

1999 SENATE INDUSTRY, BUSINESS AND LABOR
SB 2272

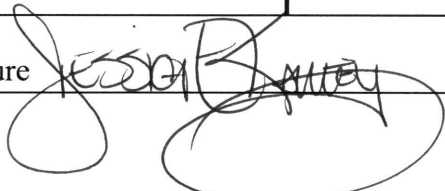
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2272

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 27, 1999

Tape Number	Side A	Side B	Meter #
2		x	2900-end
3	x		0-300
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on SB2272. All senators were present.

Reagan Puffal testified in support of SB2272. His testimony is included.

Jeff Cooper, The Greater North Dakota Association testified in support of SB2272.

Jim Fettig, branch manager at Kelly Services, testified in support of SB2272. His testimony is included.

Tom Smith testified in support of SB2272. His testimony is included.

David Martin testified in support of SB2272. His testimony is included.

Steve Lathum testified in opposition to SB2272. He felt that this bill provides no incentive for an employer to provide a safe workplace.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2272

Hearing Date January 27, 1999

Senator Mutch concluded the hearing on SB2272.

Senator Sand motioned for a do pass recommendation on SB2272 from the committee. Senator

Klein seconded his motion. The motion for a do pass on SB2272 was successful with a 5-1-1

vote.

Senator Klein will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2272 Amendment to: _____

Requested by Legislative Council Date of Request: 1-19--99

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative:

See attached.

- 2. State fiscal effect in dollar amounts:

Table with 7 columns: 1997-99 Biennium (General Fund, Special Funds), 1999-2001 Biennium (General Fund, Special Funds), 2001-03 Biennium (General Fund, Special Funds)

Revenues:

Expenditures:

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: _____
b. For the 1999-2001 biennium: _____
c. For the 2001-03 biennium: _____

- 4. County, City, and School District fiscal effect in dollar amounts:

Table with 9 columns: 1997-99 Biennium (Counties, Cities, School Districts), 1999-2001 Biennium (Counties, Cities, School Districts), 2001-03 Biennium (Counties, Cities, School Districts)

If additional space is needed, attach a supplemental sheet.

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Date Prepared: 01-22-99

Department Workers Compensation Bureau

Phone Number 328-3856

***NORTH DAKOTA WORKERS COMPENSATION BUREAU
1999 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION***

BILL DESCRIPTION: Temporary Employees

BILL NO: SB 2272

SUMMARY OF ACTUARIAL INFORMATION: The Workers Compensation Bureau, with the assistance of 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 is in response to the "Cervantes" decision which was handed down by the State Supreme Court last year. The proposed bill provides immunity to the client company, staffing service, and the employee in employee leasing arrangements if the client company or staffing service secured the payment of compensation; defines "client company" and "staffing service"; and allows the Bureau to adopt rules to further define client company and staffing service and to provide a procedure by which the bureau may determine whether an entity meets these definitions.

FISCAL IMPACT: The proposed legislation will have no quantifiable fiscal impact on the fund.

DATE: 1-21-99

SR181402

Date: 1/27/99

Roll Call Vote #: 2272

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on _____

or

Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By SAND Seconded By KLEIN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp					
Senator Mathern	X				
Senator Thompson		X			

Total (Yes) 5 No 1

Absent 1

Floor Assignment KLEIN

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

REPORT OF STANDING COMMITTEE (410)
January 28, 1999 4:03 p.m.

Module No: SR-18-1402
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2272: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **DO PASS** (5 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). SB 2272 was placed on the Eleventh order on the calendar.

1999 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2272

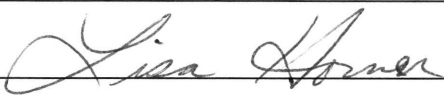
1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2272

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 2-24-99

Tape Number	Side A	Side B	Meter #
1		x	13.5 - 59.8
2	x		0 - 3.8
Committee Clerk Signature 			

Minutes:

HB 2272 Relating to Worker's Compensation employer and staffing service relief from liability for injuries to an employee and to declare an emergency.

