

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2245

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2245
January 25, 2011
Job Number 13332

☐ Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to eligibility for unemployment compensation benefits; and to declare an emergency

Minutes:

Testimonies Attached

Chairman Klein: Opened the hearing.

Senator Schneider: Handed out written testimony. (1)

Senator Dever: Sponsor of the bill. He said that he fully embraces the concept of the bill.

Senator Andrist: Said that he is also in support of the concept, but asked if the employer is charged for this and stated that there should be a vehicle that states the employer will not be charged.

Senator Dever: He talked to Senator Schneider about that and he said that the bill does make reference to that.

Janelle Moos, Executive Director of the North Dakota Council on Abused Women's Services: Testimony Attached (2).

Questions asked about national statistics and Janelle stated that there is none.

Senator Larsen: Wanted to know about the numbers Janelle was talking about and what pool made up the numbers.

Janelle: Said that she could get that information to them. Handed out written testimony from Renee Stromme with the North Dakota Women's Network (3).

David L. Kemnitz, NDAFL-CIO: Testimony Attached (4).

Darren Brostrom, Job Service of North Dakota: Testimony Attached (5). Darren was asked to answer questions about the length of time a person can receive benefits and the

amount of the benefit. Benefits extended by Congress are paid by the Federal Government. He answered other questions and then gave his testimony. He is Neutral on the Bill.

Chairman Klein: Asked if House Bill 1276 included a victim of domestic violence.

Darren: Stated that 1276 contains the exact language of Senate Bill 2245, as a section of the bill.

Questions about benefits asked.

Chairman Klein: Asked if there was a funding source for House Bill 1276 but not Senate Bill 2245, which all the employers would share, and to clarify.

Darren: House Bill 1276 is a very broad bill and it contains provisions that provide for an alternate base period, eligibility based upon compelling family reasons and multiple issues. It is based upon the unemployment modernization from the Federal Government. Darren went on to explain what the Federal Government is offering to each state.

Senator Andrist: Wanted Darrin to confirm for the record that it is not chargeable to the employers account.

Darren: Stated that was correct, it is not chargeable to the employers account. He said there are corrections he would like to see in the bill, two portions that relate to charging, that they would like to see one word removed and one word added the intend in how it is written now would and the way they would try to write it as well, would be to non-charge the individual employer so it is a pool charge across the entire employer base.

Chairman Klein: It is still a charge.

Darren: There is still an outlay of funds that have to be accounted for in some manner and that happens through the tax rate setting process.

Bill Shalloob, North Dakota Chamber of Commerce: Neutral with reservations on the bill. Do not oppose the bill but support the amendment brought up by Job Service.

Chairman Klein: Closed the hearing.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2245
January 26, 2011
Job Number 13462

☐ Conference Committee

Committee Clerk Signature

Eva Libelt

Explanation or reason for introduction of bill/resolution:

Relating to eligibility for unemployment compensation benefits; and to declare an emergency

Minutes:

Discussion

Chairman Klein: Asked if there were some questions. Does anyone have the amendments?

Senator Nodland: They suggested changes but did not give any amendments.

Discussion of what changes needed to be made. Chairman Klein will talk to Darren to see what changes Job Service of North Dakota wanted.

2011 SENATE STANDING COMMITTEE MINUTES

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

SB 2245
February 2, 2011
Job Number 13869

☐ Conference Committee

Committee Clerk Signature

Erin Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to eligibility for unemployment compensation benefits; and to declare an emergency

Minutes:

Discussion and Vote

Chairman Klein: Opened the meeting on Senate Bill 2245.

Discussion on the new amendments by Senator Schneider, they clarify the language.

Senator Schneider: Moved a do pass to adopt the Schneider amendment.

Senator Murphy: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Andrist: Moved a do pass as amended.

Senator Murphy: Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Schneider to carry the bill

FISCAL NOTE
Requested by Legislative Council
03/29/2011

Amendment to: Engrossed
SB 2245

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	\$37,320	\$0	\$89,568	\$0	\$89,568
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).*

SB 2245 changes unemployment insurance eligibility and employer benefit charging requirements as they relate to claims for benefits resulting from domestic violence and/or sexual assault. Fiscal impact relates to additional benefits paid.

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.*

Section 2 of the bill provides the fiscal impact in the form of additional benefit payments paid to claimants. Section 1 of the bill provides for an impact upon the employers of the state, as any benefits paid as a result of Section 2 will be charged to all employers of the state via UI tax rates.

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.*

No information technology programming changes will need to be made. FTE counts will not be impacted. Expenditures will relate to additional benefits paid to claimants, with these expenditures coming from the Unemployment Insurance Trust Fund. It is estimated that 2 eligible claims per month will result from this bill. Average weekly benefit amount (\$311) X Average claim duration (12) X Number of claims per year (24) = \$89,568. The 2009-2011 biennium is impacted due to the emergency clause. The dollar amount for this biennium is a prorated amount.

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.

None

Name:	Darren Brostrom	Agency:	Job Service North Dakota
Phone Number:	701-328-2843	Date Prepared:	03/29/2011

FISCAL NOTE

Requested by Legislative Council
01/18/2011

Bill/Resolution No.: SB 2245

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	\$37,320	\$0	\$89,568	\$0	\$89,568
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).*

SB 2245 changes unemployment insurance eligibility and employer benefit charging requirements as they relate to claims for benefits resulting from domestic violence and/or sexual assault. Fiscal impact relates to additional benefits paid.

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.*

Section 2 of the bill provides the fiscal impact in the form of additional benefit payments paid to claimants. Section 1 of the bill provides for an impact upon the employers of the state, as any benefits paid as a result of Section 2 will be charged to all employers of the state via UI tax rates.

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.*

No information technology programming changes will need to be made. FTE counts will not be impacted. Expenditures will relate to additional benefits paid to claimants, with these expenditures coming from the Unemployment Insurance Trust Fund. It is estimated that 2 eligible claims per month will result from this bill. Average weekly benefit amount (\$311) X Average claim duration (12) X Number of claims per year (24) = \$89,568. The 2009-2011 biennium is impacted due to the emergency clause. The dollar amount for this biennium is a prorated amount.

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.

None

Name:	Darren Brostrom	Agency:	Job Service North Dakota
Phone Number:	701-328-2843	Date Prepared:	01/21/2011

January 31, 2011

PROPOSED AMENDMENTS TO SENATE BILL NO. 2245

Page 1, line 7, overstrike "either"

Page 1, line 11, overstrike "Who was" and insert immediately thereafter "Was"

Page 1, line 13, replace "Who was" with "Was"

Page 1, line 13, replace "due" with "with the base-period employer for reasons directly attributable"

Page 3, line 26, replace "individual is separated" with "reason for separation"

Page 3, line 26, after "from" insert "the individual's"

Page 3, line 27, replace "due" with "is directly attributable"

Page 3, line 27, remove "reasonable"

Page 3, line 28, remove "and which causes the individual to reasonably believe the individual's"

Page 3, line 29, replace "continuing" with "that substantiates the individual's reason for separation from the most recent employment and such continued"

Page 3, line 30, remove "reasonable"

Page 3, line 31, remove "of domestic violence or sexual assault"

Page 3, line 31, replace "for" with an underscored comma

Page 4, line 1, after "protection" insert "order, restraining order,"

Page 4, line 1, remove "documentation of equitable relief by the court; a police record"

Page 4, remove lines 2 through 5

Page 4, line 6, replace "domestic violence or sexual assault," with "record filed with a court; a police record; a medical record indicating domestic violence or sexual assault; or a written affidavit"

Page 4, line 8, remove "; or a reliable statement from"

Page 4, remove lines 9 and 10

Page 4, line 11, remove "violence or sexual assault"

Renumber accordingly

Date: 2/2/2011
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2245

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Schneider Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment _____

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

Senator Schneider's Amendment

Date: 2/2/2011
Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2245

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

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

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Andrist Seconded By Senator Murphy

Senators	Yes	No	Senators	Yes	No
Chairman Jerry Klein	✓		Senator Mac Schneider	✓	
VC George L. Nodland	✓		Senator Philip Murphy	✓	
Senator John Andrist	✓				
Senator Lonnie J. Laffen	✓				
Senator Oley Larsen	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Schneider

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

REPORT OF STANDING COMMITTEE

SB 2245: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2245 was placed on the Sixth order on the calendar.

Page 1, line 7, overstrike "either"

Page 1, line 11, overstrike "Who was" and insert immediately thereafter "Was"

Page 1, line 13, replace "Who was" with "Was"

Page 1, line 13, replace "due" with "with the base-period employer for reasons directly attributable"

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Page 4, line 8, remove "; or a reliable statement from"

Page 4, remove lines 9 and 10

Page 4, line 11, remove "violence or sexual assault"

Renumber accordingly

2011 SENATE APPROPRIATIONS

SB 2245

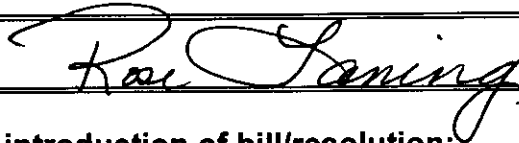
2011 SENATE STANDING COMMITTEE MINUTES

Senate Appropriations Committee Harvest Room, State Capitol

SB 2245
February 9, 2011
Job # 14253

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill to amend the Century Code, relating to eligibility for unemployment compensation benefits.

