

1999 SENATE JUDICIARY

SB 2399

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2399

Senate Judiciary Committee

Conference Committee

Hearing Date February 8, 1999

Tape Number	Side A	Side B	Meter #
1	X		2052 - end
1		x	0 - 1676
Committee Clerk Signature <i>Jackie Follman</i>			

Minutes:

SB2399 relates to the authority of state's attorneys and the attorney general to subpoena and require the production of records in welfare fraud investigations; and to provide a penalty.

SENATOR STENEHJEM opened the hearing on SB2399 at 9:30 a.m.

All were present.

SENATOR MUTZENBERGER, District 32, testified in support of SB2399. I was asked to introduce this bill on behalf of a number of state's attorneys and the Attorney General. They need more authority to investigate fraud.

JOHN FUGELBERG, Criminal Investigator for Attorney General's Office, testified in support of SB2399. Testimony attached.

SENATOR STENEHJEM asked that isn't probable cause a judicial determination.

Page 2

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JOHN FUGELBERG stated there wouldn't be judicial involvement unless the entity blocked the subpoena.

SENATOR WATNE asked about the proposed amendment, stating that this is for the title, what about the rest of the bill.

JOHN FUGELBERG stated that the bill was sent in that form and I have been informed that it was changed by Legislative Council and that is why they proposed these amendments.

BOB BENNETT, Attorney General's Office, testified in support of SB2399. This bill is similar to the Minnesota statute. This is the initial source of a business entity.

SENATOR STENEHJEM asked that after a criminal case is commenced, you can issue subpoenas to whomever you wish to.

BOB BENNETT stated that is correct. Basically this is keyed to preliminary information.

SENATOR STENEHJEM stated that the only one who is going to contest this subpoena is the business entity and not the person. The person whose records are being sought will not know.

BOB BENNETT stated that these are not these persons records, they are the business records.

SENATOR STENEHJEM asked what the Supreme Court has said on the information relating to my Internet service provider.

BOB BENNETT stated that I don't believe there has been a ruling on this. This may be the first step.

SENATOR STENEHJEM stated that I don't see the limitations you are talking about in the bill.

BOB BENNETT stated that it could cover other types of information.

SENATOR STENEHJEM asked if this is prelawsuit information.

BOB BENNETT stated that they are the business records and not the persons.

Page 3

Senate Judiciary Committee

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SENATOR TRAYNOR asked how long has Minnesota had this law and has it been challenged.

BOB BENNETT stated that it became law in 1985 and I don't believe it has been

Constitutionally challenged.

RALPH VINJE, Bismarck attorney, testified in opposition of SB2399. Testimony attached.

This bill is attempting the checks and balances.

CHAD NODLAND, Bismarck attorney, testified in opposition of SB2399. I have problems with this bill. My concern is for my client and myself where we do not have an opportunity to resist the subpoena without certain penalties. I don't see where this limits the subpoena power to the entities that are listed.

SENATOR STENEHJEM CLOSED the hearing on SB2399.

SENATOR WATNE made a motion for DO NOT PASS, SENATOR BERCIER seconded.

Motion carried. 6 - 0 - 0

SENATOR STENEHJEM will carry the bill.

FISCAL NOTE

(Return original and 14 copies)

Bill/Resolution No.: SB 2399 Amendment to: _____

Requested by Legislative Council Date of Request: 1-27-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

No fiscal impact is anticipated for the Office of Attorney General, Bureau of Criminal Investigation, as a result of this Bill.

2. **State** fiscal effect in dollar amounts:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General	Special	General	Special	General	Special
Fund	Funds	Fund	Funds	Fund	Funds

Revenues:

Expenditures:

What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____
- b. For the 1999-2001 biennium: _____
- c. For the 2001-03 biennium: _____

4. **County, City, and School District** fiscal effect in dollar amounts:

1995-97 Biennium			1997-99 Biennium			1999-2001 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed attach a supplemental sheet.

