

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1274

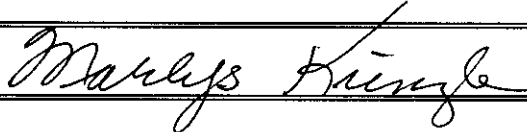
2011 HOUSE STANDING COMMITTEE MINUTES

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

HB 1274
January 26, 2011
Job # 13453

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to unemployment benefits chargeable against a nonprofit organization as a base period employer

Minutes:

Chairman Keiser:

Scot Kelsh Representative from District 11, Fargo: HB 1274 came to me by a constituent who was a director of a small non-profit. Non-profits can opt out of paying to the unemployment insurance program. The non-profit opted out of paying into the unemployment insurance program. The situation with this small non-profit is that an employee worked for a short time with this small non-profit quitting voluntarily and went to work for a profit company. Shortly after being employed with the other company was laid off. Consequently Job Service, to determine the employee's benefits had to go back to the time the employee was working for the non-profit. Therefore leaving the small non-profit on the hook for paying for some of the unemployment benefit even though they had nothing to do with that employee leaving their employment.

Chairman Keiser: Explained what a small non-profit is. Small non-profit can opt out of paying to the unemployment insurance program. They then become self insured entities. It is a business model but they run the risk that if someone is terminated or laid off, they will get there percent of the claim.

Representative Ruby: Was the non-profit, in the base period, notified that the employee had filed and they would have to pay. Did they respond to that notice that the employee had left on their own?

Rep Kelsh: I do feel that Mr. Larson would better answer that question better.

Darrel Larson from Fargo, ND Representing Family Life Services and the Parish center: Two years ago, who worked about 3 months and voluntarily quit. A number of weeks later we received a notice from the Employment Office that we owed a bill for that benefit. We responded immediately that this employee quit voluntarily. They responded back that according to the statue at this time even, though they quit voluntarily, at this time you would have to pay. We looked at the statue and it's our understanding, if a for-profit has the same situation, if they quit voluntarily they do not qualify for benefits. Whether it is

true or not at that time that is how we interpreted the statute and that is what we were told by the unemployment office. They suggested going to the Legislature to make that change to have equal playing ground where by an employee voluntarily quits.

Representative Ruby: You are correct that the account isn't charged on the for-profit employer; however they are paying to the fund over the year, so in general they are sharing in the risk as it goes into the fund. Would you have been opposed to paying a small percentage of a payment compared to the full amount if they left at that point?

Darrel Larson: Obviously we would rather do nothing if the person quits voluntarily. In this case we feel if it is non-profit or for-profit if someone voluntarily quits no one should pay.

Chairman Keiser: Did you find out what the premium rate would have been had you opted into the system to buy this type of insurance?

Darrel Larson: No, we had not because our turn over is very minimal. We do not mind if we have to pay if we have to terminate them for other reasons. The only time we have a problem is when they terminate on their own.

Dana Schaar~Executive Director of the North Dakota Association of Nonprofit Organizations (NDANO): (see attached testimony 1)

Representative Amerman: As director of NDANO, are they aware that they could fall into this situation that Mr. Larson has found himself in, in this situation? Are they made aware of this?

Dana Schaar: With my experiences with the members who are involved with the direct reimburse program, they do understand. I am unsure of all non-profits.

Representative Nathe: You say several of you members have opted out of unemployment insurance benefits; do you have a hard number on that or a percentage of the 160 members?

Dana Schaar: I don't have an exact number on that, we do have a large number of small non-profit members and typically they do opt out of using the benefits because they have a very small employee base and small budgets. I could check on that and I could get you some numbers.

Representative Nathe: Generally do you think it is 10% or 20% more or less?

Dana Schaar: I really don't have an answer to that.

Chairman Keiser: Anyone else here to testify on HB1274.

Gayle Klopp~Co-Executive Director-Charles Hall Youth Services: (see attached testimony 2).

