

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1153

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1153

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1153

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 01-24-01

Tape Number	Side A	Side B	Meter #
1	x		49.6 - end
1		x	0 - 45.8
Committee Clerk Signature <i>Nissa Warner</i>			

Minutes: **HB 1153**

Chairman Berg opened the hearing.

Brent Edison, Vice President of Legal and Special Investigations for ND Workers Comp., testified in favor of the bill. See written testimony.

Each section of testimony was discussed by the committee.

Michael Wolf, Manager of the County Employer Group for the NDACo., testified in favor of the bill. See written testimony.

Chuck Peterson, member of the GNDA, testified in favor of the bill. See written testimony.

Vern Hordist, of Pace, a local of IR Bobcat, spoke in opposition to the language in the bill.

Steve Chmielewski, of Pace, spoke in opposition to the bill.

Chairman Berg closed the hearing.

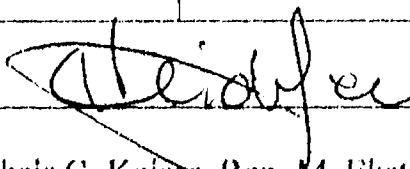
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1153(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date Feb. 12, 2001

Tape Number	Side A	Side B	Meter #
2	X		2.91-21.5
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 Johnson: This bill addresses the definition of fee schedules, mandatory sick leave, Worker's Comp confidentiality, and the preferred worker program. The next employer would have a 3 year waiver if a new employee has had a workers comp claim.

Rep M. Klein: I move a do pass.

Rep Lemieux: I second.

12 yea, 2 nay, 1 absent

Carrier Rep N. Johnson

## FISCAL NOTE

Requested by Legislative Council  
12/26/2000

Bill/Resolution No.: HB 1153

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:** Use of leave, Claim File Confidentiality, Preferred Worker Program, and Fee Schedule

**BILL NO:** HB 1153

**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 prohibits an employer from requiring an employee to use accrued personal leave for time off from work for a work-related disability; makes a claimant's social security number non-releasable from a claim file and makes it a Class B misdemeanor for an employer to use medical information contained in the employer's injured worker's claim file for any purpose other than to administer the workers' compensation claim; provides incentives for employers to hire injured workers in positions that will

accommodate the workers' restrictions resulting from a work injury; and amends the definition of "fee schedule".

**FISCAL IMPACT:** The introduction of the Preferred Worker Program could increase administrative costs and decrease premium income from current levels. We did not attempt to derive an estimate of the likely impact of this proposed change 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 other incentive programs, we anticipate that future loss cost savings could partially offset the additional costs generated by this new program.

We do not believe that the other changes that would be introduced as part of this bill would result in a material change to required rate and reserve levels.

**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.*

<b>Name:</b>	Paul R. Kramer	<b>Agency:</b>	ND Workers Compensation
<b>Phone Number:</b>	328-3856	<b>Date Prepared:</b>	12/27/2000

Date: 2-12-01  
Roll Call Vote #: 1

**2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. ~~CRK 686 to amend Dkt. 1185 on 7/1~~**

House Industry, Business and Labor Committee

☐ Subcommittee on \_\_\_\_\_

or  
☒ Conference Committee

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

Action Taken No Pass

Motion Made By M. Klein Seconded By Lamius

[illegible]

Total (Yes) 12 No 2

Absent /

Floor Assignment *Neo Johnson*

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

**REPORT OF STANDING COMMITTEE (410)**  
February 12, 2001 4:21 p.m.

**Module No: HR-25-3129**  
**Carrier: N. Johnson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1153: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1153 was placed on the Eleventh order on the calendar.**



2001 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1153

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1153

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 05, 2001.

Tape Number	Side A	Side B	Meter #
1	x		0 to 17.4
(3/14/01) 1		x	42.6 to 44.1
Committee Clerk Signature <i>Doris C. Pritz</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on HB 1153 relating to establishing incentives for employers to hire workers who have previously sustained a work injury ; the definition of fee schedule for workers' compensation purposes, prohibiting employers from requiring injured workers to use sick or annual leave benefits, the confidentiality and use of workers' compensation claim file information; to provide a penalty; to provide a continuing appropriation; and to provide an effective date.

