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CR

2003 HOUSE JUDICIARY

HB 1057

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1057

House Judiciary Committee

Conference Committee

Hearing Date 1-15-03

Tape Number	Side A	Side B	Meter #
1		xx	2.3-40 (tape broken)
Committee Clerk Signature <i>Al Penrose</i>			

Minutes: All members were present.

Chairman DeKrey: We will hear testimony on HB 1057.

Rep. Frank Wald: In favor of bill 1057 (see testimony). I would like to have Bryan Personne speak further on this bill.

Bryan Personne, JD, Director of Government Affairs, Southwest Area Human Resource

Association: In favor of HB 1057 (see testimony).

Rep. Delmore: Are there ND statistics that show need of this bill.

Mr. Personne: No specific stats are available - but it is still necessary.

Rep. Delmore: You said 9 states have adopted this type of bill.

Mr. Personne: Yes, this will act as a deterrent.

Rep. Eckre: What about free speech? What other interest do you have in this matter.

Mr. Personne: I have no other interest. We talked about it in our group.

Rep. Klein: The bill would apply to not just employee but for the company.

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Page 2
House Judiciary Committee
Bill/Resolution Number HB 1057
Hearing Date 1-15-03

Mr. Personne: Yes.

Rep. Grande: What are the definitions of annoying? A single threat, employer held responsible if do not see the need.

Mr. Personne: The bill provides immunity for the employer, whether he decides to get a TRO or not.

Rep. Delmore: Should the language that is adopted, conform more to the domestic abuse language, would it read that way. Where did this language come from?

Mr. Personne: The language is from Arizona statute.

Rep. Delmore: Wouldn't this tie up a great deal of court time, we need to keep consistency.

Rep. Klemm: I would like to ask a question on sections on disorderly conduct restraining order, it only applies to the person or parent of minors?

Mr. Personne: The employer doesn't meet the definition of person - has no standing.

Rep. Klemm: Does the employer have to let the employee know he is filing it.

Mr. Personne: As its currently defined, it does not meet the definition of person.

Rep. Boehning: Wouldn't you bring a restraining order against that person.

Mr. Personne: If the person was terminated, the employer would have reasonable recourse.

Rep. Boehning: If fired, can he sue the employer.

Mr. Personne: Since in North Dakota, an employer can fire an employee for no cause, he would have no recourse to sue the employer for a restraining order.

Rep. Bernstein: This is expanding what we have now.

Mr. Personne: It would expand who has standing to bring restraining order on behalf of his employee.

Page 3
House Judiciary Committee
Bill/Resolution Number HB 1057
Hearing Date 1-15-03

Rep. Bernstein: Can't get now.

Mr. Personne: No.

Rep. Bernstein: He is forbidden to get a restraining order.

Rep. Maragos: Would have remedy - fire employee and get restraining order then.

Chairman DeKrey: Anyone else in favor or opposition to HB 1057.

Bonnie Palacheck, NDCAWS: I am opposed to the bill. Our issue is a concern about the third party getting a restraining order on behalf of someone else, need to develop work safety issues, don't have resources to do that, from being fired. Nationally, libraries are having problem with harassment of employees, the person is restrained, should a third party be able to get involved?

Chairman DeKrey: Thank you for appearing before our committee. We will now close the hearing.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1057

House Judiciary Committee

Conference Committee

Hearing Date 1-20-03

Tape Number	Side A	Side B	Meter #
1		xx	3-6
Committee Clerk Signature <i>D Penrose</i>			

Minutes: 12 members present, 1 absent (Rep. Maragos)

Chairman DeKrey: We'll look at HB 1057.

Rep. Grande: I move a Do Not Pass.

Rep. Delmore: Seconded.

Chairman DeKrey: Any discussion from the committee.

Rep. Delmore: I think there is a problem with the language. I just think it is a bad bill.

Chairman DeKrey: My concern is that when a situation requires a restraining order, it is already bad enough, but if you are scared of somebody, that you don't get the restraining order for yourself, how would you like to have your boss do it to you. That's what could happen.

