-03-01.1. When persons liable to prosecution in this state

Any person who commits one or more of the following acts and is thereafter found in this state is liable to prosecution under the laws of this state:

1. Commission of a robbery or theft outside this state and bringing the stolen property into this state.
2. Soliciting, while outside this state, criminal action within this state.
3. Commission of kidnapping or felonious restraint when the victim is brought into this state.

Search this disc for cases citing this section.