**Bob Indvik**, Vice-Chairman, ND Workers' Compensation Bureau Board of Directors. Written testimony attached.

**Brent Edison**, VP of Legal and Special Investigations, ND Workers' Compensation Bureau. Written testimony attached.

**Chuck Peterson**, GNDA, in support. Written testimony attached.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1153

Hearing Date March 05, 2001.

**David Kemnitz, NDAFL-CIO:** Sections 2 and 3 are of particular interest to us. Workers need chance for good work environment where they can excel and decent wages. We support this bill.

No opposing testimony. Hearing concluded.

March 14, 2001. Tape: 1-B-42.6 to 44.1

Committee reconvened. All members present. Discussion held.

**Senator Espegard:** Motion: do pass. **Senator Klein:** Second.

Roll call vote: 7 yes; 0 no. Motion carried.

Floor assignment: **Senator Espegard.**

Date: 3/14/01  
Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1153**

## Senate Industry, Business and Labor

Committee

☐ Subcommittee on \_\_\_\_\_

or

☐ Conference Committee

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

Action Taken Do Pass

Motion Made By Sen. Esgard Seconded By Sen. Klein

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Espeland

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

**REPORT OF STANDING COMMITTEE (410)**  
March 14, 2001 1:50 p.m.

Module No: SR-44-5604  
Carrier: Epegard  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1153: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1153 was placed on the Fourteenth order on the calendar.**

2001 TESTIMONY

HB 1153

**HOUSE BILL NO. 1153**

**Fifty-Seventh Legislative Assembly  
Before the House Industry, Business and Labor Committee  
January 24, 2001**

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

Mr. Chairman, Members of the Committee:

My name is Brent J. 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 2001 House Bill No. 1153. This bill was approved unanimously by the Workers Compensation Board of Directors.

This bill amends subsection 19 of section 65-01-02 and sections 65-05-08 and 65-05-32 of the North Dakota Century Code dealing with the definition of fee schedule, use of sick leave by employers, privacy of medical records, and creates a preferred worker program to create incentives for employers to hire workers with restrictions.

**I. DEFINITION OF FEE SCHEDULE.**

Prior to 1999, NDWC was required to follow the administrative rulemaking process to update its medical fee schedules. When NDWC adopted a new medical fee schedule in 1998, it took eight months for NDWC to go through the administrative rulemaking process before the new fee schedule took effect.

In 1999, the Legislative Assembly amended section 65-02-08 to allow NDWC to update its fee schedules through a faster notice and hearing process, rather than having to follow the full-blown eight-month rulemaking process. The 1999 amendment states:

Before the effective date of any adoption of, or change to, a fee schedule, the bureau shall hold a public hearing, which is not subject to chapter 28-32.

NDWC has used this faster process to update its medical fee schedules, setting forth its most recent update in the NDWC publication entitled, "Medical and Hospital Fees," which is published both in written form and on NDWC's Web site.

Although the Legislative Assembly amended section 65-02-08 in 1999, it did not make a corresponding change to the statutory definition of "fee schedule." As a result, the following outmoded definition is still codified at section 65-01-02(19) of the Century Code:

"Fee schedule" means the relative value scale, conversion factors, fee schedules and medical aid rules adopted by the bureau.

Section 1 of this bill updates the statutory definition and clarifies that NDWC's fee schedules are formulas, rather than lengthy lists of specific dollar amounts. The formulas make reference to factors, codes and dollar amounts established in other government and industry sources, including Relative Values for Physicians, Current Procedural Terminology, Current Dental Terminology, Ingenix Usual and Customary Rate module, HCFA Common Procedure Coding System, and Firstdatabank's Electronic Drug Average Wholesale Price. While the old definition referred to some of those component parts of the NDWC's formulas, such as the "relative value scale" and "conversion factors," the new definition recognizes that the formulas may include other components, such as those just mentioned.

