

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1317

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10/3/03  
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1317

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1317

House Industry, Business and Labor Committee

Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
3		X	4354-end
4	X		89-3841

Committee Clerk Signature

*Elizabeth Pfeiffer*

Minutes: **CHAIR KEISER:** Opened hearing on HB 1317

**REP. SEVERSON:** Discussed intent of bill and Critical Incident Stress Debriefing (CISD).

**REP. NOTTESTAD:** Will it be hard to get volunteers for EMS teams without this bill? Rep. Severson said that the bill is for the retention of EMS personnel. Rep. Nottestad asked if recruitment would be hurt too and Rep. said yes, it does. Especially with the talk of small towns.

**REP. JOHNSON:** Do you know how many this may have impacted in 2002? Rep. Severson deferred to Derek Hanson.

**DEREK HANSON (Past President of ND EMS Assoc.):** Supports with written testimony.

**REP. KLEIN:** Who or where are the CISD teams? Hanson replied that the teams are available through the state Health Department and area made up of psychologists, peers, other EMS personnel. The team is pulled together through requests from the community and at no charge. The state has two teams, one in the east and one in the west. When asked if any other states have this in place, Hanson replied that they are researching the issue.

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House Industry, Business and Labor Committee

Bill/Resolution Number 1317

Hearing Date 1-28-03

**REP. JOHNSON:** Where in the bill are the two suggestions of seeing other groups? (Hanson mentioned in testimony that before eligible for benefits, the individual would have to utilize CISD and/or an employee program.) Hanson said that it is not in the bill, but would rather see it in the rules process with the Workers' Comp Bureau (WCB).

**REP. JOHNSON:** Is there screening for volunteers who may be more prone to the stress? Hanson said screening to that extent is expensive, but they do give the facts and give the volunteers the option of not joining. Rep. Johnson then asked who determines how long the process carries on. Hanson said this would also be a rules issue, but most likely it would be the counselor.

**REP. NOTTESTAD:** In regards to ambulance crews, is help provided by the hospitals? Hanson noted that paid staff may have employee assistance for counseling. Hanson reminded the committee that in rural areas, EMS teams are taking care of people they know, where in cities you may not be familiar with whomever you are helping.

**DAVE KIMNITZ (ND AFL-CIO):** Supports. Premiums are paid by someone and the Bureau should be able to manage. The employer is also impacted when employees try to come back.

**CHRIS SKELDUM (1st Responder at Case):** They use the CISD teams, but would also like coverage as a 1st Responder when you aren't at work.

**BARRY MAYHER (Fraternal Order of Police):** Noted that if he is shot at and hit, he is covered. However, if he is shot at and missed, he is not covered by the mental aspect of almost being killed.

**LOIS HARTMAN (ND Firefighters Assoc.):** In support

**DAVE THIELE (WCB):** Opposed with written testimony.

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House Industry, Business and Labor Committee  
Bill/Resolution Number 1317  
Hearing Date 1-28-03

**REP. KLEIN:** Do you know of any other states that have this system? Thiele said the jurisdictions are split. Not always limited to EMS systems.

**REP. EKSTROM:** On pg. 1, line 22, can the Bureau not establish a definition of critical incident? Thiele said they have a framework from the EMS Assoc. However, he said that is not the issue.

**REP. NOTTESTAD:** Are you opposing based on the cost? It can be done, yet you are still against it. Thiele noted their argument is not solely based on costs. He feels it can be an Equal Protection issue when others want the same coverage. There is no line.

**REP. KEISER:** Who pays? John Halvorson of the WCB answered saying it is a class system. If they are part of the fire team, the firefighter class pays. It could be the county paying or the firefighters. Volunteers are assessed differently. They roll through the county experience rate and are under the deductible.

**DALE ANDERSON (Pres. of GNDA):** Opposes with written testimony.

**REP. KEISER** received clarification on the "who pays" question from John Halvorson and then asked why the businesses care if the counties are paying. Anderson responded that they are behind the WCB.

**REP. RUBY:** In the situation where an employer has a 1st Responder, would that be assessed to the business? Anderson was not sure because that is a WCB issue. Rep. Ruby then asked if that was why Anderson is opposed to this. Would this effect the businesses experience rating? Anderson said that this should be done through the Bureau.

**EVAN MANDIGO (WCB):** Opposes with written testimony.

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House Industry, Business and Labor Committee  
Bill/Resolution Number 1317  
Hearing Date 1-28-03

**REP. KASPER:** Did the board come up with actuarial data as to the actual cost? Mandigo said they did not. They could not get passed the issue of where do you draw the line.

