

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1368

2001 HOUSE GOVERNMENT AND VETERANS AFFAIRS

HB 1368

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1368 A

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/2/01

Tape Number	Side A	Side B	Meter #
1	X		3840-END
		X	0-1493
Committee Clerk Signature <i>Robin L. Smee</i>			

Minutes:

REP. M. KLEIN called the meeting to order.

In favor:

REP. AUDREY CLEARY, introduces the bill. Please see attached testimony.

In favor:

REP. LISA MEIER also speaks on behalf of the bill, she too is a sponsor on the bill. MEIER introduces GARY NELSON, the constituent that approached them to propose this bill.

In favor

GARY L. NELSON, BUSINESS MANAGER, SELF

Please see attached testimony.

In favor:

KRIS RUNGE, NDAFL-CIO NDPES

RUNGE wants to state that for the record they are for this bill. Urges a do pass.

Page 2

House Government and Veterans Affairs Committee

Bill/Resolution Number HB 1368 A

Hearing Date 2/2/01

Oppose:

DICK JOHNSEN, NDWC BOARD OF DIRECTORS

Please see attached testimony.

REP. M. KLEIN asks how many cases of fraud do they have record of? JOHNSEN does not have that info.

REP. KLEMIN asks if they have an audit procedure. JOHNSEN replies that yes they do have one.

REP. KROEBER asks if some of the contractors have unfair bidding? JOHNSEN replies yes, that is possible.

REP. CLEARY asks about using another tool, maybe getting more attention. JOHNSEN replies anything that is changing information that is not accurate.

REP. MEIER asks how many times are employers audited? JOHNSEN replies that they are audited annually.

REP. CLEARY asks if it is ever unfair to the employee and not the employer? JOHNSEN states that it is never personal.

Oppose:

KURT PETERSON

PETERSON states that he does not like the bill.

REP. M. KLEIN asks what is his major objection of the bill. PETERSON states that it is the privacy issue.

REP. KROEBER also asks about the unfair bidding situations. PETERSON replies that anybody is curious can find out why.

Oppose:

JULIE LEER, GENERAL COUNSEL FOR NDWC

Please see attached testimony.

REP. M. KLEIN asks about reports of fraud, how many do you get in each area? What is the proportion of it, between employer and employee fraud? LEER replies that since the hot line has opened up there has been 133 referrals.

REP. CLEARY asks about the difference of policy procedures LEER states that it depends on the different types of fraud. REP. CLEARY asks how do you investigate employer fraud? LEER replies that they send out investigators, surveillance, and or tax records. REP. CLEARY asks how do you hear about employer fraud? LEER replies from hot line tips

In favor:

GARY NELSON, SELF

NELSON addresses the committee again, NELSON makes a challenge to everyone in the room. There are 4 employees in his office, if anyone can tell him what his gross wages are, paid for one year, he will take all of them out for dinner. That's all he had to say.

REP. M. KLEIN asks if this is only a problem with the iron workers union? NELSON replies that they do not classify their employees right.

Being there was no further testimony, the hearing was then closed. No action was taken at this time.

2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1368 B

House Government and Veterans Affairs Committee

☐ Conference Committee

Hearing Date 2/08/01

Tape Number	Side A	Side B	Meter #
3	X		1334-1958
Committee Clerk Signature <i>Robin A. Small</i>			

Minutes:

ACTION: HB 1368 TESTIMONY HEARD 2/02/01

REP. BRUSEGAARD motioned for a DO NOT PASS, seconded by REP. CLARK. The roll call vote was taken with 11 YES, 4 NO and 0 ABSENT AND NOT VOTING. The motion carries. The CARRIER of the bill is REP. M. KLEIN.

HB 1368: DO NOT PASS 11-4

CARRIER: REP. M. KLEIN

FISCAL NOTE

Requested by Legislative Council
01/26/2001

Bill/Resolution No.: HB 1368

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: Confidentiality of Employer Reports

BILL NO: HB 1368

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 the information in employer reports that would be open to the public to include the number of employees in each rate classification as well as the policy expiration date.

FISCAL IMPACT: Anticipate no impact to rate and reserve levels.

DATE: January 22, 2001

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type*

and fund affected and any amounts included in the executive budget.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

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

Name:	Paul R. Kramer	Agency:	ND Workers Compensation
Phone Number:	328-3856	Date Prepared:	01/29/2001

Date: Feb. 8th, 2001

Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1368

House GOVERNMENT AND VETERANS AFFAIRS Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Brusegaard Seconded By Clark

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN KLEIN	✓		REP KROEBER		✓
VICE CHAIR GRANDE	✓				
REP BELLEW	✓				
REP BRUSEGAARD	✓				
REP CLARK	✓				
REP DEVLIN	✓				
REP HAAS	✓				
REP KASPER	✓				
REP KLEMIN	✓				
REP MEIER		✓			
REP WIKENHEISER	✓				
REP CLEARY		✓			
REP HUNSKOR	✓				
REP METCALF		✓			

Total (Yes) 11 No 4

Absent _____

Floor Assignment Rep. M. Klein

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

REPORT OF STANDING COMMITTEE (410)
February 8, 2001 5:24 p.m.

Module No: HR-23-2808
Carrier: M. Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1368: Government and Veterans Affairs Committee (Rep. M. Klein, Chairman)
recommends **DO NOT PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).
HB 1368 was placed on the Eleventh order on the calendar.

2001 TESTIMONY

HB 1368

House Government and Veterans Affairs Committee
HB 1368

Representative Audrey Cleary District 49
February 2, 2001

Chairman Klein and members of the House Government and Veterans Affairs Committee.

For the record I am Audrey Cleary, Representative from District 49.

I come before you today in support of HB 1368.

HB 1368 requires the Workers' Compensation Bureau upon request to disclose the number of employees in each rate classification, and the expiration date of the premium paid by an employer.

Access to claimant information is granted to the public under Chapter 65-05-32, section 5 of the North Dakota Century Code. Which states that "The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending, and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose."

Concerns over the cost of workers' compensation insurance premiums have brought about widespread allegations of claimant fraud. However, Employers who misclassify their employees in an effort to reduce their workers' compensation premiums defraud the system also.