When the values, codes, or dollar amounts contained in these various other sources change, the dollar amount NDWC pays for a specific service may also change, even though the formula in our published fee schedule does not change. This bill makes it clear that NDWC will not be required to go through rulemaking or the expedited rulemaking process when those changes occur. Under the bill's updated definition of "fee schedule," expedited rulemaking will be required under section 65-02-08 only when there is an "adoption of, or change to" NDWC's formulas.



Section 1 will allow NDWC to be responsive to the demand for reimbursement formulas that continually reflect changes in medical practices, technology and procedures. At the same time, section 1 preserves the expedited rulemaking and publication procedures that allow medical providers an opportunity to provide input before any of NDWC's reimbursement formulas are changed.

## **2. MANDATORY SICK LEAVE AND WORKERS COMPENSATION.**

Section 2 addresses what has been a gray area in the law: the question whether an employer may require an injured worker to use sick leave when the injured worker is receiving workers compensation disability benefits. This section prohibits an employer from requiring an employee to use sick leave, annual leave, or other paid time off, during the time the employee is receiving disability benefits. An employee is still given the option of using sick or annual leave to make up the difference between the disability benefits and the employee's regular pay but only if the employer allows it and the employee agrees to it.

## **3. CONFIDENTIALITY.**

Section 3 increases confidentiality protections to injured workers by removing "social security number" from the items of information that may be released to the public. Section 3 also limits employer access to an injured worker's claim file to a "need to know" basis. Only those employer representatives who have a required need to know, based on their duties with the employer, will be allowed access to injured workers' claim

file information. This change preserves the employer's right to review information sufficient to participate in the claims adjudication process, but protects injured workers from potential abuses of that right.

If an employer or employer's representative violates the section by revealing claim file information to persons who do not have a legitimate need to know, they may be found guilty of a Class B Misdemeanor.

#### **4. PREFERRED WORKER PROGRAM.**

Section 4 provides for the creation of a Preferred Worker Program. This program will create incentives for employers other than the employer of injury to re-employ workers who have disabilities from on-the-job injuries and who are not able to return to their regular work because of those injuries.

The employer of injury already has an incentive to provide workplace modifications or otherwise accommodate an injured worker's physical restrictions. The Preferred Worker Program provides incentives for other employers to participate in Workers Compensation's return to work efforts. One of the incentives for employers to participate is a waiver of premiums on the injured worker's salary for up to three years. Another incentive is that if the injured worker sustains a new compensable on-the-job injury during the three year period, the injury will not be assessed against that employer's account for premium computation purposes.

The Preferred Worker Program is modeled after a very successful program in the state of Oregon. In Oregon, a worker with restrictions is issued an identification card that can be presented to prospective employers along with an information sheet advising the potential employer of the benefits of hiring the worker and participating in the Preferred Worker Program. If the employer wishes to participate, both the worker and the employer complete the card and submit it for approval by the Preferred Worker Program. Upon approval, the worker, the employer, and the Preferred Worker Program enter into a contract outlining the rights and responsibilities of each party to the contract.

The success of Oregon's program suggests a Preferred Worker Program will be a win-win situation for North Dakota's workers, employers, and workers compensation fund. Employees who cannot be returned to work under the existing programs may be eligible for hire as Preferred Workers. Employers will likely find they can hire quality workers and also reap the benefits of this incentive program.

This concludes my testimony on House Bill No. 1153. 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.

TESTIMONY TO THE  
HOUSE APPROPRIATIONS COMMITTEE  
Prepared January 24, 2001 by the  
North Dakota Association of Counties  
Michael W. Wolf, County Employer Group Manager

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CONCERNING HOUSE BILL NO. 1153

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Mr. Chairman, members of the committee. Good morning, my name is Michael Wolf and I am the Manager of the County Employer Group (CEG) for the North Dakota Association of Counties (NDACo). Thank you for allowing me the opportunity to appear before you today. I am here today testifying in support of HB1153 as it relates to the Preferred Worker Program.