Chairman Berg opened the hearing on the bill.

Reagan Pufall, Workers Compensation, testified in support of the bill.

(see attached written testimony)

Berg asked who is covered under this bill and where does the premium come from.

Pufall said that the premium goes directly to the bureau so both groups would be covered.

Ekstrom asked where this bill is at as compared to what the supreme court said.

Pufall said there was no concern about that.

Lemieux asked about the accident being preventable.

Pufall said that the injured worker was injured while working for Drayton Foods. It went to Supreme Court and money was awarded and Workers Comp. benefited from the case because money was also paid to the bureau.

Lemieux has a problem with immunity when there is total disregard for safety. Maybe Workers Comp. should not pay when there is a total disregard.

Tom Smith, NDATSS, testified in support of the bill.

(see attached written testimony)

Jim Fettig, Kelly Services & NDATSS, testified in support of the bill.

(see attached written testimony)

Froseth asked who does the payroll for Kelly Services when services are contracted.

Fettig said they do their own.

Stefonowicz asked about the emergency rule.

Fettig said it is a quick and short term fix process.

Lemieux asked about the relationship with the Workers Compensation Bureau.

Fettig said it was same as any other employer relationship and the same classification code is used.

Jess Cooper, Greater ND Association, testified in support of the bill. He said it is necessary for employees in ND and is a win win for everyone.

Chairman Berg closed the hearing on the bill.

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House Industry, Business and Labor Committee

Bill/Resolution Number Sb 2272

Hearing Date 2-24-99

Moved by Froseth for do pass, second by Kempenich

by roll vote, 13 yes, 2 no, 0 absent, motion carried

Rep. Severson will carry the bill.

Date: 2-24-99
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2272

House Industry, Business and Labor Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken do pass

Motion Made By Froseth Seconded By Kempenich

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe		/
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz		/			

Total (Yes) 13 No 2

Absent _____

Floor Assignment Severson

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

REPORT OF STANDING COMMITTEE (410)
February 24, 1999 2:41 p.m.

Module No: HR-33-3483
Carrier: Severson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2272: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (13 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2272 was placed on the Fourteenth order on the calendar.

1999 TESTIMONY

SB 2272

Senate Bill No. 2272

Fifty-sixth Legislative Assembly
Before the Senate Industry, Business, and Labor Committee
January 27, 1999
Testimony of Reagan Pufall
Regarding Exclusive Remedy Protection Relating to Staffing Services

Mr. Chairman, Members of the Committee:

My name is Reagan Pufall. I am the Chief Operating Officer and General Counsel for the Workers Compensation Bureau and I am here to testify in support of 1999 Senate Bill No. ~~1858~~
2272

This Bill amends section 65-01-08 of the North Dakota Century Code.

1. Background

This bill protects the "historic bargain" that is at the heart of the workers compensation system. In that bargain, employers and workers both give something up, and receive something in return, with both ending up better off than they were.

A. The Workers Compensation Bargain

Employers must pay premiums for mandatory coverage, and in return they are protected from being sued by their employees for workplace injuries. Although employers are sometimes unhappy about the cost of the premiums, it is clearly better for them to bear this predictable expense than to face the threat of an unexpected lawsuit that could put them out of business entirely.

Workers give up the right to sue for work injuries, and in return they receive no-fault coverage for workplace injuries. A small number of workers may end up unhappy that they can't sue their employers, but most workers receive needed benefits for injuries in which they would never have been able to successfully sue the employer anyway.

