

**2015 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1294**

# 2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1294  
1/21/2015  
22278

- Subcommittee  
 Conference Committee



## Explanation or reason for introduction of bill/resolution:

Prohibited employer retaliation and provide a penalty.

## Minutes:

Attachment 1

**Kylie Oversen~District 42 in Grand Forks:** (Attachment 1).

2:00

**Representative Becker:** This doesn't address the discussion of specifically, the gender in equality, its just any kind of discussion in regard to compensation?

**Oversen:** That correct.

**Representative Becker:** Say if I have all female employees and one can negotiate better than the others, do you see any of my concerns?

**Oversen:** If the concern of the business owner is not to create tension, based on their differing wages, they are already protected at the federal level under the NLRB. This bill is simply adding an additional level of state protection so they can bring action under state law.

**Representative Ruby:** There are some situations where they don't understand what I'm evaluating them or another employee in, I discuss with them privately. If I'm concern if there is some discussion, would you be in favor of me just saying, you know what, you are talking about this, we are going to sit down now and tell everyone's wage that they make and why. Do you think this is acceptable, would you be ok with that?

**Oversen:** I think if the issue is increasing transparency and that's what the employees are concerned about, but I don't think as an employer you can force them to share information. I don't think this bill will create a flurry of discussion and tension among employee because the protection is already at the federal level. We're just adding it to the state level.

**Representative Ruby:** Have you ever been discriminated, on your gender with wages?

**Oversen:** I have never.

**Representative Kasper:** Have you ever been an employer where you hired employees faced with this dilemma that the bill covers?

**Oversen:** I've been in a position of being an employer and a supervisor, yes. Have I been in the position of facing employees discussing their wages, no.

**Representative Kasper:** I'm talking about the ramifications where you might have seen that caused hardships?

**Oversen:** No.

**Representative Amerman:** The new language would protect the employee if he talks about his compensation with another person but it doesn't say another employee. If I discussed my compensation with my wife and she went and complained to my employer. My employer would have fired me because I discussed this with my wife, this law would now protect me, is that correct?

**Oversen:** It protects the employee from retaliation. As far as the employee bringing that conversation outside of the place of business, yes, it would provide the protection, but I may have to look into that further.

**Chairman Keiser:** There is a distinct difference between a large corporations versus a small businesses. It's more difficult for a small business. Was there discussion for small businesses under a certain size from this because of the potential problems that it creates in a smaller company?

**Oversen:** There was not, but I will look into this.

**Renee Stromme~North Dakota Women's Network:** This is starting to address the issue of the gap of discrimination. What the transparency piece does is gives the people the knowledge and tools they need to understand where they stand. There are ways to flush out the employee, employer relationships where you build a strong trust in each other. I think this is a good start. It's just that they are not retaliated against any discussion.

**Chairman Keiser:** Yes, we do advertise, what the starting pay scale is. But we have hired a person that has cost us a minimum of \$10,000, with the mistakes they make and the training process, until they get experience. So there is a huge differential, one is there for 20 years and the other is beginning their second year. If we list what the salaries are, we are going to have all sorts of problems for small businesses. You may think its fine to have transparency, but it creates problems for small business.

**Stromme:** The question is not to require it, the question is if it becomes a discussion that it's not addressed to retaliation to the employees, but it is.

**Chairman Keiser:** Then we can't have a policy that says this is a confidential relationship and don't discuss it.

**Stromme:** That may be the case. I'm not sure the requirement at the federal level is if it's just 50 employees and above that it doesn't hit that.

**Chairman Keiser:** The federal, is it 50 and above?

**Stromme:** I do believe that is the threshold but I would have to investigate for certainty.

**Tom Ricker~President of the AFL-CIO:** We stand in support of HB 1294. I believe transparency is a good thing and I don't think there is any harm in allowing employees to talk.

**Representative Kasper:** In the labor agreements that labor unions sign, are all the wages of all the employees disclosed to all of the people?

