

2023 SENATE JUDICIARY

SB 2236

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2236
1/25/2023

A bill relating to the personal liability of charitable organization employees; and to provide for application.

9:08 AM Chairman Larson called the meeting to order.

Present: Chairman Larson and Senators Myrdal, Luick, Estenson, Sickler, Paulson and Braunberger.

Discussion Topics:

- Non-Profits
- For profit organizations
- Charitable organizations
- Volunteers

9:08 AM Senator Hogan introduced the bill and provided written testimony #16456.

9:13 AM Jaclyn Hall, Executive Director, North Dakota Association for Justice, testified opposed to the bill and provided written testimony #16812.

9:23 AM Dana Hagar, Association of Non-Profit Organizations, spoke neutral on the bill.

9:23 AM Chairman Larson closed the public hearing.

Additional written testimony:

Sandra Marshall provided written testimony #16431

Bruce Murry provided written testimony #16642

9:23 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2236
1/31/2023

A bill relating to the personal liability of charitable organization employees; and to provide for application.

9:34 AM Chairman Larson opened the meeting.

Present were Chairman Larson and Senators Sickler, Estenson, Luick, Myrdal, Paulson and Braunberger.

Discussion Topics:

- Committee action.

9:38 AM Senator Sickler provided some additional information regarding the bill.

9:38 AM Senator Sickler made a motion to recommend a Do Not Pass on SB 2236. Motion seconded by Senator Myrdal.

9:39 AM Roll call vote was taken.

Senators	Vote
Senator Diane Larson	Y
Senator Bob Paulson	Y
Senator Jonathan Sickler	Y
Senator Ryan Braunberger	Y
Senator Judy Estenson	Y
Senator Larry Luick	Y
Senator Janne Myrdal	Y

Motion passes 7-0-0.

Senator Braunberger will carry the bill.

This bill does not affect workforce development.

9:39 AM Chairman Larson closed the meeting.

Rick Schuchard, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2236: Judiciary Committee (Sen. Larson, Chairman) recommends **DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2236 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

TESTIMONY

SB 2236

TESTIMONY
Senate Judiciary Committee
SB 2236
January 25, 2023
Sandi Marshall

Chair Larson and Members of the Judiciary Committee, for the record my name is Sandi Marshall. I am the retired CEO of Development Homes, Inc. (DHI) in Grand Forks, a charitable nonprofit organization serving people with developmental and intellectual disabilities, also known as a DD Provider agency. Earlier in my career, I worked as a state employee for 18 years, including serving as the DD Director for the Department of Human Services in the 1990's. In that capacity, I worked to successfully end the ARC lawsuit against ND by bringing services up to a level of excellence that was recognized nationally. I later served for several years as a member and as President of the DD provider association, NDACP. I have committed my life to the betterment of the lives of people with disabilities in North Dakota, and to those who selflessly care for them.

My interest in Senate bill 2236 stems from my personal experience with a very contentious civil lawsuit filed against my former agency that was finally resolved in early 2021, after over 4 years of litigation. In addition to the agency being named as a defendant, I and three of my staff were individually named as co-defendants. The litigation included a gut-wrenching 2-week trial in 2019, which ultimately resulted in a jury determination that found no liability attributable to us as individuals. On appeal, the ND Supreme Court further found no liability on the part of individual employees as well, and in addition, effectively dismissed the most egregious claims against the agency.

My desire at this juncture is to try to ensure that no employees of DD Provider agencies, or other similar nonprofit charities, have to go through such a devastating scenario when they are simply doing their jobs in an honest and lawful manner. I will never forget sitting with my employees in the courtroom at the end of the trial, waiting in excruciating anticipation of the jury's verdict, not knowing if a runaway jury could destroy our careers and lives.

As you are no doubt acutely aware, North Dakota is experiencing a significant workforce shortage, especially in direct care-giving roles. These are difficult and very responsible jobs. Imagine the increased difficulty inherent in hiring for these crucial positions in an environment where a person's future could be potentially destroyed by false allegations of intentional wrongdoing, allegations that may be entirely malicious and motivated by greed and the promise of "deep pockets".

Of primary importance to me is that employees of such charities are treated on a level playing field as similar state employees in relation to the law. DD Provider agencies offer services that are identical to those provided also by the State. In this case, the Life Skills and Training Center provides residential and vocational training services to persons with Intellectual and Developmental Disabilities that are identically licensed and certified by the same state agencies as those of private DD providers. Additionally, these private agencies perform functions that are otherwise the responsibility of the state government and are funded almost entirely by the state under contractual arrangements. It is an issue of absolute fairness that these employees be treated with the same liability protections as their state-employed counterparts.

