

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1099

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1099

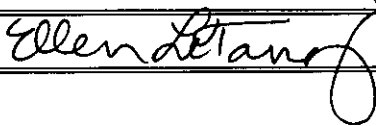
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 12, 2009

Recorder Job Number: 6776

Committee Clerk Signature



**Lisa McEvers~Commissioner of the ND Department of Labor.** See attachment 1.

**Representative Schneider:** Just for clarification. This new language clears the statue of limitations in your department to two years?

**McEvers:** That's correct.

**Representative Schneider:** Employee wage claim contract in district court has six years?

**McEvers:** That's correct. We don't want to limit.

**Representative Ruby:** In light of the six years, if you set the 90 day limit to take it to district court, that wouldn't apply to the six years.

**McEvers:** Only things that are filed with the department.

**Chairman Keiser:** We have language to the effect that ? should have known instead of the hard fast two years.

**McEvers:** That person couldn't come back.

**Representative Schneider:** I wonder if removing the last section of the new language when the claim for wages is first filed would help clarify the whole statue. Isn't it a 180 or 190 days after the complaint or termination is filed in court?

**McEvers:** Clarify what language?

**Representative Schneider:** The last sentence of the new language.

**Representative Schneider:** How many days is it currently after termination is made in court?

**McEvers:** That would go by the statue of limitations under 340113.

**Representative Schneider:** Can you situation arose by limiting the (inaudible).

**McEvers:** I do.

**Representative Schneider:** Any thoughts on the best way to clarify that?

**McEvers:** Perhaps we would add a line.

**Representative Schneider:** Maybe it goes to the whole purpose of the bill in the first place.

**McEvers:** The purpose it to limit the roll of the department.

**Representative Schneider:** At the least extend it to the two years?

**McEvers:** I could certainly add some language to make sure that it is not restrictive.

**Representative Schneider:** I think two years will keep it more consistent.

**McEvers:** May I ask for clarification, you would like the 90 days taken out and two years regardless.

**Representative Schneider:** (Inaudible).

**Chairman Keiser:** We have a two year window right now. If they take action in 60 days, then you have 90 days. They could have sat back and waited two years and have a longer period of time under which to take action. If you go out the full two years the maximum time available is two years plus. We want to make it so there is no penalty for early action. That will need another amendment by tomorrow on these amendments.

**None in opposition**

**Seeing none, we will close the hearing on HB 1099**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1099

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 13, 2009

Recorder Job Number: 6932

Committee Clerk Signature

*Ellen Letang*

**Chairman Keiser:** Opens the working session on HB 1099.

**Lisa McEvers~Commissioner of the ND Department of Labor.** See attachment 1 for purposed amendment.

**Chairman Keiser:** Your key concern was that the two years on line eight, but taking this out we will go back to what we currently had in place.

**What are the wishes of the committee?**

**Representative Schneider** moves the adoption the purposed amendment.

**Representative Thorpe:** Seconded

All in favor by voice roll call.

**What are the wished of the committee?**

**Representative Schneider:** Do Pass as Amended.

**Representative Ruby:** Second

Committee Roll Call was taken with 12 yeas, 0 no's & 1 absent and the carrier is

**Representative Clark.**

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1099

Page 1, line 10, remove "If a claim for wages is first filed with the department, the period of limitation for bringing an action in the district court is ninety days from the date the department issues a written notice to the employee that the action on the complaint is concluded."

Renumber accordingly

January 13, 2009

VR  
1/13/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1099

Page 1, line 10, remove "If a claim for wages is first filed with the department, the period of limitation for bringing"

Page 1, remove line 11

Page 1, line 12, remove "to the employee that action on the complaint is concluded."

Renumber accordingly

Date: Jan 13, 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1099

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 98129.0101 Title 0200

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

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Ab

Total (Yes) 12 No 0

Absent 1

Floor Assignment Representative Clark

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

**REPORT OF STANDING COMMITTEE**

**HB 1099: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1099 was placed  
on the Sixth order on the calendar.

Page 1, line 10, remove "If a claim for wages is first filed with the department, the period of  
limitation for bringing"

Page 1, remove line 11

Page 1, line 12, remove "to the employee that action on the complaint is concluded."

Renumber accordingly



2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1099

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1099

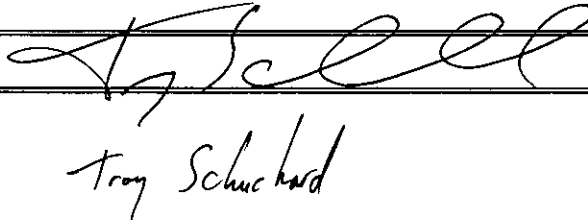
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 25, 2009

Recorder Job Number: 9684, 10500

Committee Clerk Signature



Minutes:

Lisa K. Fair McEvers, Commissioner of Labor: Written testimony in favor of HB 1099.

Senator Behm: They have up to two years to dispute this?

Lisa: Senator Behm, surprisingly it is not always done right away. Sometimes folks don't know their do those wages. For instance a claim for overtime, they didn't know they were entitled to overtime. They had an employer who told them they were an exempt employee.

Chairman Klein: Do you have a lot of these cases, these old cases?

Lisa: It is not unusual for us to have to look back at two years of cases.

Senator Potter: Is there any class action kind of element here? Say there are eight managers of a corporation that think they're not entitled and one decides to file the claim. You agree and they win, are the other seven still entitled to file?

Lisa: As long as it hasn't been more than two years. Yes there is a class action element.

Generally if there is a class action, they will go to an attorney and file in federal court.

Senator Horne: Could you help us understand this ninety day limitation that was deleted. What was it and what is the status of it now?