While the concept of the program would prove to be beneficial for both the "preferred employer" and the "preferred worker" who cannot return to their normal duties with their existing employer, we encourage the Bureau to consider incorporating other incentive programs that address return to work opportunities as a part of this bill. We stand in support of any program that assists employers and employees in the return to work process. One minor obstacle we identified was that in order to be a "preferred worker employer", you have to have a position open within your business when it comes time to accept a "preferred worker".

To address this obstacle, we would like to see North Dakota Workers Compensation consider developing a "Job Pool Program" in conjunction with the 'Preferred Workers

Program" where employers could make known what light duty transitional jobs they have available. A "preferred worker" could then be placed in a modified sedentary position within their medical restrictions until they were able to return to work with their regular employer. A "job pool program" would provide more opportunities to accommodate the injured worker with meaningful and medically appropriate return to work options. This concept would benefit all types of employers, both large and small.

For example, a small mechanic shop has very little opportunity to offer transitional work to their employees. However, if other businesses within their community were part of a "job pool", the possibility of placing an injured employee in a meaningful and medically appropriate transitional job would be greatly enhanced. The benefit is that the employee continues to be productive and remains a valuable resource to their employer and their community.

If the concept of having a job pool were made available, the return to work process would be much more feasible for those employers who are currently limited in their ability to offer modified duty and it would also provide additional opportunities for those employers already actively involved in the return to work process.

In speaking with Bureau personnel, it is my understanding that the concept of developing a "Job Pool Program" and offering incentives to those employers interested in enhancing the return to work process is something that could be considered and incorporated into the administrative rules process as part of this bill.

1-24-01 STATEMENT BY CHUCK PETERSON, REPRESENTING  
GNDA, REGARDING HB 1153 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 HB 1153.

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, and the North Dakota Implement Dealers Association.

HB 1153 proposes that an employer may not require an employee to use sick leave or annual leave, or other employee benefits before applying for benefits from Worker's Compensation. It further provides that an employer may allow an employee to use sick leave or annual leave to make up for the difference between the employee's wage loss and the employee's regular pay.

We believe that this legislation is consistent with good business practices. I have been aware of occasions in which an employee has been required to use sick leave prior the use benefits provided by Worker's Compensation. I am not sure whether this occurred because of lack of knowledge or by design. This legislation will clarify the proper application of employer benefits in relation to disability pay.

HB 1152 further provides that an employer or dully authorized representative who willingly communicates information in an employee's claim file to any person who does not need the information in the coarse of that person's duties is guilty of a Class B Misdemeanor.

All too easily very personal information may be compromised by person not having given proper thought to the privacy of an injured worker. While serving on the Board of the Worker's Compensation Bureau I have been provided releases by injured workers who requested my help. I have noted that often the files contain very sensitive information. The disclosure of this information could be quite damaging or at the very least embarrassing to the worker. Not all of us are professionals when dealing matters of this nature. This legislation will provide a reason to maintain the proper level of confidentiality.

HB 1152 further provides a process to encourage the employment of injured workers. It is called the Preferred Worker program. The Preferred Worker Program relates to:

- A. An injured worker with a compensable injury.
- B. The plan will provide premium relief for 3 year

C. No claims may be charged to the employer during the initial period of 3 years.

I have spent time as a member of the Customer Service Committee, which was an advisory committee to the Worker Composition Board of Directors. Part of our mission was to listen to comments made by injured workers and to provide information to the Board that would assist them. We heard from workers who were experiencing difficulty returning to the workplace. I heard of instances where a very honest effort was being made to find employment, but they were unsuccessful. The Preferred Worker Program increases the worker's ability to transition back to the work place.

I must admit that as an employer, I have hired workers with a great deal of apprehension knowing that they have had problems in the past. I can think of a least one case, it in which our company has paid a considerable amount for what I believe was a previous injury. The Preferred Worker Program would have eliminated those charge to our account and provided a more positive attitude toward hiring a previously injured worker.

Thank you for the opportunity to discuss GNDA's position regarding HB 1153.



