

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2301**

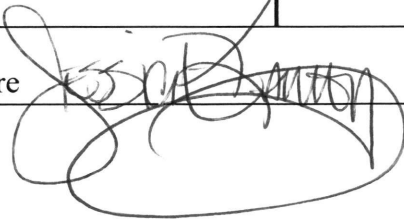
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2301

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date January 27, 1999

Tape Number	Side A	Side B	Meter #
1	x		1990-3868
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on SB2301. All senators were present. She offered some amendments.

Dave Kemntz, testified in support of SB2301.

Serald Nedder, Vice President of CARE, testified in support of SB2301. He said that there are a lot of people on disability that need a raise. He also said that he didn't think that it was right to have a doctor say that a person is permanently disabled.

Steve Lithem, North Dakota Trial Lawyers Association, testified in support of SB2301.

Senator Mutch asked Mr. Lithem how this bill differed from the House bill. The reply was that this bill said that the bureau had to put a person on permanent disability after seven years.

Senator Heitkamp asked him if seven years was an adequate amount of time. The reply was yes.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number Sb2301

Hearing Date January 27, 1999

Julie Leer, an attorney with the Worker Compensation Bureau, testified in opposition to SB2301.

She said that she felt that this bill would require them to give up on an injured worker after seven years. They do acknowledge that there is a need to give a person total benefits after a certain period of time.

Senator Heitkamp asked her if after being injured for seven years he would still be receiving the same amount of benefits. The reply no the workers compensation amount would not change,

Senator Mutch concluded the hearing on SB2301.

Committee discussion took place on February 3, 1999.

Senator Krebsbach motioned to amend the SB2301. The motion was successful with a 6-0-1 vote.

Senator Klein motioned for a do not pass with amendments recommendation on SB2301.

Senator Krebsbach seconded his motion. The motion carried with a 4-1-2 vote.

Senator Mutch will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: \_\_\_\_\_ Amendment to: SB 2301

Requested by Legislative Council \_\_\_\_\_ Date of Request: 2-10-99

- 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:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:

Expenditures:

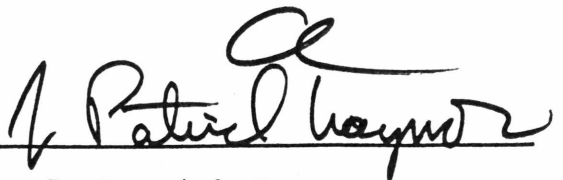
- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- 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:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed 

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

Date Prepared: 02-10-99

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

***BILL DESCRIPTION:***      **Permanent Total Disability**

***BILL NO:*** SB 2301

***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 provides for employees with injuries resulting in temporary total disability to be deemed permanently totally disabled if the injured employee has not returned to work within seven years of the date of injury. The proposed bill would apply to injuries occurring after July 31, 1999.

***FISCAL IMPACT:***

**Rate Level Impact:** Not quantifiable. Rates are set to cover the expenses associated with the claims incurred during the policy year. To the extent the proposed bill serves to increase the number of claims resulting in long term disability, the increased system costs associated with long term disability would be reflected in subsequent rate adjustments.

**Reserve Level Impact:** The proposed bill results in no reserve level impact as the bill is designed to apply prospectively to future claims.

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**AMENDMENT:** The bill with the proposed amendment changes the application from prospective only to existing and future claims.

**Rate Level Impact:** Not quantifiable. Rates are set to cover the expenses associated with the claims incurred during the policy year. To the extent the proposed bill serves to increase the number of claims resulting in long term disability, the increased system costs associated with long term disability would be reflected in subsequent rate adjustments.

**Reserve Level Impact:** Not quantifiable. The proposed bill with amendment will increase reserve levels as it applies to existing claims, however, the impact is extremely difficult to quantify. The proposed bill with amendment will remove Bureau flexibility in addressing return to work issues with long term disability claims. The Bureau can anticipate an increase in the number of claims classified as permanent and total disabled thus resulting in an increase in ultimate claims expenditures.

***DATE:*** 2-10-99

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: SB 2301 Amendment to: \_\_\_\_\_

Requested by Legislative Council Date of Request: 1-20-99

- 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:

1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
General Fund	Special Funds	General Fund	Special Funds	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:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed J. Patrick Traynor

Typed Name J. Patrick Traynor

Department Workers Compensation Bureau

Phone Number 328-3856

Date Prepared: 01-22-99

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

***BILL DESCRIPTION:***      **Permanent Total Disability**

***BILL NO:*** SB 2301

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***FISCAL IMPACT:***

**Rate Level Impact:** Not quantifiable. Rates are set to cover the expenses associated with the claims incurred during the policy year. To the extent the proposed bill serves to increase the number of claims resulting in long term disability, the increased system costs associated with long term disability would be reflected in subsequent rate adjustments.

