

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1097

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1097

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6775

Committee Clerk Signature

Chairman Keiser: opened the hearing on HB 1097 relating to limitations of withholdings of an employer from compensation due employees.

Lisa McEvers Commissioner~ND Department of Labor

See attachment 1.

Representative Ruby: On line 21 is that suppose to be of instead of or? Is it suppose to be thief of property?

McEvers: Yes it should be.

Representative Ruby: It covers thief of property but not damages to property?

McEvers: That correct.

Representative Ruby: What requirements are suppose to be in an authorization before?

McEvers: It comes to what the terms, individual itemization. The term individual was added to the statue in 1993.

Representative Clark: There would be no exceptions without an authorized signature?

McEvers: There are still the exceptions for anything that is court ordered, taxes and required by the state or federal government. That is correct.

Representative Johnson: Give a couple of examples of situations for McEvers.

McEvers: The more clear it is, the more acceptable is.

Representative Clark: There seems to be there should be minimum amount. You can't to small claims court.

McEvers: That could be true, but businesses are in position of power. Businesses have more ability to absorb that small dollar loss rather than an employee. Purpose of these statutes is to protect the employee and not the employers.

Vice Chairman Kasper: You list we need to list for authorization. You do not have the reason for the deduction that I can see. You don't have the reason.

McEvers: Adding one more thing would be fine. I would not object to that.

Vice Chairman Kasper: Going on the liability and thief admitted by the employee to employer. They make a decision that they are going to pay it back but the employer do not report it. What liability does the employer have from not reporting a thief?

McEvers: I don't know .

McEvers and Vice Chairman Kasper about liability.

Representative Schneider: I have concerns with subsection 2. It doesn't seem remedial if the employer hold money from the employee. Doesn't seem remedial.

McEvers: What is happening right now is employers are holding the money and they are not reporting to law enforcement and that's the defense they report to us. We're are trying to give them some avenue. There is a time limit they can hold a check.

Representative Schneider: What is the law now on returned wages after separation of employment and does your office see a lot of complaints from employees from wages they have earned?

McEvers: Yes. The Department of Labor has already seen 533 wage claims. We do receive a lot of wage claims. Most claim are for unpaid vacations.

Representative Gruchalla: Will this address the specific case of day care? Employer deducted the day care fee from the check unknown to employee. This statute will take care of this.

McEvers: Yes

Representative Clark: Employee walks off the job, do you just pay him. You said that 533 claims, whose favor are those settled?

McEvers: Of 582 claims; 144 settled without a determination that could have gone either way, 87 settled after determination, and 82 were settled with no merit. So out of the 582, 82 of them were no merit, so 500 were with merit. We had 194 filed in state district court. We have already taken in ½ million dollars of wage claims. There is no recourse for someone who walks off.

Vice Chairman Kasper: What is the law in ND on vacation?

McEvers: There is no law to provide vacation. If it's earned it's payable upon leaving.

Vice Chairman Kasper: How do you determine earned & payable, unless there is an agreement between employer & employee?

McEvers: The policy manual.

Chairman Keiser: Question on page 1 line 23. Employer has to report it in seven days. Is there something magical about the seven days?

McEvers: There is not. Talks about the seven days back and forth with Chairman Keiser.

Chairman Keiser: On the second page line 9, what's the rate of interest?

McEvers: Same rate of interest used in the court system. That could also be clarified.

Chairman Keiser: Without clarification that creates another argument of the point. Would you look into other state to see how they are handling this? Do you have to do an investigation of all claims that are small, filed in your department?

McEvers: That's correct.

Chairman Keiser: Does employee or does the department?

McEvers: More claims go to district court than small claims court. Claims over \$500 are claims that the Attorney General take. Only the claims under \$500 we would tell the employee, you're on your own to go to small claims court. There were 194 referrals for the Attorney General and District Court and 18 for small claims court.

Chairman Keiser: Worker is not getting free legal counsel but the state is taking the cost on and going against the employer. So that's a good thing for the employee. What this bill is attempting to do is create a transparency on what's happening, and then saying in effect, without that signature, the employer has no legal. What's the penalty?

McEvers: My recollection is that it's an infraction of \$500. We try to be a neutral investigative agency but it is intending to protect employees not employers.

Representative Clark: Do you feel this bill will reduce the workload for your department?

McEvers: It may, at least employers know what they have to do. What they write in those authorizations. We are hoping so.

