

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2157

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2157

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 17, 2001

Tape Number	Side A	Side B	Meter #
1	x		35.6 to end
1		x	0 to 2.6
1		x	34.7 (vote)
Committee Clerk Signature <i>Doris E Perez</i>			

Minutes:

The committee was called to order. All members present. The hearing was opened on SB 2157 relating to penalties for an employer's failure to secure worker's compensation coverage, submit payroll, or otherwise comply with chapter 65-04; and to provide a penalty.

BRYAN HORME, ND Township Offices Assn. Neutral. Wants to bring up the problem the townships are having because their fiscal year runs from March to March. Boards meet during March or later. The Bureau sends notices on January, the townships don't comply and are assessed fines. Most of the times the fines are waived, but something should be done to avoid this, maybe change the date the notices are sent or change the fiscal year.

JUDY LEER, General Counsel, ND Workers Compensation. In favor of this bill. Written testimony attached. The townships concerns are not addressed in this bill. In many instances the penalties are waived in consideration of how the townships operate. We will look at an

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 2157

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administrative way to address this. The late filing townships are assessed a penalty but we do not collect.

No testimony against. Hearing concluded.

Committee reconvened. Discussion was held. Tape 1 side B 34.7.

SENATOR KLEIN: Motion: Do Pass. SENATOR ESPEGARD: Seconded

Roll call vote: 7 yes; 0 no; 0 absent. Carrier SENATOR ESPEGARD.

## FISCAL NOTE

Requested by Legislative Council

12/26/2000

Bill/Resolution No.: SB 2157

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:** Policyholder Services Bill

**BILL NO:** SB 2157

**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 creates a single penalty section by combining the penalty provisions of existing sections; creates a new section that identifies the procedure for issuing decisions and requesting appeal from those decisions; identifies when an employer who defaults on premium will be declared uninsured; identifies when a certificate of coverage may be revoked; and identifies when an employer has an obligation to pay premium on an extraterritorial coverage contract.

**FISCAL IMPACT:** We did not attempt to derive an estimate of the likely impact of the proposed changes on the budget and reserve levels because we do not have access to an appropriate base of historical experience to use in deriving the estimates. However, we understand that most of the proposed changes can be viewed as "housekeeping adjustments" designed to improve NDWC's overall operating efficiency. At the same time, we recognize that clarification as to when an employer may be declared uninsured will likely enhance NDWC's premium collection efforts. Thus, some administrative cost savings may emerge over time.

**DATE:** December 27, 2000

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

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

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

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

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

Date: January 17, 2001  
Roll Call Vote #: 1

**2001 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2157**

Senate Industry, Business and Labor Committee

- Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

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

Action Taken Do Pass

Motion Made By S. Klein Seconded By S. Espigard

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espigard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Every

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

**REPORT OF STANDING COMMITTEE (410)**  
January 17, 2001 3:38 p.m.

**Module No: SR-07-1151**  
**Carrier: Every**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2157: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2157 was placed on the Eleventh order on the calendar.**

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2157



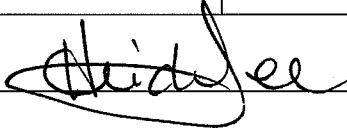
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2157

House Industry, Business and Labor Committee

Conference Committee

Hearing Date Feb. 14, 2001

Tape Number	Side A	Side B	Meter #
1	X		0-20.6
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Julie Leer: *ND Workers Compensation* **Written testimony** sponsoring bill.

Charlie Peterson: *Greater ND* **Written testimony** in support of bill to declare a policy holder to uninsured those that don't pay premiums but employees still receive treatment.

Ken Yates: Opposed to bill. Does the penalty fit the crime? Penalties are too costly and may put a small company out of business, also there is no appealing rate. We need to look at premium versus penalty.

Leer: We do have the ability to waive, this is for the ones that won't cooperate. We do negotiate with the good willing.

Chairman Berg: We'll close the hearing on SB 2157.

