1999 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1331

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1331

House Industry, Business and Labor Committee

❑ Conference Committee

Hearing Date 1-19-99

Tape Number	Side A	Side B	Meter #
3	x		2170 - end
3		x	0 - 745
Committee Clerk Signature	Lisa Homer		

Minutes: **HB 1331**

Rep. Keiser introduced HB 1331 relating to civil liability for intentional work-related injuries; to employer and provider fraud, and to the liability of a non-complying employer for work-related injuries; to provide a penalty and a continuing appropriation.

This bill is a refinement bill. It says three things: One, sole exception to the immunity from civil liability toward the employer an intentional act that is done with a conscious purpose of inflicting injury. Two, If an employer fails to obtain coverage and the premium would be an excess of $500 in a combination, this would result in a class A felony. Three, it continues an appropriation for investigating fraud and expenditures.

Dave Thiele senior litigation council for WCB testified in support of HB 1331. (See written testimony)

Rep. Johnson: What is an intentional tort?

Dave Thiele: A classic example is an assault, intentional injury.

Chris Runge for NDPEA testified in opposition to section one of HB 1331.

End of side A, tape 3. Start side B.

Steven Lathan, for National Trial Lawyers Assoc. testified in opposition to section one. The negligent employer should be held accountable for negligence. That employer is costing the bureau, the honest employer and the workers.

Rep. Keiser: Do you support eliminating gross negligence by an employee and the coverage would then be less?

Steven Lathan: If it was an intentional, willful disregard I think that would be a consideration. I disagree with the statement that most injuries are caused by the negligence of employees as opposed to the negligence of employers.

Chairman Berg closed the hearing.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1331.1

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-25-99

Tape Number	Side A	Side B	Meter #
3	x		40.5
Committee Clerk Signature	Lisa Horner		

Minutes:

HB 1331.1

Chairman Berg opened the meeting on the bill

The committee discussed possible amendments to the bill which included possible negligence in regard to activities related to the bill. No amendments were approved by the committee.

Moved by Rep. Froseth for do pass, second by Rep. Brekke

by roll vote, 13 yes, 0 no, 2 absent

Rep. Froseth will carry the bill

Chairman Berg closed the meeting on the bill

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1331 Amendment to: _____

Requested by Legislative Council Date of Request: 1-13-99

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:

   See attached.

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

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:						
Expenditures:						

3. 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:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Date Prepared: 01-18-99

Department Workers Compensation Bureau

Phone Number 328-3856

NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

***BILL DESCRIPTION*:** **Exception to Employer Immunity; Employer Fraud**

BILL NO: **HB 1331**

***SUMMARY OF ACTUARIAL INFORMATION*:** The Workers Compensation Bureau, with the assistance of 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 clarifies that employers may be sued for a work injury caused by an intentional act done with the conscious purpose of inflicting the injury; makes an employer's willful failure to secure coverage for employees a felony when the amount exceeds $500; and provides for a continuing appropriation for investigating employer and provider fraud and requires those expenditures to be examined in the biennial independent performance audit of the Bureau.

***FISCAL IMPACT*:** Not quantifiable. It is anticipated the return on investment will more than offset the expenditures incurred from the investigation of employer and provider fraud. Since inception of the Fraud Unit, the Bureau has saved nearly $5.00 for every dollar spent on fraud investigations.

***ATE*: 1-17-99**

98284.0101
Title.

Prepared by the Legislative Council staff for
Representative Ekstrom
January 22, 1999

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1331

Page 1, line 2, replace "intentional" with "certain"

Page 1, line 9, replace "**intentional**" with "**certain**" and replace "exception" with "exceptions"

Page 1, line 10, replace "is an action" with "are a claim for relief for an injury to an employee if it is proven by clear and convincing evidence that the injury was caused by gross negligence of the employer and a claim for relief"

Renumber accordingly

Date: 1-25-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1331

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Amendment – Fail

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg			Rep. Thorpe		
Vice Chairman Kempenich					
Rep. Brekke					
Rep. Ekstrom					
Rep. Froseth					
Rep. Glassheim					
Rep.Johnson					
Rep. Keiser					
Rep.Klein					
Rep. Koppang					
Rep. Lemieux					
Rep. Martinson					
Rep. Severson					
Rep. Stefonowicz					