Vice Chairman Kasper: Talking about the minimum, do you think it would make sense add to this bill language any dispute below 100 or 150 dollars would have to be settled by small claims court and not come to your department. What will the impact of that would occur.

McEvers: I don't want to discourage anyone coming to us because a dispute can be resolved without going to court at all.

Vice Chairman Kasper: It's your opinion that even though you have to do the same type of investigation for a \$20 versus a \$3000 claim, do you still think it served the public better using your department?

McEvers: I believe so.

Representative Nottestad: Give us an idea of amounts. These 500 some claims filed, what would be the smallest and largest? What's the range?

McEvers: Very wide range. From \$100 to \$40,000. We have a claim that pending on tens of thousands.

Representative Nottestad: Is there are a patterns of specific businesses of large claims?

McEvers: Most claims come from the trucking industry. There are also businesses out of business and daycare centers. It's all types of business.

Representative Boe: Who will this effect seasonal employers that make a deal their employee that at the end the season.

McEvers: I don't think it will change at all.

Representative Clark: Explain the main difference of this bill and the one you drew last session?

McEvers: The reference in the automatic contribution plan, they could opt out or in. The other provision was for lost or stolen property and damage to property and it was offensive. I had the authorization the amount deducted during each pay period. I also have provisions in there that a deduction could not be excess of the amount that could be held on garnishments.

Vice Chairman Kasper: Under garnishment, what right does an employee have to dispute a garnishment before it is implemented?

McEvers: I'm not an expert on garnishment so I can't answer that question.

Chairman Keiser: Ask you to draft at least two amendments; relative to the seven days and on page two, look to see if that isn't leaving it open ended.

Representative Ruby: Need to change of to or and also two days before the pay period.

Chairman Keiser: Anyone else here to testify in support of 1097.

John Risch~United Transportation Union. I'm in support.

Representative Clark: You see most complaints, how often do they come up?

Risch: Happens on a regular basis in my business.

Tom Balzer~ND Motor Carriers Association. I stand in support but it need more clarification.

Mr Balzer goes on to talk about a situation about how he needs clarification for that situation.

Dan Ulmer~Blue Cross-Blue Sheild of ND. We have no problem with the bill but we have a question on line 12 about the specific time period.

McEvers: Answers question about specific time period.

Chairman Keiser: In your amendments would you look at out that section and creating a new section so we are dealing with just that small thing.

Vice Chairman Kasper: Cafeteria plans should also be excluded under this section.

Representative Johnson: You need to go back into all contracts.

Chairman Keiser: Leave section one as it is, take out the new language there create a new subsection two which is talking about unauthorized deductions.

No opposition.

Close the hearing on HB 1097.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1097

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6932 starting at 6:50 on the digital recorder.

Committee Clerk Signature

Ellen LeTang

Chairman Keiser: Opens the committee work session on 1097. Representative Clark, do you have the amendments for that?

Representative Clark: We have two amendments.

Lisa McEvers: See attachment.

Vice Chairman Kasper: I think you are missing section 125, the cafeteria plan are separate.

McEvers: Perhaps we put qualified plans sponsored by the employer, would that cover it?

Vice Chairman Kasper: I think that might cover it all.

Chairman Keiser: Where would take anything out and insert?

Vice Chairman Kasper: Starting on line 2, goes on to explain what he wants.

McEvers: Is it necessary to designate that is qualified under the IRS?

Vice Chairman Kasper: I don't know.

Chairman Keiser: Well, we know the intent and we will have to get some clarification.

Representative Nottestad: On page two, we have one & two, and then on the last one after line 9 insert four, what happened to three?

McEvers: On page one, inaudible.

Representative Nottestad: So, one & two in parentheses are subsection of B, correct?

McEvers: Yes

Vice Chairman Kasper: On line ten, what are we doing with the words "an authorization of reduction shall include"?

McEvers: That would move to the beginning of subsection two.

Chairman Keiser: We will sign and engross it so that we can see it, read the impact. Now, lets go to the second amendment.

Representative Ruby: We heard a lot about the thief and I thought about damages that are criminally caused. I asked Representative Clark to include that. When we are done with this, we will have a completely rewritten bill?

Chairman Keiser: Yes. The term stolen property, if we replace it with criminal act by the employee that implies that I have to bring charges? I was wondering if you wanted to say stolen or criminal act?

Vice Chairman Kasper: What would be wrong with say "with stolen or damaged property"?