**House Bill No. 1153, 1161, 1162 and 1260  
Engrossed House Bill No. 1419, and 1469  
Re-engrossed House Bill No. 1281**

**Fifty-Seventh Legislative Assembly  
Before the Senate Industry, Business and Labor Committee  
March 5, 2001  
Testimony Regarding Workers Compensation Legislation**

Good morning Chairman Mutch, members of the Senate Industry, Business, and Labor Committee:

My name is Bob Indvik, and I am the Vice-Chairman of the North Dakota Workers Compensation Board of Directors. I am also the Chairman of the Board's Legislative Committee. I am here this morning to testify regarding the Board's position on several pieces of legislation that will affect the state's workers' compensation system.

In the interest of time, I will provide you with a brief description of the bills you will be hearing this morning and tell you about the recommendations the Board made regarding each of the bills.

The first is House Bill No. 1153, which the Board supports. House Bill No. 1153 does a variety of things. It redefines "fee schedule". It prohibits an employer from requiring an employee to use personal leave during periods of work-related disability. It also allows NDWC to establish incentives for employers who hire previously injured workers in physically appropriate jobs. And it makes a claimant's social security number private and requires an employer to limit the people who have access to its employees' claim files.

The second is House Bill No. 1161. It would increase the awards given for Permanent Partial Impairments. This bill is a result of an independent PPI study that was mandated by the 56<sup>th</sup> Legislative Assembly. The Board agrees with the results of the study and supports the bill and its proposed amendment. House Bill No. 1161 would increase awards given for certain amputations and the loss of one eye. It would also adopt the 5<sup>th</sup> Edition of the AMA Guidelines. The proposed amendment to the bill would reduce the PPI award threshold from 16% to 11% as recommended by the study.

House Bill No. 1162 is also supported by the Board. It changes the supplementary benefit structure to provide for supplementary benefits to be paid to all death benefit recipients or to all permanently and totally disabled workers who have been receiving benefits for an extended period of time.

House Bill No. 1260 would allow an employer with a deductible policy to keep 100% of the recovery in a third-party action if an injured worker and the Bureau chooses not to pursue the third-party for recovery of damages. This bill relates to a small number of employers, and it will not have an impact on rates or reserve levels. The Board supports House Bill No. 1260.

Re-engrossed House Bill No. 1281 would allow the Board to set the workers' compensation budget on an annual basis, and requires NDWC to report to the Legislative Assembly on how its funds were spent. The Board supports Re-engrossed House Bill No. 1281. It is a recommendation from our most recent performance evaluation. The Board believes the authority to set the workers' compensation budget annually would allow NDWC to keep up with industry trends, and to allow most contracted services to be brought in-house and reduce cost.

The Board supports Engrossed House Bill No. 1419. It allocates \$150,000 to the Legislative Council to contract with an industry expert to conduct a study of the effects of opening the state's workers' compensation system to competition. The Board has not taken a position on whether or not competition is appropriate for North Dakota. A study of the pros and cons of competition would be beneficial for the Board and ultimately, will help the Legislative Assembly make an informed decision on this subject.

Finally, the Board has taken a neutral position on Engrossed House Bill No. 1469. It creates exemptions for certain custom agriculture operations. The Board originally opposed this bill when it was introduced, but would have supported a study on the issue.

This concludes my testimony regarding the Board's position on the several pieces of legislation that you have before you this morning. I would encourage you to give favorable consideration to House Bill Numbers: 1153, 1161 with the proposed amendments, 1162, 1260, 1281, and 1419.

NDWC staff will provide you with more details about each of the bills and its effect on the North Dakota Workers Compensation system.

**HOUSE BILL NO. 1153**

**Fifty-Seventh Legislative Assembly  
Before the Senate Industry, Business and Labor Committee  
March 5, 2001**

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

Mr. Chairman, Members of the Committee:

My name is Brent J. 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 2001 House Bill 1153. This bill was unanimously approved by the Workers Compensation Board of Directors and passed the House of Representatives by a vote of 91 to 4.