Total (Yes) 3 No 10

Absent 1

Floor Assignment _____

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

Date: 1-25-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1331

House Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number ~~do pass~~

Action Taken do pass

Motion Made By Froseth Seconded By Brekke

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe		
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep.Johnson	/				
Rep. Keiser	/				
Rep.Klein	/				
Rep. Koppang	/				
Rep. Lemieux					
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Froseth

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

REPORT OF STANDING COMMITTEE

HB 1331: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1331 was placed on the Eleventh order on the calendar.

1999 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1331

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HOUSE BILL 1331

Senate Industry, Labor and Business

❑ Conference Committee

Hearing Date MARCH 3, 1999

Tape Number	Side A	Side B	Meter #
1		x	2800 to end
2	x		0 to 415
Committee Clerk Signature			

Minutes:
SENATOR MUTCH: open the hearing on HOUSE BILL 1331

DAVE THIELE: Introduce HOUSE BILL 1325, testimony, support of HOUSE BILL 1331

Gus Zimmerman case, employers immunity from prosecution by the employee

SENATOR MUTCH: how old is the larson case

DAVE THIELE: professional on workers compensation laws and interprets those laws across the county, section three of the bill deals with fraud especially employer fraud, deterrents is the number one goal. section 4 loophole and the closing of, section 5 deals with employers failing to comply with sections of the law and the disqualification of the employer

SENATOR MUTCH: Zimmerman case

DAVE THIELE: That was in Grand Forks

SENATOR MUTCH: where do we sit with that ruling coming from Grand forks

DAVE THIELE: this would basically effect the employer, looking at previous cases and seeing if these cases worked or did not work in compliance with the law, intentional acts by the employee and if Workers Comp should cover them.

SENATOR THOMPSON: under section 3, estimates of how many employees are not pay workers comp. state fees

DAVE THIELE: Cannot answer that, there is probably allot out there. Examples of employers who are not paying the Workers Compensation fees

SENATOR MUTCH: false reports being made a felony

DAVE THIELE: we have to let them know and we have to address this with the employer, example

SENATOR SAND: starting a business and paying people by cash

DAVE THIELE: this actually happened: example: injured worker is still protected but workers compensation will file recourse against the employer

SENATOR KREBSBACH: wording on page one and taking care of the immunity and the employer in court facing charges

DAVE THIELE: there are exceptions to this rule and they are intentional torts made by the employer

SENATOR KREBSBACH: do we not have a code or law covering intentional acts on employers

DAVE THIELE: this is the first case of this of this kind

SENATOR MUTCH: any further questions

CHRIS RUNGE: opposed to 1331 because the employee is not given the chance to sue his or her employer regardless of the charges, see testimony

SENATOR THOMPSON: what about other sections of the bill, are you in support of sections three and four

CHRIS RUNGE: we are in support to these other areas and trying to get rid of fraud within the system

SENATOR MUTCH: what would an employer do if they didn't want to be subjected a lawsuit

CHRIS RUNGE: they would have to take out additional insurance, but there are fraudulent employers out there

SENATOR MUTCH: wanted immunity and didn't want to buy the extra insurance, I would have no choice

CHRIS RUNGE: this will not fix a rouge business, they will continue doing what they are doing

STEVE LATHAM: opposed to this bill, knowledge of intent for the employer to do something wrong. This is not a no fault system. Ordinary negligence and the denying of benefits. Section 1 will protect the intoxicated employer and intentional torts. No reduction in litigation issues. Language is unnecessary

SENATOR THOMPSON: would the zimmerman boy won a lawsuit

STEVE LATHAM: no he still would have lost his law suit, would have prevented the lawsuit and the employer knew of the defect. Conscious purpose