Representative Ruby: That was actually the language I mentioned. I have no problem.

Representative Schneider: I would agree with Vice Chairman Kasper.

Chairman Keiser: Do we want to modify this amendment to say stolen or damaged property?

Representative Ruby: Yes, that would be fine. That was pretty much my intent.

McEvers: Sometimes damage is not a crime; I would want you to consider that there are some damages that would not be reported to law enforcement. I'll leave that for you to consider.

Vice Chairman Kasper: This could be handled in house, don't we want that employer & employee to be able to agree to that?

McEvers: They could do that now.

Representative Gruchalla: Would putting in there "Illegally stolen or damaged", would that help.

Chairman Keiser: "stolen or illegally damaged"?

Vice Chairman Kasper: I have another concern with the last word on page two, crime. There again, we are implying crime compared to thief. Is it reported or not reported.

Representative Ruby: I think that's the whole point. This is the bill that gives the employer one little bit of remedy to hold on to a check in the case of thief or damage that is criminal.

Chairman Keiser: Lisa, the group I heard most from is contractors. They take the truck with all the tools, when they get done with the job site, put them on the truck and bring them back. Then they don't. Contractor tells them "I told you a thousand times to bring those things back, you didn't do it, (there gone), I'm going to deduct this from your paycheck. This will prohibit that.

McEver: That would be negligence, which would not be a criminal act. With negligence, the employer has the remedy of disciplining them or terminating them. Also, they could cut their pay.

Chairman Keiser: You can't deduct it.

McEver: You couldn't from the check unless it is agreed upon.

Representative Clark: I don't think that would work very well with a Union employee to cut their pay. Secondly, I want to say, all of this is contingent on a signed agreement with the employee that you can withhold his check. Lisa has agreed to work up a common prehire authorization and post it on her web site. Isn't that the basis we have talked about?

McEver: Yes, that is correct. We will be willing to draft some of the more simple incidents.

Representative Clark: I think that has the potential to limit the number of things that go to her office if the employers get some authorization in writing at the time of hire.

Representative Ruby: I think that's fine with the understanding that it can't be a blanket approach.

Chairman Keiser: Do you want us to try and incorporate both these amendments? What are your wishes?

Representative Clark: Representative Ruby, is it your opinion that you are not going to have an authorization to with hold with the new written language. You still need that written authorization?

Representative Ruby: Not if you are going file it as a law enforcement.

Chairman Keiser: We are talking about two authorizations here. One is preemployment and the other is, you hired the employee and now there is a problem. We need some transparency, an employer just can't arbitrarily, unilaterally withhold.

Representative Ruby: There is also the example where you are not going to get the authorization because there is some criminal activity and that's where the employer has the ability to hold to the check.

Chairman Keiser: Tyler, could you work this up?

Intern Tyler: One question, on line 17, shall will be replace with may.

Chairman Keiser: OK. Lisa, we will do that, get a copy to you and have you review it to see if there is anything else you would like us to reconsider.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1097

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 20, 2009

Recorder Job Number: 7307

Committee Clerk Signature

Ellen L. Tang

Chairman Keiser: Opened the committee work session on HB 1097.

Chairman Keiser: Representative Clark, have you had a chance to review the colored amendments?

Representative Clark: Both of these amendments were prepared by the labor commissioner &

Tyler told me this morning that one thing was left out.

Tyler: On amendments A, section four.

Vice Chairman Kasper: Could you read it.

Tyler: Reads the paragraph.

Vice Chairman Kasper: Talks about cafeteria plan.

Representative Clark: Don't they all have to be authorized by a signature?

Chairman Keiser: Yes they do.

Representative Clark: Is it necessary to put this down on the bill?

Vice Chairman Kasper: I think it should.

Representative Clark: Don't the words employer sponsored retirement accounts cover that?

Vice Chairman Kasper: It's a different section of the code.

Chairman Keiser: What are the wishes of the committee?

Representative Clark: I move the amendments be adopted both A & B and Vice Chairman Kasper's.

Representative Ruby: Second.

All ayes.

What are the wishes of the committee.

Representative Clark: Under current law, whatever reason, the employee can go to the labor commissioner and file a complaint. At the labor commissioner will rule against the employer and send it on to the attorney general.

Chairman Keiser: Not necessarily.

Representative Clark: If they don't, the next remedy to the employee to file suit.

