

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2121

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2121

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2121

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 17, 2001.

Tape Number	Side A	Side B	Meter #
1	x		0 to 27.9
(Feb. 13/01) 3	x		0 to 1.1
(March 28/01) 1	x		0 to 3.5
Committee Clerk Signature			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2121 relating to workers' compensation fraud; to provide a penalty; and to provide an effective date.

BRENT EDISON, VP, Legal and Special Investigations for NDWC, in favor. Written testimony attached.

SENATOR KREBSBACH: What is the ratio of investigation of employers vs. employees?

B EDISON: As of November 2000, 76 employers were investigated and 35 employees.

SENATOR MUTCH: What is the meaning of "nonverbal act", page 2, line 24?

B EDISON: This is based on a Supreme Court decision which said that a nonverbal act, that means not a statement but an act. Example: show up with cane or pronounced limp and later be shown doing activities inconsistent with that. This bill allows the prosecutor to include this act as a false statement

SENATOR KLEIN: Give us an example of employer fraud.

B EDISON: Injury happened over the weekend and employer alleges it happened on a Monday.

Before this bill action could be taken against the employee, this bill would remedy that and we can take action against the employer.

SENATOR D. MATHERN: Who will make the determination of what is considered a nonverbal act?

B EDISON: The bureau has the burden of showing there was misrepresentation of physical condition. Employee can go to administrative law judge to make factual finding. Appealable to district court and to ND Supreme Court. Misrepresentation of physical condition falls under false statement, this allows ease of prosecution.

SENATOR KLEIN: Why strengthen wording, adding willful to failure?

B EDISON: Basically we are referring to intentional conduct, not careless or negligent.

CHRIS RUNGIE, NDPEA. Opposing this bill, "willful nonverbal act" goes too far, too much subjectiveness on the part of the bureau and people judging videotapes.

DAVID KIMNITZ, NDAFL-CIO, in opposition. Granted burden of proof is put on the bureau, but the first thing the bureau does is deny benefits, then the individual has to take on the system. We oppose language, it gives the bureau police authority over others that are at a disadvantage. There are people who may not look hurt but they are hurt. Pinched shoulder nerve only shows when exerting, otherwise person looks fine.

VERN HOECHST, P.A.C.E. Oppose this bill. In the course of an injury a person may have good and bad days. When in bed in pain there is nobody videotaping, out on a good day may be videotaped. This is unfair.

RENEE PFENNING, ND Building & Construction Trades Council, oppose this bill.

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Senate Industry, Business and Labor Committee
Bill/Resolution Number SB 2121
Hearing Date January 17, 2001.

SENATOR KLEIN: I recommend this bill is held until the language is made more "palatable".

Hearing closed.

Feb. 13/01. Tape 3-A-34 to 37.1

Committee reconvened. All members except SENATOR ESPEGARD present. Discussion held.

Proposed amendment discussed. SENATOR D. MATHERN: Motion to adopt amendment.

SENATOR KLEIN: Seconded. Roll call vote: 6 yes; 0 no; 1 absent not voting. Motion carried.

SENATOR KREBSBACH: Motion: do pass as amended. SENATOR D. MATHERN: Seconded.

Roll call vote: 6 yes; 0 no; 1 absent not voting. Carrier: SENATOR D. MATHERN

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2121

Hearing Date ~~January 17, 2001.~~

March 28, 2001. Tape 1-A-0 to 3.5

Committee reconvened. All members present. Committee discussed House amendments.

Senator Espegard: Motion to accede to House amendments. **Senator Tollefson:** Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Mathern.**

FISCAL NOTE
 Requested by Legislative Council
 03/22/2001

Bill/Resolution No.:

Amendment to: Engrossed
 SB 2121

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

**NORTH DAKOTA WORKERS COMPENSATION
 2001 LEGISLATION
 SUMMARY OF ACTUARIAL INFORMATION**

BILL DESCRIPTION: Employer Fraud

BILL NO: Engrossed SB 2121 w/House Amendments

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill provides that an employer may be found guilty of fraud for making false statements to get a claim or benefit paid.

The proposed amendments clarify existing language and result in no change to the fiscal impact for the engrossed bill.

FISCAL IMPACT: We did not attempt to derive an estimate of the likely impact of the proposed change on rate and reserve levels because we do not have access to an appropriate base of historical experience to

use in deriving the estimates. However, based on NDWC's past successes with fraud prevention initiatives, we anticipate that cost savings will emerge over time if the legislation is passed.

DATE: March 23, 2001

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.*

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.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Paul R. Kramer	Agency:	ND Workers Compensation
Phone Number:	328-3856	Date Prepared:	03/23/2001

FISCAL NOTE
 Requested by Legislative Council
 02/15/2001

Bill/Resolution No.:

Amendment to: SB 2121

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

**NORTH DAKOTA WORKERS COMPENSATION
 2001 LEGISLATION
 SUMMARY OF ACTUARIAL INFORMATION**

BILL DESCRIPTION: Employer Fraud

BILL NO: Engrossed SB 2121

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill provides that an employer may be found guilty of fraud for making false statements to get a claim or benefit paid.