SENATOR SAND: omission of guilt, conscious purpose

END OF TAPE ONE

STEVE LATHAM: you are talking about simple negligence (tape blurred) and conscious purpose SENATOR HEITKAMP: type of protection provided to small businesses and disabling the workers compensation system because it's so unfair

STEVE LATHAM: This is supposed to be a no fault system, in return the worker is assured certain relief. Broken contracts between the employer and the employee

SENATOR MUTCH: has there ever been another zimmerman case before this case where the plaintiff has won through the courts

STEVE LATHAM: I am not aware of any that I know of. If you are employer and you are sued, most employers have additional insurance. I will support the rest of this bill and it's dealing with employer fraud. Employer driven system with employer fraud. If you are a employer who is not covered by workers comp, you loose your immunity from law suits by the employee, example.

SENATOR MUTCH: anyone else on HOUSE BILL 1331.

Senator Mutch closed the hearing on HB1331.

Senator Klein motioned for a do pass committee recommendation on HB1331. Senator Krebsbach seconded his motion. The motion carried with a 4-3-0 vote.

Senator Klein will carry the bill.

SR464.90

Date: 3/15
Roll Call Vote #: 1

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
HOUSE **BILL/RESOLUTION NO.** 1331

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By KLEIN Seconded By KREBSBACH

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern		X			
Senator Heitkamp		X			
Senator Thompson		X			

Total (Yes) 4 No 3

Absent 0

Floor Assignment KLEIN

REPORT OF STANDING COMMITTEE

HB 1331: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1331 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

HB 1331

Fifty-sixth
Legislative Assembly
of North Dakota

Engrossed House Bill 1331

EXCEPTION TO EMPLOYER IMMUNITY; EMPLOYER FRAUD OF THE WORKERS COMPENSATION BUREAU

Testimony
Before the House Industry, Business, and Labor Committee

January 19, 1999

David Thiele, Senior Litigation Counsel
North Dakota Workers Compensation Bureau

Mr. Chairman, Members of the Committee:

My name is David Thiele and I am the senior litigation counsel for the Workers Compensation Bureau. I am here today to testify in support of House Bill No. 1331. This bill relates to employer immunity and employer fraud.

1. Employer Immunity

Workers' compensation was created to provide benefits for workplace injuries on a no-fault basis as a more efficient alternative to lengthy and expensive litigation. The employer is granted absolute immunity from lawsuits for workplace injuries to its employees; employees receive wage loss and medical benefits for injuries on the job regardless of fault. Historically, there is no better example of a truly successful system of alternative dispute resolution. However, the absolute immunity for employers has now been eroded; the North Dakota Supreme Court held for the first time in *Zimmerman v Valdak Corp.* that an employer may be sued for workplace injuries to an employee, but only if caused by an intentional act intended to harm the employee.

The ambiguous and contradictory language of the Supreme Court in the *Zimmerman* decision will create confusion regarding how far the exception to immunity will extend and will inevitably lead to unnecessary litigation. This bill will remedy the situation by clearly defining the limited circumstances under which a suit may be brought against an employer. The bill provides that if an employer commits an intentional act with the conscious purpose of inflicting an injury, the employer may be sued by the worker injured by that act.

If the Legislative Assembly does not act to clarify this issue the threat of lawsuits against employers will greatly increase and employer immunity could be further eroded. Even if the employer ultimately prevails in a suit, the cost and time of defending a civil suit is a substantial loss in itself. Without clear guidance from the Legislative Assembly, lawyers, relying on the

conflicting language in the *Zimmerman* decision, will bring suits against employers in an ever-widening variety of circumstances in the hopes that the court will expand the definition. By legislating a clear and specific exception, suits will be brought only when the facts warrant such a cause of action.