Minutes:

You may make reference to "attached testimony."

Chairman Holmberg called the committee hearing to order on SB 2245.

Roxanne Woeste – Legislative Council; **Sheila Peterson** – OMB

Chairman Holmberg We have SB 2245 before us. It got 45 votes for passage on the floor and it should have come to the appropriations committee before it went on the floor. It has an \$89,568 fiscal impact. We are meeting the requirements of the rules. Senator Christmann stepped out of the room and he knows the rules. He got hold of Jay Buringrud (Legislative Council) as to how we have to handle this from a paperwork standpoint. Now we have the bill – someone said it was out of the door and we should have let it keep running. The motion that was made was to re-refer it to us, but the motion was not for the senate to reconsider. The Senate has passed it, but Senator Dever is here to tell us about it.

Senator Dick Dever, District 32

This simply provides that if a person leaves employment because they are the victim of domestic violence, they are eligible for unemployment benefits. Money in the fiscal note – there's money for this biennium because there's an emergency clause on it. My understanding is that the bill does not punish the employer – so they're not charged for that.

Senator Grindberg asked **Darren Brostrom, Job Service, Director of Unemployment Insurance**, if we have latitude in state to add these additional categories for eligibility based on federal law. **Darren Brostrom** said yes we do. Thirty nine states have already passed a domestic violence provision.

Chairman Holmberg said there isn't much to talk about because we're supposed to make a recommendation to the floor and what other recommendation but Do Pass would make sense when they passed it 45 – 0. So mistakes happen and others will be blamed.

(**Senator Christmann** entered the room)

Chairman Holmberg (to Senator Christmann) - What did Jay Buringrud say how we should handle this?

Senator Christmann That's the thing that we already passed? As it relates to our committee, if wanted to change something or recommend not passage, I would need to take some further action on the floor and do that so we can attach a committee report. But if we're fine with it, we just send it back up there and it will go to the House.

Chairman Holmberg Do we need any motions?

Senator Christmann said we DON'T want a committee report on it. If it's without objection, we just make a motion on the floor and return it from the Appropriations Committee and have something in our minutes that it was discussed and there was no objection.

Senator Christmann will carry it on the floor.

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2245

2011 HOUSE STANDING COMMITTEE MINUTES

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

SB 2245
March 8, 2011
15062

☐ Conference Committee

Committee Clerk Signature

Ellen LeTang

Explanation or reason for introduction of bill/resolution:

Eligibility for unemployment compensation benefits and declare an emergency

Minutes:

Chairman Keiser: Opens the hearing on SB 2245.

Senator Dever, Sponsor: Introduces SB 2245.

Janelle Moos~Executive Director of the North Dakota Council on Abused Women's Services: (See attached testimony 1).

Representative Ruby: We see a version of this bill every session. Could you tell me how many cases happen in North Dakota?

Janelle Moos: We don't have the statistics because domestic violence victims are not eligible, most often they will not apply for it.

Representative Ruby: As the coalition that advocates and assists people, nobody has ever come to you for benefits?

Janelle Moos: We don't track those numbers specifically. They might choose to leave for their own out of safety. This makes the victims eligible for it but it doesn't mean necessarily that they are going to receive the benefits.

Representative Ruby: Can't they get some protect from their employer?

Janelle Moos: That would be up to the individual employer. Whether or not the victim chooses to notify their employer that they are a victim of domestic violence, we have seen employers start to develop much more comprehensive policies around work place violence. This isn't going to penalize any employer, it's the non-charging section. It's just making another tool available for victim.

Chairman Keiser: On the fiscal note, the agency assumes two per month and we can ask the agency on that frequency.

Representative Kreun: You indicated that it doesn't cost but does that not reflect into the employer's rate of his unemployment insurance?

Janelle Moos: I will defer that question to Darren but as I understand the bill, this is the non-charging section, so it will be spread across the employers.

Representative Kreun: It's not directly related as a cost of your account. It's spread out over everyone.

Representative Frantsvog: Is there some specific criteria that would identify someone that they would be eligible for unemployment?

Janelle Moos: If you look on starting on line 30, page 3, this makes the language more tangible.

Representative Nathe: If they were stalked and switched to a new job because of this, would that perpetrator follow them to their new job?

Janelle Moos: Stalkers don't stop stalking. They would often follow them to a new employment.

Vice Chairman Kasper: How do you resolve what you just said and how does this bill resolve stopping harassment?

Janelle Moos: Again this is one tool, there are additional tools.

Representative Ruby: Do you charge women if they come into the centers?

Janelle Moos: No, our services are free in all 21 programs.

Dave Kemnitz~President of North Dakota AFL-CIO: (See attached testimony 2).

Tom Balzer~NDMCA-filling in for Bill Shalhoob: We were neutral with this bill but with the amendments that the Senate put in, we now can support this bill. On page 3 & 4, the amendment makes it a very specific verifiable issue. The bill on the front side was very expensive and the chamber groups were not very comfortable with it. Domestic violence is a business interruption; this gives them an option to provide assistance for this issue. Another reason for the support is it's going to the pool instead of the employer account and this swayed our support on this particular issue.

Representative Ruby: Would this be the first instance where a benefit was provided to an employee where it was at no fault of the employer? Would this be the first instance where the employer had no input or action on his part within Unemployment Insurance?

Tom Balzer: I would defer to Job Service.

Representative Kreun: If you look on line 3, page 4, the affidavits could be a member of the clergy or a shelter worker and those are not necessarily trained or licensed in those

areas. They could sign the affidavit to put that person into that position to gain those benefits?

Tom Balzer: That is the part of the particular process that these folks do have training. They are trained in this particular area and can recognize that. This bill does not mean that if you have a restraining order, you can leave a job to gain benefits. There are the internal processes that Job Service has to be able to go through and verify that this is the reason to leave and it's legitimate.

Representative Kreun: Being this is paid for by the employer, when does the employer get notification of this situation so that they can get involved, manage, help and monitor this situation as well? Is this not following the same scenario that the employer is not involved with this? On page 2, line 21, that employer has to be notified of all of these situations, will that hold true in this case too?

Tom Balzer: That is our understanding.

Chairman Keiser: We can follow up with Job Service what that would be.

Chairman Keiser: Anyone else here to testify in support, in opposition, in the neutral position to SB 2245

Darren Brostrom~Director of Unemployment Insurance, North Dakota Job Service:
(See attached testimony 3)

You asked if there were instances where this is the first time an employer would not participate in the separation of employment and the unemployment benefits would be found eligible for them. There are two very limited situations where that could happen now. One would be in some medical claims, there is a provision where you have 60 days to you make your services available to your employer, suitable employment. That one is pretty tight. The other one is the disaster claims.

Representative Kreun, you had some questions as to how the employer would be notified. We would not change our notification process. When the claim would be filed, we would immediately, the following day, send a notice to that employer saying that a claim was filed for this individual and most of the cases it will have the potential liability for benefits. I would imagine that would still be on the notice but if the individual was found to be eligible for benefits under this provision, that charge would not go to that employer. We also would follow up with the employer in a day or two with more questions and details that they could answer for us.

Representative Kreun: If the employer is notified, the employer could have some prior knowledge of the situation going on and indicate to you whether this is valid or not. If they feel it's not valid, would they have the ability to appeal that decision?

Darren Brostrom: Yes they would have the opportunity to appeal it. Any determination made by Job Services is appealable by law.

Vice Chairman Kasper: I don't see any place on this bill where the employer is required to be notified by the employee in advance of a claim filed. Is there that notification requirement in the statute?

Darren Brostrom: No there's not.

Vice Chairman Kasper: Don't you see that there could be some value to having a notification to the employer prior to the claim being filed, where the employer might be able to intervene.

Darren Brostrom: I'm sure there could be some value to a situation like that. It hasn't been an angle that hasn't been discussed. We would be willing to work with the committee to look into whether that would be a feasible method.

Vice Chairman Kasper: There are no definitions for a sheltered worker. Would there be any reason why we couldn't add any definitions after line 4, page 4?

Darren Brostrom: You are correct, it's not specific in definition and we would be willing to work with you.

Representative Ruby: You mentioned about the case of disaster, is that the disaster of the work place or somebody's home.

Darren Brostrom: It has to relate to the presidential declared disaster and that the federal government funds it.

Representative Ruby: There are extra funds that get injected for that purpose?

Darren Brostrom: That is correct. We are working on that right now with FEMA because of the potential flooding.

Representative Nathe: On bottom page 3 and top of page 4, do you need just one piece of documentation from the police or clergy or do you need a combination?

Darren Brostrom: One would be appropriate for us. This is a learning curve for us on how we will proceed with this.