Chairman Keiser: Currently, employee thinks there is a problem. They can file a complaint with the labor commissioner. The labor commissioner investigates every file. On occasion, the labor commission does come back with a ruling on behalf of the employer saying "we have investigated the complaint and we do not support the complaint". At that point the employee can go to court if they so choose.

Representative Clark: I'm thinking of no site authorization and where there is no signed authorization. There is no exception to the employer cannot withhold, under current law, they have to have a signed authorization or the labor commissioner will rule against the employer.

Chairman Keiser: I don't think that's really right. The new law says that you have to get the signed authorization.

Representative Schneider: The reason for the extra language to clarify more on the signed authorization.

Representative Clark: Under bill, the remedy shifts from the employee to the employer. Am I missing the point?

Chairman Keiser: You can go to your employee.

Representative Clark: You've got to get the signed authorization.

Representative Thorpe: On line seven, page one and talks about changes.

Vice Chairman Kasper: There is amiss on number 3. Something is missing.

Representative Schneider: I don't think they need a signed authorization, it's wrong doing.

Vice Chairman Kasper: I have a fix for the grammatical error.

Ruby: I remember the sign authorization being clarified last session by the labor commissioner.

Chairman Keiser: If you have a signed agreement for an offset salary, there is never a complaint. This does put a structure on it.

Representative Clark: Testimony by the labor commissioner went at great length to point out that blanket exemptions are no good.

Chairman Keiser: What do you want to do?

Representative Vigesaa: Move the further amendment.

Vice Chairman Kasper: Second.

All ayes:

What are your wished?

Representative Schneider: Do Pass as Amended.

Representative Thorpe: Second.

Roll call on HB 1097 Do Pass as Amended with a 12 yea's, 0 nay's, 1 absent and

Representative Clark is the carrier.

January 20, 2009

VR
1/21/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1097

Page 1, line 10, after the period insert:

"2."

Page 1, line 12, after "covers" insert "unless the authorization clearly indicates that the period is in perpetuity or until revoked in writing or upon separation of employment"

Page 1, line 17, replace "2." with "3." and replace "shall" with "may"

Page 1, line 18, replace "stolen property" with "monetary damages resulting from a criminal act by the employee" and remove "the employee"

Page 1, line 19, replace "Voluntarily" with "The employee voluntarily"

Page 1, line 20, replace "1" with "2"

Page 1, line 21, replace "theft or" with "a crime resulting in monetary damages to the employer which is"

Page 1, line 22, remove "property or funds"

Page 1, line 23, remove "of theft" and replace the second "theft" with "crime"

Page 1, line 24, after "employment" insert "or the next regularly scheduled payday, whichever occurs later"

Page 2, line 2, replace "theft" with "crime"

Page 2, line 5, replace "theft" with "the alleged crime"

Page 2, line 6, replace "the value of the theft" with "an amount to be determined by the court"

Page 2, line 8, replace "value of the theft" with "loss incurred by the employer due to the crime"

Page 2, line 9, after "interest" insert ", at the rate established by section 47-14-09"

Page 2, after line 9, insert:

"4. This section may not be construed as prohibiting the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations, to employer-sponsored retirement accounts, or qualified plans sponsored by the employer, nor may this section prohibit deductions authorized under a collective bargaining agreement, including dues or service fees not otherwise prohibited by law."

Renumber accordingly

Date: Jan 20 - 2009
Roll Call Vote # _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1097

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	x		Representative Amerman	x	
Vice Chairman <u>Kasper</u>	x		Representative Boe		
Representative Clark	x		Representative Gruchalla	x	
Representative N Johnson	x		Representative Schneider	x	
Representative Nottestad	x		Representative Thorpe	x	
Representative Ruby	x				
Representative Sukut	x				
Representative Vigesaa	x				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Clark

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

REPORT OF STANDING COMMITTEE

HB 1097: Industry, Business and Labor Committee (Rep. Kelser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1097 was placed on the Sixth order on the calendar.

Page 1, line 10, after the period insert:

"2."