This bill amends subsection 19 of section 65-01-02 and sections 65-05-08 and 65-05-32 of the North Dakota Century Code dealing with the definition of fee schedule, use of sick leave by employers, privacy of medical records, and creates a preferred worker program to create incentives for employers to hire workers with restrictions.

**I. DEFINITION OF FEE SCHEDULE.**

Prior to 1999, the Bureau was required to follow the administrative rulemaking process to update its medical fee schedules. When the Bureau adopted a new medical fee schedule in 1998, it took eight months for the Bureau to go through the administrative rulemaking process before the new fee schedule took effect.

In 1999, the Legislative Assembly amended section 65-02-08 to allow NDWC to update its fee schedules through a faster notice and hearing process, rather than having to follow the full-blown eight-month rulemaking process. The 1999 amendment states:

Before the effective date of any adoption of, or change to, a fee schedule, the bureau shall hold a public hearing, which is not subject to chapter 28-32.

NDWC has used this faster process to update its medical fee schedules, setting forth its most recent update in the NDWC publication entitled, "Medical and Hospital Fees," which is published both in written form and on NDWC's Web site.

Although the Legislative Assembly amended section 65-02-08 in 1999, it did not make a corresponding change to the statutory definition for "fee schedule." As a result, the following outmoded definition is still codified at section 65-01-02(19) of the Century Code:

"Fee schedule" means the relative value scale, conversion factors, fee schedules and medical aid rules adopted by the bureau.

Section 1 of this bill updates the statutory definition and clarifies that NDWC's fee schedules are formulas, rather than lengthy lists of specific dollar amounts. The formulas make reference to factors, codes and dollar amounts established in other government and industry sources, including Relative Values for Physicians, Current Procedural Terminology, Current Dental Terminology, Ingenix Usual and Customary Rate module, HCFA Common Procedure Coding System, and Firstdatabank's Electronic Drug Average Wholesale Price. While the old definition referred to some of those component parts of the NDWC's formulas, such as the "relative value scale" and "conversion factors," the new definition recognizes that the formulas may include other components, such as those just mentioned.

When the values, codes, or dollar amounts contained in these various other sources change, the dollar amount NDWC pays for a specific service may also change, even though the formula in our published fee schedule does not change. This bill makes it clear that NDWC will not be required to go through rulemaking or the expedited rulemaking process when those changes occur. Under the bill's updated definition of

"fee schedule," expedited rulemaking will only be required under section 65-02-08 when there is an "adoption of, or change to" NDWC's formulas.

Section 1 will allow NDWC to be responsive to the demand for reimbursement formulas that continually reflect changes in medical practices, technology and procedures. At the same time, section 1 preserves the expedited rulemaking and publication procedures that allow medical providers to provide input before any of NDWC's reimbursement formulas are changed.

## **2. MANDATORY SICK LEAVE AND WORKERS COMPENSATION.**

Section 2 addresses what has been a gray area in the law: the question whether an employer may require an injured worker to use sick leave when the injured worker is receiving workers compensation disability benefits. This section prohibits an employer from requiring an employee to use sick leave, annual leave, or other paid time off, during the time the employee is receiving disability benefits. An employee is still given the option of using sick or annual leave to make up the difference between the disability benefits and the employee's regular pay but only if the employer allows it and the employee agrees to it.

## **3. CONFIDENTIALITY.**

Section 3 increases confidentiality protections to injured workers by removing "social security number" from the items of information that may be released to the public. Section 3 also limits employer access to an injured worker's claim file to a "need to know" basis. Only those employer representatives who have a required need to know, based on their duties with the employer, will be allowed access to injured workers' claim file information. This change preserves the employer's right to review information sufficient to participate in the claims adjudication process, but protects injured workers from potential abuses of that right.

If an employer or employer's representative violates the section by revealing claim file information to persons who do not have a legitimate need to know, they may be found guilty of a Class B Misdemeanor.