Professor Arthur Larson, in his Treatise on Workers Compensation Law, clearly recognizes the necessity for true employer immunity with only the narrowest exception. In discussing certain jurisdictions that have attempted to go beyond a true intentional tort exception, Professor Larson stated:

> "To put the matter bluntly, the various efforts of the West Virginia, Ohio, and some Louisiana courts to stretch the concept of intentional injury are not undertaken in the name of discovering a truer and higher meaning of "intentional"; they are undertaken because these courts still cannot accept the non-fault nature of worker's compensation, and have taken it on themselves to change the statutory scheme to conform more closely to their values. True, in some of the more extreme cases of employer negligence one may understandably feel the urge to chip away at the exclusiveness barrier, but the experience of three-quarters of a century has clearly proved that, once a breach is made in that dam, to accommodate an appealing case, there follows a flood of routine cases with no such appeal at all." Larson, *Larson's Worker's Compensation Law*, §68.15, page 13-97.

2. Employer Fraud

This bill also cures an oversight in the area of employer fraud. Currently, an employee who defrauds the workers compensation fund of over $500.00 is guilty of a class C Felony, while an employer who willfully fails to secure any coverage at all for its employees for the same amount would only be guilty of a class A Misdemeanor. The portion of this bill that amends section 65-01-05 would close this loophole by designating employee and employer fraud in excess of $500.00 a class C Felony.

Currently, under section 65-04-14, an employer who willfully misrepresents the amount of payroll upon which a workers' compensation premium is calculated is subject to criminal penalties, while an employer who willfully fails to secure any coverage would arguably have no such criminal liability. The bill specifies that employers who willfully fail to secure workers' compensation coverage for employees are subject to the same penalties as employers who commit fraud by willfully misrepresenting payroll.

Additionally, this bill establishes a continuing appropriation for investigating employer and provider fraud. This is necessary because of restraints in the budgeting process. Unlike the investigation of employee fraud, employer and provider fraud investigation costs cannot be charged to the rate class of the specific claim because there is usually no specific claim at issue in these cases. The costs of investigating employer fraud must therefore be charged against the budget of the fraud department. This hampers the fraud unit's ability to aggressively pursue allegations of employer fraud. This bill requires that any expenditures pursuant to the continuing

appropriation be evaluated and reported in each biennial independent performance audit to ensure the effectiveness of such expenditures.

Sections 6 and 7 of the bill deal with a possible statutory loophole in employer immunity. The current law could potentially allow an injured worker to bring a civil suit against his employer if that employer "failed to comply with 65-04." There are currently 36 sections to 65-04, many of which deal which routine administrative matters. If an employer could be sued, with no defenses available, merely because it was delinquent in payment of premiums due to an administrative oversight for example, there could be a threat of unwarranted litigation. This bill's amendment to the statute makes it clear that only an employer who willfully misrepresents payroll or willfully fails to secure coverage loses its immunity.

Thank you for your consideration. I will be glad to answer any questions you might have about House Bill No. 1331.

FRAUD DEPARTMENT

Monthly Progress Report

Quick Facts:

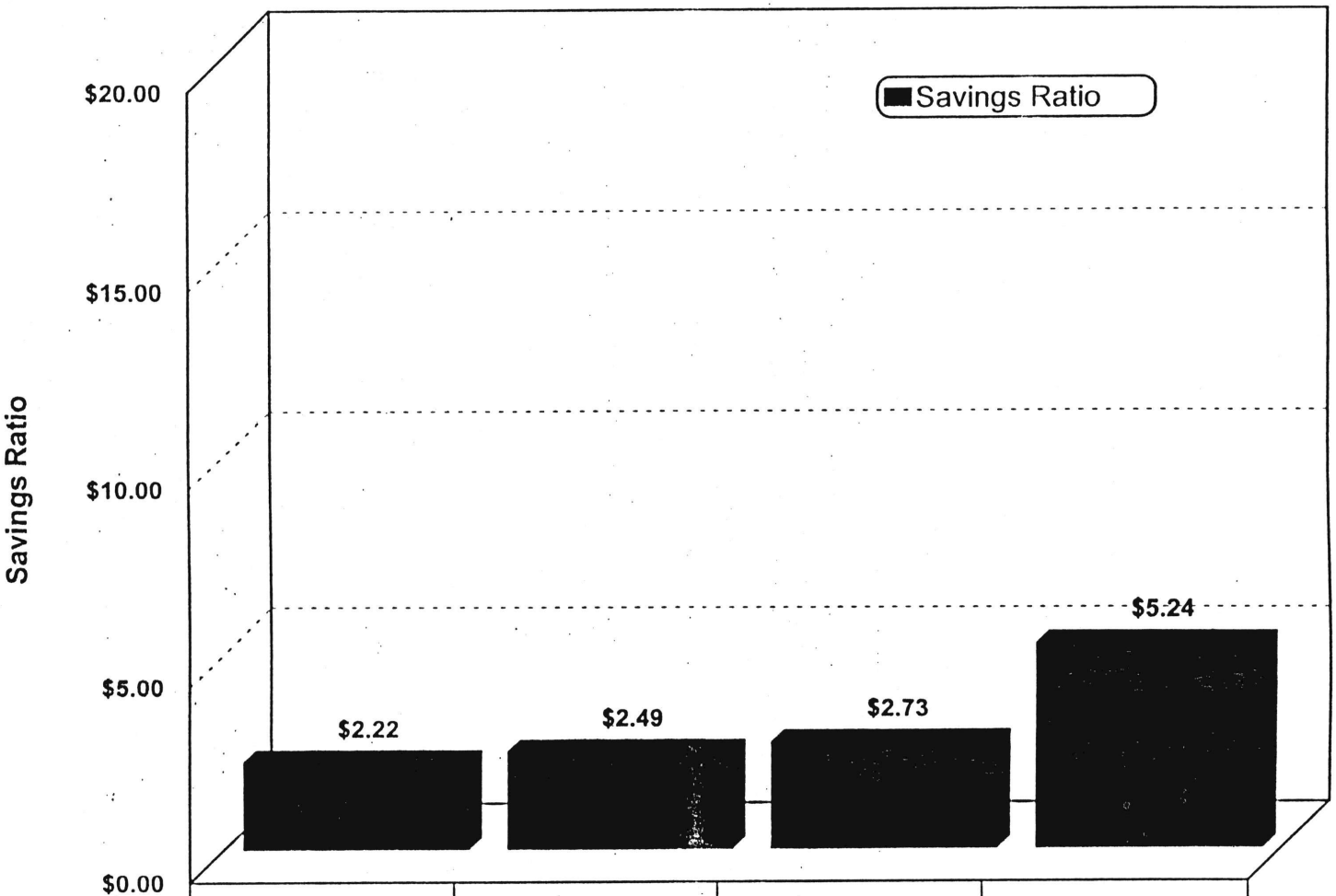
Estimated Gross Savings (inception Fraud Unit Aug. 1994):	**$8,290,592**
Paid Investigator Costs (Since Inception):	**$1,648,718**
Estimated Net Cumulative Savings	**$6,641,873**
Active Cases: (As of Month End) :	**144**
Fraud Referrals (Year to Date):	**1088**
Civil Fraud Orders (Since Fraud Unit Inception):	**126**
Criminal Fraud Orders: (Since Fraud Unit Inception):	**43**
Criminal Fraud Prosecutions: (Since Fraud Unit Inception):	**22**

For the Month of December 1998

Prepared by:
Research and Statistics
January 8, 1999

Savings Ratio

Of the Fraud cases closed during the 4th quarter of calendar year 1998, the estimated savings was $757,091. Paid investigator costs for the same period was $144,408. Fraud Department saved $5.24 for every dollar spent on investigation costs.



	1st Qtr 98	2nd Qtr 98	3rd Qtr 98	4th Qtr 98
Savings Ratio	$2.22	$2.49	$2.73	$5.24

~quarterly data as of quarter end

INTENTIONAL TORT

If an employer intentionally or purposely injures an employee or deliberately places that employee in a hazardous situation resulting in injury, the employee may normally seek legal recourse against that employer. Some states, such as Colorado, offer no exception to the exclusive remedy rule and bar all law suits against the employer.

Intentional torts can be placed into three categories: The first involve cases of the employer's deliberate and knowing intention to harm the employee--for example assault and battery cases. The second concern cases in which the employer fails to uphold his/her duty to disclose relevant information about a particular job or condition to the employee. An example would be where the employer knows that the employee is suffering from a workplace disease or physical condition (maybe through a routine employee physical) and does not tell the employee. A third category lumps cases in which the employer exposes the employee to known hazards.