FISCAL IMPACT: We did not attempt to derive an estimate of the likely impact of the proposed change on rate and reserve levels because we do not have access to an appropriate base of historical experience to use in deriving the estimates. However, based on NDWC's past successes with fraud prevention initiatives, we anticipate that cost savings will emerge over time if the legislation is passed.

DATE: February 15, 2001

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.*

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.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Paul R. Kramer	Agency:	ND Workers Compensation
Phone Number:	328-3856	Date Prepared:	02/15/2001

FISCAL NOTE
 Requested by Legislative Council
 01/03/2001

Bill/Resolution No.: SB 2121

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

**NORTH DAKOTA WORKERS COMPENSATION
 2001 LEGISLATION
 SUMMARY OF ACTUARIAL INFORMATION**

BILL DESCRIPTION: Employer Fraud

BILL NO: SB 2121

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation provides that an employer may be found guilty of fraud for making false statements to get a claim or benefit paid.

FISCAL IMPACT: We did not attempt to derive an estimate of the likely impact of the proposed change on rate and reserve levels because we do not have access to an appropriate base of historical experience to use in deriving the estimates. However, based on NDWC's past successes with fraud prevention initiatives, we anticipate that cost savings will emerge over time if the legislation is passed.

DATE: December 27, 2000

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.*

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.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name:	Paul R. Kramer	Agency:	ND Workers Compensation
Phone Number:	328-3856	Date Prepared:	01/04/2001

REPORT OF STANDING COMMITTEE

SB 2121: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2121 was placed on the Sixth order on the calendar.

Page 2, line 24, remove "nonverbal act intended"

Page 2, line 25, remove "to represent an injured worker's physical condition,"

Renumber accordingly

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2121

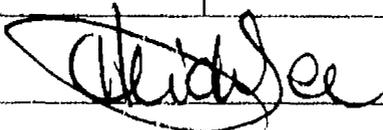
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2121

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 12, 2001

Tape Number	Side A	Side B	Meter #
1		X	4.3-17.8
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Brent Edison: *VP of Legal and Special Investigations NDWC* **Written testimony.**

Chuck Peterson: *GND* **Written testimony** in support of bill.

Chairman Berg: We'll close the hearing on SB 2121.

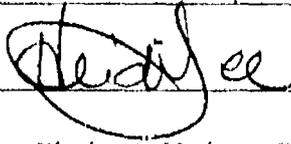
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2121(B)

House Industry, Business and Labor Committee

Conference Committee

Hearing Date March 19, 2001

Tape Number	Side A	Side B	Meter #
1	X		0-5.3
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep M. Ekstrom, Rep R. Froelich, Rep G. Froseth, Rep R. Jensen, Rep N. Johnson, Rep J. Kasper, Rep M. Klein, Rep Koppang, Rep D. Lemieux, Rep B. Pietsch, Rep D. Ruby, Rep D. Severson, Rep E. Thorpe.

Rep Ekstrom: Provided overview of bill and amendments. Moved amendments

Rep Severson: Second.

Vice-Chairman Keiser: I move a do pass as amended.

Rep Ekstrom: I second.

13 yea, 0 nay, 2 absent Carrier Rep Ekstrom.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2121

Page 2, line 1, overstrike "is guilty of a class A misdemeanor if that person is claiming" and insert immediately thereafter "who claims"

Page 2, line 2, overstrike the comma and remove "or is an employer of a person claiming"

Page 2, line 3, remove "benefits,", overstrike "and that" and insert immediately thereafter "or the employer of a person who claims benefits or payments for services is guilty of a class A misdemeanor if the", and after "person" insert "or employer does any one or more of the following"

Renumber accordingly

Date: 3-19-01
 Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2121

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as amended

Motion Made By Keiser Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein		✓
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	✓
Rep. Rod Froelich		✓	Rep. Doug Lemieux	✓	✓
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	✓
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	✓
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	✓
			Rep. Elwood Thorpe	✓	✓

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep Ekstrom

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

REPORT OF STANDING COMMITTEE

SB 2121, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2121 was placed on the Sixth order on the calendar.

Page 2, line 1, overstrike "is guilty of a class A misdemeanor if that person is claiming" and insert immediately thereafter "who claims"

Page 2, line 2, overstrike the comma and remove "or is an employer of a person claiming"

Page 2, line 3, remove "benefits,", overstrike "and that" and insert immediately thereafter "or the employer of a person who claims benefits or payments for services is guilty of a class A misdemeanor if the", and after "person" insert "or employer does any one or more of the following"

Renumber accordingly

2001 TESTIMONY

SB 2121

SENATE BILL NO. 2121

**Fifty-Seventh Legislative Assembly
Before the Senate Industry, Business and Labor Committee
January 17, 2001**

**Testimony of Brent J. Edison
North Dakota Workers Compensation Bureau**

Mr. Chairman, Members of the Committee:

My name is Brent Edison. I am the Vice President of Legal and Special Investigations for North Dakota Workers Compensation, and I am here to testify in support of Senate Bill No. 2121. This bill was approved unanimously by the Workers Compensation Board of Directors.