Please allow me at this time to introduce to you Mr. Gary Nelson, Business Manager for Ironworkers Local 793, who can further explain HB 1368.

Fifty-Seventh
Legislative Assembly
Of North Dakota

RE: House Bill No. 1368

Testimony

Before the House Industry, Business and Labor Committee

Urging a "Do Pass" Recommendation

January 25, 2001

Gary L. Nelson, Business Manager
Ironworkers Local 793

Mr. Chairman, Members of the Committee.

My name is Gary Nelson and I am Business Manager for Ironworkers Local 793. Our jurisdiction is the Entire State of North Dakota and the bordering counties of Minnesota. I am here today in support of House Bill # 1368.

When I went to the Bureau in 1995, they were collecting premiums on a gross payroll of 2.43 million with a total of 431 employees being reported in the 5040 classification (Steel Erection). After my contact with the Bureau, they sent a letter to all contractors explaining that if they are doing steel erection, they must pay on the 5040 classification (Steel Erection). The year starting 6-30-97, premiums were paid on a gross payroll of 5.58 million with a total of 1211 employees being reported. So, as you can see, quite a few employers were not paying on the correct classification. The 5040 classification premium rate is 25.26% of wages, while the 5410 classification (Building Construction) premium rate that most employers pay on is 11.64% of wages. For a difference of 13.63%. A potential lost of \$13.63 per hundred dollars of wages.

By passing this Legislation, it would not hinder the Bureau; it could possibly help the Bureau collect premiums on misclassified employees. I am not stating that there is a lot of misclassification going on, but it is not fair to the employers who are paying on the correct classification, when others are not. If all employers paid correctly, possibly the premium rate would go down in certain classifications.

The Bureau has opposed this bill in the past two sessions. In the past, the Bureau has stated that if this bill were passed a requester would be able to calculate the wages and premiums paid by an employer by knowing the number of employees in each classification.

According to my calculations their statement is incorrect. By just knowing how many

employees are in a classification, it would be impossible to know their gross wages or premiums paid. To come up with this calculation, you would have to know how many hours an employee worked in a classification and the wages they were paid per hour. Without knowing these facts, you would not know if the employee worked 10 hours or 2000 hours in a certain classification or was paid minimum wage or \$20.00 per hour.

To give an example on what I am trying to say in this testimony; Ironworkers Local 793 has three employees in classification 8747 (Traveling Representatives) and one in classification 8805 (Clerical Office Employees). Given the above information, I challenge anyone to tell me what the gross wages and premiums paid for the year would be.

The Bureau also stated that sales and marketing firms would seek the number of employees in each classification. Why? For what reason? The Bureau also stated that this legislation intends to divest employers of their privacy, while employee privacy is left in place. There is a section in the Bureau regulations giving access to employee information.

That number is 65-05-32, section 5 and it reads as follows:

"The claimant's name; social security number; date of birth; injury date; employer name; type of injury; whether the claim is accepted, denied, or pending; and whether the claim is in active or inactive pay status will be available to the public. This information may not be released in aggregate form, except to those persons contracting with the bureau for exchange of information pertaining to the administration of this title or except upon written authorization by the claimant for a specified purpose."

I see no difference between the proposed legislation that I am supporting and the above regulation. One pertains to an employer and the other to an employee.

With the passing of this legislation an individual would be able to call the Bureau to see if a certain employer was paying on the correct classification and number of employees in that classification.

An example, a company has ten employees doing structural steel erector. You call the Bureau to see if the company is paying on the correct classification and number of employees. If they are not, you ask the Bureau to investigate and if they are, you thank the Bureau for the information and no more is said.

The alternative to this bill would be to turn in all employers that do structural steel erection (Classification 5040) into the Workers Comp Fraud Unit for investigation. I do not believe this is a prudent thing to do.

I believe House Bill #1368 is good legislation and would help the Bureau in collecting premiums and I urge your support for a "Do Pass" recommendation.

Workers Compensation Bureau

500 East Front Avenue
Bismarck, ND 58504-5685

1-800-243-3331



WCB HelpLine

1-800-777-5033

Questions? Call us. Report injuries immediately.

Pat Traynor
Executive Director

Edward T. Schafer
Governor

November 24, 1995

International Association of Bridge,
Structural and Ornamental Iron Workers
Gary Nelson, Business Agent
2901 Twin City Drive, Suite #4
Mandan, ND 58554

Dear Mr. Nelson:

Thank you for your letter in regard to construction employers apparently operating without all of the correct rate classifications. Our office has had many discussions with you concerning this situation and I have indicated to you that we are taking the necessary steps to try and correct any inequities that exist. Due to confidentiality statutes, we are unable to give out specific payroll and employee information on an employers account.

The Bureau is in the process of contacting each of the contractors you have listed to determine if they have indeed done any structural steel work in the past. As I have explained to you, we do appreciate any information that will help us in ensuring that all employers are properly classified.

Currently, the Bureau has only six field auditors who are responsible for monitoring 21,500 employer accounts. This presents a major problem in that it makes it very difficult for us to effectively manage every account. As we discussed, the ideal situation would be for our department to have someone dedicated full time to just driving around and checking construction sites for proper coverage and classifications. There is no doubt we could keep someone busy doing this and it may even be very effective. That is why we do rely on contacts out in the field such as yourself, so we can respond to specific situations and deal with them accordingly.

This is not simply a situation in which anyone could assume all of these contractors are committing fraud. When dealing with fraud, it has to be proven that an employee, medical provider, or an employer has intentionally tried to deceive the Bureau by filing false statements or reports. While it is easy to accuse these contractors of fraud, it is much more difficult prove.

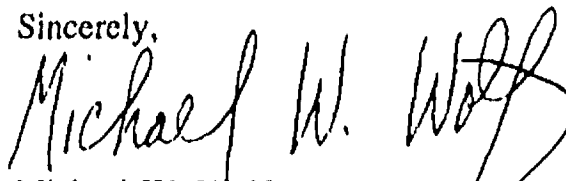
Page 2

As I indicated to you previously, we are in the process of contacting each of the contractors you have listed to determine the accuracy of your numbers as well as determine the scope of their operations and add the 5040 class if necessary. I am going to go a step further in pursuing this matter in that I am planning on sending a letter to all contractors who currently have classification 5410 and inform them that if they are performing any structural steel duties that they need to be properly and separately rated under 5040.