Representative Nathe: A person switched from one job to another and the stalker followed them over there, would we then have to go through the documentation process again?

Darren Brostrom: That's a tough one. I would expect it's the same documentation that could be used again. I would expect that we would run into situations and we will learn as we go.

Vice Chairman Kasper: What would happen if a report was filed and it was a false report? Now this employee received dollars as a result of a false accusation, what would happen then?

Darren Brostrom: That a great question, if it were determined fraud, we have a defined path. There are penalties and fines.

Vice Chairman Kasper: Does that need to be outlined in this bill or is it in statute?

Darrin Brostrom: It's in other statute. I don't believe that it needs to be addressed here.

Representative Clark: Didn't we have a bill earlier to receive stimulus dollars and if we passed this bill, would we then would we qualify for those stimulus dollars?

Darren Brostrom: HB 1276, this on its own, would not qualify us. We would have to have an ultimate base period and we would have to have another provision along with this for other compelling family reasons. This alone is a standalone bill.

Chairman Keiser: How many states have legislation similar at this time?

Darren Brostrom: There are 39 other states that have legislation that is relatively close.

Chairman Keiser: If they have to relocate to another state, how will we track them when they leave the state?

Darren Brostrom: We work with other states and it is definitely harder when you deal with determining eligibility and job search requirements. The Federal Government implemented software that we can communicate with other states. We do follow up with them.

Chairman Keiser: What are the limitations for the coverage for these folks?

Darren Brostrom: That will be based on their base period and their work history. They could receive, as little as \$43 a week or as much as \$442 a week and the length of time would be 12 up to 26 weeks.

Chairman Keiser: It would be the same as if the employer terminated them?

Darren Brostrom: That's correct.

Chairman Keiser: Is there anyone else here to testify in neutral position of SB 2245?
Closes the hearing.

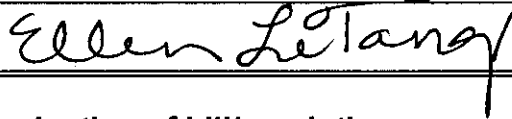
2011 HOUSE STANDING COMMITTEE MINUTES

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

SB 2245
March 22, 2011
15894

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Eligibility for unemployment compensation benefits and declare an emergency

Work Session Committee Minutes:

Chairman Keiser: Opened the work session on SB 2245.

Vice Chairman Kasper: This bill works with Job Service, the sexual harassment and other items in the work place to try to come up with some resolution to be eligible for those benefits. We had a subcommittee with Representative Nathe, Darren, Janelle and myself to come up with some language that would be more specific. (Attachment 1-Amendment 11.0496.02001).

Darren Brostrom~Director for Unemployment for North Dakota Job Service: Changes we made one page 1, line 13, is the base period to most recent and that change was made to insure that the charging was made correctly. The employers in the base period wouldn't be charged specifically for any benefits paid under this statute but they would be pooled to the entire state wide group of employers.

Chairman Keiser: Any questions from the committee about that part of the amendment?

Darren Brostrom: The primary changes we made were we took out the notification to employers. We talked about the individuals that are filing for benefits needing to contact the employer prior to filing a claim for unemployment insurance. What we ended up there was we put in a provision where Job Service would notify the employer of the reason for separation, so the employer was aware of the reason, wouldn't waste time responding and would understand the situation as well. We also added some clarity to the identification of those that could substantiate the domestic violence. There was some concern at the last hearing where we talked about shelter workers and the specific language in the bill at that time. There was not a clear definition as to what a shelter worker was. We defined some of those things, first saying that they had to have some experience working with the individual as the domestic violence situation came up. They had to be a licensed social worker, counselor or attorney, so we made those changes there. We did identify that the Job Service had to be contacted within 14 calendar days from the date the individual files a claim for unemployment insurance benefits and provide us with the documentation substantiating the domestic violence. We also added a piece clarifying in the event of a

false statement, we quoted the statute that related to unemployment insurance fraud and the misdemeanor offense that could come from that. Janelle was happy with the outcome. We're satisfied with the outcome and we think it's a good bill that addresses all the questions that the committee had.

Representative Nathe: For the purposes of documentation, do they just need documentation for just one of the people listed in subsection 2?

Darren Brostrom: Yes, one or more is what we went with.

Chairman Keiser: Further comment? What are the wishes of the committee regarding this amendment?

Vice Chairman Kasper: We worked very hard on being more specific on page 6.

Representative Ruby: To me, the term, domestic violence is a broad term, I'm not sure this is the right precedence to set.

Vice Chairman Kasper: Moves to adopt amendment 11.0496.02001.

Representative Nathe: Second.

Roll call was taken on amendment 11.0496.02001 with 13 yeas, 0 nays, 1 absent.

Chairman Keiser: This amendment came to us as the request from the oil industry addressing the historical utilization of landmen and their non-participation in as being exempt from Job Service fees and also from the benefits associated with unemployment.

Ron Ness~North Dakota Petroleum Council: (Amendment 2-11.0496.02002). In the early eighties, this was put into law to clarify as part of the easy test, that you go through prior to the 20 point common law test, along with other sectors of the industry. If clarified what landmen must do essentially to be exempted from the 20 points test and qualifies independent contractors. The duties of the landman have not changed for 30 years. The tasks have remained the same and the way they have been paid remains the same. What we are attempting to do is clarify that compensation by tasks are done on a daily basis. The work has been identified in numbers 1-6 on the amendment and that has not changed. They own and operate their own businesses. I estimate that we have between 1500 and 2000 working in this industry right now and that 100% are paid on a daily basis. We think it's essential to clarify this in the law that this is a remuneration that is accepted under the portion of the easy test, so they have the certainty to know that yes, they are continuing as independent contractors. This is the crux of the issue.

Vice Chairman Kasper: Has there been a problem that occurred that you are addressing or is this a clarification?

Ron Ness: There was a random audit of a company that was changing status. Job Service ruled because the words daily rate were not in this provision, that it wasn't by the

task. Yes, we are trying to provide certainty for this sector of the industry that have been here for a long time and now has certainly expanded over the past years.

Vice Chairman Kasper: Will this bill solve the current problem that Job Service is engaged in or will this take care of it?

Ron Ness: That is a question that I can't answer, it's still in the appeal process.

Representative N Johnson: With this change, these individuals are not in the unemployment insurance process, so, if they don't have work, they are on their own?

Ron Ness: This change doesn't alter anything that's going on today. The individuals who are landmen who own and operate their companies are not involved in the UI claim benefit process whatsoever.

Representative M Nelson: That checklist, that is basically a federal checklist, isn't it?

Ron Ness: Actually the 20 point common law is adopted in statute in North Dakota and used by the Job Service, Workforce Safety and Department of Labor.

Representative M Nelson: Are those 20 points used for other things?

Ron Ness: What you have is a statute and then there are a series of exemptions, such as this one. Anyone else would fall into that 20 point common law test and that test has been a subject of an interpretation by the individual giving the test.

Representative M Nelson: Does this exempt the landmen from this 20 point test in all areas or does it just clarify that they aren't employees for Job Service purposes but could still end up employees for other purposes?

Ron Ness: Your point is correct. This is an unemployment insurance statute solely. The other entities do still stand on their own and I do not have their interpretations before me. This is a Job Service statute only.

Chairman Keiser: It would be fair to say that without this exemption, the department would be obligated to consider all landmen employees using the 20-point test?

Ron Ness: Without this clarification, if you are paid by a day rate, we still believe that they are still being compensated for a task. This will be a debate going forward, but moving them into the 20-point common law test, they then will have to qualify.

Chairman Keiser: Further questions?

Maren Daley~Executive Director of Job Service of North Dakota: (See attached testimony 3).

Representative Ruby: Do you know if these individual landmen register as contractors with the Secretary of State's office, not as construction contractors but as a separate entity?

Maren Daley: I cannot confirm that specifically. Ron said that they represent business in North Dakota.

Chairman Keiser: Do they register with the Secretary of State?

(Answer inaudible).

Vice Chairman Kasper: Is it true if an individual is operating in his or her own name, I don't need to register with the Secretary of State, I can operate as an independent business?

Maren Daley: You can operate as a sole proprietorship if you are not looking to register a specific business name. There are various requirements for registering, doing business. I'm not in the position to speak for the Secretary of State specific requirements.

Vice Chairman Kasper: Are you supporting, opposing or neutral to the amendment?

Maren Daley: We are neutral.

Vice Chairman Kasper: There is ambiguity of unemployment and would look if this compared to WSI and so on. Would it make any sense if we are going to adopt amendments to exempted landmen or is it going too far?

Maren Daley: I would not recommend broadening it without those entities being present to participate in that discussion. They may have unique requirements.

Chairman Keiser: The WSI is the exclusive remedy that you can't exempt anybody, even volunteers are covered for accident and work environment from an insurance perspective.

Representative M Nelson: Do you know of any other situations you have where our state unemployment insurance and federal unemployment insurance would not be in sync with the state of North Dakota?