Page 1, line 12, after "covers" insert "unless the authorization clearly indicates that the period is in perpetuity or until revoked in writing or upon separation of employment"

Page 1, line 17, replace "2." with "3." and replace "shall" with "may"

Page 1, line 18, replace "stolen property" with "monetary damages resulting from a criminal act by the employee" and remove "the employee"

Page 1, line 19, replace "Voluntarily" with "The employee voluntarily"

Page 1, line 20, replace "1" with "2"

Page 1, line 21, replace "theft or" with "a crime resulting in monetary damages to the employer which is"

Page 1, line 22, remove "property or funds"

Page 1, line 23, remove "of theft" and replace the second "theft" with "crime"

Page 1, line 24, after "employment" insert "or the next regularly scheduled payday, whichever occurs later"

Page 2, line 2, replace "theft" with "crime"

Page 2, line 5, replace "theft" with "the alleged crime"

Page 2, line 6, replace "the value of the theft" with "an amount to be determined by the court"

Page 2, line 8, replace "value of the theft" with "loss incurred by the employer due to the crime"

Page 2, line 9, after "interest" insert ", at the rate established by section 47-14-09"

Page 2, after line 9, insert:

"4. This section may not be construed as prohibiting the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations, to employer-sponsored retirement accounts, or qualified plans sponsored by the employer, nor may this section prohibit deductions authorized under a collective bargaining agreement, including dues or service fees not otherwise prohibited by law."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1097

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1097

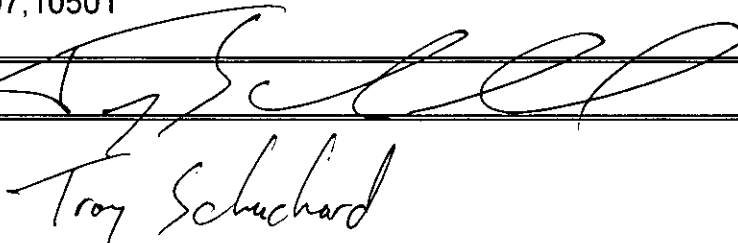
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 1097,10501

Committee Clerk Signature



Minutes:

Lisa Fair McEvers, Commissioner of Labor: I am in support of 1097. Written testimony attached. This bill is a proposal to try to clarify 341404.1 authorized deduction statute. We continue to have problems with employers who want to use policy manuals or blanket deductions to take things out of the employee's checks.

Chairman Klein: Do you continue to find that employers are struggling with what they can actually and are withholding and shouldn't be. This is hopefully to clarify everything that there is a true consent between an employee and employer and a signed consent.

Lisa: That's correct, these employers are saying that these blanket policies that if they sign a policy manual that it does whatever they put in their policy that it creates a valid authorization. There is no beginning date, there is no amount the employee has no way of knowing by signing that what amount they might actually have withheld from their paycheck.

Chairman Klein: The policy book doesn't hold water to the law?

Lisa: That is our construction of the law based on the legislative history of this statute. There haven't been any task cases in court so I don't know if the court would construe that the same way the department is but we are trying to follow the mandate of the legislative history of this statute.

Senator Potter: By changing it from theft to criminal act, does that include vandalism, what about serving a minor? A bartender serves a minor; it subjects your employer to a lawsuit, would that apply at all?

Lisa: I don't know if that specific scenario was not part of the discussion but if the act by that employee resulted in a monetary damage to an employer potentially they could. I am thinking of the criminal act in that instance, law enforcement themselves would probably bring charges against the business, not the employee.

Senator Potter: Criminal act does that include all misdemeanors?

Lisa: It's meant to include everything in century code 12.1 under the criminal code.

Senator Andrist: I would think if it's a criminal act the employer would want to protect himself right away but there is a considerable time length between the deed and the court trial. What happens during that period?

Lisa: Under the present statute the employer would be required to pay that paycheck at the next required pay day if they fired that employee and filed charges. If they filed charges we wouldn't accept the wage claim the one that was in dispute. The problem as it is right now the employer under law they are suppose to pay that pay check. Under this proposal they could hold they check and file charges and as long as law enforcement deemed that the charges should be dropped the check doesn't get paid until the end of the outcome that the court decides.

Senator Nodland: A business has a policy manual and in that manual they have certain deductions that they can do and then they have a form that they can sign that authorizes the employer to do those deductions. Is that still okay?

Lisa: Anytime an employee signs a policy manual, we will look to see if it is specific enough to create a valid authorization. But is current policy and are future policy would be unless whatever is signed is noted in the first part of this bill, that policy manual isn't going to be

adequate. Not everyone files a wage claim. Everything that isn't specific we going to few as a blanket authorization. In the legislative history your group has decided you don't want blanket authorizations. Sometime there is a statue that doesn't seem quite fair to the employer but we are very strict on following the letter of the law.

Similar discussion continued.

