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DESCRIPTION

2170

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10/17/03
Date

2003 SENATE JUDICIARY

SB 2170

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2170

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 1/21/03

Tape Number	Side A	Side B	Meter #
1	x		20.0 - 50.1
2	x		19.6-23
Committee Clerk Signature <i>Maria LaSolberg</i>			

Minutes: **Chairman Traynor** opened the hearing on SB 2170. All members were present.

Testimony in support of SB 2170

Senator Ray Holmberg testified and introduced the bill. This bill was introduced at the request of a constituent who serves papers for the court as a part of his business. He would enter a place of business for the purpose of serving a document for the court and the business owners would refuse him access. Before testifying on the bill, Senator Holmberg recommended an amendment to the bill since "or other authorized person" was inadvertently left out when the bill was drafted. (written proposed amendment attached)

Senator Traynor clarified "authorized person" was a process server authorized by the person who wanted a document served and could be anyone.

Senator Dever added that he had been asked to add the wording after "opposed " "resist, avoid or evade".

Senator Holmberg recommended asking the various attorneys on the committee about this.

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Bill/Resolution Number SB 2170
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Bill Butcher testified as owner of W.T. Butcher and Associates, a private detective service in Bismarck in support of the bill. (written testimony) (meter #23.8). He also testified in support of the amendment proposed by Senator Holmberg.

Senator Trenbeath asked if process servers carry identification that indicates they are officers of the court?

Mr. Butcher said no but the papers being served normally indicate the server is an officer of the court.

Senator Trenbeath asked if that is what is currently used to prove the server is an officer of the court. (meter #27.4) Wouldn't it be better to have some sort of identification or badge system that would indicate the status of a server and wouldn't that give them better luck getting on private property?

Mr. Butcher said private investigators have state identification cards but they do not indicate they are officers of the court because when they are doing other private investigator business, they are not officers of the court. There are some companies in the state that do strictly process service and they do not have state identification cards because they are not private investigators.

Senator Trenbeath stated that he wasn't sure process servers or a deputy serving papers should be allowed on private property if the owner excludes them. (meter #29.8)

Mr. Butcher related an incident where a process server entered a restaurant to serve a waitress and she went into the kitchen and the manager refused him entry to the premises and told the process server to serve the employee somewhere else.

Senator Trenbeath asked if in this type of situation wouldn't the court issue a contempt citation?

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What you are asking the state of North Dakota to do is to make obstruction of the service of civil documents a crime. (meter #30.8)

Mr. Butcher said in thirty years of working as a private investigator, he has never heard of a contempt citation being issued by the court against anyone obstructing the service of process.

Senator Lyson said the only reason "other authorized persons" bothers him is that an attorney could ask anyone to serve papers. Does this make that person an officer of the court? (meter #31.0)

Mr. Butcher said it is absolutely correct that anyone who is over the age of 18 and a citizen can serve papers. On the other hand, that person is representing the court. The alternative could cost a lot of money and time.

Senator Bercier asked if servers have a badge?

Mr. Butcher said no. As a clarification, deputies can serve papers and they have a badge. But this is not a requirement to serve papers.

Senator Bercier asked if the legal system could offer a temporary badge to used for serving papers?

Mr. Butcher said turning the badges back in could be cumbersome and there could be a lot of badges in circulation.

Jessica McSparron, Sexual Assault Program and Policy Coordinator of the North Dakota Council on Abused Women Services. Testified in favor of the bill. (meter #35.0) Victims of domestic violence who implement an order of protection through the courts, can have that order served on their abuser by any process server. When a woman goes through with the decision to leave her abuser she puts herself at great risk of violence. Allowing an abuser to avoid service of a civil

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order because the server can't enter private property or a place of business puts the victim at risk.

Senator Lyson acknowledged the concerns of Ms. McSparron. He said even a deputy sheriff serving a civil paper does not have the authority to enter a person's home without being invited to enter nor does he have the right to go into a business place without the permission of the owner. You are asking us to make a law to take the privacy away from a home owner or a business owner. He can't in good faith agree with it.

Senator Trenbeath also acknowledged the concerns of Ms. McSparron. He didn't think making sure service is made would abate the risk to an abused woman by her abuser. (meter #38.8)

Senator Dever asked if there is a provision if a person knows they are going to be served and avoids service, would he then be held responsible even though the service was not made. (meter # 39.6)

Ms. McSparron said there are no repercussions for someone who knowingly avoids service of a civil order.

Senator Lyson said problems with accountability need to be addressed but we can't demand private homes or businesses be entered so papers could be served. (meter # 40.6)

John Olson, North Dakota States Attorneys, testified against the bill. He said the states attorneys have a lot of concerns regarding prosecuting these cases and determining what constitutes avoidance or resistance.

Senator Nelson asked if resist and avoid are synonymous?

Mr. Olson said he didn't know.

Senator Traynor asked about an employer that has a policy of no interruptions of the work schedules of his employers.

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Mr. Olson said that is the employer's prerogative. If a collection agency is told not to call an employee at work, there are no more calls at work. There are protections in place under the Fair Debt Collection Act.

Testimony Neutral to SB 2170

None

Testimony Against SB 2170

Dan Houfek, private investigator in Bismarck, testified against the bill. He initially thought this was a good bill but after hearing testimony, he is against it. He doesn't think private people should have more rights than law enforcement in the service of civil papers. A more precise definition of oppose and resist vs. avoidance and evasion is necessary.