We need to develop some ground work in order to consider the fraud issue. If an employer is specifically informed and aware of the proper reporting requirements and then fails to report properly or files a false report by under-reporting in a specific classification, we then would have a basis for fraud. If, in our research of the contractors you have listed we determine an employer has filed false statements or reports, we will surely pursue the fraud issue.

I trust this information will be of value to you. Should you have any additional questions or require additional information please do not hesitate to contact me direct at 328-3818.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael W. Wolf". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Michael W. Wolf
Director of Policyholder Services

cc: Governor Schafer
Pat Traynor
Charles Lemar

Workers Compensation Bureau

500 East Front Avenue
Bismarck, North Dakota 58504-5685



Pat Traynor
Executive Director

Edward T. Schafer
Governor

December 15, 1995

NOTICE TO CONTRACTORS

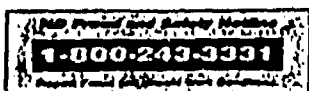
FIELD(1)
FIELD(2)
FIELD(3)
FIELD(4)
FIELD(5) FIELD(6)

Dear Employer:

It has been brought to our attention that several contractors may be involved with steel erection and not paying premiums for such. Are you performing any type of structural steel erection? If you are, our records indicate you do not have the correct classification for steel erection, classification 5040. Please be aware that if you are performing these types of activities, it is mandatory that you properly report payroll to the appropriate classifications.

Please be informed that there are severe penalties for filing fraudulent payroll reports. North Dakota law provides that any employer who willfully misrepresents to the Bureau the amount of payroll upon which workers compensation premium is based is guilty of fraud, a Class A Misdemeanor which is punishable by imprisonment for up to one year, substantial fines, or both. The employer is also civilly liable to the Bureau in the amount of two thousand dollars (\$2,000), plus ten (10) times the difference between the premium paid and the amount that should have been paid.

The purpose of this letter is to make sure that all employers doing similar types of operations are classified the same. It is the Bureau's responsibility to make sure that we are collecting adequate premium to cover all potential risks and, therefore, we must ensure that all employers are properly classified.



Office...(701) 328-3800 TDD...328-3786 (hearing impaired only)
Fax...328-3820 Claims/Legal...328-3301 Loss Prevention...328-3886
Policyholder Services...328-3811



If we need to add class 5040 to your account, you must contact us immediately. If you are not involved in any type of steel erection, you may disregard this notice. Please be advised that the Bureau, at any time, has the authority to audit payroll records, review contracts, review bids you've received, and review architectural estimates concerning the number of man hours needed to complete certain phases of a project which will assist the Bureau in determining that the employer is properly reporting accurate amounts of payroll to each classification. If you are a general contractor you must also make sure your subcontractors are also properly classified since you may be held responsible for payment of their premiums in the event they are not reporting payroll correctly.

If you have any questions, comments, or concerns relative to this matter, or if you would like one of our field auditors to visit with you personally to determine the status of your operation, please contact Susan Scott at 328-3752. We will make sure that the appropriate action is taken.

Sincerely,

Michael W. Wolf
Director of Policyholder Services

Workers Compensation Bureau

500 East Front Avenue
Bismarck, North Dakota 58504-5685



Pat Traynor
Executive Director & CEO

October 2, 1998

Gary Nelson
Fax 663-4266

Dear Mr. Nelson:

Here is the information you requested regarding rate classification 5040. Please feel free to call me with any questions at 328-3813.

In the last twelve months ending August 30, 1998, 75 different employer accounts reported actual wages paid under the 5040 rate classification. For the information below, the reporting periods included were those with inception dates after July 1 of each year. The figures were calculated as of September 30, 1998.

Year starting	gross payroll	employees reported
6-30-93	\$1.50 Million	344
6-30-94	1.54	339
6-30-95	2.43	431
6-30-96	2.37	754
6-30-97	5.56	1211

6-30-97 The accounts incepting during this fiscal year have not all reported. Any available figure would be speculative.

Part of the cause for the increased employee numbers starting July 96 may be the Bureau's increased review of the rate classification and the addition of the rate classification to all construction accounts reporting form.

Sincerely,

Bill Riedman
Assistant Director Policyholder Services

"A Team Effort"

Office: 701-328-3800 TDD: 701-328-3786 (hearing impaired only)
Claims/Legal: 701-328-3801 Claims/Legal Fax: 701-328-3820
Policyholder Services: 701-328-3811 Policyholder Fax: 701-328-3750
Loss Prevention: 701-328-3886
Workers' Adviser Program: 701-328-3796 or 1-800-701-4932

WCB HelpLine
1-800-777-5033
Local: 701-328-3800
Send! Call us. Report Injuries Immediately.