B. Different Treatment For Temporary Workers

Last year the Supreme Court in the Cervantes decision ruled that this bargain should be applied differently to temporary workers. The court ruled that a temporary worker who is injured at work can collect workers compensation benefits and also sue the business where he or she was working. The court stated that since the businesses where the temporary workers are working do not directly pay premiums to the Bureau, **those businesses that use temporary workers are not protected by the "exclusive remedy" rule that protects employers from being sued for workplace injuries.**

This means that temporary workers have special rights not available to any other type of employee, to receive benefits and still be able to sue the business where they were working. However, it probably also strips temporary workers of legal protection that other workers enjoy. Under section 65-01-08 of the Century Code, the same section the Supreme Court ruled did not apply to temporary employment situations, the “exclusive remedy” rule protects not only employers, but also other employees. In other words, when employees are injured at work, they cannot sue a co-employee for any alleged negligence by the co-employee in contributing to the accident. However, under the Cervantes decision it appears temporary workers would not be considered co-employees. Therefore, **while regular employees are protected from being sued for workplace injuries, temporary employees face the threat of being personally sued by the people with whom they work, which could be financially devastating for them.**

2. Why This Bill is Needed

The Workers Compensation Bureau strongly believes that the integrity of the workers compensation system must be protected. Workers compensation is the most successful program of alternative dispute resolution in our country's history. It was quite clear by the turn of the century that litigation in the court system was a woefully inadequate solution to the problem of workplace injuries, delivering financial relief far too slowly in far too few cases, while at the same time devastating employers in some other cases. That is why workers compensation was invented. We must not forget the lessons of the past. Litigation in the court system should not be allowed to reenter the area of work injuries.

Other witnesses will discuss the impact the Cervantes ruling had on staffing agencies, their employees, and the businesses who rely on their assistance. Because of our shared interests, the Bureau has worked with state and national representatives of the staffing industry in preparing this legislation to address the situation.

This bill will place staffing service workers on an equal legal footing with all other employees, entitled to the same legal rights and protections as everyone else.

Under this bill, staffing service workers will be able to receive the same workers compensation benefits, will be able to sue the businesses where they work only in the same unusual circumstances, and are entitled to the same protection under the co-employee rule. Businesses receiving the services of staffing workers, and the staffing services themselves, will be entitled to the protection of the exclusive remedy rule. Under this bill, in other words, the staffing service area is brought fully within the workers compensation system.

This bill also authorizes the Bureau to adopt administrative rules to further define the situation, to prevent any “creative misuse” of these new statutory provisions, for example by the creation of shell companies to unfairly avoid the payment of full premiums for coverage.

This bill does not extend "two for one coverage" in any way. The premiums paid by staffing agencies, and which are paid indirectly by the client company in their payments to the staffing service, are set at a level to cover the risk of injury occurring while the staffing service worker is on-site at the client company performing work duties. By the same token, then, the exclusive remedy rule should also cover that same work and the client company where that work is being performed.

SB 2272 protects the economic and legal interests of everyone concerned, and is a win-win solution to the problem. The Bureau respectfully requests that this committee recommend a "do pass" on this bill.

**Statement of Jim Fettig, President of the North Dakota Association of Temporary and Staffing Services
regarding S. B. 2272, before the Senate Industry, Business and Labor Committee
Wednesday, January 27, 1999**

Mr. Chairman and members of the committee, my name is Jim Fettig from Bismarck. The North Dakota Association of Temporary and Staffing Services urges the committee to adopt S.B. 2272.

There are approximately 25 staffing firm establishments operating in North Dakota and in 1998 employed over 1,800 workers statewide on a daily basis. Nationwide more than 2.9 million employees are employed by the staffing industry each day.

Staffing companies help millions of people move from school-to-work, job-to-job and welfare-to-work by offering transitional employment opportunities as well as training in the new skills that are essential for success in our changing economy. Temporary work also provides thousands of people in between jobs a safety net of income and other benefits while they look for new permanent jobs and provides permanent placement for many employees. A growing number of temporary employees are highly skilled professional, computer and technical workers who work as "temporaries" full time.

Staffing firms also provide important services to client companies. Temporary help provides an important means for businesses to match production with the ever-changing market forces. We are the fastest growing employment trend in the country because of the important benefits we offer to both businesses and workers. We serve a vital role in today's economy.