**REP. NOTTESTAD:** Since these assessments would go to the counties, did you get input from the ND Assoc. of Counties? Mandigo could not answer that, but his assumption is they sought input from the EMS community and others who would be affected.

**CHAIR KEISER:** Closed hearing on HB 1317

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1317

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1/29/03

Tape Number	Side A	Side B	Meter #
2		x	45.0-end
3	x		0.00-7.6
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Kelsner** called for committee work on HB 1317.

**Rep. Froseth:** I've struggled with this bill, it's so subjective, we've looked at this time after time. What is mental/mental stress?

**Rep. Nottestad** moved a Do Pass. **Rep. Zaiser** seconded the motion.

**Rep. Klein:** I've struggled with this too. It's going to be very hard to decide what is "mental". It's an ongoing struggle, I don't think I can support it.

**Rep. Ekstrom:** WCB/WSI has to establish the narrow definition of a critical incident. The Bureau has been given enough latitude to decide what's covered. It will be up to the community that is being covered to argue the cases. I'm going to support it.

**Rep. Zaiser:** In my estimation, this is pretty well done.

**Rep. Severson:** It's a good compromise from two years ago. It gives WCB latitude to make good decisions. Cities and counties are already paying Workers Comp premiums. They ought to be able to pay the bill. I've always questioned whether it should be called "mental/mental, though.

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1317

Hearing Date 1/29/03

Really it's a traumatic incident that created the situation with an individual who is emotionally unable able to handle it. I believe that this is something that we need in rural North Dakota especially with EMS situations.

**Chairman Keiser:** My problem with this is that it doesn't have the best track history in terms of claims, predictability, cost to the fund and other subjective things. I'd prefer another direction for large urban areas. Both hospitals have employee assistance programs. Emergency personnel have traumas, they are sent to those facilities. That isn't so readily available in rural areas. How do we get these services to the rural areas? Some counties are running with \$100,000 deductibles. One exposure will wipe them out, they haven't a way to fund that, except under emergency funds. I think we should have dealt with assuring that these people have an opportunity for counseling without creating a condition in Workers Comp.

**Rep. Ekstrom:** This occurs for workers who are doing their natural course of business. Under sure and certain relief provision of Workers Comp, the one thing we want most is for them to get back to work.

**Rep. Severson:** There's a maximum of seven counseling sessions At \$500 a piece, that's only \$3500 per person, that's the intention. They are already covered for medical injuries.

The results of the initial roll call vote were **6-8-0**. The motion failed.

**Rep. Klein** moved a **Do Not Pass**.

**Rep. Froseth** seconded the motion. The results of the second roll call vote were **9-5-0**.

**Rep. Froseth** will carry this bill on the floor.

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**FISCAL NOTE**  
 Requested by Legislative Council  
 01/14/2003

Bill/Resolution No.: HB 1317

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 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  
 2003 LEGISLATION  
 SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Mental-Mental Coverage

BILL NO: HB 1317

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 bill expands coverage for emergency service providers to include mental injuries arising from mental stimuli, which occur during the course of employment. The proposed bill would limit benefits to medical benefits only and requires NDWC to adopt criteria defining the incidents in which benefits would be paid.

FISCAL IMPACT: We do not anticipate that this revision will materially increase rates for the state as a whole since premiums associated with the classifications affected by the expanded coverage comprise only about 8% of the statewide total. However, rates for the specific classes may increase over time due to the changes implemented under the proposed legislation. We did not attempt to derive an estimate of the likely impact of the proposed change on rate and reserve levels for those classes because we do not have access to an appropriate base of historical experience to use in deriving the estimates.

DATE: January 22, 2003

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.

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**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:	John Halvorson	Agency:	NDWC
Phone Number:	328-3760	Date Prepared:	01/23/2003

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Date: 1/29/03  
 Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1317

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By Nottestad Seconded By Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Rep.Boe	✓	✓
Rep. Severson, Vice-Chair	✓		Rep. Ekstrom	✓	✓
Rep. Dosch		✓	Rep. Thorpe	✓	✓
Rep. Froseth		✓	Rep. Zaiser	✓	
Rep. Johnson		✓			
Rep. Kasper		✓			
Rep. Klein		✓			
Rep. Nottestad	✓				
Rep. Ruby		✓			
Rep. Tieman		✓			

Total (Yes) ~~10~~ 6 No ~~10~~ 8

Absent 0

Floor Assignment \_\_\_\_\_

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

*Motion failed*

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Date: 1/29/03  
 Roll Call Vote #: 2