**Ricker:** Every employee gets a copy of the contract and all labor grades are listed. Generally there are provisions in CBA's or collective bargaining agreements that allow people to bid or bump to different positions based on their ability or wiliness to learn and they know what the pay is. Pay grades are listed.

**Representative Kasper:** What you're describing is a longevity bonus.

**Ricker:** Correct.

**Chairman Keiser:** Is there anyone else here to testify in support of HB 1294, opposition?

**Mike Rud~Represent the North Dakota Petroleum Marketers and the North Dakota Retail Association:** I would stand in opposition based on what Chairman Keiser talked about but if you set a number of employees, I would support it.

**Chairman Keiser:** Anyone else here is opposition of HB 1294, neutral?

**Troy Seibel~Labor Commissioner for the North Dakota Labor and Human Rights:** I'm here for questions the committee may have.

**Representative Boschee:** Are you able to answer questions on the Federal threshold and how it differs from the state threshold?

**Seibel:** The Department of Labor does not enforce the national labor relations act, the (NLRA). The NLRA is enforced by national labor relations board, which is the NLRB. The NLRB takes the position that the type of activity that is described as being a protected activity. If an employee is retaliated against for discussing pay with anybody, that is considered a violation with the NLRA. Whether you are covered or not under the NLRA, it will generally come down to whether or not your business effect interstate commerce. It will come down to case by case analogy.

**Representative Boschee:** Do we have a precedent of what defines a large or smaller employer based on the personnel looking for an exemption?

**Seibel:** The EEOC, title 7 uses the threshold of 15.

**Chairman Keiser:** Does the NLRA cover this activity?

**Seibel:** The NLRB takes position that this type of activity is protected activity. If your business is covered by the NLRA, if you retaliate against an employee for discussing compensation, the NLRB will take that as a violation of the NLRA.

**Chairman Keiser:** Can an employer, have a policy that says that salaries are confidential?

**Seibel:** Under state law, yes, but as whistle blowers statue is currently written, I'm speculating, I would suspect that the NLRB would take issue to that.

**Chairman Keiser:** What are the wishes of the committee?

**Representative Boschee:** Could we hold the bill?

# 2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

HB 1294  
1/27/2015  
22610

- Subcommittee  
 Conference Committee

*Ellen Letang*

## Explanation or reason for introduction of bill/resolution:

Prohibited employer retaliation and provide a penalty.

## Minutes:

*No attachments*

**Chairman Keiser:** Opens the work session on HB 1294.

**Representative Amerman:** I don't think we are waiting for anything. Moves a Do Pass.

**Representative Boschee:** Second.

**Representative Laning:** It does nothing with law and if it makes people feel good, let's go with it.

**Representative Boschee:** It's law federally but not state.

**Representative Louser:** When we reference on line 20, could that other person be somebody be at the Peacock?

**Chairman Keiser:** Yes.

**Chairman Keiser:** Can the employer have in their policy, a statement your compensation is confidential? Does this circumvent that?

**Inaudible.**

**Chairman Keiser:** You can request but not prohibit?

**Roll call was taken for a Do Pass on HB 1294 with 8 yes, 4 no, 3 absent and Representative Amerman is the carrier.**

Date: Jan 27, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 1294

House Industry, Business & Labor Committee

Subcommittee  Conference Committee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
Other Actions:  Reconsider \_\_\_\_\_

Motion Made By Rep Amerman Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut		X	Representative Louser		X
Representative Beadle	Ab		Representative Ruby	Ab	
Representative Becker		X	Representative Amerman	X	
Representative Devlin		X	Representative Boschee	X	
Representative Frantsvog	X		Representative Hanson	X	
Representative Kasper	Ab		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 8 No 4

Absent 3

Floor Assignment Rep Amerman

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

**REPORT OF STANDING COMMITTEE**

**HB 1294: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **DO PASS** (8 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING).  
HB 1294 was placed on the Eleventh order on the calendar.