S.B. 2272 is necessary to ensure the continued viability of the staffing industry. Our industry is based upon our ability to provide labor without significantly increasing the associated legal risks and administrative burdens to the customer. Traditionally, securing workers' compensation coverage for the workers it places, in exchange for a fee paid by the customer, is an integral component of the arrangement between a staffing firm and the client company. Without the protection of the legislation, staffing firms and the people who use them would be subject to potentially crushing liability for workplace injuries. Both the staffing firm and the client company would be required to duplicate workers' compensation coverage for the same worker. This would increase costs to both the staffing firm and the client company, but the injured worker would not get increased benefits. These duplicate costs and the associated administrative burdens would have a significant negative impact on the staffing industry and North Dakota's economy. Although the emergency rule issued by the Workers' Compensation Bureau attempted to mitigate this effect, a legislative remedy is required.

Forty-eight states currently recognize the sound public policy behind applying this common sense approach to the workers' compensation rules for staffing firms.

For these reasons, we urge you to adopt S.B. 2272, and we thank you for the opportunity to testify before this committee.

STATES THAT APPLY THE "EXCLUSIVE REMEDY" RULE TO SPECIAL EMPLOYERS

The following states have applied the exclusive remedy provisions of their workers' compensation laws to customers using temporary help or other contract services. A number of states have had multiple court rulings on the issue (e.g. Michigan). In these states, we have cited the most recent case by the highest judicial authority in the state that has dealt with the issue.

State	Case or Statute
Alabama	Rhodes v. Alabama Power Co., 599 So. 2d 27 (Ala. 1992).
Alaska	Ruble v. Arctic General, Inc., 598 P.2d 95 (Alaska 1979).
Arizona	Araiza v. U.S. West Business Resources, Inc., 183 Ariz. 448, 904 P.2d 1272 (Ariz. Ct. App. 1995).
Arkansas	National Union Fire Insurance Co. v. Tri-State Iron and Metal Co., 323 Ark. 258, 914 S.W.2d 301 (Ark. 1996).
California	Cal. Labor Code § 3602(d) -- Workers' Compensation
Colorado	Evans v. Webster, 832 P.2d 951 (Colo. Ct. App. 1991), <i>cert. denied</i> 1992 Colo. LEXIS 582 (Colo. July 7, 1992).
Connecticut	Koscak v. Mott Metallurgical Corp., No. CV 94-0536404S, 1996 Conn. Super. LEXIS 1669 (Conn. Super. Ct. July 1, 1996).
Delaware	Porter v. Pathfinder Services, Inc., 683 A.2d 40 (Del. 1996).
District of Columbia	Thomas v. Hycon, Inc., 244 F. Supp. 151 (D.D.C. 1965) (court stated that special employers are protected by the exclusive remedy rule even though it was not the issue before the court).
Florida	Fla. Stat. Ann. § 440.11(2) -- Workers' Compensation
Georgia	Ga. Code Ann. § 34-9-11 -- Workers' Compensation
Hawaii	Frank v. Hawaii Planing Mill Foundation, 88 Haw. 140, 963 P.2d 349 (1998).
Idaho	Idaho Code § 72-103 -- Workers' Compensation
Illinois	Crespo v. Weber Stephen Products Co., 275 Ill. App. 3d 638, 656 N.E.2d 154 (Ill. App. Ct. 1995).
Indiana	Walters v. Modern Aluminum, 699 N.E.2d 671 (1998).
Iowa	Fletcher v. Apache Hose & Belting Co., 519 N.W.2d 839 (Iowa Ct. App. 1994).
Kansas	Hollingsworth v. Fehrs Equipment Co., 240 Kan. 398, 729 P.2d 1214 (Kan. 1986)
Kentucky	Marc Blackburn Brick Co. v. Yates, 424 S.W.2d 814 (Ky. App. 1968)
Louisiana	Snow v. Lenox International, 662 So. 2d 818 (La. Ct. App. 1995).

