

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1122

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1122

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1122**

House Industry, Business and Labor

Conference Committee

Hearing Date **17 January 05**

Tape Number	Side A	Side B	Meter #
2		X	27 - 44

Committee Clerk Signature



Minutes: **Chairman Keiser opened the hearing on HB 1122.**

Rep. Dan Ruby, District 38, introduced the bill. This bill deals with subrogating legal rights to recoup money that is awarded in a settlement. It makes sense that WSI's intent here is to make sure the worker/employee is taken care of. When a settlement is obtained from a responsible part, WSI is able to recoup its costs it has put in. I'll let them explain in more detail.

Rob Forward, staff counsel, WSI, testified in favor of the bill. **(Testimony attached.)**

Dave Kemnitz, president of the ND AFL-CIO. I have a question I haven't been able to get answered well. Several sessions back subrogation was a large issue. One of the testifiers said that part of the award they received for the support of her spouse who was injured, the bureau did not reimburse for any the costs they incurred. Non of that was covered by WSI. Under the subrogation it be returned to WSI. She argued it was her money for home care for 18 months. As I listen to WSI's testimony it is to recover as much as they can, regardless of how it awarded from a court. I want to bring this to your attention. There are certain awards that are specific to services and support that shouldn't be subrogated.

Forward: The scenario Mr. Kemnitz gave you was not accurate. When a spouse of an injured worker receives a loss of consortium award from that 3rd party, WSI has no subrogation rights to that. That's established in law. We take no part of the money the injured person's spouse receives from a third party.

Chairman Keiser: Let's say an injured worker takes a third party to court and is granted through a jury trial an amount part of which includes portions related to WSI. WSI is only concerned with getting 50% of what it pays in. Is that correct? Not 50% of any other portion. 50% of that portion that is WSI payment?

Forward: Fifty percent of the total award. We are unique in that other states and insurance companies take out 100% of what they've paid out. We want to encourage injured workers to have some money left over to put in their pocket.

Rep. Kasper: Let's use as an example a million dollar award and \$800,000 is for the worker, \$200,000 goes to spouse for care, comfort, lost wages. WSI does not take any of that \$200,000.

Forward: That's exactly correct.

Deb Bale, injured worker from Jamestown, testified in opposition. During the first year of dealing with WC I received a specific form from my Claims Medical Analyst. I had to report at that time if there was any legal action. I'm confused that they weren't notified of the lawsuit because I gave them the form. With this new legislation, how does this benefit the injured worker? Do they receive more or less of a reward? I feel the priority of all this legislation should be aimed at the injured worker.

There being no further testimony, **Chairman Keiser closed the hearing on HB 1122.**

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1122

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-31-05

Tape Number
3

Side A

Side B
x

Meter #
45.3-50.3

Committee Clerk Signature



Minutes:

Chairman Keiser: Re-opened the hearing on HB 1122.

Representative Dosch: I move a **DO PASS** on HB 1122.

Representative Boe: **SECOND** the **DO PASS** motion.

Motion carried **VOTE: 11-YES 2-NO 1-Absent (Ekstrom)**

Representative Nottestad will carry the bill on the floor.

Hearing adjourned.

FISCAL NOTE
Requested by Legislative Council
01/03/2005

Bill/Resolution No.: HB 1122

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: Third Party Recoveries

BILL NO: HB 1122

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 creates a lien on monetary awards or settlements paid to an injured worker from a third party; clarifies WSI's ability to bring a legal action to collect its share of any monetary recovery when WSI does not recover the share to which it is entitled; clarifies the amount of attorney fees WSI must pay when a recovery is made and clarifies under what condition the fee may be requested; clarifies the apportionment of costs of a third party action; and allows WSI to recover benefits paid to an injured worker for a claim accepted by WSI and later accepted in another state.