Maren Daley: When you say in sync, we get conformity approval from USDOL for any bill that is being discussed. If we don't get conformity, we would alert you immediately because there would be significant financial risk to the employer in this state if the state was out of conformity. USDOL does not have an issue with North Dakota creating a specific exemption for landmen under state unemployment but that would not be applicable if the IRS reviews all the taxes they collect.

Representative M Nelson: We would still be conformed.

Maren Daley: Yes.

Chairman Keiser: The proposed amendment will take all landmen that do work on a daily rate out of it, no matter what?

Maren Daley: It will be a much easier test to pass, but if a random audit were done, we would expect to see some connection between the payment of a daily rate and specific tasks done. We are flexible, we are not hard-line on what type of documentation there is but payment of a daily still has to be tied to the performance of the specific landman task. This statute only applies to landmen, so you can't call everybody a landman. If they get paid vacation and if they are doing tasks other than landman tasks, it could put them in jeopardy. What I mean by jeopardy, then we would go to the 20-point test and there is serious concern as to whether they could pass the 20 point test.

Chairman Keiser: If we adopt this amendment and I concur, we better do a good job informing those who do not fit into this category. Do you have any language with requirements to inform?

Maren Daley: I do not at this point. I had a brief discussion with Mr. Ness yesterday; we didn't get to that point. I'm not making a request to put it in statute.

Chairman Keiser: Anyone else here to speak on this amendment?

Vice Chairman Kasper: Moves to adopt amendment.

Representative Sukut: Second.

Roll call vote for amendment 11.0496.02002 with 10 yeas, 3 nays, 1 absent.

Chairman Keiser: We have SB 2245 amended two times before us, what are the wishes of the committee?

Vice Chairman Kasper: Do Pass as Amended.

Representative N Johnson: Second.

Chairman Keiser: Further discussion?

Roll call vote was taken for a Do Pass as Amended with 12 yeas, 1 nay, 1 absent and Representative Nathe is the carrier.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

Page 1, line 13, replace "base-period" with "most recent"

Page 1, remove lines 15 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, replace lines 1 through 4 with:

"SECTION 2. AMENDMENT. Subsection 1 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

1. a. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
 - a. (1) Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
 - b. (2) Has not left the individual's most recent employment under disqualifying circumstances.
- b. A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's workforce in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.
- c. This subsection does not apply if job service North Dakota determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.
- d. This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the

physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer, other than a reimbursing employer, from whom the individual became separated as a result of the illness or injury. Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.

- e. This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.
- f. For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.
- g. For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.
- h. This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.
- i. This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base-period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.
- j. (1) This subsection does not apply if the reason for separation from the individual's employment is directly attributable to domestic violence or sexual assault that is verified by documentation submitted to job service North Dakota which substantiates the individual's reason for separation from the most recent employment and such continued employment would jeopardize the safety of the individual or of the individual's spouse, parent,

or minor child. After receiving a claim for unemployment insurance benefits for which the individual identifies domestic violence or sexual assault as the reason for separation, job service North Dakota shall notify the most recent employer of the reason for separation provided by the individual.

- (2) For purposes of this subdivision, documentation includes:
- (a) A court order, protection order, restraining order, or other record filed with a court;
 - (b) A police or law enforcement record;
 - (c) A medical record indicating domestic violence or sexual assault; or
 - (d) A written affidavit provided by an individual who has assisted the claimant in dealing with the domestic violence or sexual assault and who is a:
 - [1] Licensed counselor;
 - [2] Licensed social worker;
 - [3] Member of the clergy;
 - [4] Director or domestic violence advocate at a domestic violence sexual assault organization as defined in section 14-07.1-01; or
 - [5] Licensed attorney.
- (3) Documentation must be received by job service North Dakota within fourteen calendar days from the date the individual files a claim for unemployment insurance benefits after separating from employment for reasons directly attributable to domestic violence or sexual assault.
- (4) A false statement of domestic violence or sexual assault in a claim for unemployment insurance benefits is subject to subsection 8 and section 52-06-40."

Renumber accordingly

Date: March 23, 2011

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2245

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0496.02001

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

Motion Made By Rep Kasper Seconded By Rep Nathe

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

Total Yes 13 No 0

Absent 1

Floor Assignment _____

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

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

Page 1, line 1, after "subdivision" insert "k of subsection 18 of section 52-01-01, subdivision"

Page 1, line 1, after "52-04-07" insert a comma

Page 1, line 2, after "to" insert "ineligibility and"

Page 1, after line 4, insert:

"SECTION 1. AMENDMENT. Subdivision k of subsection 18 of section 52-01-01 of the North Dakota Century Code is amended and reenacted as follows:

- k. Service performed for a private for-profit person or entity by an individual as a landman if substantially all remuneration, including payment on the basis of a daily rate, paid in cash or otherwise for the performance of the service is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and the services are performed under a written contract between the individual and the person for whom the services are performed which provides that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract. For purposes of this subdivision, "landman" means a land professional who has been engaged primarily in:
- (1) Negotiating the acquisition or divestiture of mineral rights;
 - (2) Negotiating business agreements that provide for the exploration for or development of minerals;
 - (3) Determining ownership of minerals through research of public and private records;
 - (4) Reviewing the status of title, curing title defects, and otherwise reducing title risk associated with ownership of minerals;
 - (5) Managing rights or obligations derived from ownership of interests and minerals; or
 - (6) Activities to secure the unitization or pooling of interests in minerals."

Renumber accordingly

Date: March 23, 2011

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2245

House House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 11.0496.02002

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

Motion Made By Rep Kasper Seconded By Rep Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	Ab	
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 10 No 3

Absent 1

Floor Assignment _____

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

March 23, 2011

YK
3/24/11
log 4

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2245

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Page 1, line 13, replace "base-period" with "most recent"

Page 1, remove lines 15 through 23

Page 2, remove lines 1 through 31

Page 3, remove lines 1 through 31

Page 4, replace lines 1 through 4 with:

"SECTION 3. AMENDMENT. Subsection 1 of section 52-06-02 of the North Dakota Century Code is amended and reenacted as follows:

1. a. For the week in which the individual has left the individual's most recent employment voluntarily without good cause attributable to the employer, and thereafter until such time as the individual:
 - a- (1) Can demonstrate that the individual has earned remuneration for personal services in employment from and after the date of the unemployment compensation claim filing, equivalent to at least eight times the individual's weekly benefit amount as determined under section 52-06-04; and
 - b- (2) Has not left the individual's most recent employment under disqualifying circumstances.
- b. A temporary employee of a temporary help firm is deemed to have left employment voluntarily if the employee does not contact the temporary help firm for reassignment before filing for benefits. Failure to contact the temporary help firm is not deemed a voluntary leaving of employment unless the claimant was advised of the obligation to contact the temporary help firm upon completion of an assignment and advised that unemployment benefits may be denied for failure to contact the temporary help firm. As used in this subsection, "temporary employee" means an employee assigned to work for a client of a temporary help firm; and "temporary help firm" means a firm that hires that firm's own employees and assigns these employees to a client to support or supplement the client's workforce in a work situation such as employee absence, temporary skill shortage, seasonal workload, a special assignment, and a special project.
- c. This subsection does not apply if job service North Dakota determines that the individual in an active claim filing status accepted work which the individual could have refused with good cause under section 52-06-36 and terminated such employment with the same good cause and within the first ten weeks after starting work.
- d. This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer, other than a reimbursing employer, from whom the individual became separated as a result of the illness or injury. Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.
- e. This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or

order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

- f. For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.
- g. For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.
- h. This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.
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 - (a) A court order, protection order, restraining order, or other record filed with a court;
 - (b) A police or law enforcement record;
 - (c) A medical record indicating domestic violence or sexual assault; or
 - (d) A written affidavit provided by an individual who has assisted the claimant in dealing with the domestic violence or sexual assault and who is a:

- [1] Licensed counselor;
 - [2] Licensed social worker;
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 - [5] Licensed attorney.
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- (4) A false statement of domestic violence or sexual assault in a claim for unemployment insurance benefits is subject to subsection 8 and section 52-06-40."

Renumber accordingly

Date: March 23, 2011

Roll Call Vote # 3

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2245

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 Kasper Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	Ab	
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 12 No 1

Absent 1

Floor Assignment Rep Nathe

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

REPORT OF STANDING COMMITTEE

SB 2245, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2245 was placed on the Sixth order on the calendar.

Page 1, line 1, after "subdivision" insert "k of subsection 18 of section 52-01-01, subdivision"

Page 1, line 1, after "52-04-07" insert a comma

Page 1, line 2, after "to" insert "ineligibility and"

Page 1, after line 4, insert:

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 - b- (2) Has not left the individual's most recent employment under disqualifying circumstances.
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- d. This subsection does not apply if the individual left employment or remains away from employment following illness or injury upon a physician's written notice or order; no benefits may be paid under this exception unless the employee has notified the employer of the physician's requirement and has offered service for suitable work to the employer upon the individual's capability of returning to employment. This exception does not apply unless the individual's capability of returning to employment and offer of service for suitable work to the employer occurs within sixty days of the last day of work. However, the cost of any benefits paid under this exception may not be charged against the account of the employer, other than a reimbursing employer, from whom the individual became separated as a result of the illness or injury. Job service North Dakota may request and designate a licensed physician to provide a second opinion regarding the claimant's qualification; however, no individual may be charged fees of any kind for the cost of such second opinion.
- e. This subsection does not apply if the individual left the most recent employment because of an injury or illness caused or aggravated by the employment; no benefits may be paid under this exception unless the individual leaves employment upon a physician's written notice or order, the individual has notified the employer of the physician's requirement, and there is no reasonable alternative but to leave employment.