State	Case or Statute
Maine	Me. Rev. Stat. Ann. tit. 39-A §104 -- Workers' Compensation
Maryland	Whitehead v. Safway Steel Products, Inc., 304 Md. 67, 497 A.2d 803 (Md. 1985).
Michigan	Kidder v. Miller-Davis Co., 455 Mich. 25, 564 N.W. 872 (Mich. 1997)
Minnesota	Danek v. Meldrum Manufacturing & Engineering Co., 252 N.W.2d 255 (Minn. 1977).
Mississippi	Northern Electric Co. v. Phillips, 660 So.2d 1278 (Miss. 1995).
Missouri	McGuire v. Tenneco, Inc., 756 S.W.2d 532 (Mo. 1988).
Montana	Mont. Code Ann. § 39-8-207(8)(b) -- Professional Employer Organizations and Groups Licensing
Nebraska	Daniels v. Pamida, Inc., 251 Neb. 921, 561 N.W.2d 568 (Neb. 1997).
Nevada	Antonini v. Hanna Industries, 573 P.2d 1184 (Nev. 1978).
New Hampshire	LaVallie v. Simplex Wire and Cable Co., 135 N.H. 692, 609 A.2d 1216 (N.H. 1992).
New Jersey	Kelly v. Geriatric and Medical Services, Inc., 287 N.J. Super 567, 671 A.2d 631 (N.J. Super. Ct. App Div. 1996).
New Mexico	Vigil v. Digital Equipment Corp., 122 N.M. 417, 925 P.2d 883 (N.M. Ct. App.), <i>cert denied</i> 122 N.M. 279, 923 P.2d 1164 (N.M. 1996).
New York	Thompson v. Grumman Aerospace Corp., 78 N.Y.2d 553, 585 N.E.2d 355, 578 N.Y.S.2d 106 (N.Y. 1991).
North Carolina	Brown v. Friday Services, Inc., 119 N.C. App. 753, 460 S.E.2d 356 (N.C. Ct. App.), <i>cert. denied</i> 342 N.C. 191, 463 S.E.2d 234 (N.C. 1995).
Ohio	Campbell v. Central Terminal Warehouse, 56 Ohio St. 2d 173, 383 N.E.2d 135 (Ohio 1978).
Oklahoma	Zant v. People Electric Cooperative, 900 P.2d 1008 (Okla. Ct. App.), <i>cert. denied</i> (Okla. July 13, 1995).
Oregon	Or. Rev. Stat. § 656.018(5)(b) -- Workers' Compensation
Pennsylvania	English v. Lehigh County Authority, 428 A.2d 1343 (Pa. Super. Ct. 1981).
Rhode Island	R.I. Gen. Laws § 28-29-2(3)(c) -- Workers' Compensation
South Carolina	Day v. Sanders Brothers, Inc. 315 S.C. 95, 431 S.E.2d 629 (S.C. Ct. App. 1993) (court stated that special employers are protected by the exclusive remedy rule even though it was not the issue before the court).
South Dakota	Goodman v. Sioux Steel Co., 475 N.W.2d 563 (S.D. 1991).

<u>State</u>	<u>Case or Statute</u>
Tennessee	Bennett v. Mid-South Terminals Corp., 660 S.W.2d 799 (Tenn. Ct. App. 1983).
Texas	Esquivel v. Mapelli Meat Packing Co., 932 S.W.2d (Tex. Ct. App. 1996).
Utah	Utah Code Ann. § 35A-3-105 -- Workers' Compensation
Vermont	Candido v. Polymers, Inc., 687 A.2d 476 (Vt. 1996).
Virginia	Metro Machine Corp. v. Mizenko, 244 Va. 78, 419 S.E.2d 632 (Va. 1992).
Washington	Novenson v. Spokane Culvert & Fabricating Co., 91 Wash.2d 550, 588 P.2d 1174 (Wash. 1979).
West Virginia	Maynard v. Keynard Chemical Co., 626 F.2d 359 (4th Cir. 1980).
Wisconsin	Wis. Stat. Ann. § 102.29(6) -- Workers' Compensation

(Note: Wyoming does not have any cases or statute on whether special employers are protected by the exclusive remedy rule. The Montana PEO licensing statute is the only reference in that state on the application of the exclusive remedy rule to special employers.)