Chairman Traynor closed the hearing on SB 2170.

Chairman Traynor opened the hearing on SB 2170. pm (tape 2, side 1, meter 19.6)

Discussion on the ability of a private investigator vs. a deputy of the state. What if an employer states they do not want their work line disrupted at any time? What about the privacy of a home? Even a police officer does not have the right to go into someone's home even if they have committed a crime.

Chairman Traynor closed the hearing on SB 2170.

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2170

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 1/27/03

Tape Number	Side A	Side B	Meter #
4	X		41.1 - End
3		X	0.0 - ? Bad Tape
Committee Clerk Signature <i>Maria L. Salberg</i>			

Minutes: Chairman Traynor opened the committee work on SB 2170. All members were present.

Ray Holmberg - attachment #1 Amendment spoke (meter 41.1) Discussed sworn officers are covered under a different part of the law. Officer of Court and making a crime out of a civil procedure. Discussed Knowingly Vs Intentionally Vs willfully (meter 47.4) Infraction will cost \$25.

Motion Made to DO NOT PASS SB 2170 by Senator Thomas L. Trenbeath and seconded by Senator Dick Dever .

Roll Call Vote: 4 Yes. 2 No. 0 Absent

Motion Passed

Floor Assignment Senator Thomas L. Trenbeath

Chairman Traynor closed the hearing on SB 2170.

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Att # 1

Holmberg

SB 2170

The bill with amendment attached.

A person may not knowingly oppose or resist any officer [OR OTHER AUTHORIZED PERSON] in serving or attempting to serve or execute any legal writ or process. A violation of this section is a class B misdemeanor.

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12/17/03
Date

30281.0101
Title.

Prepared by the Legislative Council staff for
Senator Holmberg
January 15, 2003

PROPOSED AMENDMENTS TO SENATE BILL NO. 2170

Page 1, line 4, after "officer" insert "or other authorized person"

Renumber accordingly

Page No. 1

30281.0101

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Date: January 27, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2170

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Sen. Trenbeath Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley. Lyson - Vice Chair		X	Sen. Carolyn Nelson		X
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FOUR (4) No TWO (2)

Absent Zero (0)

Floor Assignment Senator Thomas L. Trenbeath

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

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REPORT OF STANDING COMMITTEE (410)
January 27, 2003 4:39 p.m.

Module No: SR-15-1160
Carrier: Trenbeath
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2170: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO NOT PASS**
(4 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2170 was placed on the
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-15-1160

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2003 TESTIMONY

SB 2170

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Senate Bill 2170

Testimony by Bill Butcher, Business Owner
Before the Senate Judiciary Committee
January 21, 2003

I appear today as the owner of a North Dakota private investigation firm, and I am asking this Committee for a "Do Pass" on Senate Bill 2170.

This bill was submitted due to a problem many process servers in the state are having. That is, the obstruction of service of process. When law enforcement serves papers, they generally have the authority of the uniform, and obstruction of justice statutes to assist them in getting to the individuals that they need served.

My employees and I serve legal documents for attorney, government and corporate clients on a regular basis, but we do not have the obstruction statutes to fall back on. Nor do we have a badge or uniform to show that we too are officers of the court when serving legal papers, even though that is exactly what we are.

Most states in the US allow private process servers to serve papers, and over a dozen of those states have now enacted laws prohibiting the obstruction of process service. There are a number of reasons why we, private process servers in the state of North Dakota, feel that this is necessary. Firstly, on rare occasions individuals will resist the service of process in a variety of ways, including physically attacking the process server. Unless they actually do significant physical harm to the process server, most states attorneys will not press charges. This statute would give prosecutors another option for prosecution.

Another reason, and more towards the intent of this bill, is to assist the process server in getting into locations to serve individuals. Many times when we get papers to

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serve, our clients do not know where the person lives so we go to their places of employment. Occasionally, employers will refuse to either call the employee to the front to be served, or will not allow us direct access to the employee within the workplace. With this statute in place we could advise such employers that not allowing us to effect the service could be considered obstructionist and they could face criminal penalties if they don't allow service to be made.

A similar situation could occur at gated communities. There are few of these in North Dakota as yet, but in the larger cities there are some. With this statute, process servers could advise gatekeepers that it would be obstructionist if they did not allow the process server on company property to serve the papers.

Finally, I would like to address the amendment to this bill. When this bill was originally proposed, it had the wording from the amendment in it; however, when the bill was written it was unintentionally omitted. The amendment is a vital part of the wording of this statute. Legally, the bill is probably correct as written because when process servers serve court papers they are considered to be officers of the court; however, as a practicality, many members of the public do not understand this and would interpret the statute to be referring to police officers. All they would need to do is tell the prosecutor that they thought that it meant for police officers and they didn't know the process server was an officer of the court. By adding "Other Authorized Individuals" the bill makes this perfectly clear and so it is important that it be included in the statute.

I ask that you forward a "Do Pass" recommendation on to your colleagues in the House of Representatives.

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A person may not oppose, resist, avoid or evade any person licensed by the North Dakota Private Investigators and Security Board in serving or attempting to serve or execute any process. A violation of this section is an infraction.



Dan H.

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