Representative Ruby: All the business' pay into the fund. We have the same scenario happening to us, when we get the same notification that someone has applied and we respond. We don't get charged to our account, but you do. It still gets charged to the pool that our rates are based on to keep it solvent. So even though it doesn't affect our account it does indirectly affect us in the slight way. Would you opposed to a percentage or a minimal base fee the way it affects us?

Gayle Klopp: No, I would not be opposed to that. I think anything that lowers the burden to a non-profit, it is a good thing.

Representative Ruby: That would be fairer to all others.

Gayle Klopp: Right

Chairman Keiser: If you chose to opt in what would your premium be?

Gayle Klopp: I haven't looked at for a while. Charles Hall had opted out of this a long time ago and I haven't looked at it for a sometime and don't know what it is right now.

Chairman Keiser: If you did opt in and paid the premium, would you have any other charge for this individual?

Gayle Klopp: In this case we would not have been charged if we would have paid the premium.

Chairman Keiser: Anyone here to testify in support, in opposition to HB 1274?

Darren Brostrom~Job Service North Dakota: (see attached testimony 3).

Representative Boe: If they were to choose to pay into Unemployment Benefits, what classification would they come under and what rate?

Darren Brostrom: It would depend on their experience with the system. When they first came into the system, they would receive a new employer rate for the first two years. This would be 1.37%. Typically from the testimony, it would be minimal in their environment. In most cases it is a point 2% rate which is currently under a \$25,500 wage base. It works out to be \$50 per employee per year.

Representative Kreun: Is there a limit on employee that they can qualify? Do they have to be under a certain amount of employees to qualify? Reference was made to 4 employees, is that correct?

Darren Brostrom: I not sure exactly what was being referred to and the same question came to my mind and I was have the Associated Director look for the data. I do not believe so. As a non-profit they can choose to be a reimbursable employer. That is my understanding.

Chairman Keiser: The only complaints from the non-profit are relative to this one issue, which I have said, "buy the insurance." Why not eliminate this? Why not just make it equitable? They get a great rating, let's treat everybody the same so we don't have this unique disparity? Where did this issue come from to choose the ability for the reimbursable status?

Darren Brostrom: I didn't research the origins of this.

Tom Balzer North Dakota Motor Carriers Association: I support the non-profit community very well but as the chairman eluted to it is a business decision that they make. A fund is made to cover these exposures as we know. Our non-profit organization pays in and has always paid in for this very reason. They need to make this business decision if they want to take the risk of not having insurance to cover yourself or not. We all fall into this situation at one time or another.

Chairman Keiser: Is there any opposition, neutral HB 1274. Seeing non we will close the hearing. What are the committee's wishes?

Representative Ruby: I have a problem with doing this, because everyone pays into the fund and there is a certain risk there even if you do write back from the notification that they left on their own fell this is a dangerous way to go,.

Chairman Keiser: Is there a motion?

Representative Ruby: I make a motion for a do not pass

Representative Kreun: seconded the motion

Representative Amerman: I see in the summary that I am the carrier of this bill. I think the proponents of the bill made a good case. I do feel that Representative Ruby motion is in order and wanted to make you aware.

Do Not Pass Yeas 14 Nays 0 Absent 0

FISCAL NOTE

Requested by Legislative Council
01/24/2011

Bill/Resolution No.: HB 1274

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$92,520	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1274 provides for non-charging of UI benefits paid to non-profit reimbursable employers. The overall changes required by the bill result in the need to change the Job Service mainframe-based employer charging system.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

Programming changes associated with Section 1, number 5 provide the basis for the fiscal impact of this bill.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

None

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

FTE counts will not be impacted. Expenditures will relate to mainframe programming necessary to implement the ability to non-charge reimbursable employers within the Job Service mainframe system.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

No funding is available to Job Service to implement the necessary programming associated with the changes outlined within this bill. Additionally, no appropriation of state general funds was requested by Job Service. As a federally funded agency, Job Service is limited in the funding received, and would need to request to receive an appropriation of funds in order to complete the changes required by the bill if it were passed.