Rep. Eckre: There are some serious free speech issues here. Is it really needed, liability?

Rep. Klemin: I think there are laws already in existence covering almost everything in this bill, except for the one instance of a boss getting a restraining order for an employee.

Rep. Bernstein: I don't really feel it expands much of anything.

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Page 2
House Judiciary Committee
Bill/Resolution Number HB 1057
Hearing Date 1-20-03

Chairman DeKrey: Any further discussion? The clerk will call the vote.

11 YES 1 NO 1 ABSENT DO NOT PASS

CARRIER: Rep. Eokre

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Date

42

Date: 1/20/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1057

House Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep. Grande Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	AB		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin		✓			
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 11 No 1

Absent 1

Floor Assignment Rep. Eckre

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

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REPORT OF STANDING COMMITTEE (410)
January 20, 2003 10:34 a.m.

Module No: HR-10-0757
Carrier: Eokre
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1057: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO NOT PASS
(11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1057 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-10-0757

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2003 TESTIMONY

HB 1057

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Summary of Testimony re: HB1057
Judiciary Committee Hearing
January 15, 2003
Prairie Room, State Capitol

Bryan W. Personne, J.D.
Director of Government Affairs, Southwest Area Human Resource Association
Member of the Society for Human Resource Management
Director of Administrative Services, Consolidated Telcom
701-483-7328 wk
701-483-7346 fax
Bryan@consolidatedtelcom.com

Goals of Proposed Legislation:

1. Give employers a legal right to obtain a Restraining Order to protect its staff and customers from workplace violence.
2. Do not expand employers liability in creating this right.

Facts Supporting the Need for this Legislation:

1. An estimated 1 million individuals are victims of violent crime which occurred in the workplace each year. (Sources: Bureau of Labor Statistics; National Institute for Occupational Safety and Health)
2. The Workplace Violence Research Institute estimates that incidents of workplace violence in 1995 cost employers \$35.4 billion. These costs include, but are not limited to, lost work, lost productivity, insurance claims, and litigation costs.
3. Approximately one half million U.S. employees missed 1.75 million days of work as a result of workplace violence. This represents more than \$55 million in lost wages, not including days taken under sick and annual leave, as well as \$13.5 billion in medical costs (Sources: National Center for Health Statistics; Bureau of Labor Statistics)
4. 20% of workplace homicides are committed by someone who has a relationship with the workplace, ie. domestic relationship with an employee, ex-employee, current employee, current or prior customer, etc. (National Center for the Analysis of Violent Crime)
5. 8% of all rapes and 16% of all assaults occur at the workplace. (Source: Bureau of Labor Statistics)

6. Women who are victims of workplace violence are more likely to be attacked by an acquaintance. Of those women who were victims of workplace violence 60% were attacked by someone they know. (Source: Bureau of Labor Statistics)

Analysis of Main Issues in HB1057:

1. This legislation is designed to empower employers to combat foreseeable acts of violence in the workplace based on specific events that have occurred that would lead a reasonable person to conclude that further acts of violence may be forthcoming. It is not going to have any impact unforeseeable criminal acts of 3rd parties, i.e. robberies. Its primary impact will be in the areas of domestic disputes that have spilled over into the workplace, harassment from ex-employees, or harassment from other 3rd parties targeted at the employer.
2. Harassment is defined as any single threat or act, or a series of threats or acts, that would cause a reasonable person to be alarmed. Whether the acts warrant a restraining order will be determined objectively by the court.
3. When reviewing the evidence in a petition for a restraining order under this proposed legislation, the court will determine whether the potential harm to the employer outweighs the individual's right to be free from the restraint requested. This determination will be based on the specific facts presented.
4. Sections 11 and 16 address the issue of employer liability. Section 11 states that this law does not expand the duties of an employer to provide a safe workplace and Section 16 states that an employer is immune from civil liability for seeking or failing to seek a restraining order under this proposed legislation. While the legislation creates a right in the employer to obtain a restraining order it does not create a duty to do so.