FISCAL IMPACT: The proposed legislation will assist WSI in collecting their share of recoveries to which the organization is entitled. The modification of attorney fees and conditions in which they are paid provides an incentive to resolve disputes through a binding dispute resolution process, thus avoiding the costs of a long drawn out court proceeding. Although not quantifiable, to the extent recoveries are increased and costs are reduced, this will be reflected in future premium levels.

DATE: January 3, 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
Phone Number: 328-3760

Agency: WSI
Date Prepared: 01/11/2005

Roll Call Vote #: 1 Date: 1-31-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HR 1122

House **INDUSTRY, BUSINESS AND LABOR** Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO PASS

Motion Made By Rep. Dosch Seconded By Rep. Boe

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman		X
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom		
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. Vigesaa	X				

Total (Yes) 11 No 2

Absent (1) Rep. EKstrom

Floor Assignment Rep. Nottestad

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

REPORT OF STANDING COMMITTEE (410)
February 1, 2005 7:11 a.m.

Module No: HR-21-1509
Carrier: Nottestad
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1122: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
HB 1122 was placed on the Eleventh order on the calendar.

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1122

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1122

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date 3-01-05

Tape Number	Side A	Side B	Meter #
1	xxxx		2640-4397
3	xxxx		1615-2000

Committee Clerk Signature *Lisa VanBerkom*

Minutes: **Chairman Mutch** opened the hearing on HB 1122. All Senators were present.

HB 1122 relates to subrogation and lien rights of the organization and reimbursement of benefits paid by the organization.

Rob Forward, staff council for WSI, introduced the bill.

See written testimony.

There was no questions from the committee.

Glen Baltrousch spoke in opposition to the bill.

Glen: One of the things, that I don't know if you guys are aware of, this is the testimony of the bureau of Mr. Forward here. He used an example like motor vehicle accidents. The employer can be held liable too. They don't like to talk about it. I can tell you for a fact, and prove it in black and white cuz I got the paper work at home. An employer can be sued. We aren't suing the employer, we are just suing his insurance company. The way this thing is wrote, it seems like it

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1122

Hearing Date 3-01-05

almost like has to do with people like them. Employers, if you are not aware of it, wake up. You can be sued.

There were no questions from the committee.

The hearing was closed on HB 1122. No action was taken.

That afternoon, the committee met to act on this bill.

Senator Krebsbach moved a DO PASS. Senator Klein seconded.

Roll Call Vote: 6 yes. 1 no. 0 absent.

Carrier: Senator Krebsbach

Date: 3-1-05
Roll Call Vote #:]

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1122

Senate Industry, Business, and Labor

Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Krebsbach

Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Chairman Mutch	X		Senator Fairfield		X
Senator Klein	X		Senator Heitkamp	X	
Senator Krebsbach	X				
Senator Espegard	X				
Senator Nething	X				

Total (Yes) 6 No 1

Absent 0

Floor Assignment Krebsbach

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

REPORT OF STANDING COMMITTEE (410)
March 1, 2005 4:54 p.m.

Module No: SR-37-3919
Carrier: Krebsbach
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1122: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HB 1122 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1122

2005 House Bill No. 1122
Testimony before the House Industry, Business, and Labor Committee
Presented by: Rob Forward, Staff Counsel
Workforce Safety and Insurance
January 17, 2005

Mr. Chairman and Members of the Committee:

Good Morning. My name is Rob Forward and I am staff counsel for Workforce Safety and Insurance (WSI). I am here today to testify in support of House Bill 1122. This bill makes changes in WSI's subrogation law and creates a lien provision. The WSI Board of Directors is in support of this bill.

