

2023 SENATE JUDICIARY

SB 2106

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2106
1/10/2023

A bill relating to issues of fact, plea of once in jeopardy, and special verdicts.
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9:00 AM Chairman Sickler, as acting Chairman, opened the meeting.

Present are Acting Chairman Sickler, Senators Paulson, Braunberger, Estenson, Luick and Myrdal. Senator Larson is absent.

Discussion Topics:

- Double jeopardy

9:02 AM Sara Behrens, Attorney, State Court Administrator's Office, introduced the bill and provided written testimony #12721.

9:05: AM Chairman Sickler closed the public hearing.

9:05 AM Acting Chairman Sickler closed the meeting.

Rick Schuchard, Committee Clerk

2023 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Peace Garden Room, State Capitol

SB 2106
1/18/2023

A BILL for an Act relating to plea of once in jeopardy; relating to plea of once in jeopardy.

1:59 PM Madam Chair Larson called the meeting to order.

Present: **Madam Chair Larson, Senators, Myrdal, Luick, Estenson, Braunberger, Sickler, Paulson.**

Discussion Topics:

- Committee action

2:02 p.m. Sara Behrens, Staff Attorney Office of the Attorney General, presented amendments. #14344, LC 23.8021.01001

2:07 PM Senator Sickler moved amendment.

2:07 PM Senator Myrdal seconded.

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 passed. 7-0-0

2:08 PM Senator Luick moved a **DO PASS as Amended**

2:08 PM Senator Myrdal seconded.

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 passed. 7-0-0

Senator Sickler will carry the bill.

2:09 PM Madam Chair closed the meeting.

Patricia Wilkens, Committee Clerk

January 18, 2023

DR
1-19-2023
10/1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2106

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to repeal sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code relating to issues of fact, plea of once in jeopardy, and special verdicts."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code are repealed.

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2106: Judiciary Committee (Sen. Larson, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2106 was placed on the Sixth order on the calendar. This bill does not affect workforce development.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to repeal sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code relating to issues of fact, plea of once in jeopardy, and special verdicts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. REPEAL. Sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century Code are repealed.

Renumber accordingly

2023 HOUSE JUDICIARY

SB 2106

2023 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Room JW327B, State Capitol

SB 2106
3/1/2023

Relating to the definition of meeting.

1:30 PM Chairman Klemin opened the hearing. Members present: Chairman Klemin, Vice Chairman Karls, Rep. Bahl, Rep. Christensen, Rep. Cory, Rep. S. Olson, Rep. Rios, Rep. Schneider, Rep. VanWinkle. Absent: Rep. Henderson; Rep. S. Roers Jones, Rep. Satrom and Rep. Vetter.

Discussion Topics:

- Sections of Code effected
- Amended in 1895
- Double jeopardy.
- Obsolete regulations

Sara Behrens: Staff attorney, State Court Administrator's Office: Introduced the bill.
Testimony #21372

Hearing closed at 1:41 PM.

Rep. Olson moved a Do Pass;
Seconded by Rep. Rios

Representatives	Vote
Representative Lawrence R. Klemin	Y
Representative Karen Karls	Y
Representative Landon Bahl	Y
Representative Cole Christensen	Y
Representative Claire Cory	Y
Representative Donna Henderson	A
Representative SuAnn Olson	Y
Representative Nico Rios	Y
Representative Shannon Roers Jones	A
Representative Bernie Satrom	A
Representative Mary Schneider	Y
Representative Lori VanWinkle	Y
Representative Steve Vetter	A

Roll call vote: 9 Yes 0 No 4 Absent Motion carried.

Carrier: Rep. VanWinkle

House Judiciary Committee

SB 2106

March 1, 2023

Page 2

The meeting closed at 1:41 PM.

Delores Shimek, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2106, as engrossed: Judiciary Committee (Rep. Klemin, Chairman) recommends **DO PASS** (9 YEAS, 0 NAYS, 4 ABSENT AND NOT VOTING). Engrossed SB 2106 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2106

Senate Bill 2106
House Judiciary Committee
Testimony Presented by Sara Behrens
January 10, 2022

Good morning Chair Larson, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of Senate Bill 2106.