The first category of intentional tort cases are generally accepted as exceptions to the exclusive remedy rule. The second and third categories usually depend on case law or specific statutory exception.

The statutory definition of "intentional" varies among jurisdictions and no common interpretation exists. Numerous court rulings and case law dictate the legal meaning used by individual states.

Ohio, for example, statutorily defines intentional tort as:

> ...an act committed with the intent to injure another or committed with the belief that the injury is substantially certain to occur.
>
> Deliberate removal by the employer of an equipment safe guard or deliberate misrepresentation of a toxic or hazardous substance is evidence, the presumption of which may be rebutted, of an act committed with the intent to injure another if injury or an occupational disease or condition occurs as a direct result.
>
> 'Substantially certain' means that an employer acts with deliberate intent to cause an employee to suffer injury, disease, condition, or death.

NDPEA NORTH DAKOTA PUBLIC EMPLOYEES ASSOCIATION

AMERICAN FEDERATION OF TEACHERS LOCAL 4660 AFL-CIO

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WEBSITE: www.ndpea.org

TESTIMONY IN OPPOSITION TO HOUSE BILL 1331

Before the House Industry, Business and Labor Committee
North Dakota Public Employees Association, AFT Local 4660, AFL-CIO
January 19, 1999

Chairman Berg, members of the House Industry, Business and Labor Committee, my name is Chris Runge and I am the Executive Director of the North Dakota Public Employees Association and I am here to testify in opposition to Section 1 of HB 1331. This bill is the Workers Compensation Bureau's response to the Zimmerman case; the young man who had his arm ripped off in a centrifuge extractor. The language that the Workers Compensation bureau is requesting in this bill is the minority opinion of those states that have had the opportunity to reach the issue of when an employer or fellow employee can be sued by an employee when the employee is intentionally injured. The language in Section 1 of this bill virtually eliminates any possibility for an injured worker to sue his employer regardless of how reckless or irresponsible the conduct was that caused the injury to the employee.

What is needed here is balance and fundamental fairness. Is the language of Section 1 of this bill on par with the language of NDCC 65-01-11 which excludes an employee from Workers Compensation benefits because the "employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, . ."? In other words, is there a higher standard for

Testimony

employers to be covered by Workers Compensation than there is for injured workers to be terminated from benefits under Workers Compensation?

It is clear that the Workers Compensation Bureau is attempting to discourage litigation by the language of this bill, but will it only encourage more litigation? If, in an appropriate case, an injured employee cannot sue his employer for injures that any reasonable person would state were "intentional" that employee then is left to challenge the constitutionality of the Workers' Compensation Act itself.

The North Dakota Supreme Court in the Zimmerman case provided a standard for intentional injuries: "An employer is deemed to have intended to injure if the employer had knowledge an injury was certain to occur and willfully disregarded that knowledge." Zimmerman by Zimmerman v. Valdak Corp. 570 NW2d 204, 209 (ND 1997).

I urge you to adopt a more reasonable standard for civil liability for employers from intentional injuries. Unless amended, NDPEA urges a no vote on HB 1331.

Thank you and I am available to answer you questions.

Fifty-sixth
Legislative Assembly
of North Dakota

House Bill 1331

EXCEPTION TO EMPLOYER IMMUNITY; EMPLOYER FRAUD OF THE WORKERS COMPENSATION BUREAU

Testimony
Before the Senate Industry, Business, and Labor Committee

March 3, 1999

David Thiele, Senior Litigation Counsel
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Mr. Chairman, Members of the Committee:

My name is David Thiele and I am the senior litigation counsel for the Workers Compensation Bureau. I am here today to testify in support of House Bill No. 1331. This bill relates to employer immunity and employer fraud. ~~This bill was approved by the Workers Compensation Board of Directors and passed the House on a 94-2 vote.~~

1. Employer Immunity ←

Workers' compensation was created to provide benefits for workplace injuries on a no-fault basis as a more efficient alternative to lengthy and expensive litigation. The employer is granted absolute immunity from lawsuits for workplace injuries to its employees; employees receive wage loss and medical benefits for injuries on the job regardless of fault. Historically, there is no better example of a truly successful system of alternative dispute resolution. However, the absolute immunity for employers has now been eroded; the North Dakota Supreme Court held for the first time in *Zimmerman v Valdak Corp.* that an employer may be sued for workplace injuries to an employee, but only if caused by an intentional act intended to harm the employee.