Signed Jerald C. Kemmet
Typed Name Jerald C. Kemmet

Date Prepared 1-28-99

Department Office of Attorney General, BCI

Phone Number 328-5500

Date: 2-8-99
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2399

Senate Judiciary Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO NOT PASS

Motion Made By Watne Seconded By Bercier

Senators	Yes	No	Senators	Yes	No
Senator Wayne Stenehjem	X				
Senator Darlene Watne	X				
Senator Stanley Lyson	X				
Senator John Traynor	X				
Senator Dennis Bercier	X				
Senator Caroloyne Nelson	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Stenehjem

REPORT OF STANDING COMMITTEE (410)
February 8, 1999 1:22 p.m.

Module No: SR-25-2176
Carrier: W. Stenehjem
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2399: Judiciary Committee (Sen. W. Stenehjem, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2399 was placed on the Eleventh order on the calendar.

1999 TESTIMONY

SB 2399

TESTIMONY ON
SENATE BILL NO. 2399
BEFORE THE
SENATE JUDICIARY COMMITTEE
February 8, 1999

My name is John Fugleberg and I am a special agent for the Bureau of Criminal Investigation, which is a division of the Office of Attorney General. I am testifying in support of this bill because it will provide a tool for law enforcement that will enhance our ability to obtain information.

First though, I have an amendment. The bill was changed when it was put into form and style and the amendment changes the reference to "welfare fraud" investigations in the title back to "conjunction with criminal" investigations. This would put the bill back into the form that it was submitted. As you can see from the language in the first section, the bill includes much more than Medicaid fraud.

This bill is patterned after Minnesota's statute and the purpose in requesting this bill is to allow us to identify where records are. The bill allows receipt of preliminary information to speed-up an investigation. It does not open the door to information but only permits receipt of knowledge as to where the door is. It complies with constitutional and statutory requirements by ensuring that a factual basis exists to receive the information (relates to an ongoing criminal investigation).

For example law enforcement is unable to obtain a search warrant from a judge for a bank unless they know that a particular suspect actually has an account there. This would allow law enforcement to determine that there is an account. Once we determine that fact we can execute a search warrant and obtain the records.

This is not an attempt to avoid oversight in our investigation. If an entity does not wish to honor the subpoena, we can only enforce the subpoena through a court. However my experience has been that entities like Federal Express, Smith Barney, and banks are willing to cooperate with us. They just need to make sure that they follow applicable law. For example banks may release customer information to law enforcement if they do so pursuant to a "search warrant or a subpoena duces tecum issued in accordance with applicable statutes or the North Dakota Rules of Criminal Procedure." N.D.C.C. § 6-08.1-02(9). This bill would create a mechanism for them to follow.

I want to close with an example where this bill would have helped us.

PROPOSED AMENDMENT TO SENATE BILL NO. 2399

Page 1, line 3, replace "welfare fraud" with "conjunction with criminal"

North Dakota Constitution - Article 1 Section 8:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Introductory paragraph "in welfare fraud investigations."

But see:

Page 1, lines 19-23 and page 2, line 1

Bill 2399 is clearly not limited to welfare fraud investigations.

Separation of powers is violated - judiciary is cut out of loop.

No recourse to the courts.

Section 4 prohibits anyone, including the business being searched, from informing anyone, including its own lawyers and/or the court, of the fact of the search.

Party being searched can't challenge.

Party being investigated can't challenge (doesn't know).

Section 6 - no records filed with court if court orders compliance with search and seizure:

Welfare fraud?

No accountability.

Section 7 - includes Attorney General.

Presumably that means every state agency that relies on the services of an assistant Attorney General - or - every state agency.

Abuse:

Attorney General could use to investigate political opponent. No one could even inform him/her it was happening.

What is the reason for eliminating the traditional checks and balances of having the judiciary find probable cause and issue search warrants?

It can only be the desire of the drafters to engage in clandestine activities that they feel a court would not allow.