1-800-243-2331

NORTH DAKOTA WORKERS COMPENSATION RATES - 2000/2001

DESCRIPTION	CLASS	07/01/1999	07/01/2000	AMT CHANGE	PERCENT CHANGE	MAX CHARGE	MAX CHARGE
		BASE RATE	BASE RATE			07/01/1999 \$16,000	07/01/2000 \$16,100
Iron or Steel Construction	6040	25.31	25.28	-0.05	-0.20%	3,948.36	4066.86
Ornamental Work	6100	3.99	4.07	0.08	2.01%	622.44	655.27
Boiler and Elevator Installation & Svc.	6110	7.53	6.53	-1.03	-13.62%	1,179.36	1051.33
Plumbing, Heating, Sheet Metal	6183	6.99	6.68	-0.31	-4.43%	1,090.44	1075.48
Electrical - Wiring - Svc. & Repair	6190	5.34	4.71	-0.63	-11.80%	833.04	758.31
Concrete Work	6205	8.60	7.53	-1.07	-12.44%	1,341.60	1212.33
Plastering-Stucco-Drywall	6345	11.54	11.18	-0.36	-3.12%	1,800.24	1799.98
Building Construction	6410	12.38	11.64	-0.74	-5.98%	1,931.28	1874.04
Painting and Paper Hanging	6474	7.91	7.47	-0.44	-5.58%	1,233.96	1202.67
Carpet Laying and/or Linoleum	6502	8.58	8.56	-0.02	-0.23%	1,338.48	1378.16
Roofing-Hot Tar Method & Sandblast	6545	27.97	27.33	-0.64	-2.29%	4,363.32	4400.13
Consulting Engineers	6603	1.91	1.91	0.00	0.00%	297.96	307.51
Street and Road Construction	6042	8.83	7.79	-1.04	-11.78%	1,377.48	1254.19
Water Well Drilling Operations	6200	10.75	9.67	-1.08	-10.05%	1,677.00	1556.87
Oil and Gas Development - Drilling	6203	19.03	18.47	-1.16	-5.91%	3,062.28	2973.67
Oil & Gas Well Sply. Or Equip. Dirs.	6204	3.78	2.99	-0.79	-20.90%	589.68	481.39
Oil Well Trucking	6205	13.78	13.46	-0.32	-2.32%	2,149.68	2167.06
Well Servicing	6206	15.37	14.04	-1.33	-8.65%	2,397.72	2260.47
Oil and Gas Instrument Logging	6208	4.38	4.37	-0.01	-0.23%	683.28	703.57
Junk and Scrap Metal Dealers	6209	13.36	13.33	-0.03	-0.22%	2,084.16	2146.13
Bldg. Moving - Demolition - Salvage	6210	19.63	17.90	-1.73	-8.81%	3,082.28	2881.90
Excavating and Digging	6221	8.67	7.02	-1.65	-19.03%	1,352.52	1130.22
Dredging	6223	25.97	23.08	-2.89	-11.13%	4,051.32	3715.88
Tunnel Construction	6233	TBA	TBA	TBA	TBA	TBA	TBA
Caisson Work	6253	85.35	75.38	-9.97	-11.68%	13,314.60	12136.18
Sewer-Water-Gas-Pipeline Const.	6301	20.55	15.44	-5.11	-24.87%	3,205.80	2485.84
Fence Construction	6400	10.80	10.29	-0.51	-4.72%	1,684.80	1656.69
Trucking and Hauling	7215	13.68	12.48	-1.20	-8.77%	2,134.08	2009.28
Explosive Ammunition Handlers	7217	11.66	10.12	-1.54	-13.21%	1,818.96	1629.32
Chauffeurs-School Bus - Ambulance	7380	3.23	2.97	-0.26	-8.05%	503.88	478.17
Ice Handling	7384	6.30	5.61	-0.69	-10.95%	982.80	903.21
Aircraft Ground Crew Operations	7403	3.53	3.14	-0.39	-11.05%	550.68	505.54
Aircraft Flying Operation	7405	7.92	7.16	-0.76	-9.60%	1,235.52	1152.76
Specialized Aircraft Operations	7420	20.48	21.26	0.78	3.81%	3,194.88	3422.86
Gas Works	7500	2.30	2.11	-0.19	-8.26%	358.80	339.71
Water Works	7520	3.10	2.83	-0.27	-8.71%	483.60	455.63
Electric Light & Power Const. - REA	7529	7.04	6.52	-0.52	-7.39%	1,098.24	1049.72
Electric Light & Power Companies	7531	4.14	3.77	-0.37	-8.94%	645.84	606.97
Elec. Lgt./Power Const./Invest. Own.	7533	4.03	3.74	-0.29	-7.20%	628.68	602.14
Electric Lght/Power Const. - Special	7534	13.44	11.79	-1.65	-12.28%	2,096.64	1898.19
Electronic Equip. - Install. & Repair	7535	2.11	2.03	-0.08	-3.79%	329.16	326.83
Telegraph & Telephone Operations	7600	2.94	2.88	-0.06	-2.04%	458.64	463.68
Phone and Cable Line Const.	7601	6.21	6.15	-0.06	-0.97%	968.76	990.11
Radio and Television	7602	0.63	0.58	-0.05	-7.94%	98.28	93.38

003276

Workers' Compensation Fraud : The Real Story

Prepared for the

Injured Workers Bar Association

Prepared by the

LABOR RESEARCH ASSOCIATION

June 1998

Workers' Compensation Fraud: The Real Story

Executive Summary

Escalating workers' compensation insurance premiums in the late 1980s and early 1990s set off a series of unsubstantiated charges about widespread claimant fraud as a major cost driver in the workers' compensation system. A number of states passed anti-fraud legislation and began to pursue fraud cases and to collect information about fraud on a serious basis. These efforts have uncovered no evidence to support the charges of widespread claimant fraud and, in fact, have revealed that employer fraud is a far larger drain on the system. The misplaced focus on claimant fraud has created an atmosphere of fear and intimidation for injured workers with legitimate claims. It has also distracted policymakers, law enforcement officials and the public from the real fraud problem in workers' compensation: employer fraud.

Unsubstantiated charges of rampant claimant fraud have created an atmosphere of fear and the "unwarranted and anecdotal vilification of the work force."

"While claims fraud is a significant problem . . . it pales in comparison with premium fraud."

A recent study by California state agencies calculated that nearly one out of every five employers either underreport payroll or have no workers' compensation insurance.

The use of managed care in workers' compensation has created more opportunities for provider fraud.

The real question is not why there is so much claimant fraud, but why there is so little. A system that leaves injured workers in poverty invites abuse.

Workers' Compensation Fraud: The Real Story

Dramatic increases in workers' compensation premiums throughout the late 1980s and early 1990s fueled unsubstantiated charges that costs were high in part because workers abused the system, fraudulently collecting benefits for faked injuries or remaining on benefits far longer than their recovery required. The American Insurance Association estimated fraud losses at 10% of the cost of claims paid, or about \$3 billion. The National Insurance Crime Bureau doubled the AIA's estimate to \$6 billion, even though it was involved in only 99 fraud prosecutions in 1994 and 134 in 1995 nationwide. The Coalition Against Insurance Fraud adopted the AIA's estimate. One insurance company president put the cost of workers' compensation fraud at \$30 billion a year. These huge numbers grabbed the attention of the public and policyholders. The presumption in the press and in the state houses was that fraud was rampant and that most workers' compensation fraud was claimant fraud.