Other States that have Similar Laws:

Arizona, Arkansas, California, Colorado, Georgia, Indiana, Nevada, Rhode Island and Tennessee

This proposed legislation was modeled after the Arizona law.

Corrections to Proposed Legislation:

Page No. 4, Line 20: Should read "13. Whether *or not* a violation occurs in the presence..." The words "or not" must be inserted to make sense.

*Need one
for intern*

Southwest Area Human Resource Association



Southwest Area Human Resource Association • Chapter #0571 • PO Box 132 • Dickinson ND 58602

September 5, 2002

Representative Francis J. Wald
433 Seventh Street E.
Dickinson, ND 58601-4525

Re: The Workplace Violence Safety Act of 2002

Dear Legislator:

The Southwest Area Human Resource Association (SAHRA) is looking for a sponsor and support for adoption of a bill to prevent workplace violence in North Dakota. We have some startling statistics to report to you.

- An estimated 1 million individuals are victims of violent crime which occurred in the workplace each year. (Source: Bureau of Labor Statistics)
- The National Safe Workplace Institute estimates that incidents of workplace violence costs employers \$4.2 billion in litigation costs and lost work in 1992.
- Approximately one half million U.S. employees missed 1.8 million days of work as a result of workplace violence. This represents more than \$55 million in lost wages, not including days taken under sick and annual leave. (Source: Bureau of Labor Statistics)
- Women who are victims of workplace violence are more likely to be attacked by an acquaintance. Of those women who were victims of workplace violence, 40 percent are attacked by a stranger; 35 percent by a casual acquaintance; 19 percent by a well-known acquaintance and one percent by a relative. Five percent of women are attacked by a husband, former husband, boyfriend, or former boyfriend. (Source: Bureau of Labor Statistics)
- The Office of Criminal Justice calculates that three to four million women are battered each year.
- According to HAVEN, a Michigan-based organization on domestic violence, and the Family Violence Prevention Fund, at least 74 percent of battered women are harassed by their husbands at work, either by phone or in person.

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The first few statistics show the financial costs of workplace violence, but the intangible costs of workplace violence are much more. A person who arrives to work each day in fear of harassing phone calls, unexpected visits, and threats from an estranged spouse simply cannot be performing job duties well. Could you? In addition to workplace violence issues from domestic relationships, employers must also deal with workplace violence resulting from disgruntled employees on a regular basis. Employers and their staff simply cannot be performing at optimal levels when they are in fear of an ex-employee returning to the workplace.

North Dakota's employers have tried to counter incidents of workplace violence by increasing security; installing surveillance cameras in public areas; providing training to employees and supervisors on how to handle an incident of workplace violence; and developing resources for women seeking to remove themselves from an abusive situations. But often, workplace violence can only be prevented by barring an intruder from the workplace.

As legislators you are in a unique position to support North Dakota employers efforts by trying to eliminate the opportunity of violence by enacting The Workplace Violence Safety Act. This Act, attached, would allow an employer to seek a temporary restraining order and injunction on behalf of itself or one of its employees when acts constituting harassment have occurred. While individual's have a right to seek restraining orders on their own, many do not, fearing that they may make a bad situation worse. Presently North Dakota law does not permit an employer to obtain a temporary restraining order and injunction against harassment on its own behalf or on behalf of one of its employees. Allowing employers the opportunity to seek a temporary restraining order on behalf of an employee or itself would not only make our workplaces safer for all employees, it may help some of those of battered women take steps to reclaim their lives.

Please consider sponsoring this important legislation and help ensure the safety of North Dakota's workforce. Should you need additional information or if you are interested in assisting us in moving this proposal forward please contact me at the numbers listed below. The Directors of SAHRA are committed to supporting this legislation and are prepared to assist you in anyway necessary. Thank you for your consideration of this matter and I look forward to hearing from you.

Sincerely


Bryan W. Personne
Director of Governmental Affairs
Southwest Area Human Resource Association

Tel: 701-483-7328
Fax: 701-483-7385