The proposed amendments to Chapter 32-03.3 Charitable Organization Immunity add language that would serve to protect the personal liability of such nonprofit employees. It mirrors protections already in place for both state agencies and political subdivisions, such as "Public nonprofit corporations", as defined in existing statutes, notably NDCC Chapter 32-12.1 Governmental Liability.

I would urge you to consider adopting this bill into law. It will benefit the thousands of everyday constituents living and working in communities of all sizes throughout the state who do this important care-giving work for our most vulnerable populations, often for wages far below the state average, and hopefully will aid in recruitment and retention for the affected agencies. Thank you for your consideration.

TESTIMONY
Senate Judiciary Committee
SB 2236
January 25, 2023
Senator Kathy Hogan

Chair Larson and Members of the Judiciary Committee, for the record my name is Kathy Hogan and I represent District 21 which is central Fargo with a small corner of West Fargo.

Senate Bill 2236 was introduced on behalf of a colleague from Grand Forks, who worked for a nonprofit developmental disabilities provider after an extremely contentious litigation that did not find any liability for employees named in the suit. She will provide testimony about the situation.

In NDCC 32-12.1 Governmental Liability, one of the categories of protected organizations is "public nonprofit corporations", which is defined as a nonprofit that performs a governmental function and is funded primarily by the state. This is true of DD Providers, who provide similar services to those provided by the Life Skills and Transition Center in Grafton (both ICF/IDD homes and HCBS services). It contains the same limitations on liability as the above chapter, and in section 32-12.1-04 extends those limitations to employees as well. These are the same protections that state employees have. This bill is designed to clarify the employee liability limitations for public nonprofit corporations.

In this time of many recruitment and retention problems for nonprofit organizations, clarification of this issue is critical to retain staff and services for those vulnerable individuals served by this system of care.

Thank you for your consideration and I would be more than willing to answer any questions.

SB 2236 (2023 LEGISLATIVE ASSEMBLY)
SENATE JUDICIARY COMMITTEE
HONORABLE DIANE LARSON, CHAIRMAN
JANUARY 25, 2023 9:00 A.M.
TESTIMONY OF BRUCE MURRY FOR FRASER LTD

Chairman Larson and members of the Senate Judiciary Committee, I am Bruce Murry, Lobbyist #330, representing Fraser LTD of Fargo, North Dakota. Since its inception in 1893, Fraser has met the needs of children, youth, and adults. Services and resources have grown to include independent living supports, residential services, and day support services for people with disabilities; as well as childcare and transitional youth services.

Fraser observes the same acute shortage of staff seen statewide. Disability service providers face the additional pressure of an extensive background check for each employee. Employees with a clean record are often very motivated to maintain it. They are often horrified that they could face investigations, findings of abuse or neglect, or even lawsuits for doing what they thought was right. This includes New Americans who have not had reason to trust their former governments. We seek to overcome these fears with training and supervision that help to foster high quality, person-centered services.

However, New Americans, college students, and others sometimes leave Fraser for fear of the level of responsibility they bear for services not completely under their control. Indeed, the State sets the service goals, establishes a budget, and regulates many aspects of the work. In these demanding circumstances, we can't afford to lose a single qualified employee.

I would be happy to facilitate conversations with Fraser about their experiences in this regard, including with Sandra Leyland, Fraser's CEO.

Thank you for the opportunity to appear today.

SB2236 – Senate Judiciary

Madam Chair Larson and members of the Senate Judiciary, my name is Jaci Hall and I am the Executive Director of the North Dakota Association for Justice. Today, I am here in opposition of SB2236 as it is written.

SB2236 aims to reduce an employee's negligence when injuries are caused by negligence, wrongful acts or omissions within the scope of their employment. This bill will require civil action to only be brought against the organization this employee works for unless the acts are reckless, grossly negligent, or willful and wanton misconduct.

Workplace negligence is a legal term that often comes up in workers' compensation cases that describes **a person or entity that fails to act reasonably, given the circumstance**. Employer negligence refers to actions and omissions by employers that lead to property damage, loss, theft, illness, injury, or wrongful death.