Dave Kemnitz, President of the AFL-CIO: When I read the law o the limitations of withholding that's okay. But line nineteen, section three. It talks about an alleged criminal act. It is loosely applied and anything can be considered a criminal act. If it's alleged and not proven it can be withheld. (Continued discussing the unfairness of the bill).

Chairman Klein: I may be looking at this totally differently because I see it as a positive thing for the employee because before the employer was just taking that money. Now we lay it out here in an easy to read definition so the employer knows exactly that he doesn't take this he doesn't file a charge he has to pay this. I see it as an advantage to the employee not the employer.

Dave: It's wrong for an employer to withhold illegally an individual's earned wages for any reason. (Continued discussing the fairness of the bill).

Lisa: Senator Potter's issue on how long it would take. It would take at the most twenty one days, if there are not any charges filed.

Senator Potter: What about the number of days after that? How long can it take for the employer to give him his pay check?

Lisa: Immediately, we would be involved in that.

Chairman Klein: Closed the hearing on HB 1097.

Chairman Klein: Opened discussion on HB 1097. There was an issue as to the employer withholding some compensation as a result of damage advertently or inadvertently caused by employees.

Page 4

Senate Industry, Business and Labor Committee

Bill/Resolution No. 1097

Hearing Date: February 25, 2009

Senator Andrist: We need to remember this bill limits what an employer can withhold from an employee, without this there would be no limit. To me this was a worker friendly bill.

Senator Potter: Motion for a Do Not Pass

Senator Horne: Seconded

Chairman Klein: Motion for a Do Not Pass is approved 5-2, Senator Horne to carry.

Date: 3/9
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1097

Senate

Committee

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

☐ Pass

☒ Do Not Pass

☐ Amended

Motion Made By Senator Potter Seconded By Senator Horne

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist		✓	Senator Tracy Potter	✓	
Senator George Nodland		✓			

Total (Yes) 5 No 2

Absent 0

Floor Assignment Senator Horne

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

REPORT OF STANDING COMMITTEE

HB 1097, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO NOT PASS** (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1097 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HB 1097

John Hoeven
Governor

Lisa K. Fair McEvers
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

nd.gov/labor
nd.gov/humanrights

Testimony on HB 1097
Prepared for the
Industry, Business and Labor Committee
January 12, 2009

Chairman Keiser and members of the Industry, Business and Labor Committee, I am Lisa Fair McEvers, Commissioner of Labor. I appear before you in support of HB 1097 relating to authorized deductions made by an employer from an employee's compensation.

This bill proposes a number of changes to N.D.C.C. § 34-14-04.1. The statute currently bans deductions unless there is a written authorization by the employee for an individual item, with the exceptions of deductions which are required by law such as state and federal taxes, court orders, etc.

Both the labor department and the legislative assembly have struggled with how to craft a statute which protects employees from unauthorized deductions made by employers. The legislative history on N.D.C.C. §34-14-04.1 from 1973 shows that one of the concerns of the legislative assembly in passing this section was that employers were making unauthorized deductions from employees' paychecks for things such as fund raising and breakage. Apparently, employers were taking money out of employees' checks without them even knowing it.

In 1993, the issue was revisited at the request of the department of labor, making another exception for documented payroll advances, and clarifying that authorized deductions must not only be made in writing, but also for individual items. The term "individual" continues to be a sticking point between the department and employers when it comes to whether or not a deduction has been appropriately authorized.

Concerns of the Senate Industry, Business and Labor Committee in 1993 included: 1) that a till shortage could not be taken out of an employee's wages without an authorization; 2) that "up front" authorizations should not be allowed for breakage; 3) that documentation for charges made by an employee to the employer must be documented by a signature. In fact, Senator Schoenwald stated: "I just want to make it clear that that there shouldn't be deductions that are non-authorized or blanket authorized."

Commissioner Craig Hagen had concerns in 1993 over confusion that the term "individual" and possible interpretations that may occur in regard to blanket authorizations. Commissioner Hagen indicated that the department had a case where

signing a blanket authorization was made a condition of employment. The authorization said simply that I authorize the employer to make appropriate deductions from my compensation period. Then, any time the bill was short, the employer simply took it out of the employee's check.

The department continues to have problems with employers using blanket authorizations for deductions from paychecks. Often the employer has a policy manual which states that funds will be deducted from the employee's final paycheck if they leave employment, and the employee is required to sign the policy manual upon commencing work. Examples of such policies include deductions for items such as: keys, uniforms, cleaning of vehicles, etc. The employers' position is generally that these policies **do** authorize deductions for individual items. While the position is understandable, these blanket authorizations are what the legislature intended to avoid in amending the statute in 1993.