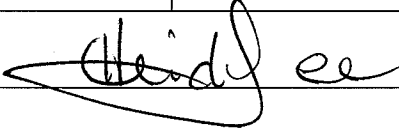
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2157

House Industry, Business and Labor Committee

Conference Committee

Hearing Date Feb, 14, 2001

Tape Number	Side A	Side B	Meter #
1	X		48.57-58.0
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep M. Klein: I move a do pass.

Rep Jensen: I second.

**12 yea, 0 nay, 3 absent Carrier Rep Severson**

Date: 2-14-01  
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. SB 2157

House Industry, Business and Labor Committee

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

Action Taken Do Pass

Motion Made By M. Klein Seconded By Jensen

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg			Rep. Jim Kasper	✓	
Vice-Chairman George Keiser	✓		Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux		
Rep. Glen Froseth			Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe	✓	

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep Severson

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

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

**Module No: HR-27-3344**  
**Carrier: Severson**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2157: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). SB 2157 was placed on the Fourteenth order on the calendar.**

2001 TESTIMONY

SB 2157

Fifty-seventh  
Legislative Assembly  
of North Dakota

**Senate Bill No. 2157**  
Before the Senate Industry, Business, and Labor Committee  
North Dakota Workers Compensation Testimony  
January 17, 2001

Mr. Chairman, Members of the Committee:

My name is Julie Leer and I am General Counsel for North Dakota Workers Compensation. I am here today to testify in support of 2001 Senate Bill No. 2157 dealing with several perspectives of workers' compensation policyholder services. The Workers Compensation Board of Directors unanimously supports this bill.

The policyholder services department of North Dakota Workers Compensation (NDWC) is responsible for billing and collecting employer premiums, imposing penalties on delinquent accounts, providing information on statutory provisions requiring coverage, and determining eligibility for optional coverages. Chapter 65-04 contains most of the provisions dealing with these issues. While each of these issues is addressed within that chapter, or elsewhere in Title 65, NDWC has identified some areas that need clarification or "cleaning up." This bill has been prepared to address some of those areas.

There are two sections of this bill which will create new sections to chapter 65-04: sections 10 and 12. My testimony starts with section 12 because many of the other sections are in the bill because of this new section being created. There are several sections in Title 65, most in chapter 65-04, which provide penalties for employers who fail to secure coverage for their employees, who fail to pay premiums when they are due, who fail to provide payroll reports to NDWC to determine how much premium is due, or who become uninsured. Because these sections are scattered throughout Title

65, it is difficult to readily identify which sections are penalty sections. Section 12 seeks to combine these sections in to one section. For instance, there are four sections that provide penalties for employers who fail to comply with the requirement that they obtain workers' compensation coverage for their employees: sections 65-04-12, 65-04-14, 65-09-03, and 65-09-04. These sections have been streamlined into section 12 of this bill. One change to these sections is that we are proposing to remove the distinction between an employer who is noncompliant but is caught before a claim is filed, and one who is noncompliant but is caught after a claim is filed. The calculation of the penalty has also been simplified to be applied to all noncompliant employers.

The requirement that coverage be secured is contained in subsection 1 of section 12. The second subsection contains the penalty for willful misrepresentation of payroll or for failure to secure coverage. This penalty has been changed to read "three times the difference between the premium paid and the amount of premium the employer should have paid" instead of "ten times the difference..." The reason for this change is simply that it is more realistic that we will collect an amount of three times the difference rather than ten times the difference. The implementation of the current language has not been shown to have a deterrent effect on employers and the only result is a larger amount in judgment in penalties that will never be collected. The third subsection provides the penalty for the employer who has become uninsured after having obtained coverage and failed to keep the account current. The fourth subsection provides the penalty for failure to submit the annual payroll report and the fifth subsection provides the penalties and interest to be imposed upon an employer who defaults in payment of premium.

Section 17 of the bill contains the repealer clause for the existing Century Code sections that have been consolidated into the new section created in Section 12 of the bill. Sections 1, 2, 11, 14, and 15 are included in the bill to change the references in those sections from the penalty sections being repealed to the new section being created.