Most civil lawsuits for injuries allege the wrongdoer was negligent. To win in a negligence lawsuit, the victim must establish 4 elements:

- (1) the wrongdoer owed a duty to the victim**
- (2) the wrongdoer breached the duty**
- (3) the breach caused the injury**
- (4) the victim suffered damages.**

Today, the question I ask the committee is this – Should employees be held accountable for negligent behavior? If so, how egregious of an act should they be held liable for? On one hand, holding employees accountable for their actions can serve as a deterrent for negligent behavior and can hold individuals responsible for their actions. This can also provide a sense of justice for the victim and ensure that the employee is held responsible for the harm they have caused. Employees are trained in their line of work and the victim depends on

the employee to provide the utmost care to support them in their daily lives.

Organizations should be held liable for the actions of their employees. This is because organizations have a responsibility to ensure the safety and well-being of their employees and those affected by their actions. Holding organizations liable can also ensure that they take steps to prevent similar incidents from occurring in the future.

It is important to consider both the actions of the individual employee and the actions of the organization when determining liability.

1. The employee's actions should be evaluated to see if they are in violation of any laws, policies, or regulations, and if the organization had proper oversight and monitoring in place.

2. The organization's liability should be determined based on whether it failed to provide a safe working environment, failed to properly train or supervise its employees, or failed to take appropriate action when it knew or should have known about the employee's behavior.

For example, if an employee is employed by a charitable organization and is caring for a disabled client and while transitioning the client from the bed to a chair, drops the client. This causes a severe injury to the client. Should the employee be held liable? Or, should only the organization be held liable?

SB2236 increases the required negligence of the employee to a higher level. In this example, the employee needs to be grossly negligent – which means then intended to drop the client – before charges can be brought against the employee. Is this fair to the victim?

Three other things to consider –

1. What happens if the employee is volunteering at a local soup kitchen or food pantry and negligence occurs. Are these individuals' employees? Or are they volunteers?

2. Many times, employees are included in civil litigation personally because they were either involved in the negligence, or the victim is unsure the employee still works for the organization or entity. If the employee is determined to not be at fault during the deposition and fact finding, they will be removed from the lawsuit.

3. This change is only for charitable organizations. So, we are increasing the threshold for these organizations who work with clients, but not for profit entities or those that do not fall under the threshold of charitable as defined in the NDCC?

Under 32-03.3-01. "Charitable organization" means a nonprofit organization whose primary purpose is for relief of poor, disabled, underprivileged, or abused persons, support of youth and youth programs, or the prevention of abuse to children and vulnerable adults.

If passed, SB2236 will endanger the most vulnerable of our population. The disabled, underprivileged and those who are abuse and vulnerable. Employees are trained professionally and in their scope of work to support these individuals. By increasing the threshold of their negligence, are you allowing negligence to occur?

The current statute for negligence for charitable organizations requires the organization and their employees to care for the clients as they were trained. Accidents happen, but if negligence occurs, the victim deserves to receive justice from the individual who harmed them.

Thank you for the opportunity to speak today. I will stand for any questions.

CHAPTER 32-03.3
CHARITABLE ORGANIZATION IMMUNITY

32-03.3-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Charitable organization" means a nonprofit organization whose primary purpose is for relief of poor, disabled, underprivileged, or abused persons, support of youth and youth programs, or the prevention of abuse to children and vulnerable adults.
2. "Claim" means any claim for money damages brought against a charitable organization or an employee of the charitable organization for an injury caused by the charitable organization or an employee of the charitable organization acting within the scope of the employee's employment.
3. "Employee" means every present or former officer or employee of the charitable organization or any person acting on behalf of the charitable organization in an official capacity, temporarily or permanently, with or without compensation.
4. "Injury" means personal injury, death, or property damage.
5. "Occurrence" means an accident, including continuous or repeated exposure to a condition, which results in an injury.
6. "Personal injury" includes bodily injury, mental injury, sickness, or disease sustained by a person and injury to a person's rights or reputation.
7. "Property damage" includes injury to or destruction of tangible or intangible property.
8. "Scope of employment" means the employee was acting on behalf of the charitable organization in the performance of duties or tasks of the charitable organization assigned to the employee by the charitable organization.

32-03.3-02. Liability of charitable organizations - Limitations - Statute of limitations.

1. A charitable organization may be only held liable for money damages for a personal injury or property damage proximately caused by the negligence or wrongful act or omission of an employee acting within the employee's scope of employment.
2. The liability of the charitable organization under this chapter is limited to a total of two hundred fifty thousand dollars per person and one million dollars for any number of claims arising from any single occurrence. The charitable organization may not be held liable, or be ordered to indemnify an employee held liable, for punitive or exemplary damages.
3. An action brought under this chapter must be commenced within the period provided in chapter 28-01.