In attempting to follow the legislative intent of the statute, the department's position on these blanket authorizations is that the department does not view them valid authorizations, and will not recognize them. These blanket authorizations are signed when it is unknown whether a loss will occur, an amount which may be deducted from their compensation, and do not give the employee any opportunity to dispute the charge.

Upon review of the legislative history it is clear that the term "individual item" was added to the statute to address the problem of blanket authorizations, but in fact, has not really solved the problem. The new language is intended to solve this problem, by clarifying what is required in an authorization, including: the specific time period covered by the authorization, the amount to be deducted from the employee's compensation for each period, the employee's signature, and the date the authorization was signed. This requirement would ensure that employees know exactly what they are authorizing to be deducted from each check.

The proposed amendments also include provisions directing an employer of steps to take if they believe the employee has stolen from them. In this situation, the employer may either request the employee sign an authorization or discharge the employee and file a report with local law enforcement.

In conclusion, wage collection statutes are intended to be remedial in nature. We should not allow employers to have a superior position to every other creditor, simply because they control the paycheck. Employees should have an opportunity to agree that they owe a debt by authorizing the deduction or have the same right as every other debtor to due process.

I would be happy to answer any questions you may have in regard to this bill.

Proposed changes to HB 1097 including both Amendments A & B

1. Every employer shall withhold from the compensation due employees those amounts which are required by state or federal law to be withheld and may deduct advances paid to employees, other than undocumented cash, and other individual items authorized in writing by the employees.
2. An authorization for deduction shall include:
 - a. The specific time period the authorization covers unless the authorization clearly indicates that the period is in perpetuity or until revoked in writing or upon separation of employment
 - b. The amount to be deducted from the employee's compensation for each pay period;
 - c. The employee's signature; and
 - d. The date the authorization was signed.
3. An employer shall not make any deduction from the compensation due employees for monetary damages resulting from a criminal act by the employee unless the employee;
 - a. Voluntarily authorizes the employer in writing to make the deduction as described in subsection two.
 - b. The employer discharges the employee by reason of the allegation of a crime resulting in monetary damages to the employer that are connected to the employee's work and the employer files a report with a local law enforcement for the crime within seven days of the separation of employment or the next regularly scheduled payday, whichever occurs later subject to the following conditions.
 1. If no charges are filed in a court of competent jurisdiction against the employee for the alleged crime within 15 days of the filing of the report with a local law enforcement agency, wages are due and payable upon the expiration of the 15 day period.
 2. If charges are filed against the employee for the alleged crime the court may order the withheld wages to be offset an amount to be determined by the court, if the employee is found not guilty or if the employer withholds an amount in excess of the loss incurred by the employer due to the crime the court may order the employer to pay the employee the withheld amount plus interest, at the rate established by section 47-14-09.
4. Nothing in this section shall be construed as prohibiting the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations or to employer sponsored retirement accounts, nor shall this section prohibit deductions authorized under a collective bargaining agreement including dues or service fees not otherwise prohibited by law.

Keiser, George J.

From: McEvers, Lisa K.
Sent: Monday, January 12, 2009 4:57 PM
To: Keiser, George J.
Subject: Please review 'PROPOSED AMENDMENTS TO HB 1097'
Attachments: PROPOSED AMENDMENTS TO HB 1097.doc

Follow Up Flag: Review
Flag Status: Flagged

Chairman Keiser,

I submit the following proposed amendments for your consideration. In trying to adhere to your request the draft amendments be to you by the end of the day, I hope I have not missed anything suggested by the committee. I would note that in my research today I have found a wide array of how other states have tried to deal with this issue. Arizona has a provision that provides some protection for employers if there is a reasonable good faith dispute and allows the employer to raise a counterclaim of debts owed by the employee. There is a set off provision under 34-14-05, but the department has never considered offsets in cases of unauthorized deductions.

Earlier today, there was a question as to the penalty provided under 34-14—while I wasn't certain, my answer was correct, a violation is at most an infraction under 34-14-07.

I would be happy to put more work into this effort if the amendments are not to your satisfaction. I am afraid I don't have much experience in drafting amendments and my staff has even less.

Lisa Fair McEvers

A

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1097

Page 1, line 10, after "employees." begin a new subsection and insert "2." on the next line.