Since that time, more than half of the states have passed legislation on workers' compensation fraud, with most of the laws directed primarily at claimants. Thirty-three states currently have active workers' compensation insurance fraud units, many of them geared to fighting claimant fraud.¹ In every state, some claimant fraud has been discovered; publicity about these cases has created a deterrent for workers who might contemplate fraudulent claims. But it has also created an atmosphere that Frederick Hill, California analyst for Firemark Research of New Jersey, describes as the "unwarranted and anecdotal vilification of the work force."²

In its extensive investigation of workers' compensation fraud, the *Santa Rosa Press Democrat* concluded that, "The perception that workers are cashing in by faking or exaggerating injuries has created a climate of mistrust in which every person who is injured and files a claim can become the subject of suspicion by insurance adjusters, doctors and industry lawyers."³ Perhaps most importantly, the fixation on claimant fraud has distracted policymakers, enforcement agencies, and the public from growing evidence of the real problem: millions of dollars in employer and provider fraud.

Workers' Compensation Fraud: The Real Story

Few experts believe that claimant fraud is a major cost driver in workers' compensation. But some estimates, including those adopted by California Governor Pete Wilson, suggest that fraud accounted for 25% of all employers' workers' compensation costs and 10% of the claims.⁴ In California, a wave of legislation in the late 1980s and early 1990s was fueled by allegations from employers that workers' compensation costs were too high and that fraud was rampant in the system. But between 1979 and 1991, insurance carriers in California reported only 532 cases of alleged fraud.⁵

According to the *Santa Rosa Press Democrat*, "Some insurance companies saw fraud as a way to explain why premiums were soaring, and politicians and the media jumped on the bandwagon."⁶ The *Press Democrat* found that, "While some insurance companies claim one out of three workers lie about their injuries, or 33%, the actual number of fraud cases sent to prosecutors is less than 1 out of 100, or less than 1%."

In its estimates of fraud within its own state, Kentucky reversed California's estimate of fraud accounting for 10% of claims and 25% of costs, saying that "as much as 25% of all workers' compensation claims involve some element of fraud, accounting for 10% of paid premium."⁷ Kentucky then calculated its own fraud losses as \$60 million a year. It noted, however, that "while the extent of the fraud cannot be quantified, there is no doubt that workers' compensation fraud is in the public eye. Reports of fraud ... are proliferated by the media."⁸

High workers' compensation costs led to more anti-fraud efforts. The Arkansas legislature created the Workers' Compensation Fraud Investigation Unit in 1993, in response to then-escalating workers' compensation costs.⁹ In its first year of operation, the new Fraud Unit opened 116 investigations, leading to 10 claimant fraud prosecutions and five employer fraud prosecutions, and quickly discovered that the employer cases accounted for a large portion of the dollar value involved.

New York's massive 1996 workers' compensation legislation, including its fraud provisions, resulted directly from employer claims that workers' compensation costs were out of control. New York State Controller H. Carl McCall announced flatly in October of 1997, "Fraud is a factor in New York's compensation costs." A statement from his office made the link between rising costs and the presumption of widespread fraud, stating that, "In response to the high cost of workers' compensation, reforms aimed at fraud detection and prosecution were enacted in 1996."¹⁰ But according to the New York State Insurance Department's annual report on insurance fraud, workers' compensation fraud represented only 3% of all the fraud reports in the state in 1996, the year that the legislation was passed.

Of the more than \$6 million in insurance fraud documented in the New York report, workers' compensation claimant cases accounted for less than 2%. The report cited cases of pharmacists, physicians, and medical clinics making a total of almost \$3 million in fraudulent claims. Three cases of premium embezzlement totaled over half a million dollars. The report cited only five cases of claimant fraud totaling \$107,300.¹¹ Like other states that are pursuing workers' compensation fraud, New York is quickly discovering that the real drain on the system stems from employer and provider fraud.

Common Forms of Employer Fraud

The best evidence from the states that have pursued fraud and generated detailed records indicates that for every \$1 lost in claimant fraud, at least \$4 to \$5 (and in some states as much as \$10) are lost through premium fraud. Premium fraud includes a number of schemes used by employers to reduce the workers' compensation insurance premiums by underreporting payroll, misclassifying employees' occupations and misrepresenting their claims experience. According to the National Council on Compensation, the most common frauds include:

- Underreporting payroll. Employers reduce their premiums by not reporting parts of the work force, paying workers off the book, or creation corporation to hide a portion of the employees

- **Declaring independent contractors.** Employers avoid premium payments for employees by classifying them as independent contractors even though they are legally employees.
- **Misclassifying workers.** Employers intentionally misrepresent the work employees do to put them in less hazardous occupational categories and reduce their premiums.
- **Misrepresenting claims experience.** Employers hide previous claims by classifying employees as independent contractors or leased employees or creating a new company on paper.
- **Employers deliberately underestimate employment projections at the beginning of the premium year and essentially receive an interest-free loan from the insurance company for the amount that would have been required to insure new employees.¹¹**

In addition to premium fraud, employers often fail to purchase workers' compensation insurance, despite state laws mandating that they do so. There are also reports of employers instructing injured workers to seek treatment under group health insurance rather than workers' compensation, employers discouraging workers from filing workers' compensation claims and firing workers who file claims.

Recognizing the Real Fraud

While some states and the media continue to focus on claimant fraud, states that have pursued workers' compensation fraud in a serious way are now concluding that the emphasis on claimant fraud is misplaced, and employer fraud is by far the greater problem. According to Jerry D. Stewart, the bureau chief of workers' compensation/law enforcement operations at the Division of Insurance Fraud in Florida, "Historically, there has been a common presumption that those committing the most costly type of workers' compensation fraud have been claimants whose actions, such as double-dipping or claims for false injuries, drove up the cost of workers' compensation

insurance. While claims fraud is a significant problem in Florida ... it pales in comparison with the occult type of fraud known as 'premium fraud,' where loss estimates range around \$400 million ... " Stewart notes that, "Premium fraud scams are costly to companies in Florida, causing workers compensation insurance rates to escalate and legitimate companies to lose business because they are less able to compete with companies shirking the system."¹³