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
 BILL/RESOLUTION NO. 1317

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO NOT PASS

Motion Made By Klein Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep.Boe	✓	✓
Rep. Severson, Vice-Chair		✓	Rep. Ekstrom		✓
Rep. Dgsch	✓		Rep. Thorpe		✓
Rep. Froseth	✓		Rep. Zaiser		✓
Rep. Johnson	✓				
Rep. Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad		✓			
Rep. Ruby	✓				
Rep. Tieinan	✓				

Total (Yes) 9 No 5

Absent 0

Floor Assignment ~~None~~ Froseth

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

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Operator's Signature Danna Hallmark Date 10/3/03

REPORT OF STANDING COMMITTEE (410)  
January 30, 2003 10:46 a.m.

Module No: HR-18-1340  
Carrier: Froseth  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
HB 1317: Industry, Business and Labor Committee (Rep. Keiser, Chairman)  
recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING).  
HB 1317 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-18-1340

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2003 TESTIMONY

HB 1317

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524 Weatherby Way • Bismarck, ND 58501 • 701-258-9147

HUMAN SERVICES COMMITTEE  
Testimony in Support of HB 1317

Tuesday, January 28, 2003  
2:30 PM

Provided by: Derek Hanson, Past President  
& Legislative Chair

Emergency workers in North Dakota have always been of great value to us, and since September 11<sup>th</sup>, probably mean even more to us. There is a shortage of volunteer emergency service personnel in this state. HB 1317 is a way for us to show our emergency workers that we care and we're trying to help.

The majority of North Dakota's emergency services are provided by volunteer Fire and EMS personnel. But when they are exposed to a violent situation, or a critical incident it sometimes becomes difficult for them to cope with the stress of the situation at work or at home. A critical incident is defined as "a situation faced by emergency personnel that causes emotional reactions which have the potential to interfere with their ability to function either at the scene, or later".

The EMS Association met with the Workers Compensation Bureau (WCB) in 2001 prior to the 57<sup>th</sup> Legislative session. We were working jointly to come up with the language for this bill, as well as, what to include in the Rules part of the process. Together, we agreed to hold off on introducing this bill until this current legislative session as we had some unanswered questions and needed more time. When we approached the WCB late this fall to begin working on the bill they advised us they would no longer be a part of the bill, and would more than likely oppose it if it were presented.

The WCB indicated they were concerned about the number of claims that could come about because of this law. When we met with them in 2001, they indicated they had only received 3 or 4 requests for coverage. Even if this number doubled, the fiscal note would not be a substantial amount of money. We are asking for medical coverage only for counseling and such. We are not requesting long term disability claims. We just want to help our volunteer emergency workers get back to work.

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There are between 35,000 - 50,000 ambulance runs annually in North Dakota, and thousands of fire and rescue calls. The total number of 911 calls far out number EMS and fire calls. With this in mind, the WCB only received 3 or 4 requests for assistance for mental, mental claims. Another way to look at it is that out of more than 8000 emergency workers in the state, only 3 or 4 potential claims were requested. As you can see, the percentage is extremely low.

It is difficult enough to recruit and retain volunteer emergency workers to serve North Dakota. If we don't take care of our emergency workers we may find ourselves in an unpleasant situation of not having emergency responders when we need them. And when volunteer folks are involved, that means it's the local mechanic, school teacher, or secretary who is now moving about the community, and may be mentally unhealthy. These are our friends and neighbors that volunteer, and if we don't look out for them who will?

It is very difficult to attach a fiscal note to this bill since there is no history of any Post Traumatic Stress Disorder (PTSD) claims in North Dakota. We do know from the number of requests made for the Critical Incident Stress Debriefing (CISD) team going out to communities that it would not number in the hundreds.

Our volunteer emergency workers donate enough time out of their already busy schedules and family lives. To ask them to pay for their own counseling sessions is not fair. This is not a local issue. As we all travel from one area of the state to another, we may be at the mercy of any emergency unit.

To cut down on the number of claims being filed, our suggestion to the WCB was to have two filters in place, and each person filing a claim must have accessed at least one out of the two screening mechanisms. They are; 1. must have accessed the ND CISD team, or 2. they must have accessed an Employee Assistance Program (EAP). In many locations, the first one to three visits at an EAP are free. Only upon doing one or both of these options would they be eligible to file a claim.


Fire, EMS, Law Enforcement, and 911 Dispatchers would be covered under this program. The emergency service organizations are more than willing to work with the WCB on developing the rules for this program.

