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*Deanna Hall*

10/22/03

Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2397

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2397

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-11-03

Tape Number	Side A	Side B	Meter #
1	XXXX		1300-2045
Committee Clerk Signature <i>Lisa M. Berkson</i>			

Minutes: Chairman Mutch opened the hearing on SB 2397. All Senators were present.

SB 2397 relates to false claims or statements made to workers' compensation.

**Testimony in support of SB 2397**

Senator O'Connell introduced the bill. He had no literature on the bill because the constituent who asked for this piece of legislature was not able to attend the hearing due to bad weather.

There was no supporting testimony on SB 2397, however, Glen Baltrusch later turned in written testimony after the hearing was closed and action was taken. See attached.

**Testimony in opposition**

David Thiele, ND Workers' Compensation, spoke in opposition to the bill. The board is unanimously opposed to this bill.

John Olson, ND State's Attorney's office, stated that this bill would raise the standard on criminal code for prosecution, therefore they are opposed.

The hearing was closed.

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Date

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2397

Hearing Date 02-11-03

Senator Espegard moved a DO NOT PASS. Senator Klein seconded.

Roll Call Vote: 7 yes. 0 no. 0 absent.

Carrier: Senator Espegard

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**FISCAL NOTE**  
Requested by Legislative Council  
01/30/2003

Bill/Resolution No.: SB 2397

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

**NORTH DAKOTA WORKERS COMPENSATION  
2003 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL DESCRIPTION:** False Claims or Statements

**BILL NO:** SB 2397

**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 would place additional limits on NDWC's ability to terminate benefits and to recoup past benefit payments in situations involving false or misleading claim statements.

**FISCAL IMPACT:** We do not have access to an appropriate base of historical experience to use in quantifying the anticipated impact of the proposed legislation on rate and reserve levels. However, based on our discussions with NDWC staff, we believe that costs will increase.

NDWC estimates that its fraud unit has generated net savings in the neighborhood of \$20 million since 1994. The changes proposed under SB 2397 could hamper the fraud unit's ability to achieve similar savings in the future for several reasons:

- 1) Loss costs may increase if NDWC is constrained in its ability to terminate indemnity and/or medical benefits when fraud is involved.
- 2) Loss costs may increase further if the degree to which the current statutes deter fraud is diminished.
- 3) Legal costs may increase if the new standards adopted under SB 2397 generate an increase in litigation.

**DATE:** February 5, 2003

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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.

see Narrative

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.

see Narrative

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

Name:	John Halvorson	Agency:	NDWC
Phone Number:	328-3760	Date Prepared:	02/05/2003

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Deanna Halvorson  
Operator's Signature

02/05/03  
Date

Date: 2-11-03  
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2397

Senate \_\_\_\_\_ Committee \_\_\_\_\_

☐ Check here for Conference Committee

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

Action Taken DO NOT Pass

Motion Made By Espegard Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Espegard

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

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10/22/03  
Date

**REPORT OF STANDING COMMITTEE (410)**  
February 11, 2003 11:54 a.m.

Module No: SR-26-2255  
Carrier: Espegard  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
SB 2397: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends  
**DO NOT PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2397 was  
placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-26-2255

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2003 TESTIMONY

BB 2397

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10/22/03  
Date

**SENATE BILL NO.2397**  
**TESTIMONY BEFORE SENATE**  
**INDUSTRY, BUSSINESS, & LABOR COMMITTEE**

**February 11, 2003**

**By Glen E. Baltrusch**

Mr. Chairman, Members of the Committee:

First, I wish to thank Senator O'Connell for sponsoring *Senate Bill No.2397*.

My name is Glen Baltrusch. I am a North Dakota citizen by birth and a voter by duty. I am disabled because of a tractor-trailer accidental injury.

Mr. Chairman, Members of the Committee, I respectfully request that you cast a "*DO PASS*" vote on *Senate Bill No. 2397*.

The reason this bill is before the committee today is to stop unwarranted denial of benefits to injured employee's that are entitled to benefits by authority and statute. As section *65-05-33* of the *North Dakota Century Code* currently implies, this section as written and applied, wrongfully injures individuals who make a mistake but do not commit fraud. It causes innocent people who are too trusting, don't want any trouble, or are financially and/ or physically unable to defend themselves, to permanently forfeit and wrongfully lose benefits, forever. *Section 65-05-33* as written sets a very low standard by which benefits can be denied. *Senate Bill No. 2397* raises the bar and will prevent denial of legitimate and worthy claims.

*Senate Bill No. 2397* amends *sub-section 3* of *section 65-05-08* and *section 65-05-33* of the *North Dakota Century Code*; which further defines "*false claim*" or "*false statement*" and adds new language to *sub-section 3* of *section 65-05-33* relating to benefits and requires the bureau to prove its accusations "*by clear and convincing evidence*". The amendment of *sub-section 3* of

section 65-05-08 helps clarify "false claim" and "false statement", as related to 65-05-33.

*Filing false claim or false statement - Penalty.*

Words in *Title 65 of the North Dakota Century Code* are to be used in their normal sense unless specifically defined. As used in sections 65-05-08 and 65-05-33, the word willfully is not specifically defined and as such is understood in its normal context as an adverb.