In Florida, the construction industry, the state Workers' Compensation Oversight Board, and the House of Representatives Committee on Financial Services all lobbied for increased enforcement of premium fraud and stiffer penalties for employers. Since 1996, Florida has turned its attention to premium fraud, with dramatic results. Florida now has a special strike force mobilized solely to fight premium fraud. The state prosecutor has also impaneled a statewide grand jury to hear complex insurance fraud schemes such as premium fraud. During the last months of 1997, 11 persons were charged with racketeering and schemes to defraud, which involved \$7.5 million in workers' compensation premium fraud losses.¹⁴

In one case, a Palm Beach leasing firm misclassified employees and underreported their payroll, thus avoiding payment of more than \$800,000 in workers' compensation insurance premiums. Another case involved underreporting of payroll at a large fruit harvesting company, with fraud charges totaling \$3.5 million. Yet another employer in central Florida was charged with defrauding insurers of \$2 million while operating one of the state's largest temporary employment agencies. The employer disguised the high-risk nature of the work done by many of the employees, concealed its claims history, prevented insurance companies from conducting audits and lied on applications for workers' compensation insurance.¹⁵ In January of 1998, two Florida insurance executives and their attorney were charged with multiple criminal counts in connection with the \$100 million collapse of two insurance companies caused by kickbacks to reduce workers' compensation premiums.¹⁶

Under a state law that took effect in 1994, Wisconsin's Division of Workers' Compensation now collects information and issues annual reports

on fraud. In 1994, the division referred to the district attorney five cases of claimant fraud, involving \$44,674, out of 73,678 work-related injuries reported for the year.¹⁷ In its 1997 study, the division concluded that, "There is no evidence that criminally prosecutable fraud is more than one percent of all reported claims in Wisconsin - a far cry from the 20-30% estimates thrown about elsewhere."¹⁸ In 1996, there were 152 allegations of workers' compensation claimant fraud made to the division in Wisconsin. Eleven of those were referred to the district attorney, and seven were pursued, with fraud losses valued at total of \$175,389. The division found that fraud is involved in six-tenths of one percent of all reportable claims in Wisconsin.¹⁹

A Texas study of workers' compensation fraud conducted by the state's Research and Oversight Council on Workers' Compensation found that, "In 1996, health care provider fraud was the most expensive type of fraud detected in the Texas workers' compensation system in terms of total dollars lost (\$1,200,952), accounting for over eight times the dollar amount of injured worker benefit fraud (\$134,351)."²⁰ In 1996, only 18 injured worker benefit fraud cases were referred to district attorneys, with an average fraud of \$7,464 per case, compared with 46 health care providers, with an average fraud of \$26,108 per case.

The Texas report found, however, that insurance carriers spent more money investigating injured worker benefit fraud than any other type of workers' compensation fraud. In 1996, Texas insurance carriers spent an average of \$1,257 per claimant fraud investigation, compared with \$991 per employer premium fraud investigation and \$823 per health care provider fraud investigation. In 1996, the nineteen insurers studied spent over \$5.5 million investigating workers' compensation fraud in Texas, yet recovered a total of \$1,520,179. Of the 4,077 cases of claimant fraud that the carriers investigated, only 18 were referred for criminal prosecution. The report concluded: "It is clear that more resources should be spent fighting the most expensive and overlooked types of workers compensation fraud: employer premium and health care provider fraud."²¹

A 1995 law that requires the reporting and investigation of premium fraud has helped to shift the focus in California. "In terms of dollar costs, there's no question that employer fraud today costs more dollars to carriers and to the industry than employee fraud," according to Richard Schultz, a spokesman for the State Compensation Insurance Fund, California's largest compensation insurer.¹¹ A recent study by the California Department of Industrial Relations and the Employment Development Department (EDD) calculated that 19% of employers – nearly one out of every five – either underreport payroll to EDD or have no workers' compensation insurance. The California Department of Insurance concludes that, "Losses on premium fraud can and usually do exceed the amount of loss in claimant fraud, and, in some instances, medical mill fraud. For example, in several cases where criminal charges have already been filed, losses due to premium fraud for each case are estimated to be in excess of \$5 million."¹²

New York's new anti-fraud efforts have dramatically increased arrests for workers' compensation fraud. In 1997, the New York Insurance Department investigated 408 cases of alleged workers' compensation fraud and made 37 arrests, with \$900,000 saved by insurance companies and more than \$1.2 million in court-ordered restitution.¹³ Although New York continues to focus on claimant fraud, its investigations have uncovered premium fraud cases of far greater significance than any of the claimant cases. In one recent case, the comptroller of a trucking company pleaded guilty to mail fraud after he falsified the company's payroll records to defraud the State Insurance Fund of more than \$1.2 million in workers' compensation insurance premiums.¹⁴

Massachusetts's largest workers' compensation fraud case for 1997 involved an employer who fraudulently reduced the premiums for his rubbish collection workers by classifying them as clerical workers, hiding payroll and using shell corporations to evade surcharges based on the business's unfavorable prior accident history. The employer concealed more than \$1 million in payroll from insurance auditors.¹⁵

Employers also abuse the system when they fail to provide workers' compensation insurance for their employees or take out a policy but then fail to

pay the premiums. California is beginning to investigate employers who fail to provide workers' compensation insurance. In March of 1998, California launched a three-part pilot project to match computer databases from various state agencies to identify employers who are illegally uninsured for workers' compensation. According to John C. Duncan, Director of the California Department of Industrial Relations, the project is designed to "level the playing field for law-abiding insured employers and reduce the taxpayer burden created by those who are not."¹¹

California's Commission on Health and Safety and Workers' Compensation 1997 report concludes that, "Especially in industries with high premium rates, the illegally uninsured employer is able to underbid the insured employer. Insured employers are again disadvantaged when taxes are raised to cover costs shifted to government services to assist the injured workers of employers who are illegally uninsured."¹²

Several other states, including Wisconsin and Colorado, are also using proactive programs to identify uninsured employers using computerized lists of employers and workers' compensation policies.¹³ In New York, a 1997 audit by the state comptroller's office revealed that employers owe more than \$500 million in overdue unpaid workers' compensation insurance premiums to the State Insurance Fund.¹⁴ Failure to secure workers' compensation insurance is only a misdemeanor offense in New York. In West Virginia, the state has been forced to initiate a series of lawsuits to force payment of more than \$100 million in unpaid workers' compensation premiums.