- f. For the purpose of this subsection, an individual who left the most recent employment in anticipation of discharge or layoff must be deemed to have left employment voluntarily and without good cause attributable to the employer.
- g. For the purpose of this subsection, "most recent employment" means employment with any employer for whom the claimant last worked and voluntarily quit without good cause attributable to the employer or with any employer, in insured work, for whom the claimant last worked and earned wages equal to or exceeding eight times the individual's weekly benefit amount.
- h. This subsection does not apply if the individual leaves work which is two hundred road miles [321.87 kilometers] or more, as measured on a one-way basis, from the individual's home to accept work which is less than two hundred road miles [321.87 kilometers] from the individual's home provided the work is a bona fide job offer with a reasonable expectation of continued employment.
- i. This subsection does not apply if the individual voluntarily leaves most recent employment to accept a bona fide job offer with a base-period employer who laid off the individual and with whom the individual has a demonstrated job attachment. For the purposes of this exception, "demonstrated job attachment" requires earnings in each of six months during the five calendar quarters before the calendar quarter in which the individual files the claim for benefits.
- j. (1) This subsection does not apply if the reason for separation from the individual's employment is directly attributable to domestic violence or sexual assault that is verified by documentation submitted to job service North Dakota which substantiates the individual's reason for separation from the most recent employment and such continued employment would jeopardize the safety of the individual or of the individual's spouse, parent, or minor child. After receiving a claim for unemployment insurance benefits for which the individual identifies domestic violence or sexual assault as the reason for separation, job service North Dakota shall notify the most recent employer of the reason for separation provided by the individual.
- (2) For purposes of this subdivision, documentation includes:
 - (a) A court order, protection order, restraining order, or other record filed with a court;
 - (b) A police or law enforcement record;
 - (c) A medical record indicating domestic violence or sexual assault; or
 - (d) A written affidavit provided by an individual who has assisted the claimant in dealing with the domestic violence or sexual assault and who is a:
 - [1] Licensed counselor;
 - [2] Licensed social worker;
 - [3] Member of the clergy;

- [4] Director or domestic violence advocate at a domestic violence sexual assault organization as defined in section 14-07.1-01; or
- [5] Licensed attorney.
- (3) Documentation must be received by job service North Dakota within fourteen calendar days from the date the individual files a claim for unemployment insurance benefits after separating from employment for reasons directly attributable to domestic violence or sexual assault.
- (4) A false statement of domestic violence or sexual assault in a claim for unemployment insurance benefits is subject to subsection 8 and section 52-06-40."

Renumber accordingly

2011 TESTIMONY

SB 2245

TESTIMONY OF SEN. MAC SCHNEIDER (DISTRICT 42 – GRAND FORKS)
SENATE INDUSTRY BUSINESS AND LABOR COMMITTEE
SENATE BILL 2245

I am a cosponsor of Senate Bill 2245, legislation which would allow an individual who was separated from employment due to domestic violence or sexual assault to claim unemployment benefits.

First, the legislation makes changes to section 52-04-07 of the Code and declares that an employer's account may not be charged for benefits paid to an individual who was separated from employment due to domestic violence or assault.

Secondly, the bill amends section 52-06-02 of the Code dealing with disqualification of benefits and makes clear that an individual is not disqualified from benefits if the individual is separated from employment due to domestic violence or sexual assault. Importantly, the legislation requires that domestic violence or sexual assault be verified by reasonable documentation and cause the individual to reasonably believe the individual's continuing employment would jeopardize the safety of the individual or of the individual's spouse, parent, or minor child.

Mr. Chairman, this legislation would ensure that victims of domestic violence who feel compelled to flee an abuser will have access to unemployment benefits that will help them get back on their feet under safer circumstances.

Thank you for your consideration. I would be happy to answer any questions.

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**418 [REDACTED] Rosser #320 • Bismarck, ND 58501 • Phone: (701) 255-6240 • Fax 255-1904 • Toll Free 1-888-255-6240 • ndcaws@ndcaws.org

Testimony on SB 2245

Senate Industry, Business and Labor

January 25, 2011

Chairman Klein and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of SB 2245.

Many victims and survivors of domestic violence, sexual assault, and stalking must leave work in order to protect themselves, their families, and their coworkers. A woman may be harassed by threatening phone calls at work or may need to miss days of work because of injuries or attempts to seek legal remedies for the abuse. In the worst cases, a victim may be attacked by the perpetrator at work. Rape, sexual assault, and stalking are aspects of domestic violence that may prevent a victim from maintaining employment. A perpetrator may stalk a victim at her workplace because it may be the only place he knows to find her. Stalking may include up to 20 calls in a day, waiting outside her workplace in his car, or coming into the workplace and verbally or physically assaulting her. These experiences may cause a victim to be forced to leave her employment to seek safety.

According to the National Employment Law Project or NELP a survey of survivors of domestic violence found that abusive husbands and partners harassed 74% of employed battered women at work. Domestic violence caused 56% of them to be late for work at least five times per month, 28% to leave early at least five times per month, and 54% to miss at least three full days at work a month. One quarter of battered women say that had to quit work at least partly due to domestic violence.

Workers are generally not able to qualify for unemployment insurance when they leave work "voluntarily", unless they have "good cause" related to work. In many states, including North Dakota, personal reasons cannot constitute "good cause" for leaving a job so survivors of domestic violence and assault who must leave work to flee violence and protect themselves from violence and stalking may not qualify for unemployment insurance.

Under the American Recovery and Reinvestment Act (AARA) incentive funding was available to states to modernize their unemployment insurance programs to include groups of left out workers, including domestic violence victims. In order to receive this incentive funding, North Dakota needs to modernize their program by expanding benefits to workers in at least two of four categories in order to target groups who fall through the cracks of the unemployment system, such as individuals who leave work for compelling family reasons, specifically domestic violence or sexual assault, or caring for a sick family



member or moving because a spouse has been relocated for employment. A majority of states, thirty two, recognize that domestic violence often follows its victims to work and can affect their ability to retain a job. North Dakota is one state where survivors of domestic violence who must leave their jobs to protect their safety can be disqualified from receiving unemployment benefits because domestic violence isn't considered good cause for leaving a job. SB 2245 changes that. Please join me in supporting SB 2245.

Thank you.



Senate Industry Business & Labor Committee
SB 2245
January 25, 2011

Chairman Klein and members of the Senate Industry, Business & Labor Committee, I am Renee Stromme with the North Dakota Women's Network (NDWN). NDWN is a statewide women's advocacy organization working to improve the lives of women in North Dakota. NDWN strongly supports Senate Bill 2245 provide unemployment insurance eligibility to victims of violence.

North Dakota is one of only two states in our region where survivors of domestic violence who must leave their job to protect their safety can be disqualified from receiving unemployment benefits because domestic violence is not considered good cause for leaving a job. Most states recognize through policy that most often violence follows a victim to work and may make it impossible for them to retain a job. By passing SB2245 will correct this oversight and provide support for victims of violence.

NDWN urges a do pass recommendation on SB 2245. Thank you for your time and I will stand for any questions.

P. 1 of 2.

1-25-2011

Testimony on SB2245
ND AFL-CIO

(4)

North Dakota's Changing Economy

North Dakota's population and economy have grown in recent years and it has the distinction of customarily having the nation's lowest unemployment rate. Continued development of North Dakota's natural resources, particularly in the agricultural and energy sectors, has contributed to its economic position. However, North Dakota has been affected by the recent recession along with the rest of nation. North Dakota's unemployment rate rose substantially from 3.2% 2007 when the recession began to 4.3 % in 2009, or an increase of 34 %. Even though the current statewide unemployment rate is 3.8%, many local communities suffer from much higher rates of joblessness.

Although North Dakota's economy is better off than much of the rest of the country, it is not working equally well for everyone. In 2008, nearly 26% of the state's working families were low-income, meaning their earnings were less than 200% of the federal poverty level.⁷ Throughout this downturn North Dakota families have felt the pinch, with 36% in a 2009 national survey reporting that they had reduced their food spending.⁸ Similarly, in the same survey, 22% of families reported trying to get by with reduced work hours, while 21% were struggling to pay for the basics such as housing and heating costs.⁹

North Dakota workers also have different perspective on the economy depending on the industry in which they work. Two of North Dakota's five largest industries in 2009 were in the low-wage sectors of retail trade and accommodation and food services.¹⁰ Occupations in these categories are also projected to grow substantially over the next ten years. For example, food preparation and serving related occupations are projected to increase by 12.4% between 2008 and 2018.¹¹

North Dakota's Changing Workforce of Women and Low-Wage Workers

This trend of growth in the low-wage workforce overlaps with the increasing participation of women in North Dakota's workforce. In 2009, women made up nearly half of North Dakota's labor force at 47.1%.¹² It is important to note that nationally women make up a disproportionate share of the low-wage workforce since nearly 60% of all low-wage workers are women.¹³ Significantly, more women are working in North Dakota compared to the rest of the nation.