**2015 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1294**

# 2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1294  
3/18/2015  
Job Number 25042

- Subcommittee  
 Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to prohibited employer retaliation

## Minutes:

Attachments

**Chairman Klein:** Called the committee to order.

**Representative Kylie Oversen:** She is here to testify in support of the bill, which would protect employees from retaliation for discussing their wages with other employees. Written Testimony Attached (1). (:04-2:34)

**Chairman Klein:** What I heard you say is under the federal law it is already covered and we are putting it into the state law to create an easier read, less cumbersome. Would you go back to that part?

**Representative Oversen:** As I stated the National Labor Relations Act of 1935 does protect certain workers action which has been interpreted to include the discussion of wages because that is a work related discussion. I know the Labor Commissioner is here and he can clarify. There has been confusion about that particular law, it has been interpreted to include that but because of the confusion workers and employers don't always know that protection exists. Adding this to statute strengthens and clarifies that.

**Chairman Klein:** Asked if this has been an issue for constituents in the state or is this something we are looking at as a national attempt to create a more uniform law which we see a lot of these days.

**Representative Oversen:** Yes on both accounts. There has been conversation on how workers do not feel free to discuss wages with others and there have been Supreme Court cases that have noted that. This is part of a national conversation regarding wage discrimination and different protections that should be added to help address that.

**Renee Stromme, North Dakota Women's Network:** In support of the bill. They are a statewide agency working to improve the lives of women. Written Testimony Attached (2). (5:10-7:16)

**Chairman Klein:** The statistics were all based on federal numbers so this isn't a review of what is happening in North Dakota?

**Renee Stromme:** No. It really has proven to weed out paid discrepancies based on gender. The privacy just keeps it from happening. (7:25-7:52)

**Chairman Klein:** The presumed privacy?

**Renee Stromme:** Well in fact the discussion that happened in the House is employers do have that policy and when the discussion continued on, the committee discovered that they weren't really supposed to have those policies and that they are not enforceable. (7:57-8:17)

**Senator Miller:** Why would an employer want to keep his employees from discussing salary and pay?

**Renee Stromme:** I don't know that I would be able to give what their benefits are, I suppose because they can pay someone differently than another person.

**Tom Ricker, AFL- CIO:** In support of the bill. We feel it creates a level playing field and as was mentioned in 1202 we feel it is an employee friendly bill and an employer friendly bill. He said they found out for an employer to have that type of policy it would violate the National Labor Relations Act. (9:21-10:13)

**Chairman Klein:** Why do we need this when you just told me it is against the law under the National Labor Relations Act?

**Tom Ricker:** It is in violation of the National Labor Relations Act but as was brought up in earlier testimony, there were two people who were employers that prior to hearing this said they had those types of policies.

**Chairman Klein:** Asked the commissioner to come forward. You heard the discussion and my concern is do we really need to add this or are we already covered? Will this help you?

**Troy Seibel, Labor Commissioner:** We do not investigate allegations of violations of the National Labor Relations Act. If you have someone who feels retaliated against by his or her employer because they have discussed compensation with a coworker or any third party, the exclusive jurisdiction to enforce that statute is by the National Labor Relations Board. What 1294 does it specifically adds in a prohibited act. (12:05-13:35)

**Senator Miller:** Asked about section 1a and said it reads that it is covered.

**Troy Seibel:** Not exactly section 1a would really apply to a situation where I report a violation of a law and because I reported the violation whether it is to the appropriate law enforcement authority or to my employer and then I was retaliated against because I reported the violation. What 1294 does is add an additional layer which is, if I turn to a coworker and say, I make this amount of money and you as an employer came to me and fired me because I made that comment that would now become a prohibited act.

**Senator Miller:** Wouldn't the employee be able to say to you he's not following federal law?

**Troy Seibel:** I think that is accurate. If someone said I think this particular employer is violating the law and then the employer retaliated against the employee because of that act that is already covered. Whether we put this particular language into the whistle blower statute is up to the committee. The thought is it would just create additional ground of what we called prohibited retaliation.