STATES THAT DO NOT APPLY THE "EXCLUSIVE REMEDY" RULE TO SPECIAL EMPLOYERS

Massachusetts	Numberg v. GTE Transport, Inc., 34 Mass. App. Ct. 904, 607 N.E.2d 1 (Mass. App. Ct. 1993).
North Dakota	Cervantes v. Drayton Foods, 1998 N.D. 138, 582 N.W.2d 2 (1998).

Thomas O. Smith
ND Association of Temporary and Staffing Services

STATEMENT ON SENATE BILL 2272
SENATE INDUSTRY, BUSINESS & LABOR COMMITTEE
JANUARY 27, 1999

Mr. Chairman and members of the committee, my name is Tom Smith. I represent the North Dakota Association of Temporary and Staffing Services. I ask your support for Senate Bill 2272.

Senate Bill 2271 was introduced in response to a North Dakota Supreme court case that creates inequities under the state's workers' compensation laws. The North Dakota Workers' Compensation Bureau issued an emergency rule to try to mitigate the impact of that decision, but a legislative remedy is still necessary. Senate Bill 2271 extends the "exclusive remedy" rule of the workers' compensation statute to both staffing firms and their customers. It protects staffing firms and their customers from civil lawsuits for workplace injuries incurred or caused by assigned workers. Under Senate Bill 2271, the assigned employee would be considered an employee of both the staffing firm and the client company. As such, both employers would be protected from lawsuits for damages, provided either had secured workers' compensation coverage for that employee.

This legislation is consistent with the principle that underlies the North Dakota workers' compensation statute. The workers' compensation law operates under the principle of no-fault compensation, whereby the employee gives up the right to sue the employer in exchange for sure and certain benefits for all workplace injuries, regardless of fault. A worker injured in the course of employment is entitled to receive workers'

compensation benefits from his employer without having to prove negligence. This no-fault system enables the parties to avoid costly and time-consuming litigation, while ensuring that workers are compensated for injuries. Generally, the recovery of workers' compensation benefits is the worker's exclusive remedy against his or her employer, and his or her fellow employees, for accidental workplace injuries.

Under Senate Bill 2271, either party may secure workers' compensation coverage for the assigned worker. The bill treats them both as the employer for purposes of the exclusive remedy rule under the workers' compensation statute. In a traditional staffing arrangement, the staffing firm agrees to provide workers' compensation coverage for the workers it assigns to client companies. When an assigned worker is injured on the job, his or her right to collect workers' compensation benefits remains unchanged. Senate Bill 2272 simply forecloses additional suits for those same injuries. This would result in the continued effective and efficient administration of workers' compensation benefits, without added costs and burdens to the staffing firm or client company.

The staffing industry's objective is continued compliance with the workers' compensation laws. But, without this legislation, staffing firms and their customers in North Dakota would have to duplicate premiums paid for the same workers, or be subject to liability under separate tort lawsuits. This could result in serious injury to the staffing industry in North Dakota.

Senate Bill 2272 represents a common-sense approach, shared by 48 other states, that continues the scheme of efficient administration of benefits currently provided under the statute.

I request your favorable consideration of Senate Bill 2272 and ask you give this bill a “do pass” recommendation.

Testimony by David Martin, Public Affairs Manager, Chamber of Commerce of Fargo Moorhead before the Industry, Business and Labor Committee of the North Dakota Senate on Wednesday, January 27, 1999 regarding SB 2272, A BILL for an Act to amend and reenact section 65-01 of the North Dakota Century Code, relating to workers' compensation employer and staffing service relief from liability for injuries to an employee; and to declare an emergency.

Chairman Mutch and members of the committee, my name is David Martin, and I am the Public Affairs Manager of the Chamber of Commerce of Fargo Moorhead. We are a bi-state, regional business organization with more than 1,600 member firms that collectively employ more than 67,000 people in our region. Our mission is unifying and advancing business and community interests in our region.

Senate Bill 2272 will amend and reenact section 65-01 of the North Dakota Century Code, and will clarify and continue workers compensation coverage for temporary employees. The bill will help to continue protections for employees who are injured on the job while clarifying protections for employment agencies and their client companies as well.

