BUSINESS & LABOR
EXHIBIT NO. 2
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BILL NO. HB 101

TESTIMONY IN FAVOR OF HB 101
SENATE BUSINESS, LABOR AND ECONOMIC AFFAIRSCOMMITTEE
JERRY KECK, ADMINISTRATOR
EMPLOYMENT RELATIONS DIVISION
DEPARTMENT OF LABOR AND INDUSTRY
March 6, 2009

Mr. Chairman, members of the committee, my name is Jerry Keck. I am the administrator in the Employment Relations Division of the Department of Labor and Industry. The Employment Relations Division is responsible for implementing and administering many of the statutes that apply to the employer – employee relationship. That includes the Wage Payment Act that we are discussing this morning.

First, I would like to thank Rep. Welborn for carrying this bill. HB 101 is a pretty simple, straightforward bill. In cases where an employer dismisses an employee because of alleged theft, the current statute allows the employer to withhold an amount from the final paycheck an amount sufficient to cover the value of the alleged theft. HB 101 clarifies that an employer has 7 business days to file a report with local law enforcement in cases in which an employee is dismissed because of alleged theft. It also extends from 15 days to 30 days the time period within which charges must be filed by the county attorney in a court of competent jurisdiction.

The employer must file a report of theft with local law enforcement. Local law enforcement must do an investigation and determine that there is sufficient credible evidence to take the case to the county attorney for possible prosecution. The county attorney must review the evidence and determine there is sufficient evidence to file and prosecute the case in a court of competent jurisdiction.

There are instances where 15 days is simply not enough time to get the charges filed in court. In these instances, the employer is required to pay the disputed final wages because of circumstances beyond their control. In a recent case in Yellowstone County that I believe you will hear about today, an employer met their obligation and filed a report of alleged theft with the local police department on the same day, October 17, 2007, that the employee was dismissed. However, because of heavy caseloads in Yellowstone County, the charges were not filed within 15 days. The employer is now legally obligated to pay the disputed wages because of circumstances beyond the control of the employer.

Town Pump's Associate Counsel reports that they initiate about 10 prosecutions per year for alleged employee theft. Even with video surveillance equipment that often records the apparent removal of cash from a till, it is difficult to meet the timelines required by the current statute.

Mr. Chairman, members of the committee, the Department requests that you support HB 101. I am happy to try to answer any questions. Thank you.