#### **4. PREFERRED WORKER PROGRAM.**

Section 4 provides for the creation of a Preferred Worker Program. This program will create incentives for employers other than the employer of injury to re-employ workers who have disabilities from on-the-job injuries and who are not able to return to their regular work because of those injuries.

The employer of injury already has an incentive to provide workplace modifications or otherwise accommodate an injured worker's physical restrictions. The Preferred Worker Program provides incentives for other employers to participate in Workers Compensation's return to work efforts. One of the incentives for employers to participate is a waiver of premiums on the injured worker's salary for up to three years. Another incentive is that if the injured worker sustains a new compensable on-the-job injury during the three-year period, the injury will not be assessed against that employer's account for premium computation purposes.

The Preferred Worker Program is modeled after a very successful program in the state of Oregon. In Oregon, a worker with restrictions is issued an identification card that can be presented to prospective employers along with an information sheet advising the potential employer of the benefits of hiring the worker and participating in the Preferred Worker Program. If the employer wishes to participate, both the worker and the employer complete the card and submit it for approval by the Preferred Worker Program. Upon approval, the worker, the employer, and the Preferred Worker Program enter into a contract outlining the rights and responsibilities of each party to the contract.

The success of Oregon's program suggests a Preferred Worker Program will be a win-win situation for North Dakota's workers, employers, and workers compensation fund.

Employees who cannot be returned to work under the existing programs may be eligible for hire as Preferred Workers. Employers will likely find they can hire quality workers and also reap the benefits of this incentive program.

This concludes my testimony on House Bill No. 1153. I respectfully ask for this committee's favorable recommendation on the bill, and will be happy to answer any questions you may have at this time.

3-5-01 STATEMENT BY CHUCK PETERSON, REPRESENTING GNDA,  
REGARDING HB 1153 WORKER COMPENSATION LEGISLATION.

Chairman Mutch, 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 HB 1153.

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.

HB 1153 proposes that an employer may not require an employee to use sick leave or annual leave, or other employee benefits before applying for benefits from Worker's Compensation. It further provides that an employer may allow an employee to use sick leave or annual leave to make up for the difference between the employee's wage loss and the employee's regular pay.



We believe that this legislation is consistent with good business practices. I have been aware of occasions in which an employee has been required to use sick leave prior the use benefits provided by Worker's Compensation. I am not sure whether this occurred because of lack of knowledge or by design. This legislation will clarify the proper application of employer benefits in relation to disability pay.

HB 1153 further provides that an employer or dully authorized representative who willingly communicates information in an employee's claim file to any person who does not need the information in the coarse of that person's duties is guilty of a Class B Misdemeanor.

All too easily very personal information may be compromised by person not having given proper thought to the privacy of an injured worker. While serving on the Board of the Worker's Compensation Bureau I have been provided releases by injured workers who requested my help. I have noted that often the files contain very sensitive information. The disclosure of this information could be quite damaging or at the very least embarrassing to the worker. Not all of us are professionals when dealing matters of this nature. This legislation will provide a reason to maintain the proper level of confidentiality.

HB 1153 further provides a process to encourage the employment of injured workers. It is called the Preferred Worker program. The Preferred Worker Program relates to:

- A. An injured worker with a compensable injury.

B. The plan will provide premium relief for 3 year

C. No claims may be charged to the employer during the initial period of 3 years.

I have spent time as a member of the Customer Service Committee, which was an advisory committee to the Worker Composition Board of Directors. Part of our mission was to listen to comments made by injured workers and to provide information to the Board that would assist them. We heard from workers who were experiencing difficulty returning to the workplace. I heard of instances where a very honest effort was being made to find employment, but they were unsuccessful. The Preferred Worker Program increases the worker's ability to transition back to the work place.

I must admit that as an employer, I have hired workers with a great deal of apprehension knowing that they have had problems in the past. I can think of a least one case, it in which our company has paid a considerable amount for what I believe was a previous injury. The Preferred Worker Program would have eliminated those charge to our account and provided a more positive attitude toward hiring a previously injured worker.

Thank you for the opportunity to discuss GNDA's position regarding HB 1153.