Lisa: Concerns were raised on the other side; I believe by Representative Schneider, he was concerned by having the ninety days in there. I was trying to put the ninety days in so they

would have some type of grace period to go find an attorney if they needed one before they had to file in court.

Senator Horne: So if we combine the two and make it clear there is a two year statute of limitations you'd like to see the ninety days restored to the two year statute of limitations bill?

Lisa: If we could clarify that the folks with the six year statute, I didn't want the people with the six year statute of limitations to lose any of their rights. That was not my intention. So if we can somehow write it to clarify. So they can continue to file for any period of limitations they might have under contract law and then have the ninety days. That would be my preference.

Chairman Klein: We will close the hearing on HB 1099.

Chairman Klein: Opened discussion on HB 1099

Senator Nodland: I think it was a staff issue with this one.

Senator Andrist: Motion for a Do Pass on HB 1099

Senator Nodland: Seconded

Chairman Klein: Motion for a Do Pass is approved 7-0, Senator Potter to carry.

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Date: 3/9  
Roll Call Vote #: 12009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1099

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 Andrist Seconded By Senator Nodland

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) 7 No 0Absent 0Floor Assignment Senator Potter

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

**REPORT OF STANDING COMMITTEE (410)**  
March 9, 2009 4:19 p.m.

**Module No: SR-42-4389**  
**Carrier: Potter**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1099, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1099 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

HB 1099

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

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Testimony on HB 1099  
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 1099 relating to the statute of limitations for wage claims filed with the department of labor.

This bill proposes changes to clarify the period of limitation under N.D.C.C. § 34-14-09 for wage claims. This section currently refers back to N.D.C.C. § 34-01-13 as the only period of limitation, and indicates that this period of limitation is tolled by the filing of a claim with the department. Under N.D.C.C. § 34-01-13, all suits and actions brought for the recovery of overtime, damages fees, or penalties accruing under laws respecting the payment of wages, including the Fair Labor Standards Act of 1938 and similar acts must be brought within two years after the accrual of the claim.

The statute is in need of clarification for a number of reasons. It is confusing that N.D.C.C. chapter 34-14, which is a chapter granting the labor commissioner the duty and authority to ensure compliance with wage collection provisions, relies solely on a statute of limitations found in another chapter, over which the labor commissioner has no authority. Placing the period of limitations clearly within N.D.C.C. chapter 34-14 will make it easier for the public to find this information, both employers and employees.

In addition, there are a number of claims that could be brought under N.D.C.C. chapter 34-14, for which the statute of limitations found in N.D.C.C. § 34-01-13 may not apply. For example, one of the most frequently filed types of wages claims filed with the department is for payment of unpaid vacation. Since employers are not required by law to provide vacation pay, the obligation arises from an agreement between the employer and the employee. Based on the advice of the attorney general's office, it is arguable that a claim for unpaid vacation could have a longer statute of limitations of six years, because the obligation arises out of a contract. The department receives many contacts from the public requesting assistance and informal advice. It is reasonable that the department's staff would have a consistent answer for potential claimants on how long they have to file their claim with the department, regardless of the underlying issue to be addressed.

Lastly, the proposed amendment provides a specific time frame of ninety days for a claimant to bring an action in district court upon receiving notice from the department that the action is concluded. Currently, the statute reads only that the limitation of action

is tolled under N.D.C.C. § 34-01-13 by filing with the department. The proposed amendment gives the claimant a brief "grace" period once the final action of the department is taken. If claimants wish to go to court on their own following the conclusion of the department's involvement, it is often necessary for them to retain counsel to go to court. The ninety day period would give them time to pursue further legal action.

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



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

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Testimony on HB 1099  
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 1099 relating to the statute of limitations for wage claims filed with the department of labor.

This bill proposes changes to clarify the period of limitation under N.D.C.C. § 34-14-09 for wage claims. This section currently refers back to N.D.C.C. § 34-01-13 as the only period of limitation, and indicates that this period of limitation is tolled by the filing of a claim with the department. Under N.D.C.C. § 34-01-13, all suits and actions brought for the recovery of overtime, damages fees, or penalties accruing under laws respecting the payment of wages, including the Fair Labor Standards Act of 1938 and similar acts must be brought within two years after the accrual of the claim.

The statute is in need of clarification for a number of reasons. It is confusing that N.D.C.C. chapter 34-14, which is a chapter granting the labor commissioner the duty and authority to ensure compliance with wage collection provisions, relies solely on a statute of limitations found in another chapter, over which the labor commissioner has no authority. Placing the period of limitations clearly within N.D.C.C. chapter 34-14 will make it easier for the public to find this information, both employers and employees.

In addition, there are a number of claims that could be brought under N.D.C.C. chapter 34-14, for which the statute of limitations found in N.D.C.C. § 34-01-13 may not apply. For example, one of type of wage claim most frequently filed with the department is for payment of unpaid vacation. Since employers are not required by law to provide vacation pay, the obligation arises from an agreement between the employer and the employee. Based on the advice of the attorney general's office, it is arguable that a claim for unpaid vacation could have a longer statute of limitations of six years, because the obligation arises out of a contract. The department receives many contacts from the public requesting assistance and informal advice. It is reasonable that the department's staff would have a consistent answer for potential claimants on how long they have to file their claim with the department, regardless of the underlying issue to be addressed.

The amendments contained in the first engrossment of the bill deleted a provision which included a ninety days limitation period to file in district court once the department issues written notice that the complaint is concluded. The provision had been included to ensure

that if a complainant filed a wage claim with the department on the last day of the limitations period, there would be some "grace" time to file in district court after receiving notice from the department upon conclusion of the case. However, the House Industry, Business and Labor Committee thought this may actually limit the opportunity for some claimants to file in district court who may have had the longer six-year limitation period under contract law. The provision was deleted to protect this right.