As defined in *The Reader's Digest Oxford Complete Wordfinder, American edition copyright 1996 Oxford University Press, Inc.*, the derivative of the word

"willfully" is *deliberately*; and

"intentionally" is *intentionally deliberately, on purpose, purposely, willfully,*

*consciously, wittingly, calculatedly, calculatingly, knowingly, pointedly, of one's (own)*

*free will, on one's own, with one's eyes (wide) open.*

By inserting the word "intentionally" into the law it is more defined and much less "allowing" or "admitting of facts not susceptible of proof".

The new language added in sub-section 3 of 65-05-33 complies with the word "intentionally" as it pertains to the filing of a "false claim" or "false statement" and is actually self-explanatory.

This amended section provides for benefits as provided by authority and statute unless that person commits fraud. If a person truly makes a mistake in any part of their claim or statement that person cannot be denied entitled benefits but does require that portion which was erroneously received to be forfeited or reimbursed.

To ensure that this section is in compliance, "the bureau shall prove a violation of this sub-section by clear and convincing evidence".

Mr. Chairman, Members of the Committee, I respectfully request that you cast a "DO PASS" vote on *Senate Bill No. 2397*. Thank you for your time and consideration of this pertinent matter.

**2003 Senate Bill No. 2397**  
**Fifty-eighth Legislative Assembly**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by: David Thiele**  
**Vice President of Claims Operations**  
**North Dakota Workers Compensation**  
**February 11, 2003**

Mr. Chairman, and Members of the Committee:

My name is David Thiele and I am Vice President of Claims Operations for North Dakota Workers' Compensation (NDWC). On behalf of the Workers' Compensation Board of Directors, I am here today to testify in opposition to Senate Bill No. 2397. The Board is unanimously opposed to this bill.

NDWC's Special Investigations Unit was created by the 1995 Legislative Assembly. We believe our current program is extremely effective in not only detecting and investigating allegations of fraud, but more importantly, in deterring the commission of workers' compensation fraud through clear and effective penalties. This bill would significantly impact civil forfeitures relating to workers' compensation employee fraud, dramatically altering the deterrent effect of current fraud law.

Before I address the main problems with this bill, I would like to provide a brief overview of workers' compensation fraud law. Current law requires a claimant who commits workers' compensation fraud to forfeit all further benefits on that claim. In addition, a claimant may also be required to reimburse NDWC for benefits paid based on the false claim or statement. However, a claimant may subsequently file a new claim for a separate, unrelated injury without penalty. This is similar to most benefit programs in the United States where false statements made to obtain benefits typically end all further benefits.

In order to trigger the statutory consequences of reimbursement or forfeiture of benefits, the burden is on NDWC to prove the following elements:

1. a false statement or claim has been made,
2. the statement or claim is willful,
3. the false statement or claim is made in connection with the obtainment of workers' compensation benefits, and
4. the false claim or statement is material. If NDWC seeks reimbursement for past benefits paid, materiality requires NDWC to prove the false claim or false statement caused the benefits to be paid in error. A false claim or false statement is sufficiently material for forfeiture of future benefits if it could have misled NDWC or its medical experts in making a determination on the claim.

There are several major problems with this bill. First, it limits the amount forfeited or required to be reimbursed to NDWC to the difference between the amount erroneously awarded and the amount the claimant would have been eligible for "had the claim or statement been accurate". Basically, what this would create is a system where an individual can lie to obtain benefits with little consequence. The net effect of this provision would be to water down civil penalties for fraud to such a degree the deterrent effect of our current legislation would end. The only civil consequence to the commission of fraud will be repayment of disability benefits paid erroneously.

For example, if a claimant was receiving disability (wage replacement) benefits, worked a 40-hour week, and lied to NDWC, reporting she performed no work activity at all, the consequence, if caught, would be to repay the difference in what she made and what she would have received had she told NDWC of the activity. Of course, this completely ignores the fact that she has demonstrated by her conduct she is capable of working and earning an income.

We understand the current law requiring forfeiture of all further benefits can, in some cases, appear harsh. North Dakota Workers' Compensation Board of Directors has previously appointed a customer service subcommittee to address constituent

concerns. This subcommittee was comprised of legislators, board members, employee representatives and a member of the Governor's staff. One issue raised before the subcommittee was the consequences of fraud, and whether lesser measures or penalties could be structured. After considerable review, the subcommittee concluded forfeiture of all further benefits as a consequence for the commission of fraud was the most appropriate option.

Another major problem with this bill is that it would serve to effectively eliminate forfeiture of medical benefits as a consequence of fraud. The only situation where forfeiture of medical benefits would be allowed is if the individual lied about his physical condition or ability with the intent to obtain medical benefits. In the vast majority of physical misrepresentation cases, the conduct is done with the intent to obtain disability (wage replacement) benefits.

Finally, this bill proposes to heighten the standard of proof in workers' compensation fraud cases from "a preponderance of the evidence" (more likely than not) to "clear and convincing evidence". The North Dakota Supreme Court recently determined the appropriate standard of proof in workers' compensation fraud cases is the preponderance of the evidence standard. Sjostrand v. North Dakota Workers Compensation Bureau, 202 ND 125, ¶ 30.

For the reasons stated above, we urge you to leave the workers' compensation fraud detection and deterrent program in its current state, and respectfully requests a "do not pass" on 2003 Senate Bill 2397. Thank you for your consideration.