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If the Legislative Assembly does not act to clarify this issue the threat of lawsuits against employers will greatly increase and employer immunity could be further eroded. Even if the employer ultimately prevails in a suit, the cost and time of defending a civil suit is a substantial

loss in itself. Without clear guidance from the Legislative Assembly, lawyers, relying on the conflicting language in the *Zimmerman* decision, will bring suits against employers in an ever-widening variety of circumstances in the hopes that the court will expand the definition. By legislating a clear and specific exception, suits will be brought only when the facts warrant such a cause of action.

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allegations of employer fraud. This bill requires that any expenditures pursuant to the continuing appropriation be evaluated and reported in each biennial independent performance audit to ensure the effectiveness of such expenditures.

Sections 6 and 7 of the bill deal with a possible statutory loophole in employer immunity. The current law could potentially allow an injured worker to bring a civil suit against his employer if that employer "failed to comply with 65-04." There are currently 36 sections to 65-04, many of which deal which routine administrative matters. If an employer could be sued, with no defenses available, merely because it was delinquent in payment of premiums due to an administrative oversight for example, there could be a threat of unwarranted litigation. This bill's amendment to the statute makes it clear that only an employer who willfully misrepresents payroll or willfully fails to secure coverage loses its immunity.

Thank you for your consideration. I will be glad to answer any questions you might have about House Bill No. 1331.

NDPEA NORTH DAKOTA PUBLIC EMPLOYEES ASSOCIATION
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TESTIMONY IN OPPOSITION TO HOUSE BILL 1331

Before the Senate Industry, Business and Labor Committee
North Dakota Public Employees Association, AFT Local 4660, AFL-CIO
March 3, 1999

Chairman Mutch, members of the Senate Industry, Business and Labor Committee, my name is Chris Runge and I am the Executive Director of the North Dakota Public Employees Association and I am here to testify in opposition to Section 1 of HB 1331. This bill is the Workers Compensation Bureau's response to the Zimmerman case; the young man who had his arm ripped off in a centrifuge extractor. The language in Section 1 of this bill virtually eliminates any possibility for an injured worker to sue his employer regardless of how reckless or irresponsible the conduct was that caused the injury to the employee.

What is needed here is balance and fundamental fairness. Is the language of Section 1 of this bill on par with the language of NDCC 65-01-11 which excludes an employee from Workers Compensation benefits because the "employee's injury was caused by the employee's willful intention to injure himself, or to injure another, or by reason of the voluntary impairment caused by use of alcohol or illegal use of a controlled substance by the employee, . ."? In other words, is there a higher standard for employers to be covered by Workers Compensation than there is for injured workers to be terminated from benefits under Workers Compensation?

Testimony

It is clear that the Workers Compensation Bureau is attempting to discourage litigation by the language of this bill, but will it only encourage more litigation? If, in an appropriate case, an injured employee cannot sue his employer for injures that any reasonable person would state were "intentional" that employee then is left to challenge the constitutionality of the Workers' Compensation Act itself.

The North Dakota Supreme Court in the Zimmerman case provided a standard for intentional injuries: "An employer is deemed to have intended to injure if the employer had knowledge an injury was certain to occur and willfully disregarded that knowledge." Zimmerman by Zimmerman v. Valdak Corp. 570 NW2d 204, 209 (ND 1997).

I urge you to adopt a more reasonable standard for civil liability for employers from intentional injuries. Unless amended, NDPEA urges a no vote on HB 1331.

Thank you and I am available to answer you questions.