We strongly ask for your support on HB 1317, and ask that you give it a "do pass".

Thank you for your time and consideration.

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NORTH DAKOTA  
LEAGUE of CITIES  
*Founded in 1912*

*Service, Advocacy, Leadership,  
Education & Support*

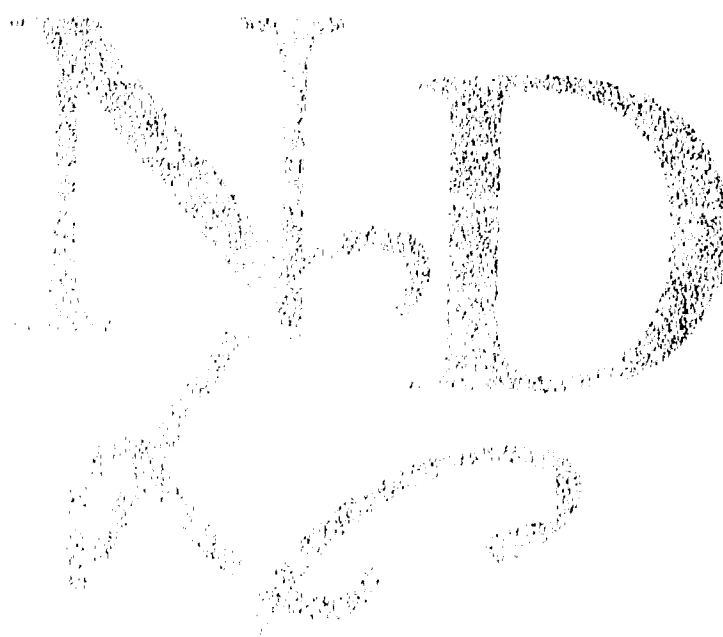
House Bill 1317  
House Committee on Industry, Business and Labor  
January 29, 2003

HB 1317 causes concern among cities that will be required to pay the premiums for the "mental injury" coverage for emergency service providers.

Although it's intended to be a narrow exception and limited to medical benefits, the language is vague. The criteria and definitions assigned to the bureau (lines 11, 12, 22 and 23) are unknown. How mental injury related to critical incident stress is ultimately defined, and coverage implemented, is a concern to local governments that will apparently be asked to pay the bill.

Currently, these issues are typically handled through an Employee Assistance Program and that is our preferred alternative at this time. The League requests a "do not pass" on HB 1317.

Connie Sprynczynatyk  
Executive Director



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Phone: 701-223-3518 ■ Toll Free (in state): 1-800-472-2692 ■ Fax: 701-223-5174 ■ Web: [www.ndlc.org](http://www.ndlc.org)

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**2003 HOUSE BILLS 1302, 1304, 1317, 1370 & 1455**

**Fifty-eighth Legislative Assembly  
Before the House Industry Business and Labor Committee  
Evan Mandigo, Member  
North Dakota Workers Compensation Board of Directors  
January 28, 2003**

Mr. Chairman, Members of the Committee:

My name is Evan Mandigo. I am a member of the Board of Directors of North Dakota Workers Compensation. It has been my pleasure to serve on the Board since 1998.

As each legislative session approaches, the Board, along with the staff of NDWC, carefully considers the legislative package ultimately presented to the Legislative Assembly. The process is thorough, analyzing all aspects of NDWC's operations. We believe the proposed legislation presented to this Committee last week represents the legislation that will allow us to improve and provide a system that ensures adequate benefits to our employees at a reasonable cost to employers.

During the legislative session, the Board meets frequently to discuss and evaluate other proposed legislation. The Board has carefully evaluated the legislation before you today and unanimously opposes House Bill No.'s 1302, 1304, 1317, and 1455. We are taking a neutral position on House Bill 1370.

The Executive Staff of NDWC will address the specific concerns we have with the bills we oppose, and provide further information to you regarding House Bill No. 1370. On behalf of the Board of Directors, I respectfully request this Committee recommend a "do not pass" on House Bill No.'s 1302, 1304, 1317, and 1455.

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**2003 House Bill No. 1317**  
**Fifty-eighth Legislative Assembly**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by: David Thiele**  
**Vice President of Claims**  
**North Dakota Workers Compensation**  
**January 28, 2003**

Mr. Chairman, and Members of the Committee:

My name is David Thiele and I am Vice President of Claims for North Dakota Workers Compensation (NDWC). I am here today to testify in opposition of House Bill No. 1317. This bill would allow payment of medical benefits for mental injuries arising from a mental stimulus that occur to an emergency service provider. The mental injury must occur within the course of employment and meet the benefit criteria and the definition of a critical incident.