Medical Provider Fraud

Workers' compensation fraud also occurs among medical providers. These forms of fraud evolve as the nature of medical care changes over time. Outright fraud occurs when providers bill for treatments that never occurred or were blatantly unnecessary. Some of the newer forms of medical provider fraud include kickbacks from specialists and other treatment providers to referring physicians, and provider upcoding, where provider charges exceed the scheduled amount. Providers also shift from the less expensive, all-inclu-

sive patient report to supplemental reports, which add evaluations and incur separate charges."

Medical provider schemes include:

- **creative billing** - billing for services not performed
- **self-referrals** - medical providers who inappropriately refer a patient to a clinic or laboratory in which the provider has an interest
- **upcoding** - billing for a more expensive treatment than the one performed
- **unbundling** - performing a single service but billing it as a series of separate procedures
- **product switching** - a pharmacy or other provider bills for one type of product but dispenses a cheaper version, such as a generic drug

Newer forms of fraud and abuse occurring under managed care arrangements include:

- **underutilization** - doctors receiving a fixed fee per patient may not provide a sufficient level of treatment
- **overutilization** - unnecessary treatments or tests given to justify higher patient fees in a new contract year
- **kickbacks** - incentives for patient referrals
- **internal fraud** - providers collude with the medical plan or insurance company to defraud the employer through a number of schemes

According to the National Council on Compensation, "The increased use of managed care for workers' compensation, as well as for other insurance lines, is bringing new twists to old schemes." "Managed care creates more opportunities for fraud because of the financial relationships and incentives between players.

Although the campaign against California medical mills wiped out a substantial part of medical provider abuse in that state, new cases continue to emerge. In October of 1997, for example, a pharmacist plead guilty to 21 counts of fraudulent workers' compensation insurance billing. The pharmacist increased his revenues by up to 500% per prescription on more than \$600,000 of drugs sold over a four year period."

Injury Added to Injury

Because of the assumption of widespread claimant fraud, injured workers who file a workers' compensation claim may be subjected to insulting questions and treated as malingerers and cheats. Under the auspices of "fraud prevention," they may face endless questioning and unnecessary medical examinations. They may be subjected to constant video surveillance by private investors hired to follow their every move. Their employer may refuse to provide light duty work, or take retaliatory actions against them when they return to work. If they look for another job, their application may be screened for prior workers' compensation claims.

Although some of these tactics are used in legitimate attempts to investigate questionable claims, they have also become part of a broad employer attempt to intimidate workers from filing workers' compensation claims. Under the pretext of controlling what has been falsely presented as rampant claimant fraud, injured workers are discouraged from exercising their legitimate rights to workers' compensation benefits. As a recent Michigan study demonstrated, the real problem in workers' compensation is not that too many workers claim benefits, but that too few do so. The study, sponsored by the National Institute for Safety and Health, found that only one in four workers with occupational diseases file for workers' compensation. Unsubstantiated charges of rampant claimant fraud undermine public confidence in the system and discourage legitimately injured workers from seeking the benefits they need and deserve.

In California, a detailed investigation by state auditors found that "workers' compensation insurers violated workers' rights in about half the claims it

audited." The violations included "unacceptably high amounts" of unpaid benefits, late payments, inaccurate benefit notices and failure to notify injured workers of their rights. In describing the experience of many workers' compensation claimants, *The Santa Rosa Press Democrat* found that many injured workers slam into a wall of suspicion and distrust that will paralyze them with shame and frustration and delay their recovery."⁴ One of the injured workers interviewed by the newspaper commented: "You get the feeling that even though you have a legitimate complaint and a six-inch scar, you're somehow a malingerer."

The grossly overstated estimates of claimant fraud have not only subjected injured workers with legitimate claims to fear and intimidation, but have also obscured a more serious look at the workers' compensation system and the benefits it provides. The real question is not why there is so much claimant fraud, but why there is so little. In most states, workers' compensation benefits provide little more than poverty-level existence. Workers often wait weeks and months for payments.

Many employers refuse to provide light duty or alternative jobs for workers who might be able to go back to work in a modified capacity while they continue to recover, so workers are forced to continue on inadequate benefit payments even though they may be able to work in some capacity. Some injured workers lose their jobs or are only offered positions at much lower pay. It is little wonder that so many claimant fraud cases involve workers illegally continuing to accept benefits when they are in fact working at another establishment. Too many times, inadequate benefits put people in desperate straits, and they take desperate measures as a result. A system that leaves people in poverty invites abuse.

The presumption of widespread malingering and dishonesty undercuts any meaningful discussion of the adequacy of benefits and provides a convenient response for those opposed to the benefit increases that are so critically needed in many states. Until the misplaced focus on claimant fraud is overcome, district attorneys will continue to fry the small fish while the big fish go free, and the voting public will remain distracted by anecdotes.

1 National Council on Compensation, 1998 Issues Report, p. 94

2 Santa Rosa Press Democrat, 12/7/98, p. A5

3 *Ibid*

4 Gary Schwartz, "Waste, Fraud and Abuse in Workers' Compensation: The Recent California Experience," Maryland Law Review, Vol. 52, p. 987.

5 Damon Darlin, "The System Was Spinning Out of Control," Forbes, Vol. 155, No. 6, 3/13/95, pp. 128-32.

6 Santa Rosa Press Democrat, 12/7/97, p. A8.

7 Kentucky Labor Cabinet, Department of Worker Claims, "Workers Compensation Anti-Fraud Effort In Kentucky," 9/17/97.

8 *Ibid*.

9 Bud Roberts, "Avoiding Workers' Compensation Fraud and Fraud Charges," The Law Journal, 1996.

10 "McCall Surveys Workers' Compensation Anti-Fraud Program," New York Office of the State Comptroller, press release, October 10, 1997.