**Senator Murphy:** Said what this bill would do is you would be able to take care of it at the state level.

**Troy Seibel:** That's correct.

**Chairman Klein:** We are going to recess until 10:15.

# 2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1294  
3/23/2015  
Job Number 25267

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Era Liebelt*

## Explanation or reason for introduction of bill/resolution:

Relating to prohibited employer retaliation

## Minutes:

No Attachments

**Chairman Klein:** This bill deals with retaliation, if you discuss compensation with another person. If you have a good employee and if they do something wrong, you're not going to fire them if you need them. I have my concerns over this one.

**Senator Miller:** Sometimes when you start adding more and more language it can complicate things in other ways. I am going to move a do not pass because I don't think this is necessary.

**Senator Miller:** Moved a do not pass.

**Senator Burckhard:** Seconded the motion.

**Chairman Klein:** Any other discussion?

**Senator Murphy:** If we do have this situation happen you do have to make a federal case about it to get something adjusted. I don't see why we should put our employees through that.

**Senator Sinner:** I am on both sides of this one. I know as an employer I prefer that my employees don't discuss their wages amongst each other.

**Senator Campbell:** We have a huge incentive for our people where we base promotions and wage increases on productivity.

**Senator Sinner:** Eventually you either deal with that disgruntled employee on this issue or explain what has happened or the employee figures it out himself and goes on his own. I don't think it is fair to retaliate against somebody who has a discussion about this and then we can't go and explain what happens. I think that is the problem here, if you can't explain to your employee what happened because these things always happen. To retaliate

against them is wrong because it is our job as an employer to explain why they didn't get a raise or what their position is. That's why I am going to vote against the motion.

**Senator Murphy:** I think you are absolutely right about what happens and what you don't want. You want to be able to promote or not or pay for performance but that is not what this bill is about. This is merely if someone talks out of school that you can't punish them for that. In my view then you have that conversation and explain it.

**Senator Poolman:** I am torn on this bill. Some people get raises and some don't and when they don't and they don't understand why they didn't, they can become toxic.

**Senator Miller:** I think subsection "a", somewhat takes care of the issue. In the fact if you are in violation of a federal law, employees will have some sort of place for recourse.

**Chairman Klein:** I think the comment was made whether it is in here or not is it going to make any difference? We put a lot of things in the code that don't make any difference and I am sometimes frustrated by that and citizens are frustrated by that. It seems to me what I heard is we are covering this. If there is someone who feels they are being discriminated against because they did that, they have a leg to stand on.

**Senator Murphy:** I agree they do have a leg to stand on already but in a small rural area they have to drive somewhere else so they can talk to the feds about it. It is just making it easier.

**Chairman Klein:** I would argue that we are not racing to the court house. I still believe we are going to the labor commissioner, the labor commissioner is looking at the issue and he can make that determination. However if he says it is not a discrimination case that is when the claimant will suggest that they are going to court and that is when he has to go to the federal court potentially versus district.

Roll Call Vote: Yes-5 No-2 Absent-0

**Senator Campbell will carry the bill.**

# 2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

HB 1294  
3/30/2015  
Job Number 25581

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Eva Luedt*

## Explanation or reason for introduction of bill/resolution:

Relating to prohibited employer retaliation

## Minutes:

No Attachments

**Chairman Klein:** Asked if anyone wanted to continue the discussion on 1294.

**Senator Campbell:** Said that he thought this one through and he was approached a couple of different times by Tom Ricker.

**Senator Sinner:** Moved to reconsider actions on 1294.

**Chairman Klein:** We are going to reconsider actions whereby we had a do not pass on 1294.

**Senator Murphy:** Seconded the motion.

**Chairman Klein:** All in favor say "I", opposed no. That carried.

**Senator Campbell:** Said that there were a couple of things that were brought to his attention. He said that at an employee's standpoint they can only go back four years if it is in the feds but if it is with the State they can go back for more than four years. So if a company is going to be sold it would be a disadvantage to them because if there is an outstanding case it is a deterrent to sell the company.

**Senator Sinner:** Said he had discussion with Tom Ricker as well. As I understand it if a complaint is filed with the North Dakota Labor Commissioner that complaint is only on the books for four years. However if the complaint is filed with the federal labor relations board that complaint will stay there forever.