The "labor force participation rate" (i.e., the percent of working or looking for work) of women workers in North Dakota was 67.7% in 2009 compared to the national average of 59.2%.¹⁴ Women in

⁷ Working Poor Families Project data, 2008 American Community Survey microdata compiled by Nadwa Mossaad, Research Associate, Population Reference Bureau and Sworn Special Agent to the U.S. Census Bureau, <http://www.workingpoorfamilies.org/indicators.html>

⁸ Lake Research Partners, Perspectives on Poverty Among Adults in North Dakota: Results from a National Survey with an Oversample of North Dakotans, August 2009

⁹ Ibid.

¹⁰ North Dakota Workforce Review, 2010 Edition, Job Service North Dakota, November 2010, http://www.ndworkforceintelligence.com/admin/gsipub/htmlarea/uploads/lmi_ndwr2010edition.pdf

¹¹ Ibid.

¹² Economic Policy Institute analysis of Current Population Survey data

¹³ Gregory Acs, Pamela Loprest, and Caroline Ratcliffe, Progress Toward Self-Sufficiency for Low-Wage Workers, The Urban Institute for the U.S. Department of Health and Human Services, January 2010, <http://www.urban.org/uploadedpdf/412173-low-wage-workers.pdf>

¹⁴ Economic Policy Institute analysis of Current Population Survey data

Senate Bill 2245
Testimony of Darren Brostrom
Job Service North Dakota
Before the
Senate Committee On
Industry, Business and Labor
Senator Jerry Klein, Chair
January 25, 2011

Mr. Chairman, members of the committee, I am Darren Brostrom, Director of Unemployment Insurance for Job Service North Dakota. I am here today to provide information on Senate Bill 2245. Although Job Service is neither opposing nor supporting this bill, we do have a concern with some of the language within the bill.

Under current law, an individual who quits employment must prove that he or she quit due to good cause *attributable to the employer* in order to be eligible for unemployment insurance benefit payments. Examples of good cause attributable to the employer are things like workplace harassment or significant changes in the hiring agreement.

The basis for this eligibility requirement is that the unemployment insurance program is funded by employer taxes, and employers are not expected to bear the burden of charges associated with benefit payments made to an individual who quits a job due to something other than the employer's actions. Although domestic violence and sexual assault can be compelling reasons for an individual to leave employment, this bill expands unemployment insurance benefit

eligibility when the employer's action, or lack of action, has no bearing on the individual's separation from employment.

While researching the impact of this bill, Job Service identified 39 states that currently allow for benefit eligibility when an unemployment insurance claimant separates from employment due to domestic violence. We requested information from several states to gauge the impact benefit eligibility in cases surrounding domestic violence had on their states. Due to some states' reporting limitations and, in some cases, a lack of response, we have limited substantiated information concerning the fiscal impact of this eligibility. In speaking with the Unemployment Insurance Directors of these states, however, it was generally held that the overall fiscal impact of this type of eligibility was minor.

Job Service does not have a mechanism within our systems noting reasons for separation relating to domestic violence or sexual assault. Therefore, in order to provide the fiscal impact of this bill, we estimated the number of individuals who might fall into this category. We based this estimate upon claims in which individuals noted that they quit their job due to domestic reasons in general.

Based upon this information, we estimated that 2 claims per month might fall under this scenario. It is difficult to say confidently that this estimate is completely accurate, as individuals impacted by domestic violence or sexual assault may have been reluctant to bring the issue forward, while others may have been aware that North Dakota law does not provide for eligibility for benefits based upon this type of situation.

While it is reasonable to believe that domestic violence and sexual assault is more prevalent than our estimates may reflect, not every situation involving domestic violence or sexual assault results in a separation from employment. Under our estimate of 2 claims per month, it could be expected that approximately \$90,000 of additional benefits would be paid per year.

The way Senate Bill 2245 is written, employers would be relieved of benefit charges for benefits paid to claimants who previously worked for them but quit due to domestic violence or sexual assault. Instead, charges associated with benefits paid due to domestic violence or sexual assault would be charged to the entire pool of employers within the state, creating a fairly minimal impact upon the employers of the state as a whole.

I noted earlier that we have concern with some of the language in this bill. One part we are concerned with relates to ‘reasonable documentation of the domestic violence or sexual assault.’ In particular, the language that reads, “a reliable statement by another individual with knowledge of the domestic violence or sexual assault” could pose difficulties in our eligibility adjudication process.

This language is broad and transfers the burden to determine whether or not domestic violence or sexual assault has occurred to Job Service adjudication staff – staff who do not have any expertise in these areas.

An additional concern is that this language does not address proximity and time as factors in determining the eligibility of the individual. As written, any documented case of domestic violence or sexual assault, no matter where or

when it occurred, would get the claimant past the verified reasonable documentation requirement.

While these concerns relate to the bill language as proposed, we would welcome the opportunity to work with the committee and bill sponsors to amend the proposed language in such a way as to ensure that the intent of the bill is reflected in an administratively feasible manner.

It is important to note that this is one of two bills that Job Service is aware of that is being introduced concerning domestic violence and sexual assault as it relates to eligibility for unemployment insurance. The second bill is House Bill 1276. House Bill 1276 provides for the overall expansion of unemployment insurance benefits, and expands benefit eligibility to include separations from employment for "compelling family reasons."

The introduction of House Bill 1276 is based in part upon a federal initiative entitled Unemployment Insurance Modernization, and along with passage of the bill, additional federal funding would be provided to the state. Although these additional federal funds would be made available under House Bill 1276, passage of Senate Bill 2245 would not qualify for any additional federal Unemployment Insurance Modernization funding on its own.

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

**NORTH DAKOTA COUNCIL ON ABUSED WOMEN'S SERVICES
COALITION AGAINST SEXUAL ASSAULT IN NORTH DAKOTA**

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Testimony on SB 2245

House Industry, Business and Labor

March 8, 2011

Chairman Keiser and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of the North Dakota Council on Abused Women's Services. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in support of SB 2245.

Many victims and survivors of domestic violence, sexual assault, and stalking must leave work in order to protect themselves, their families, and their coworkers. A woman may be harassed by threatening phone calls at work or may need to miss days of work because of injuries or attempts to seek legal remedies for the abuse. In the worst cases, a victim may be attacked by the perpetrator at work. Rape, sexual assault, and stalking are aspects of domestic violence that may prevent a victim from maintaining employment. A perpetrator may stalk a victim at her workplace because it may be the only place he knows to find her. Stalking may include up to 20 calls in a day, waiting outside her workplace in his car, or coming into the workplace and verbally or physically assaulting her. These experiences may cause a victim to be forced to leave her employment to seek safety.

Workers are generally not able to qualify for unemployment insurance when they leave work "voluntarily", unless they have "good cause" related to work. In many states, including North Dakota, personal reasons cannot constitute "good cause" for leaving a job so survivors of domestic violence and assault who must leave work to flee violence and protect themselves from violence and stalking may not qualify for unemployment insurance.

SB 2245 enables victims of domestic violence and sexual assault to be considered eligible for unemployment insurance, but by no means guarantees them anything, just that they are eligible and the change is proposed in the non charging section of the statute. We worked with Job Service to make some adjustments to the bill that we both agreed upon, which is what you see in the engrossed version of the bill.

A majority of states, thirty two, recognize that domestic violence often follows its victims to work and can affect their ability to retain a job, therefore making them eligible for benefits. Most states that cover domestic violence victims under their unemployment insurance laws have found that there are only a handful of claims per year. In one year Connecticut granted benefits to 47 domestic violence victims, with an average weekly benefit of \$397.00 or a total cost of \$169,850. And in the state of Washington for one calendar year, it had 110 claims- resulting in only .3% of all the unemployment insurance claims in the state that year.



North Dakota is one state where survivors of domestic violence who must leave their jobs to protect their safety can be disqualified from receiving unemployment benefits because domestic violence isn't considered good cause for leaving a job. SB 2245 changes that. Please join me in supporting SB 2245.

Thank you.



ND AFL-CIO

David L. Kemnitz, President

March 8, 2011

House IBL Committee

SB 2245

Provide unemployment benefits to persons whose work separation, though not the fault of the employer, is directly attributable to domestic violence or sexual abuse. As stated on page 3 beginning on line 28 the abuse or assault must have "documentation that substantiates the individual's reason for separation from the most recent employment and such continued employment would jeopardize the safety of the individual---". We support passage of this legislation and note that after amendments that satisfied ND Job Service concerns SB 2245 passed the senate unanimous- Senate Journal page SJ 278.