Name:	Darren Brostrom	Agency:	Job Service North Dakota
Phone Number:	701-328-2843	Date Prepared:	01/25/2011

Date: Jan 26-2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1274

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

Motion Made By Rep Ruby Seconded By Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	✓	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep. Amerman

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

16-010 approved

REPORT OF STANDING COMMITTEE

HB 1274: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1274 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1274

**Testimony of Dana Schaar, NDANO Executive Director
House Industry, Business and Labor Committee in Support of HB 1274
Wednesday, January 26, 2011**

Testimony 1

Chairman Keiser and Members of the Committee, my name is Dana Schaar, and I am the executive director of the North Dakota Association of Nonprofit Organizations (NDANO). We are here in support of HB 1274.

NDANO is a membership organization of more than 160 nonprofit members from all across North Dakota working in many different mission areas – from human services and the environment to education and the arts. Charitable nonprofits, working in every North Dakota county, provide public benefits that strengthen our communities, both rural and largely populated, across our state. North Dakota's nonprofits range from emergency shelters to boys and girls clubs, from museums to community health centers, from daycares to organizations working with the elderly, veterans, and disabled persons.

Several of our member nonprofits opt out of contributions to the state's unemployment compensation trust fund and instead provide direct reimbursement of benefits due to former employees. This bill would assist those nonprofits in directing more funding to programming or services that directly serve children and youth, victims of domestic violence, and those with physical limitations or mental health issues, among others. Charitable nonprofits would be able to use their funding to benefit the public and serve North Dakota communities instead of making unemployment payments not directly attributable to their actions.

NDANO asks for your consideration of a DO PASS recommendation on HB 1274. To further explain the impact this bill would have on nonprofits, I would like to introduce Gayle Klopp, co-executive director of Charles Hall Youth Services, a NDANO member. Thank you.

**Testimony of Gayle Klopp
Co-Executive Director, Charles Hall Youth Services
In Support of HB 1274
House Industry, Business and Labor Committee
Wednesday, January 26, 2011**

Chairman Keiser and Members of the Committee, my name is Gayle Klopp, co-executive director of Charles Hall Youth Services in Bismarck. I am here in support of HB 1274.

Charles Hall Youth Services operates three residential group homes in Bismarck serving at-risk youth ages 10 -18 in the foster care system. 85% of our funding comes through the Department of Human Services. We are a member of the North Dakota Association of Nonprofit Organizations (NDANO).

Charles Hall Youth Services opts out of formula contributions to the state's unemployment compensation trust fund and instead provides their contribution to the state's unemployment compensation fund based on direct reimbursement of benefits paid to former employees. On average, we believe this saves our agency money over time. The one drawback to this system is when a prior employee who was not eligible for unemployment benefits at the time their employment with us ended (for example, their employment ended due to a voluntary resignation) later became eligible for unemployment benefits (was hired by another employer and then their employment ended resulting in eligibility for unemployment benefits). If this later eligibility happened when their employment with us was still within the base period for benefits, we then have to reimburse the state for the portion paid to them that is attributable to their period of employment with us in that base period even though their employment termination with us was not eligible for unemployment benefits.

It seems if the system allows charitable nonprofits an alternative to only pay unemployment benefits when they are responsible for causing the eligibility for those benefits, it should be consistent. In our case with 85% of our funding coming from the state, to turn around and be required to pay those funds back to the state based on another employer's experience seems redundant and against the original purpose of the alternative funding option.

Charles Hall Youth Services asks for your consideration of a DO PASS recommendation on HB 1274. Thank you for your consideration of this bill.



House Bill 1274
Testimony of Darren Brostrom
Job Service North Dakota
Before the
House Committee On
Industry, Business and Labor
Representative George Keiser, Chair
January 26, 2011

Mr. Chairman, members of the committee, I am Darren Brostrom, the Director of Unemployment Insurance with Job Service North Dakota. I am here today to testify in opposition to House Bill 1274 which specifically addresses the charging of unemployment insurance benefits to reimbursable, non-profit employers.