**Senator Miller:** If we pass this bill what is preventing an employee who has an issue, rightly or wrongly from going to the national labor relations board?

**Senator Murphy:** My response is that NLRB on average is about a seven month process. What we are talking about here is an employee who shares with another employee what he makes and the employer gets mad at him. He shared his original argument.

**Chairman Klein:** Said he went to visit with the labor commissioner last week to see if this was something that he needed to make this happen more quickly and he said absolutely not. It is not one of the issues. Everything they do is already covered. (5:00-6:44)

**Senator Sinner:** Did you ask the labor commissioner what happens if he receives a complaint?

**Chairman Klein:** Things would work through similar to what they are. He has other things to stand on and other federal law to look to. He has everything he needs to make this an efficient process should the need ever arise.

**Senator Sinner:** Said his understanding was that they would immediately turn it over to the NLRB.

**Senator Miller:** That is probably what he would do if this was the specifics of the complaint entirely but then again he would take the complaint and read it and if he can do something else first maybe.

**Senator Sinner:** Asked if they would rather have the state labor commissioner call them and address the issue or would they rather have the NLRB call you and say we are going to investigate this thing.

**Senator Poolman:** Mr. Chairman I would just echo your comment that in this committee and my other committee I have seen so many bills where someone is taking something that is already in federal law and putting it into code and bringing people in to testify on the bills that would not have benefited on the bills that they are testifying on. I think the people that are coming to testify sometimes don't even realize that the law that they are here to advocate for is not even going to help them and so for me this is the straw that broke the camel's back. I don't anticipate that I will switch my vote because I don't want this process to continue where we make political issues out of taking something that is already in federal law and putting it into our code. I just don't think it is...

**Chairman Klein:** Do I hear a motion there since the bill is before us again. We had a motion for a do not pass originally and it is back in the committee and we need another motion.

**Senator Poolman:** Moved a do not pass.

**Senator Miller:** Seconded the motion.

Roll Call Vote: Yes-4 No-3 Absent-0

**Senator Miller will carry the bill.**

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. HB 1294**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Miller    Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Campbell	x		Senator Sinner		x
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total    (Yes) 5    No 2

Absent    0

Floor Assignment    Senator Campbell

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

**2015 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
HB 1294**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar

Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Sinner Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Klein			Senator Murphy		
Vice Chairman Campbell			Senator Sinner		
Senator Burckhard					
Senator Miller					
Senator Poolman					

*Voice  
Vote  
Carried*

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

**2015 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 HB 1294**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Senator Poolman    Seconded By Senator Miller

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy		x
Vice Chairman Campbell		x	Senator Sinner		x
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 4    No 3

Absent \_\_\_\_\_

Floor Assignment Senator Miller

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

**REPORT OF STANDING COMMITTEE**

**HB 1294: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO NOT PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1294 was placed on the Fourteenth order on the calendar.

**2015 TESTIMONY**

**HB 1294**

**Testimony - House Bill 1294**  
**House Industry, Business, and Labor Committee**  
**January 21, 2015**

Chairman Keiser and members of the House Industry, Business, and Labor committee, my name is Kylie Oversen and I represent District 42 in Grand Forks. I am here to testify in support of HB 1294, which would protect employees from retaliation for discussing their wages with other employees.

HB 1294 amends an existing statute that protects employees from retaliation from their employers for other reasons, such as the reporting of law violations, participating in a public hearing or investigation, or refusing to perform an action that the employee believes to be illegal.

Despite the enactment of equal pay laws in the 1960's, a significant gap still exists between what men earn and what women earn, for equal work. The wage gap is calculated by the difference in men's and women's median earnings. The calculations are based on data from the Census Bureau, the Department of Education, and the Bureau of Labor Statistics. The most recent data show that in North Dakota, women earn only 70% of what men earn. For every dollar that a man brings home, a woman with comparable experience and education, doing comparable work, brings home only 70 cents.<sup>1</sup>

In real numbers, the 2013 Census showed that the median earnings of North Dakota men were up to \$49,231, an increase from \$46,225 in 2012. For women, the median earnings increased from \$34,438 to \$35,549.<sup>2</sup> That amount of take home pay that women lose out on significantly affects their ability to care and provide for their families. These discrepancies cannot be simply explained away by differentials in education, experience, or performance.