The other new section being created is section 10 of the bill. This section provides a procedure to follow when employers challenge decisions made under chapter 65-04. It

was drafted to parallel the procedure found in section 65-01-16 which is used when claims decisions are challenged. It clarifies when an employer may request rehearing or reconsideration and specifies the timelines for each step up to and including judicial appeals. Section 9 of the bill proposes removing language providing a procedure for notifying a corporate officer of NDWC's determination that the corporate officer is liable for premium in default. This language, if left in section 65-04-26.1, would conflict with the newly created procedure found in section 10. Section 16 of the bill is included in conjunction with section 10 to clarify that a decision made under chapter 65-04 may also be appealed to the district court.

Section 3 clarifies that an employer's certificate of workers' compensation insurance coverage may be revoked if the employer defaults on the payment of premium. Section 4 simply makes the document title referred to in the statute the same as the document title actually in use to avoid any question of what constitutes a "pay-in-order".

Section 5 provides an amendment to the section authorizing installment payment of premium to allow some flexibility in identifying how often installment payments may be made. Currently, payments may be semiannual or quarterly. Under this amendment, NDWC could allow monthly installments if it determined that type of payment to be appropriate. The changes in section 6 reflect, in large part, the changes proposed in section 5. Additionally, section 6 clarifies that an employer who is in default may be declared uninsured if that employer remains in default for greater than 45 days.

The changes in section 7 are to clarify that it is the special assistant attorneys general employed by NDWC, rather than the office of the attorney general, who are responsible for initiating suit for premiums in default.

Section 8 is being amended to facilitate suits for premiums against out-of-state corporations. Currently, the North Dakota rules of civil procedure allow NDWC to effect personal service on an out-of-state corporation by serving corporate officers through the North Dakota Secretary of State. This section extends the procedure to directors of



those corporations. Section 13 provides an amendment to clarify that once an employer has applied for extraterritorial coverage under section 65-08-01, the employer is obligated to report all wages paid in this state. Some employers will apply for the coverage, and NDWC will go through the exercise of rating the employer and issuing the certificate so the employer receives workers' compensation coverage for the job being performed. The problem arises when the employer decides, after the job is completed, that coverage would not have been required under subsection 4 of section 65-08-01 so the employer decides not to pay. This amendment is intended to prevent that type of gaming of the system.

This concludes my testimony. NDWC requests your favorable consideration of Senate Bill No. 2157. If there are any questions, I'll attempt to answer them at this time. Thank you.

2-14-01 STATEMENT BY CHUCK PETERSON, REPRESENTING  
GNDA, REGARDING SB 2157 WORKER'S COMPENSATION  
LEGISLATION.

Chairman Berg, and members of the House Industry, Businesses and Labor Committee. I am Chuck Peterson, a member of GNDA, and a North Dakota businessman. Thank you for the opportunity to provide testimony in support of SB 2157.

The Greater North Dakota Association is the voice of business and the principle advocate of positive change in North Dakota. As a member of GNDA we represent over 1000 business and professional organizations from all areas of North Dakota. GNDA is governed by a 25 member Board of Directors elected by our membership.

I also speak for the Associated General Contractors, the North Dakota Petroleum Council, the North Dakota Retail Petroleum Marketers Association, the North Dakota Motor Carriers Association, the Automobile Dealers and Implement Dealers Association and North Dakota Grocers Association.

We have reviewed the changes to the statute contained in SB 2157 and support this legislation. We understand that it will enable the Worker Compensation Bureau to declare a policy holder uninsured after 45 days from the due date specified on the current bill in which an employer has failed to make payment.

We understand that this legislation then defines when an employer loses his common law defenses as a result of being uninsured. We believe that this is a correct approach to providing the Bureau with sufficient tools to collect the premium that is due. We are satisfied that all North Dakota workers will be insured regardless of whether the employer has been declared uninsured.

We also recognize that this legislation will enhance the Bureau's ability to require proper payroll information as well as prompt reporting. It also provides certain sanctions against false information on payroll reports.

I have had employers express concern when they knew that other businesses, their competitors, were operating considerably in arrears in worker compensation premiums while still competing with them for business and employees. This is not in the best interest of employers, employees, or the Bureau.

We strongly support SB 2157 and urge a yes vote.