

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M \



ROLL NUMBER

DESCRIPTION

1495

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1495

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1495

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-1-05

Tape Number	Side A	Side B	Meter #
3	x		1.5-30.7
3	x		41.9-end
Committee Clerk Signature <i>Joey Benke</i>			

Minutes:

Chairman Keiser: Opened the hearing on HB 1495.

Representative Amerman: Appeared in support of bill and also was a sponsor.

HB 1495 would change the shall to may and that would give WSI the opportunity not to be forced to collect the benefits and reimbursements, the bill would match the burden of proof with the consequences, it addresses some of the concerns that were in the Octagon Report.

Dave Kemnitz, President, AFL-CIO: Appeared in support of bill. HB 1495 addresses a problem that all of the claimants I've listen to if they are accused of something the bureau can stop the benefits, in order for the claimant must go to court and have clear and convincing evidence, where the bureau is denying or stopping or reducing the benefits, your at a disadvantage in any court. Does the punishment meet the crime, that is what part of HB1495 addresses, is the

punishment. Clear and convincing should show that.

Chris Runge, Executive Director, Atty, Public Employees Association:

Appeared in support of bill.

Sebald Vetter, CARE: Appeared in support of bill.

Ed Christensen, CARE: Appeared in support of bill

Tim Wahlin, Staff Counsel, WSI: Appeared in opposition of HB 1495 and
provided a written statement (SEE ATTACHED TESTIMONY).

Representative Thorpe: I MOVE the Amerman amendments.

Representative Amerman: SECOND the motion to amend HB 1495.

Motion carried.

Representative Ruby: I MOVE a DO NOT PASS AS AMENDED.

Representative Nottestad: SECOND the DO NOT PASS as AMENDED on
HB 1495

Motion carried. **VOTE: 10-YES 2-NO 2-Absent (BOE & EKSTROM)**

Meeting adjourned.

FISCAL NOTE
Requested by Legislative Council
01/24/2005

Bill/Resolution No.: HB 1495

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

WORKFORCE SAFETY & INSURANCE
2005 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Civil Remedies relating to False Statement or Claim

BILL NO: HB 1495

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, 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 increases the standard in which WSI can pursue civil remedies in the case of a false claim or statement.

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, to the extent the legislation hampers WSI's ability to terminate benefits and recoup payments when fraud is involved as well as diminish the degree to which the current statutes deter fraud, losses will increase and future premium levels will be adjusted accordingly.

DATE: January 27, 2005

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:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	01/28/2005

50629.0201
Title.0300

Adopted by the Industry, Business and Labor
Committee

February 1, 2005

VR
2/4/05

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1495

Page 2, line 4, overstrike "shall" and insert immediately thereafter "to"

Renumber accordingly

Date: 2-1-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1495

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amerman Amendments

Motion Made By Rep. Thorpe Seconded By Rep. Amerman

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman			Rep. B. Amerman		
N. Johnson-Vice Chairman			Rep. T. Boe		
Rep. D. Clark			Rep. M. Ekstrom		
Rep. D. Dietrich			Rep. E. Thorpe		
Rep. M. Dosch					
Rep. G. Froseth					
Rep. J. Kasper					
Rep. D. Nottestad					
Rep. D. Ruby					
Rep. D. Vigasaa					

Total (Yes) 12 No 0

Absent (2)

Floor Assignment Rep. Clark

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

Date: 2-1-05
Roll Call Vote #: 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1495

House INDUSTRY, BUSINESS AND LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 50629.0201 . 0300

Action Taken Do Not Pass As Amended

Motion Made By Rep. Ruby Seconded By Rep. Nottestad

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman		X
N. Johnson-Vice Chairman	X		Rep. T. Boe		A
Rep. D. Clark	X		Rep. M. Ekstrom		A
Rep. D. Dietrich	X		Rep. E. Thorpe		X
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) 10 No 2

Absent (2) Rep. Boe & Rep. EKstrom

Floor Assignment Rep. Clark

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

REPORT OF STANDING COMMITTEE

HB 1495: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO NOT PASS (10 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING). HB 1495 was
placed on the Sixth order on the calendar.

Page 2, line 4, overstrike "shall" and insert immediately thereafter "to"

Renumber accordingly

2005 TESTIMONY

HB 1495

2005 House Bill No. 1495
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Staff Counsel
Workforce Safety and Insurance
February 1, 2005

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin and I am staff counsel at Workforce Safety and Insurance (WSI). I am here to testify in opposition to HB 1495 which would amend sections of the North Dakota Century Code relating to WSI civil remedies in the case of a false statement or claim. The WSI Board of Directors opposes this bill.

The 54th Legislative Assembly directed WSI to establish a Special Investigations Unit (SIU). One of the unit's primary responsibilities is to investigate credible allegations of provider, employer, and injured worker fraud in an effort to deter this type of conduct. Although the SIU was created to address provider, employer, and injured worker fraud, this bill applies only to injured worker fraud. Consequently, today's testimony will only focus on injured workers and not employers or providers.

I would like to begin by noting that the significant majority of North Dakotans are honest people who deserve to be protected by WSI from the few who wish to prey upon the system and their dignity.

Currently, a worker who commits workers' compensation fraud forfeits all future benefits on that particular claim; however, the worker is not precluded from filing a new claim for a subsequent injury. In addition to forfeiting future benefits, the worker may also be required to reimburse WSI for those benefits paid in error due to the false statement or claim.

In order to trigger these statutory consequences, the burden is on WSI to prove the following elements:

1. A false statement or claim has been made;
2. The statement or claim is willful;
3. The statement or claim was made in order to obtain benefits; and
4. The statement or claim was material or meaningful.

HB 1495 seeks to change WSI's burden for proving fraud from a "preponderance of the evidence" standard --meaning more likely than not-- to a "clear and convincing evidence" standard. This change will only serve to erode the deterrent effects of the false statement/false claim statute. The North Dakota Supreme Court recently determined the appropriate standard of proof in workers' compensation fraud cases is a preponderance of the evidence standard. Sjostrand v. North Dakota Workers Compensation, 2002 ND 125, ¶ 30.

While WSI understands requiring the forfeiture of future benefits and the potential repayment of benefits paid in error can appear harsh, we believe this effect is tempered by the Supreme Court's interpretation and application of the law regarding false statements and false claims. North Dakota's Supreme Court has continually refined its interpretation(s) regarding "materiality."

WSI is concerned with the effects the bill will have on North Dakota's workers' compensation system where deterrence is the only practical enforcement mechanism. Like any benefit program, WSI depends on the honesty of its recipients for the proper payment of benefits and can not afford for this deterrence to be compromised.

For the stated reasons, WSI asks that the legislature leave the current deterrent structure as it is by recommending a "do not pass" on 2005 HB 1495. Thank you for your consideration. If you have any questions, I'd be happy to answer them.