Temporary employees are an important human resource for North Dakota companies both large and small, permitting firms to adjust their individual workforce to meet changing needs while remaining as productive and profitable as possible. Employment opportunities offered by employment agencies also benefit North Dakota workers by offering variety and flexibility in their work options.

According to language contained in the bill, contributing employers and staffing services will be relieved from liability for injuries to employees by contributing premiums to the state's worker compensation fund, which will then provide benefits to injured workers. If a client company contracts with a staffing service for an employee's services, both the client company and the staffing service will be afforded similar protection under our state's worker compensation system.

We believe this is how our worker compensation program in North Dakota is intended to work, by providing benefits to workers injured on the job while indemnifying employers who participate in the program. The act also permits the North Dakota Worker Compensation Bureau to adopt rules consistent with this section of the Century Code which further clarify these matters. We believe the Bureau has done an excellent job of administering the program as the Legislature has intended.

Senate Bill 2272 is an important part of a coordinated effort to both clarify and continue protections for employees who are injured on the job and the North Dakota firms that make employment possible. We appreciate the committee's consideration of SB 2272, and hope that you will provide a "Do Pass" recommendation to your colleagues in the North Dakota Senate.

Thank you.

Senate Bill No. 2272

Fifty-sixth Legislative Assembly
Before the House Industry, Business, and Labor Committee
February 24, 1999
Testimony of Reagan Pufall
Regarding Exclusive Remedy Protection Relating to Staffing Services

Mr. Chairman, Members of the Committee:

My name is Reagan Pufall. I am the Chief Operating Officer and General Counsel for the Workers Compensation Bureau and I am here to testify in support of 1999 Senate Bill No. 2272.

This Bill was approved in the Senate by a vote of 49 to zero. It amends section 65-01-08 of the North Dakota Century Code.

1. Background

This bill protects the "historic bargain" that is at the heart of the workers compensation system. In that bargain, employers and workers both give something up, and receive something in return, with both ending up better off than they were.

A. The Workers Compensation Bargain

Employers must pay premiums for mandatory coverage, and in return they are protected from being sued by their employees for workplace injuries. Although employers are sometimes unhappy about the cost of the premiums, it is clearly better for them to bear this predictable expense than to face the threat of an unexpected lawsuit that could put them out of business entirely.

Workers give up the right to sue for work injuries, and in return they receive no-fault coverage for workplace injuries. A small number of workers may end up unhappy that they can't sue their employers, but most workers receive needed benefits for injuries in which they would never have been able to successfully sue the employer anyway, and they receive those benefits much more quickly than they would through the court system.

B. Different Treatment For Temporary Workers

Last year the Supreme Court in the Cervantes decision ruled that this bargain should be applied differently to temporary workers. **The court ruled that a temporary worker who is injured at work can collect workers compensation benefits and also sue the business where he or she was working.** The court stated that since the businesses where the temporary workers are working do not directly pay premiums to

the Bureau, those businesses that use temporary workers are not protected by the “exclusive remedy” rule that protects employers from being sued for workplace injuries.

This means that temporary workers have special rights not available to any other type of employee, to receive benefits and still be able to sue the business where they were working. However, it probably also strips temporary workers of legal protection that other workers enjoy. Under section 65-01-08 of the Century Code, the same section the Supreme Court ruled did not apply to temporary employment situations, the “exclusive remedy” rule protects not only employers, but also other employees. In other words, when employees are injured at work, they cannot sue a co-employee for any alleged negligence by the co-employee in contributing to the accident. However, under the Cervantes decision it appears temporary workers would not be considered co-employees. Therefore, **while regular employees are protected from being sued for workplace injuries, temporary employees face the threat of being personally sued by the people with whom they work, which could be financially devastating for them.**

2. Why This Bill is Needed

The Workers Compensation Bureau strongly believes that the integrity of the workers compensation system must be protected. Workers compensation is the most successful program of alternative dispute resolution in our country’s history. It was quite clear by the turn of the century that litigation in the court system was a woefully inadequate solution to the problem of workplace injuries, delivering financial relief far too slowly in far too few cases, while at the same time devastating employers in those cases that resulted in large verdicts. That is why workers compensation was invented. We must not forget the lessons of the past. Litigation through the court system should not be allowed to reenter the area of work injuries.