Page 1, line 12, after "covers" insert "unless the authorization clearly indicates that the period is in perpetuity or until revoked in writing or upon separation of employment"

Page 1, line 17, replace "2." with "3."

Page 1, line 20, replace "1" with "two"

Page 1, line 22, after "property" replace "or" with "of"

Page 1, line 24, after "employment" insert "or the next regularly scheduled payday, whichever occurs later"

Page 2, line 9, after "interest" insert ", at the rate established by section 47-14-09"

Page 2, after line 9, insert "4. Nothing in this section shall be construed as prohibiting the withholding of amounts authorized in writing by the employee to be contributed by the employee to charitable organizations or to employer sponsored retirement accounts, nor shall this section prohibit deductions authorized under a collective bargaining agreement, including dues or service fees not otherwise prohibited by law."

Renumber accordingly

B

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1097

Page 1, line 18, after “for” replace “stolen property” with “monetary damages resulting from a criminal act by the employee.”

Page 1, line 21, after “allegation of” replace “theft of property or funds” with “a crime resulting in monetary damages to the employer that are”

Page 1, line 23, after “report” remove “of theft”

Page 1, line 23, after “alleged” remove “theft” and insert “crime”

Page 2, line 2, after “alleged” remove “theft” and insert “crime”

Page 2, line 5, after “employee for” remove “theft” and insert “the alleged crime”

Page 2, line 6, after “offset” remove “by the value of the theft” and insert “an amount to be determined by the court”

Page 2, line 8, after “excess of the” remove “value of the theft” and replace with “loss incurred by the employer due to the crime”

Renumber accordingly

John Hoeven
Governor

Lisa K. Fair McEvers
Commissioner



State Capitol - 13th Floor
600 E Boulevard Ave Dept 406
Bismarck, ND 58505-0340

nd.gov/labor
nd.gov/humanrights

Testimony on HB 1097
Prepared for the
Industry, Business and Labor Committee
February 25, 2009

Chairman Klein and members of the Industry, Business and Labor Committee, I am Lisa Fair McEvers, Commissioner of Labor. I appear before you in support of HB 1097 relating to authorized deductions made by an employer from an employee's compensation.

This bill proposes a number of changes to N.D.C.C. § 34-14-04.1. The statute currently bans deductions unless there is a written authorization by the employee for an individual item, with the exceptions of deductions which are required by law such as state and federal taxes, court orders, etc.

As you may recall, during the last session I proposed a bill to amend this statute to clarify what was necessary for a proper authorization, and this bill was unsuccessful. The department continues to have problems with employers using blanket authorizations for deductions from paychecks. Often the employer has a policy manual which states that funds will be deducted from the employee's final paycheck if they leave employment, and the employee is required to sign the policy manual upon commencing work. Examples of such policies include deductions for items such as: keys, uniforms, cleaning of vehicles, etc. The employers' position is generally that these policies **do** authorize deductions for individual items. While the position is understandable, these blanket authorizations are what the legislature intended to avoid in amending the statute in 1993.

In attempting to follow the legislative intent of the statute, the department's position on these blanket authorizations is that the department does not view them valid authorizations, and will not recognize them. These blanket authorizations are signed when it is unknown whether a loss will occur, an amount which may be deducted from their compensation, and do not give the employee any opportunity to dispute the charge.

Upon review of the legislative history it is clear that the term "individual item" was added to the statute to address the problem of blanket authorizations, but in fact, has not really solved the problem. The new language is intended to solve this problem, by clarifying what is required in an authorization, including: the specific time period covered by the authorization, the amount to be deducted from the employee's compensation for each period, the employee's signature, and the date the authorization was signed. This

requirement would ensure that employees know exactly what they are authorizing to be deducted from each check.

The proposed amendments also include provisions directing an employer of steps to take if they believe the employee has committed a criminal act resulting in monetary damages against the employer. In this situation, the employer may either request the employee sign an authorization or discharge the employee and file a report with local law enforcement.

In conclusion, wage collection statutes are intended to be remedial in nature. We should not allow employers to have a superior position to every other creditor, simply because they control the paycheck. Employees should have an opportunity to agree that they owe a debt by authorizing the deduction or have the same right as every other debtor to due process.

On the other hand, if an employee commits a crime against an employer resulting in monetary damages, the employer should have some recourse to recoup the loss.

I would be happy to answer any questions you may have in regard to this bill.