A claimant's eligibility to receive unemployment insurance benefits is based upon two items: monetary eligibility and non-monetary eligibility. As it relates to this bill, our primary focus will be on monetary eligibility.

When an individual files a claim for unemployment insurance benefits, the first item reviewed is the individual's work and wage history. Specifically, we look at wages earned during the first four of the last five completed calendar quarters. These four quarters are referred to as the claimant's base period, and it is the wages in these quarters that are used to determine monetary eligibility.

What this means for the claimant is that these base period wages will determine the weekly benefit amount the claimant could receive and for what length of time the benefits can be paid. What it means for the employer is that any benefits paid

which are based upon base period wages contributed by the employer are charged to the employer.

Benefits paid to unemployment insurance claimants are typically charged to one of two sources, or both:

1. The North Dakota Unemployment Insurance Trust Fund

- This fund is funded and maintained by “contributing” (tax-rated) employers. The charge for benefits is more of an exercise in record keeping, as tax-rated or contributing employers do not physically write a check to pay these benefits. The benefits paid are noted within their account records at Job Service, and are ultimately factored into the calculation of their tax rate for subsequent years.

2. Reimbursing employers

- This is a group of employers (government, 501(c)(3) tax exempt and Indian Tribes or entities wholly owned by Indian Tribes) that are allowed by North Dakota law to finance unemployment coverage for their employees outside of the “normal” system and who have chosen to do so. Since these employers pay no taxes and contribute nothing to the Unemployment Insurance Trust Fund, they must reimburse Job Service for the unemployment insurance benefits paid to claimants that are based on wages paid by them.

At the time the employer makes the choice for reimbursing status, they are clearly informed of the ramifications of choosing the reimbursable method of financing.

The primary drawback to being a reimbursable employer is that the law does not allow for non-charging of any of their proportionate share of benefits paid to past employees. This is clearly noted when the employer makes the choice to be a reimbursing employer.

Even with this charging requirement, eligible employers almost always choose to be reimbursing employers because of the off-setting benefit they see. As a reimbursing employer, no unemployment insurance taxes have to be paid by the employer.

Organizations that choose reimbursing employer status can change their status from one method to another at the beginning of any calendar year by filing a written notice with Job Service within 30 days prior to the beginning of the year. The employer remains liable, however, for reimbursement of benefits paid which are based on wages paid prior to the change.

Typically, quitting a job would result in the individual being found ineligible for benefits. However, North Dakota law allows individuals to “re-qualify” for benefits by subsequently going to work for a liable employer and earning 8 times their weekly benefit amount in wages. After earning this dollar amount, the individual could again become eligible for benefits if he or she is later separated from employment due to non-disqualifying reasons. Under this scenario, the original tax-rated base period employer would not be charged for any subsequent benefits paid to the unemployment insurance claimant. Instead, the charges for benefits paid are applied to the entire pool of tax-rated employers in the state. However, under the same scenario, reimbursable employers remain liable for

their proportionate share of any benefits paid to an individual whose claim is based at least partially on base period wages paid by the employer.

I believe that the most important thing you need to know regarding this bill is that by removing the liability of reimbursable employers for benefits paid, the reimbursable employer is not participating in any manner in the costs associated with the charges resulting from any benefit payments made to past employees. In essence, by passing this bill as it is written, reimbursable employers would receive the best of both worlds – they would not be required to pay any unemployment insurance taxes nor would they be required to pay any subsequent charges. This creates an inequity with the remaining tax-rated employers of the state who would now also cover the charges of benefits paid to past non-profit employees.

Additionally, it should be noted that if this bill passes and reimbursable employers are relieved of benefit charges, changes to our mainframe-based tax system would be necessary. Our mainframe system is designed to never allow a reimbursable employer to be relieved of benefit charges. A fiscal note has been created that outlines the necessary changes, along with the staff time needed to complete these changes. The resulting cost of these changes is \$92,520.

Mr. Chairman, this concludes my testimony. At this time I would be happy to answer questions from the committee.