11 New York State Insurance Department, Insurance Frauds Bureau 1996 Report, January, 1997.

12 National Council on Compensation Insurance, 1997 Issues Report, p. 27.

13 National Council on Compensation, 1998 Issues Report, pp. 98-99.

14 National Council on Compensation, 1998 Issues Report, p. 100.

15 Florida Department of Insurance, "Six More Nabbed in Statewide Fraud Probe," PRNewswire, press release, 12/10/97.

16 Bureau of National Affairs, Workers' Compensation Report, Vol. 9, No. 3, 2/2/98, p. 66.

17 Governor's statement, June 26, 1995.

18 Wisconsin Division of Workers' Compensation, "Report on Alleged Workers' Compensation Fraud," October 1, 1997.

19 Wisconsin Division of Workers' Compensation, "Workers' Compensation Fraud 'Is Low,'"

press release, 11/28/97.

20 Research and Oversight Council on Workers' Compensation, "Fraud in the Texas Workers' Compensation System," Texas Monitor, Vol. 2, No. 4, Winter 1997, p. 2.

21 Santa Rosa Press Democrat, 12/7/97, p. A8.

22 Ibid.

23 California Department of Insurance, Fighting Workers' Compensation Fraud: A Training Series for the Industry, 1997, Chapter 8, p. 1.

24 New York State Insurance Department, "Insurance Fraud Arrests Up 140% During Pataki Administration," press release, 2/2/98.

25 New York State Insurance Department, "Insurance Department Fraud Investigations Net 12 Arrests," press release, 1/8/98.

26 "Andover Man Charged in Insurance Fraud Scheme," Business Wire, 12/8/97.

27 "DIR Launches 'Operation Insure,'" California Department of Industrial Relations, press release, 3/10/98.

28 State of California Department of Industrial Relations, The California Commission on Health and Safety and Workers' Compensation 1996-97 Annual Report, September 1997, p. 73

29 Ibid.

30 New York Office of the State Comptroller, "McCall Audit Finds State Insurance Fund Needs to Strengthen Premium Collection Practices," press release, 8/27/97.

31 National Council on Compensation Insurance, Inc., 1998 Issues Report, p. 91.

32 National Council on Compensation Insurance, Inc., 1997 Issues Report, p. 25.

33 California State Insurance Fund, "State Fund Aids in Investigation That Leads to Prison Term for Sherman Oaks Pharmacist," press release, 10/31/98.

34 Santa Rosa Press Democrat, 12/7/97, p. 8

House Bill No. 1368

**Fifty-Seventh Legislative Assembly
Before the House Government and Veterans Affairs Committee
February 2, 2001
Testimony Regarding the Confidentiality of Employer Records**

Good Morning Chairman Klein, members of the House Government and Veterans Affairs Committee:

My name is Dick Johnsen, and I am a member of the North Dakota Workers Compensation (NDWC) Board of Directors. I am here today to testify in opposition to House Bill No. 1368.

The Board unanimously voted to oppose this bill for several reasons:

One of the key concerns is how this bill could potentially give some contractors an unfair advantage when bidding for a job. House Bill No. 1368 would allow the general public to access an employer's private employment records including the number of employees in each rate classification and the expiration date of an employer's premium. Allowing access to this information together with access to the employer's rate classification, could let competitors figure out the wages other employers are paying and be able to under-bid by paying their own employees a lesser wage.

This session several bills have been introduced to restrict the amount of information that can be released to the public. NDWC has one bill that would restrict certain information from being released from an injured worker's claim file. Why would we want to do the opposite by allowing another set of non-public records to be opened to the public?

Those in support of this bill argue that it could help reduce the number of employers who are misclassifying their employees, which can be considered fraudulent activity. However, the way the system is set up right now, the NDWC Special Investigations Unit already investigates allegations based on anonymous tips. Employers who have concerns about their competitors misclassifying can call or write and the matter will be looked into.

The NDWC Board of Directors respectfully asks for your unfavorable consideration of House Bill No. 1368.

Fifty-seventh
Legislative Assembly
of North Dakota

House Bill No. 1368

Before the House Government and Veterans' Affairs Committee
North Dakota Workers Compensation Testimony
February 2, 2001

Mr. Chairman, Members of the Committee:

My name is Julie Leer. I am General Counsel for North Dakota Workers Compensation (NDWC) and I am here to testify in opposition to 2001 House Bill No. 1368. Similar versions of this bill were introduced in 1997 and 1999 without success. The Workers Compensation Board of Directors opposes this bill.

North Dakota Century Code § 65-04-15 protects the confidentiality of employer records by mandating that NDWC "not disclose any information that would reveal the amount of payroll upon which that employer's premium is being paid or the amount of premium the employer is paying." NDWC may disclose, however, an employer's rate classification. This bill would require NDWC to allow public access to the number of employees in an employer's rate classification and the expiration date of the premium paid by an employer. While the bill would not allow NDWC to disclose the actual amount of payroll upon which an employer pays premium, it would require NDWC to provide other information that could be used to undermine an employer in a bidding war or in contract negotiations.

There are many bills introduced this session which seek to limit access to "sensitive" information. In fact, NDWC has introduced House Bill No. 1153 to limit the access to and use of injured workers' claim files. The current limits on access to employers' workers' compensation files found in § 65-04-15 are providing adequate safeguards to sensitive employer information. NDWC should not be put into the position of having to

disclose information an employer is required to provide to obtain workers' compensation coverage for its employees.

One of the arguments offered in favor of passing this bill is that this would allow "others" to help "police" the activities of employers who are suspected of not properly reporting employees. Under § 65-04-15, a person may learn what classifications an employer is reporting. If that person does not believe the classifications are proper in light of the work being done by that employer, that person can report those suspicions to NDWC. NDWC will investigate the alleged discrepancies concerning the reported rate classifications. If the reported discrepancies are verified, NDWC will determine whether the evidence indicates the employer has committed an inadvertent oversight or a criminal fraud violation. Either way, NDWC will investigate the allegations while keeping the employer's business information confidential. While supporters of this bill offer well-intentioned reasons for its passage, NDWC believes that those concerns can be addressed without loosening the confidentiality of employer files and requiring the disclosure of sensitive business information.

NDWC requests that this bill be given a "Do Not Pass" recommendation. If there are any questions, I'll attempt to answer them at this time. Thank you.

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

BILL DESCRIPTION: Confidentiality of Employer Reports

BILL NO: HB 1368

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 the information in employer reports that would be open to the public to include the number of employees in each rate classification as well as the policy expiration date

FISCAL IMPACT: Anticipate no impact to rate and reserve levels.

DATE: January 22, 2001