Other witnesses will discuss the impact the Cervantes ruling had on staffing agencies, their employees, and the businesses who rely on their assistance. Because of our shared interests, the Bureau has worked with state and national representatives of the staffing industry in preparing this legislation to address the situation.

This bill will place staffing service workers on an equal legal footing with all other employees, entitled to the same legal rights and protections as everyone else.

Under this bill, staffing service workers will be able to receive the same workers compensation benefits, will be able to sue the businesses where they work only in the same unusual circumstances, and are entitled to the same protection under the co-employee rule. Businesses receiving the services of staffing workers, and the staffing services themselves, will be entitled to the protection of the exclusive remedy rule. Under this bill, in other words, the staffing service area is brought fully within the workers compensation system.

This bill also authorizes the Bureau to adopt administrative rules to further define the situation, to prevent any “creative misuse” of these new statutory provisions, for

example by the creation of shell companies to unfairly avoid the payment of full premiums for coverage.

This bill does not extend “two for one coverage” in any way. The premiums paid by staffing agencies, and which are paid indirectly by the client companies in their payments to the staffing services, are set at a level to cover the risk of injury occurring while the staffing service worker is on-site at the client company performing work duties. By the same token, then, the exclusive remedy rule should also cover that same work and the client company where that work is being performed.

SB 2272 protects the economic and legal interests of everyone concerned, and is a win-win solution to the problem. The Bureau respectfully requests that this committee recommend a “do pass” on this bill.

**Statement of Jim Fettig, President of the North Dakota Association of Temporary and Staffing Services
regarding S. B. 2272, before the House Industry, Business and Labor Committee
Wednesday, February 24, 1999**

Mr. Chairman and members of the committee, my name is Jim Fettig from Bismarck. The North Dakota Association of Temporary and Staffing Services urges the committee to adopt S.B. 2272.

There are approximately 25 staffing firm establishments operating in North Dakota and in 1998 employed over 1,800 workers statewide on a daily basis. Nationwide more than 2.9 million employees are employed by the staffing industry each day.

Staffing companies help millions of people move from school-to-work, job-to-job and welfare-to-work by offering transitional employment opportunities as well as training in the new skills that are essential for success in our changing economy. Temporary work also provides thousands of people in between jobs a safety net of income and other benefits while they look for new permanent jobs and provides permanent placement for many employees. A growing number of temporary employees are highly skilled professional, computer and technical workers who work as "temporaries" full time.

Staffing firms also provide important services to client companies. Temporary help provides an important means for businesses to match production with the ever-changing market forces. We are the fastest growing employment trend in the country because of the important benefits we offer to both businesses and workers. We serve a vital role in today's economy.

S.B. 2272 is necessary to ensure the continued viability of the staffing industry. Our industry is based upon our ability to provide labor without significantly increasing the associated legal risks and administrative burdens to the customer. Traditionally, securing workers' compensation coverage for the workers it places, in exchange for a fee paid by the customer, is an integral component of the arrangement between a staffing firm and the client company. Without the protection of the legislation, staffing firms and the people who use them would be subject to potentially crushing liability for workplace injuries. Both the staffing firm and the client company would be required to duplicate workers' compensation coverage for the same worker. This would increase costs to both the staffing firm and the client company, but the injured worker would not get increased benefits. These duplicate costs and the associated administrative burdens would have a significant negative impact on the staffing industry and North Dakota's economy. Although the emergency rule issued by the Workers' Compensation Bureau attempted to mitigate this effect, a legislative remedy is required.

Forty-eight states currently recognize the sound public policy behind applying this common sense approach to the workers' compensation rules for staffing firms.

For these reasons, we urge you to adopt S.B. 2272, and we thank you for the opportunity to testify before this committee.