HB 1294 is an opportunity to improve just one aspect that impacts the wage gap in North Dakota and beyond. Employees often refrain from discussing their compensation with colleagues, for fear of their employer finding out and retaliating. If an employee cannot freely discuss their wages and the wages of their

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<sup>1</sup> The Wage Gap: State Rankings 2013, National Women's Law Center, September 2014. *Available at* [www.nwlc.org](http://www.nwlc.org); See also <sup>1</sup> The Gender Pay Gap: North Dakota, AAUW, September 2014. *Available at* [www.aauw.org](http://www.aauw.org).

<sup>2</sup> The Gender Pay Gap, *Supra* note 1.

co-workers, they may not be aware that a discrepancy exists. Often, in state and federal government agencies, the overall wage gap is much smaller. This can, in part, be attributed to much greater wage transparency among agencies and employees, as well as to uniform wage rates.

Even the U.S. Supreme Court has recognized that the "fear of retaliation is the leading reason" why many victims of discrimination, pay related or otherwise, "stay silent".<sup>3</sup> Strengthening these protections for North Dakota workers will allow for increased transparency and a greater opportunity to combat the wage gap. We are simply allowing our employees to voluntarily discuss their wages with others and to take note of and report discrimination when it exists.

Mr. Chairman and members of the committee, I urge to you favorably consider HB 1294 and I would be happy to answer any questions that you have.

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<sup>3</sup> Crawford v. Metro. Gov't of Nashville & Davidson County, U.S., 129 S. Ct. 846, 852 (2009)

**Testimony - House Bill 1294**  
**Senate Industry, Business, and Labor Committee**  
**March 18, 2015**

Chairman Klein and members of the Senate Industry, Business, and Labor committee, my name is Kylie Oversen and I represent District 42 in Grand Forks. I am here to testify in support of HB 1294, which would protect employees from retaliation for discussing their wages with other employees.

HB 1294 amends an existing statute that protects employees from retaliation from their employers for other reasons, such as the reporting of law violations, participating in a public hearing or investigation, or refusing to perform an action that the employee believes to be illegal.

Despite the enactment of equal pay laws in the 1960's, a significant gap still exists between what men earn and what women earn, for equal work. The wage gap is calculated by the difference in men's and women's median earnings. The calculations are based on data from the Census Bureau, the Department of Education, and the Bureau of Labor Statistics. The most recent data show that in North Dakota, women earn only 70% of what men earn. For every dollar that a man brings home, a woman with comparable experience and education, doing comparable work, brings home only 70 cents.<sup>1</sup>

In real numbers, the 2013 Census showed that the median earnings of North Dakota men were up to \$49,231, an increase from \$46,225 in 2012. For women, the median earnings increased from \$34,438 to \$35,549.<sup>2</sup> That amount of take home pay that women lose out on significantly affects their ability to care and provide for their families. These discrepancies cannot be simply explained away by differentials in education, experience, or performance.

HB 1294 began as a part of a three bill package to address the wage gap. You already heard and passed one of those, HB 1257. The other did not pass in the House. This bill is an opportunity to improve just one aspect that impacts the wage gap in North Dakota and beyond. Employees often refrain from discussing their

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<sup>1</sup> The Wage Gap: State Rankings 2013, National Women's Law Center, September 2014. Available at [www.nwlc.org](http://www.nwlc.org); See also <sup>1</sup> The Gender Pay Gap: North Dakota, AAUW, September 2014. Available at [www.aauw.org](http://www.aauw.org).

<sup>2</sup> The Gender Pay Gap, *Supra* note 1.

compensation with colleagues, for fear of their employer finding out and retaliating. If an employee cannot freely discuss their wages and the wages of their co-workers, they may not be aware that a discrepancy exists. Often, in state and federal government agencies, the overall wage gap is much smaller. This can, in part, be attributed to much greater wage transparency among agencies and employees, as well as to uniform wage rates.