How Does North Dakota Determine Who Qualifies for UI? There are three main categories of decisions that determine whether a worker qualifies for state unemployment benefits:

- **Monetary eligibility** - each state uses a one year look back period called a base period to determine if the jobless worker has sufficient recent wages to show workforce attachment. In North Dakota, an applicant must earn a minimum of \$2795 from the highest 2 1/2 quarters of their base period to be eligible for UI benefits.
- **Reason for separation** - states have eligibility rules that determine if the worker lost a job through no fault of his own. In North Dakota, if a worker loses his job due to misconduct or voluntarily leaves employment without good cause, he or she can be disqualified from receiving UI benefits.
- **Able and available for work**- states require that the UI applicant actively seek work and that they are available and able to work.

This particular UI modernization reform (SB 2245) broadens the category of eligibility to only those who have "**documentation that substantiates the individual's reason for separation from the most recent employment and such continued employment would jeopardize the safety of the individual---**". Further; the costs attributed to these claims are not charged to the impacted employer.

Significantly, more women are working in North Dakota compared to the rest of the nation. The "labor force participation rate" (i.e., the percent of working or looking for work) of women workers in North Dakota was 67.7% in 2009 compared to the national average of 59.2%. Economic Policy Institute analysis of Current Population Survey data A majority of the states, thirty-two, recognize that domestic violence often follows its victims to work and can affect their ability to retain a job. North Dakota is one of only two Plains states where survivors of domestic violence who must leave their jobs to protect their safety can be disqualified from receiving unemployment benefits because domestic violence is not considered good cause for leaving a job; Iowa being the other.

We urge the passage of SB 2245. Thank you for your time and consideration.

#3

Senate Bill 2245
Testimony of Darren Brostrom
Job Service North Dakota
Before the
House Committee On
Industry, Business and Labor
Representative George Keiser, Chair
March 8, 2011

Mr. Chairman, members of the committee, I am Darren Brostrom, Director of Unemployment Insurance for Job Service North Dakota. Job Service is taking a neutral view on Senate Bill 2245, but I am here today to provide information on the impacts of the bill.

Although Senate Bill 2245 is not expected to impact the unemployment insurance program to much extent, the change to allow for benefit eligibility in situations in which the employer has no participation in the separation from employment is a shift from current law. Currently, an individual who quits employment must prove that he or she quit due to good cause *attributable to the employer* in order to be eligible for unemployment insurance benefit payments. Examples of good cause are things like workplace harassment or significant changes in the hiring agreement. Although domestic violence and sexual assault can be compelling reasons for an individual to leave employment, existing law does not allow for eligibility based upon these reasons.

39 states currently allow for benefit eligibility when an individual quits a job due to domestic violence. In speaking with the Unemployment Insurance Directors of several of these states, it was generally held that the overall fiscal impact of

this type of eligibility was minor. Even very large states experience a low number of claims and fairly minimal benefit charges.

Job Service estimates that should Senate Bill 2245 pass, we could expect up to 2 claims per month, accounting for approximately \$90,000 of additional benefits paid per biennium. Because Job Service does not currently have a mechanism within our systems noting reasons for separation relating to domestic violence or sexual assault, we based our estimate upon claims in which individuals noted that they quit their job due to domestic reasons in general.

It is difficult to say confidently that this estimate is completely accurate, as individuals impacted by domestic violence or sexual assault may have been reluctant to bring the issue forward, while others may have been aware that North Dakota law does not provide eligibility based upon this type of situation. While it is reasonable to believe that domestic violence and sexual assault is more prevalent than our estimates may reflect, not every situation involving domestic violence or sexual assault results in a separation from employment.

It is important to note that benefits paid based upon the eligibility provided via Senate Bill 2245 would not be charged to the impacted employers. Instead, benefits paid to claimants who previously worked for these employers would be charged to the entire pool of employers within the state, creating a fairly minimal impact upon the employers of the state as a whole.

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

North Dakota Department of Labor

Independent Contractor Verification

The distinction between an independent contractor relationship and an employment relationship is an important and sometimes ambiguous one. Independent contractors, as opposed to employees, are not protected by labor standards, workers compensation, or unemployment insurance, and are treated differently than employees for tax purposes by the Internal Revenue Service. Contrary to some common thought, parties may not simply agree that their relationship is an independent contracting relationship rather than employment. The distinction is based, under law, upon objective characteristics of the relationship. The intent of the parties is only one of twenty such characteristics.

The North Dakota Department of Labor is authorized by **N.D.C.C. § 34-05-01.4** ([../laws/34-05.html#law34-05-1-4](http://laws/34-05.html#law34-05-1-4)) to verify the independent contractor status of future or existing work relationships in the state. While verification is not mandatory for parties wishing to work as or hire independent contractors, it is available on a voluntary basis to workers and firms who would like to receive a formal verification from the State as to the status of their work relationship.

What Does the Department of Labor Consider in its Review?

In determining the status of workers who apply for Independent Contractor verification, the Department of Labor will apply the "Common Law" test. The test contains twenty factors that have been developed, based on an examination of case law and rulings, considering whether an individual is an employee or an independent contractor. There is no certain number of the twenty points of the Common Law test that must be met in order to qualify as an independent contractor, and the degree of importance of each factor varies depending on the occupation and factual context in which the services are performed. A list of the twenty factors can be found below.

What Happens if the Department of Labor Finds the Worker to be an Independent Contractor?

If the North Dakota Department of Labor finds the worker to be an independent contractor, both the worker and firm are notified of the affirmative verification in writing, and a certificate is issued to the worker. In addition, the North Dakota Department of Labor generally provides the firm with an IRS form (SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and

Income Tax Withholding) that can be submitted to that federal agency should the firm wish for a determination for tax purposes.

The most significant benefit of an affirmative independent contractor verification is the reduced potential for future liability. If an independent contractor has received verification by the North Dakota Department of Labor, and at a later date is found to be an employee by the Department of Labor, Job Service North Dakota, or Workforce Safety & Insurance, the finding agency may not require the party determined to be the employer to pay taxes, premiums or wages, other than those required by the contract, or any interest, penalty, or delinquency fee with respect to premiums, wages or taxes retroactive to the date the relationship with the employee began. Unless, however, the finding agency determines the employer willfully and intentionally entered into the relationship with the purpose of avoiding unemployment compensation taxes, worker's compensation insurance premiums, or wages. The finding agency may also require the payment of wages, premiums, and taxes for the employee from the date the order declaring an employment relationship becomes final.

What Happens if the Department of Labor Finds the Worker to be an Employee?

If the Department is unable to provide an affirmative verification of independent contractor status, it does not mean that the worker and firm cannot start or continue the relationship unchanged. However, no protection from retroactive liability for premiums, penalties, taxes, wages, etc. is afforded to either party.

What Else Should I Know About the Independent Contractor Verification Process?

An affirmative verification of independent contractor status is applicable only to the specific work relationship between the verified worker and firm, and only to work performed in North Dakota. In addition, if the work relationship between the worker verified to be an independent contractor and the firm for whom he or she works changes significantly, the parties may wish to reapply as the original verification may have become invalidated by the changes.

How do I Apply for an Independent Contractor Verification?

Parties who would like an independent contractor verification of their work relationship may complete the attached **Independent Contractor Verification Application** ([../forms/sfn-58394.html](http://www.nd.gov/forms/sfn-58394.html)) (SFN 58394). The form is designed to be completed by the worker and then submitted to the firm for its review, notation of

responsible only for the attainment of a result, this factor indicates an independent contractor status.

6. **Continuing relationship.** A continuing relationship between the person and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist when work is performed at frequently recurring although irregular intervals.
7. **Set hours of work.** The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control.
8. **Full time required.** If the person must devote substantially full time to the business of the person or persons for whom the services are performed, such person or persons have control over the amount of time the person spends working and impliedly restrict the person from doing other gainful work. An independent contractor, on the other hand, is free to work when and for whom he or she chooses.
9. **Doing work on the premises of the person or persons for whom the services are performed.** If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the person, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the person is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such service on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required.
10. **Order or sequence set.** If a person must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the person is not free to follow the person's own pattern of work but must follow the established routines and schedules of the person or persons for whom the services are performed. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. It is sufficient to show control, however, if such person or persons retain the right to do so.
11. **Oral or written reports.** A requirement that the person submit regular or written reports to the person or persons for whom the services are performed indicates control. By contract, however, parties can agree that services are to be performed by certain dates and the persons performing those services can be required to report as to the status of the services being performed so that the person for whom the services are being performed can coordinate other contracts that

any additional information the firm may wish to include, and signature. Once input and review from both parties is received, as evidenced by the signatures of both parties, the form should be sent to the North Dakota Department of Labor.

Are There Other Uses for the Independent Contractor Verification Application?

In addition to reviewing beginning and existing work relationships as noted above, the department has authority to determine the status of existing or previous work relationships when necessary within the context of investigating a claim for unpaid wages. In these instances, a separate Independent Contractor Verification Application (SFN 58394) is completed by both the wage claimant and the person against whom the claim was filed. The twenty factors considered in evaluating the relationship are the same.