The Legislative Assembly passed House Bill 1252 in 1995, which specifically excluded workers' compensation benefits to employees who suffer a mental injury arising from mental stimulus. In essence, this bill eliminated claims for mental injuries that did not have an associated physical injury. Testimony regarding House Bill 1252 indicated the serious problems California and other states were facing in controlling costs associated with these claims.

The arguments made in 1995 remain valid today. These claims are extremely subjective and open to broad medical interpretation. Establishing the causation between work and a mental injury can be extremely difficult. One of the greatest problem with mental injury claims can be found in the differentiation of work-related mental injuries from an underlying mental illness. With the multitude of today's stressors, the isolation of a single work related incident as being causative of a mental

Deanna K. Blum  
Operator's Signature

10/3/03  
Date

injury is nearly impossible. Moreover, these types of claims generally have much higher associated costs.

NDWC worked with the EMS Association in 2001 and again just prior to this legislative session to attempt to create legislation that would meet the needs of the Association, yet address the concerns raised in 1995. While the current bill applies to a limited group, it still does not sufficiently address the concerns with reopening mental claims.

The difficulties regarding this issue are further illustrated by New York's experience following September 11, 2001. In New York, mental injuries arising from a mental stimulus are allowed. Following the terrorist attacks, a large numbers of claims were filed alleging mental injuries with no associated physical injuries. New York's initial response was to accept these claims, provided the claimant was within a certain radius of the World Trade Towers on September 11. Ultimately, New York decided to controvert all claims for mental injury that did not have an associated physical injury due to the difficulties in causation, and the subjective nature of these claims. New York's experience indicates exceptions to the exclusion of mental injury claims without physical trauma are not appropriate.

After much discussion and debate, the NDWC Board and staff ultimately determined any erosion of the 1995 legislation, no matter how well-intended, would be counterproductive. The same issues that contributed to the 1995 legislation remain today (high litigation, high costs, and subjective diagnoses). Allowing an exception for one group, although narrow, has the potential of opening the door for other groups, as well.

NDWC respectfully requests a "do not pass" on 2003 House Bill 1317. Thank you for your consideration.



**STATEMENT BY DALE O. ANDERSON, PRESIDENT, GNDA, REGARDING  
HB 1317, THE NORTH DAKOTA HOUSE INDUSTRY, BUSINESS  
AND LABOR COMMITTEE, JANUARY 28, 2003.**

**Chairman Keiser and members of the House Industry, Business and Labor Committee. I am Dale O. Anderson, President, GNDA, North Dakota State Chamber of Commerce. Thank you for this opportunity to provide testimony in opposition of HB 1317, regarding compensable injuries for workers' compensation.**

**The Greater North Dakota Association is the voice for business and principal advocate for positive change for North Dakota. The organization's membership is an economic and geographic cross section of North Dakota's private sector, including statewide associations and local chambers of commerce, development organizations and convention and visitors associations and public sector organizations. GNDA is governed by a Board of Directors elected by our membership. The GNDA Board Chairman is Dr. Jay Leitch, Dean, College of Business Administration, NDSU, Fargo.**

**The North Dakota business community has been an active partner with the North Dakota Legislature in making sound improvements to the North Dakota Workers Compensation during the past decade. Any business person can attest to the difficulties created for employers by the current insurance market. We are pleased that the North Dakota Workers Compensation has been able to maintain premium rates and increase benefits. As I meet with business groups across the state, the Workers Compensation Bureau receives high grades for constituency service.**

**HB 1317 outlines a challenging issue. However, we do believe that the analysis of the bureaus' board of directors is solid and we support their conclusion and recommendation.**

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**North Dakota's State Chamber of Commerce**

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Dennis Halverson  
Operator's Signature

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Date

**Thank you Chairman Keiser and members of the House Industry,  
Business and Labor Committee for this opportunity to discuss the  
business community's position on HB 1317. We urge a do not pass on  
HB 1317. I welcome your questions.**

**The following organizations oppose House Bill 1317:**

**Automobile Dealers Association - Bob Lamp  
Bismarck-Mandan Chamber of Commerce -- Dave MacIver  
Grocer's Association - Tom Woodmansee  
Implement Dealers Association - Implement Dealers  
Petroleum Council - Ron Ness  
Retail/Petroleum Marketers Association - Russell Hanson  
Xcel Energy - Kathy Aas**

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Deanna Holmquist  
Operator's Signature

10/3/03  
Date