The mission of the Bureau's Special Investigations or Fraud Unit is to prevent, detect, investigate and prosecute employer, employee, and provider fraud. This bill furthers the Fraud Unit's efforts by amending sections 65-01-05 and 65-05-33 of the North Dakota Century Code.

Section 1 of the bill clarifies the intent requirement before an employer may be found criminally responsible for failure to secure workers' compensation coverage for employees. This section makes it clear the required state of mind for criminal prosecution is "willful," rather than inadvertent or negligent.

Section 2 of the bill subjects employers who make false statements to the same criminal penalties as employees who make false statements to secure benefits. Section 2 also clarifies the type of false statement that may lead to administrative and criminal penalties. Specifically, false statements that are made "in an attempt to secure payment of benefits or payment for services" are subject to the penalties provided for in section 65-05-33. The addition of this language will help the Fraud Unit to fulfill its mission to pursue employer, employee and provider fraud.

Section 2 also adds a "nonverbal act intended to represent an injured worker's physical condition" to the definition of "statement." This change is consistent with action taken by the Legislative Assembly in 1997 to impose administrative and criminal penalties on persons who willfully misrepresent their physical condition. Although this is not a substantive change, it will simplify administrative and criminal prosecutions by allowing misrepresentation of physical condition to be included with what is typically a list of false statements being prosecuted under section 65-05-33.

This concludes my testimony on Senate Bill No. 2121. I respectfully ask for this committee's favorable recommendation on this bill, and will be happy to answer any questions you may have at this time.

Special Investigations Unit

(developed in 1994)

- Active investigations as of November 2000:
 - Injured worker: 76
 - Employer: 35
 - Provider: 1
- Criminal fraud prosecutions since inception: 37
- Civil fraud orders since inception: 162
- Estimated net cumulative savings: \$12,766,962
- Fraud amnesty period: June 1 - July 31, 2001

NDWC

PROPOSED AMENDMENT TO SB 2121

Page 2, line 24, remove "nonverbal act intended"

Page 2, line 25, remove "to represent an injured worker's physical condition,"

Renumber accordingly

**3-11-01 STATEMENT BY CHUCK PETERSON, REPRESENTING
GNDA, REGARDING SB 2121 WORKER COMPENSATION
LEGISLATION.**

Chairman Berg, and members of the House Industry, Business, and Labor Committee. I am Chuck Peterson, a member of GNDA, and a North Dakota businessman. Thank you for the opportunity to provide testimony in support of SB 2121.

The Greater North Dakota Association is the voice of business and the principle advocate of positive change in North Dakota. As a member of GNDA, we represent over 1000 business and professional organizations from all areas of North Dakota. GNDA is governed by a 25 member board of directors elected by the membership.

I also speak for the Associated General Contractors, the North Dakota Petroleum Council, the North Dakota Retail Petroleum Marketers, the North Dakota Motor Carriers Association, the Automobile Dealers Association, North Dakota Implement Dealers Association, North Dakota Grocers Association, the Bismarck-Mandan Chamber of Commerce, and the North Dakota Hospitality Association.

Our members have review SB 2121 and consider it to be good legislation. It provides that an employer may be found guilty of fraud for making false statements to cause worker compensation benefits to be paid. We recognize that this is a possibility and believe that is not an acceptable practice. We request a yes vote on SB 2121.

ENGROSSED SENATE BILL NO. 2121

**Fifty-Seventh Legislative Assembly
Before the House Industry, Business and Labor Committee
March 12, 2001**

**Testimony of Brent J. Edison
North Dakota Workers Compensation Bureau**

Mr. Chairman, Members of the Committee:

My name is Brent Edison. I am the Vice President of Legal and Special Investigations for North Dakota Workers Compensation (NDWC), and I am here to testify in support of Engrossed Senate Bill No. 2121. This bill was approved unanimously by the Workers Compensation Board of Directors and passed the Senate by a vote of 47-0.

The mission of NDWC's Special Investigations or Fraud Unit is to prevent, detect, investigate and prosecute employer, employee and provider fraud. This bill furthers the Fraud Unit's efforts by amending sections 65-01-05 and 65-05-33 of the North Dakota Century Code.

Section 1 of the bill clarifies the intent requirement before an employer may be found criminally responsible for failure to secure workers' compensation coverage for employees. This section makes it clear the required state of mind for criminal prosecution is "willful", rather than inadvertent or negligent.

Section 2 of the bill subjects employers who make false statements to the same criminal penalties as employees who make false statements to secure benefits. Section 2 also clarifies the type of false statement that may lead to administrative and criminal penalties. Specifically, false statements that are made "in an attempt to secure payment of benefits or payment for services" are subject to the penalties provided for in section 65-05-33. The addition of this language will help the Fraud Unit to fulfill its mission to pursue employer, employee and provider fraud.

This concludes my testimony on Engrossed Senate Bill No. 2121. I respectfully ask for this committee's favorable recommendation on this bill, and will be happy to answer any questions you may have at this time.