The Twenty Factors of the "Common Law" Test

The following is a list of factors evaluated by the North Dakota Department of Labor when determining the status of work relationships submitted for review under the department's Independent Contractor Verification process.

1. **Instructions.** A person who is required to comply with other persons' instructions about when, where, and how the person is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions.
2. **Training.** Training a person by requiring an experienced employee to work with the person, by corresponding with the person, by requiring the person to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner.
3. **Integration.** Integration of the person's services into the business operations generally shows that the person is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the persons who perform those services must necessarily be subject to a certain amount of control by the owner of the business.
4. **Services rendered personally.** If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.
5. **Hiring, supervising, and paying assistants.** If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the persons on the job. However, if one person hires, supervises, and pays the other assistants pursuant to a contract under which the person agrees to provide materials and labor and under which the person is

person may have which are required in the successful total completion of a particular project.

12. **Payment by hour, week, month.** Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. Payment made by the job or on a straight commission generally indicates that the worker is an independent contractor.
13. **Payment of business or traveling expenses, or both.** If the person or persons for whom the services are performed ordinarily pay the person's business or traveling expenses, or both, the person is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the person's business activities.
14. **Furnishing of tools and materials.** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment, tends to show the existence of an employer-employee relationship.
15. **Significant investment.** If the person invests in facilities that are used by the person in performing services and are not typically maintained by employees (such as the maintenance of an office rented at fair value from an unrelated party), that factor tends to indicate that the person is an independent contractor. On the other hand, lack of investment in facilities indicates dependence on the person or persons for whom the services are performed for such facilities, and, accordingly, the existence of an employer-employee relationship.
16. **Realization of profit or loss.** A person who can realize a profit or suffer a loss as a result of the person's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the person who cannot is an employee. For example, if the person is subject to a real risk of economic loss due to significant investments or a bona fide liability for expenses, such as salary payments to unrelated employees, that factor indicates that the person is an independent contractor. The risk that a person will not receive payment for his or her services, however, is common to both independent contractors and employees and thus does not constitute a sufficient economic risk to support treatment as an independent contractor.
17. **Working for more than one firm at a time.** If a person performs services under multiple contracts for unrelated persons or firms at the same time, that factor generally indicates that the person is an independent contractor. However, a person who performs services for more than one person may be an employee for each of the persons, especially when such persons are part of the same service arrangement.
18. **Making service available to general public.** The fact that a person makes his or her services available to the general public on a regular and consistent basis indicates an independent contractor relationship.

19. **Right to discharge.** The right to discharge a person is a factor indicating that the person is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the person to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired so long as the independent contractor produces a result that meets the contract specifications.
20. **Right to terminate.** If the person has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. A contract can be terminated by the mutual agreement of the parties before its completion or by one of the parties to the contract before its completion to prevent a further breach of the contract or to minimize damages. This situation indicates an independent contractor relationship.

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AMENDMENT TO SENATE BILL 2245

~ LANDMEN ~

Testimony of Maren Daley
Job Service North Dakota
Before the
House Committee On
Industry, Business and Labor
Representative George Keiser, Chair
March 23, 2011

Mr. Chairman, members of the committee, I am Maren Daley, Executive Director of Job Service North Dakota.

ND uses the 20 point common law test to determine whether a relationship is that of an independent contractor or an employee.

ND unemployment law defines what is employment for tax and benefit purposes. Century Code 52-01-18 (k) contains a special provision regarding landmen:

Service performed for a private for-profit person or entity by an individual as a landman if substantially all remuneration paid in cash or otherwise for the performance of the service is directly related to the completion by the individual of the specific tasks contracted for rather than to the number of hours worked by the individual, and the services are performed under a written contract between the individual and the person for whom the services are performed which provides that the individual is to be treated as an independent contractor and not as an employee with respect to the services provided under the contract. For purposes of this subdivision, "landman" means a land professional who has been engaged primarily in:

- (1) Negotiating the acquisition or divestiture of mineral rights;
- (2) Negotiating business agreements that provide for the exploration for or development of minerals;
- (3) Determining ownership of minerals through research of public and private records;
- (4) Reviewing the status of title, curing title defects, and otherwise reducing title risk associated with ownership of minerals;
- (5) Managing rights or obligations derived from ownership of interests and minerals; or
- (6) Activities to secure the unitization or pooling of interests in minerals.

Key criteria include: specific tasks, done under a contract as an independent contractor and payment is directly related to completion of the specific tasks contracted for rather than the number of hours worked (tasks vs time).

The three criteria are not a carte blanche exemption for landmen as independent contractors. The criteria are strong indicia of an independent contractor relationship without necessitating going into the more complex common law 20 point test for each situation.

If the criteria are not met, JSND proceeds to assess the working relationship under the common law 20 point test.

Montana and Texas have statutes akin to the ND existing statute. We have conferred with the appropriate UI directors in those states to understand how they apply their statute. Through review of case determinations from these states, what we have found was that ND applies the statute in a manner consistent with Texas and Montana. Payment of a daily rate under the laws of ND, MT and TX, which are all similar, excludes that relationship from the quick statutory test and analysis of the relationship proceeds to the common law 20 point test. Some agency determinations under the 20 point analysis in Texas, for example, have found working relationships to be that of employment with others finding for independent contractor status. In all cases, the determination of employment status depends on the specific facts and company practices.

Although Wyoming does not provide for an exemption for landmen as ND, TX, and MT do, it is understood that oil and natural gas are a large portion of their economy. As a result, we did contact the UI Director in Wyoming to gather information as to how they process determinations of employment status in cases involving landmen. Through discussion, it was identified that as with all of the states researched, Wyoming makes their determination on a case by case basis, and that determinations have been made finding some landmen to be employees and some to be independent contractors. Although they did not have experience with an exemption, the Director there did comment that in the recent economic downturn, a large number of landmen have become unemployed and filed for UI benefits. In each case, the landmen have clearly stated that they were not really independent contractors, specifically due to the level of control exercised by the companies they worked for.

The industry supports the amendment to specifically permit payment of a daily rate be added to the statute because this is a common practice among landmen, although payment by the day is a form of payment by time which is more akin to employment. A driving force for this amendment is the risk of liability and uncertainty of determinations under the 20 point common law test.

I'd now like to ask you to join me in looking at the specifics of the amendment to explain how JSND will apply this, if passed. Payment of a daily rate would not automatically exclude the relationship from the quick statutory test. Compensation

must still be directly related to the completion by the individual of the specific tasks contracted for rather than the number of hours worked by the individual.

How the individual for whom the services are performed and the landman provide acceptable evidence from records or respond to JSND questionnaires to show how the payment for services are directly related to the completion of the specific tasks may vary. This is a much easier test to pass, but still not a complete exemption from analysis under the 20 point test if there is not evidence to show connection between payment of a daily rate and completion of the tasks.

A change in this law affects only ND state unemployment insurance, not workers compensation, wage and hour claims or the IRS including social security and FUTA. The ND Dept of Labor uses the 20 point common law test for the state's independent contractor verifications.

We have concerns with other industries using this business model for select professions seeking similar exemptions and lessening the unemployment safety net for employees and the funding for the UI trust fund. We support a business friendly environment and entities should be able to reasonably establish working relationships. I still advocate, if the parties wish to maintain the tax saving and freedom of independent contractor relationship, they should act accordingly and such action is reflected under the common law assessment. The history of UI balances the freedom to negotiate and establish working relationship with reasonable protections that, when in doubt, will favor a finding of employment.

Because of the nature and timing of this requested statutory change, if this amendment passes, we would encourage industry to notify the current and future landmen affected by this change which could impact the individual's eligibility for unemployment insurance. .

Mr. Chairman, at this time I would be happy to answer questions from the committee.

**TEXAS UI TAX DIRECTOR
EXPLANATION OF APPLICATION OF
TEXAS SECTION 201.077
SERVICE BY LANDMEN**

From: Pursell, Leigh A [mailto:leigh.pursell@twc.state.tx.us]
Sent: Wednesday, March 16, 2011 9:11 AM
To: Daley, Maren L.
Cc: Temple, Larry
Subject: TWC Hearings on Landmen Sec. 201.077

Good morning. I am responding to the question that you posed yesterday to Larry Temple about Landmen. Under Section 201.077, Texas Workforce Commission requires that all three parts of the section be met in order to qualify for the exemption. That includes the requirement that all remuneration paid be related to the completion of a task rather than the number of hours worked or a daily rate of pay. If the employer is unable to show that the remuneration is based on completion of the task, TWC will disallow the exemption and move to the common law factors. I am attaching two recent Rule 13 Hearings for your review that resulted in Landmen being held to be employees under the 20 common law factors because the employer did not meet all three parts of the exemption under Section 201.077. I apologize for the quality of the copies, but I had to redact the proprietary information. The first paragraph on page 7 of Case One provides a good explanation of TWC's position on the application of the section. Please let me know if you have further questions or if I can assist in any way. Thank you.

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