**Reserve Level Impact:** The proposed bill results in no reserve level impact as the bill is designed to apply prospectively to future claims.

***DATE:*** 1-24-99

Date: 1/27/99  
 Roll Call Vote #: 2301 1

**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 TO AMEND PAGE 1 LINE 11

Motion Made By KREBSBACH Seconded By \_\_\_\_\_

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Heitkamp	<del>X</del>				
Senator Mathern	X				
Senator Thompson	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment \_\_\_\_\_

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



Date: 2/3/99  
Roll Call Vote #: 2301-2

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2301

SR242113

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

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

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

Action Taken DO NOT PASS AS AMENDED

Motion Made By KLEIN Seconded By KREBSBACH

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

Total (Yes) 4 No 1

Absent 2

Floor Assignment MUTCH

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

**REPORT OF STANDING COMMITTEE**

**SB 2301: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (4 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). SB 2301 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "occurring after July 31, 1999, which" with "that"

Renumber accordingly

**1999 TESTIMONY**

**SB 2301**

**WORKERS COMPENSATION PERMANENT TOTAL DISABILITY**

Testimony

Before the Senate Industry, Business, and Labor Committee

January 27, 1999

Presented by Julie Leer, Attorney

North Dakota Workers Compensation Bureau

Mr. Chairman, Members of the Committee:

My name is Julie Leer and I am an attorney for the Workers Compensation Bureau. I am here today to present opposition testimony to 1999 Senate Bill No. 2301. The Bureau's greatest concern about this Bill is that it would require us to "give up" on injured workers.

Specifically, the Bill requires the Bureau to automatically declare someone to be permanently and totally disabled if the employee has been unable to return to work within seven years of the date of the injury. A declaration of permanent total disability may allow an injured worker to be eligible to receive supplementary benefits under North Dakota Century Code section 65-05.2-01. Currently, the law requires an injured worker to receive wage-loss benefits for ten consecutive years and to be permanently and totally disabled, for that worker to receive supplementary benefits. (1999 Senate Bill No. 2214, heard before this committee last week, proposes to change the time limit from ten years to seven.)

One of the criticisms of the Bureau in the past was that it had not consistently reviewed claims in a timely manner to determine whether an injured worker is permanently and totally disabled. That criticism was not undeserved. The Bureau, aware of its past shortcoming in this area, has established a procedure to ensure that all claims are reviewed in a timely and thorough manner. A committee made up of people from the claims and legal departments, including our medical advisor conducts the review. This committee is charged with reviewing claims for permanent and total disability by assessing the likelihood of continued medical improvement for the worker, the likelihood of succeeding with vocational rehabilitation efforts considering the injured worker's physical capabilities, transferable skills, and educational background, and the length of time the injured worker has been receiving wage-loss benefits. If the committee determines an injured worker is unlikely to be successful in further medical or vocational rehabilitation, the committee may make a recommendation to declare the injured worker permanently and totally disabled.

This bill would make this committee unnecessary and would require the Bureau to "deem" someone incapable of rehabilitation simply due to the length of time that person has been off work. It does not allow the Bureau to assess the *individual* or that *individual's* needs. For example, if an injured worker suffers a catastrophic injury, the injured worker's medical treatment may prevent that injured worker from pursuing a course of vocational rehabilitation for a few years. If the Bureau were to determine that this catastrophically injured worker were entitled to a four-year training program, it would be likely that the presumption of permanent total disability would be triggered before the worker's training program would be completed. The Bureau would rather have the opportunity to assess each individual worker's situation than to pigeon-hole all injured workers as incapable of working or of rehabilitation simply because seven years have passed.

In addition to establishing the permanent total disability review committee, the Bureau has determined that a study of long-term workers' compensation wage-loss benefits is needed. In fact, 1999 Senate Bill No. 2214 requires the Bureau to undertake this study. The study will include a review of the Bureau's supplementary benefits structure as well as a review of the interplay between the workers' compensation and social security disability programs. While it is an unfortunate fact that some people suffer permanent and total disability as the result of work-related injuries, the Bureau asks that you not increase that number by creating a presumption of permanent total disability based exclusively on the time an injured worker is off the job. Bear in mind that for an individual who is struggling to overcome a long-term serious injury, receiving notice that the individual is "permanently and totally disabled" could serve to crush whatever hope of improving that person may have had. Making this determination should be done reviewing all the information available, not just by an automatic process imposed by statute which allows absolutely no consideration of the individual's circumstances.

Thank you for your consideration. I'll attempt to answer your questions at this time.