Currently, under the National Labor Relations Act of 1935, employees are provided this particular protection. However, that federal law is not explicitly written regarding discussion of compensation and that has caused confusion.<sup>3</sup> Adding this clear protection in state law clarifies and strengthens that provision.

Even the U.S. Supreme Court has recognized that the "fear of retaliation is the leading reason" why many victims of discrimination, pay related or otherwise, "stay silent".<sup>4</sup> Strengthening these protections for North Dakota workers will allow for increased transparency and a greater opportunity to combat the wage gap. We are simply allowing our employees to voluntarily discuss their wages with others and to take note of and report discrimination when it exists.

Mr. Chairman and members of the committee, I urge to you favorably consider HB 1294 and I would be happy to answer any questions that you have.

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<sup>3</sup> Dreisbach, Tom: "Pay Secrecy" Policies at Work: Often Illegal, and Misunderstood, April 2014. Available at <http://www.npr.org/2014/04/13/301989789/pay-secrecy-policies-at-work-often-illegal-and-misunderstood>.

<sup>4</sup> Crawford v. Metro. Gov't of Nashville & Davidson County, U.S., 129 S. Ct. 846, 852 (2009)



Senate Industry, Business and Labor  
House Bills 1294  
March 18, 2015

Good morning Chairman Klein and members of the Senate Industry, Business, and Labor committee. I am Renee Stromme representing the North Dakota Women's Network. We are a statewide advocacy organization working to improve the lives of women. We stand in support of House Bill 1294.

One of the reasons that pay discrimination is so difficult to root out is that the majority of employers have policies and practices that prohibit or discourage workers from discussing or inquiring about pay. According to the Institute for Women's Policy Research, half of all workers, including 61 percent of private-sector employees, report that discussing or inquiring about their wages is either directly prohibited or discouraged by their employer.<sup>i</sup>

In contrast, when workers are able to discover pay disparities, they can take steps to address them, and employers are more likely to proactively identify and remedy discrimination, reducing the need for costly litigation.

In the public sector, where pay secrecy rules are uncommon, only about 14 percent of employees report that discussing their wages is either prohibited or discouraged.<sup>ii</sup>

The gender-based wage gap for all full-time workers, based on median earnings, is about 23 percent,<sup>iii</sup> but in the federal government, where pay rates are publically available,<sup>iv</sup> the gender-based wage gap is 11 percent.<sup>v</sup>

HB 1294 provides important protections for workers to discuss their wages without fear of retaliation. By enacting this protection, North Dakota would join both the federal government and the growing chorus of states that have enacted protections for workers to discuss their wages without fear of retaliation. Therefore we urge this committee to look favorably on 1294 and give it a do pass recommendation.

<sup>i</sup> INST. FOR WOMEN'S POLICY RESEARCH, PAY SECRECY AND WAGE DISCRIMINATION (2014), available at [http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at\\_download/file](http://www.iwpr.org/publications/pubs/pay-secrecy-and-wage-discrimination-1/at_download/file) (revealing that overall, 51 percent of female employees and 47 percent of male employees report that their employers either prohibit or discourage the discussion of wages, and that in the private sector that number increases to 60 percent of male employees and 62 percent of female employees).

<sup>ii</sup> See PAY SECRECY AND WAGE DISCRIMINATION, supra note 34 (showing that 11 percent of male employees in the public sector and 18 percent of female employees in the public sector report that wage discussion is prohibited or discouraged).

<sup>iii</sup> Gowri Ramachandran, Pay Transparency, 116 PENN ST. L. REV. 1043, 1063 (2012).

<sup>iv</sup> Id.

<sup>v</sup> U.S. Gov't Accountability Office, GAO-09-279, Women's Pay: Gender Pay Gap in the Federal Workforce Narrows as Differences in Occupation, Education, and Experience Diminish 3 (2009), available at <http://www.gao.gov/assets/290/287375.pdf>.