Senate Bill 2106 amends sections 29-16-01 and 29-22-33 and repeals section 29-21-16. These sections discuss a plea of once in jeopardy. This is an antiquated term which is rarely asserted and, essentially, precludes double jeopardy. However, the North Dakota Constitution in Article I, Section 12, already precludes double jeopardy. The plea of once in jeopardy is unnecessary and more confusing than helpful. Therefore, we are seeking to remove reference to a plea of once in jeopardy. Thank you for your consideration and we urge a do pass.

23.8021.01000

Sixty-eighth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2106

Introduced by

Judiciary Committee

(At the request of the Supreme Court)

1 A BILL ~~for an Act to amend and reenact sections 29-16-01 and 29-22-33 of the North Dakota~~
2 ~~Century Code, relating to plea of once in jeopardy; and to repeal section 29-21-16 of the North~~
3 ~~Dakota Century Code, relating to plea of once in jeopardy.~~

4 **~~BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:~~**

5 **~~SECTION 1. AMENDMENT.~~** ~~Section 29-16-01 of the North Dakota Century Code is~~
6 ~~amended and reenacted as follows:~~

7 **~~29-16-01. Issue of fact.~~**

8 ~~An issue of fact arises:~~

9 ~~1.—Upon a plea of not guilty;~~

10 ~~2.—Upon a plea of former conviction or acquittal of the same offense; or~~

11 ~~3.—Upon a plea of once in jeopardy.~~

12 **~~SECTION 2. AMENDMENT.~~** ~~Section 29-22-33 of the North Dakota Century Code is~~
13 ~~amended and reenacted as follows:~~

14 **~~29-22-33. Judgment upon special verdict.~~**

15 ~~The court shall give judgment upon a special verdict as follows:~~

16 ~~1.—If the plea is not guilty and the facts prove the defendant guilty of the offense charged~~
17 ~~in the information or indictment, or of any other offense of which the defendant could~~
18 ~~be convicted under the information or indictment, judgment must be given accordingly,~~
19 ~~but if otherwise, a judgment of acquittal must be given.~~

20 ~~2.—If the plea is a former conviction or acquittal of the same offense, or once in jeopardy,~~
21 ~~the court shall give a judgment of conviction or acquittal according as the facts prove~~
22 ~~or fail to prove the plea.~~

23 **~~SECTION 3. REPEAL.~~** ~~Section 29-21-16 of the North Dakota Century Code is repealed.~~

24 ~~for an Act to repeal sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota Century~~
25 ~~Code relating to pleas and special verdicts.~~

1 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

2 **SECTION 1. REPEAL.** Sections 29-16-01, 29-21-16, and 29-22-33 of the North Dakota
3 Century Code are repealed.

Senate Bill 2106
House Judiciary Committee
Testimony Presented by Sara Behrens
March 1, 2023

Good afternoon Chair Klemin, members of the committee. My name is Sara Behrens and I am a staff attorney with the State Court Administrator's Office. I am here today in support of Senate Bill 2106.

Senate Bill 2106 repeals sections 29-16-01 29-21-16, and 29-22-33.

All three sections contain antiquated terms referring to double jeopardy, which is covered by both the United States Constitution and the North Dakota Constitution. Amendment V of the United States Constitution states in part: "nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb . . ." Section 12 of Article 1 of the Constitution of North Dakota states:

In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law.

Additionally, N.D.C.C. § 29-01-07 states:

No person can be twice put in jeopardy for the same offense, nor can any person be subjected to a second prosecution for a public offense for which that person

has once been prosecuted and convicted, or acquitted, or put in jeopardy, except as is provided by law for new trials.

These sections were originally enacted in 1877. In 1895, the wording was changed slightly to what it is today. None of these statutes has been amended since 1895.

§ 29-22-33 has never been cited in a case and § 29-21-16 was only cited once as a typo. The citation should have been to § 29-21-26. Only § 29-16-01 has ever been cited and only 4 times regarding “once in jeopardy.”

A defendant no longer makes a plea of once in jeopardy. Instead, a defendant makes a plea of guilty or not guilty. Double jeopardy would be asserted in a motion or as a defense at trial.

Rule 11 of the North Dakota Rules of Criminal Procedure governs pleas. Rule 31 of the North Dakota Rules of Criminal Procedure governs jury verdicts, including special verdicts. Rule 31 states in what circumstances the issue of double jeopardy is a jury issue. Typically, this would be asserted in a motion to dismiss prior to trial.