Section 1. This section of the bill concerns the reimbursement of all benefits WSI has paid or otherwise would pay in the future to an injured worker harmed by a third party. An example of this situation is when an employee is hurt in a car accident while "on the job" by the negligence of another driver. While the injured worker is entitled to and receives medical and wage benefits from WSI, the accident was the fault of a negligent driver and the injured worker has a right to sue that driver for damages. In the event the injured worker sues for damages, WSI has a right to a portion of that money as reimbursement for the benefits it paid. WSI's rights in this reimbursement process, and the process itself, are generally known as subrogation. WSI is proposing the following changes to the subrogation statute:

First, WSI suggests the addition of a lien in the amount of benefits WSI has paid. The lien would be created as soon as the first dollar of benefits is paid. It attaches, or becomes an encumbrance upon, any money to be paid by the third party. The lien is intended to be used in addition to WSI's existing subrogation right and would compliment that right by giving WSI a new remedy for collecting benefits paid. Specifically, this lien is intended to discourage third parties and injured workers from settling personal injury lawsuits without WSI's involvement. Currently, when an injured worker settles their case and releases the third party from liability, WSI's right to recover is extinguished and WSI must attempt to collect its share from the injured worker. This is not an appealing remedy because it requires WSI to sue the same injured worker it is currently assisting.

Under the proposed changes, if WSI does not receive its share of the settlement within thirty days of the money being paid to an injured worker, it may recover its lien amount from all the parties involved, regardless of whether the injured worker released any of those parties from liability. Because this lien is a powerful encumbrance, WSI's ability to use it is tempered: WSI must provide a notice of its lien to the injured worker and the third party before enforcing its lien. And, WSI has only one year from the date it becomes aware of the injured worker's recovery to begin a lawsuit to enforce the lien.

Another proposed change in section 1 involves the North Dakota Supreme Court's decision in *Lawson v. N.D. Workmen's Compensation Bureau*, 409 N.W.2d 344 (1987). In that case, the Court held that WSI must pay fifty percent of the costs of an injured worker's lawsuit against a third party. Before that court case, WSI interpreted the statute to require WSI to pay fifty percent of the costs of a lawsuit before recovery, and after recovery the costs were retrospectively prorated. The proposed change is intended to clarify the statute so that WSI may once again pay fifty percent of the costs before recovery, and prorate the costs after recovery. It is important to note that costs are prorated only if there is a recovery. If there is no recovery, WSI is responsible for fifty percent of the costs.

Finally, WSI proposes to raise the fees injured workers' attorneys earn for collecting WSI's share of recovery from twenty percent to twenty-five percent in situations where recovery is obtained without starting a lawsuit. And, WSI proposes to raise their fees to thirty-three and one-third percent in situations where recovery is obtained through binding alternative dispute resolution (not intended to include nonbinding processes). These changes are intended to help lessen litigation costs.

Section 2. This section of the bill involves situations where an injured worker has received benefits from WSI and later files a claim with another state for the same injury. Our current law requires an injured worker to reimburse WSI the benefits paid to them during the time period the injured worker was eligible to receive benefits from another state system. In theory, this is to avoid a double recovery.

In practice, there are situations when WSI does not receive reimbursement of benefits it paid because injured workers, private insurers, and other states fashion awards or settlements so that their time period of eligibility does not coincide with the time period WSI was providing benefits. The proposed change is intended to close this loophole by requiring these parties to be mindful that any settlement or reimbursement must consider all benefits received from WSI regardless of how another state or insurer fashions the dates of eligibility in their systems. This change should not prejudice injured workers as it does not affect their eligibility in North Dakota.

This concludes my testimony. I would be glad to answer any questions.

2005 Workforce Safety & Insurance Legislative Quick Guide
HB 1122
WSI Subrogation and Lien Rights

Sponsor: Rep. Dan Ruby, Co-Sponsor: Sen. Jerry Klein

Third-Party Recoveries

- Creates a lien on monetary awards or settlements paid to an injured worker. (The award/settlement is recovered by the injured worker from the party who is legally liable for the worker's injuries.)
- Clarifies WSI's ability to bring a legal action to collect its share of any monetary recovery by an injured worker when WSI does not recover the share to which it is entitled
- Clarifies the amount of attorney fees WSI must pay when a recovery is made and clarifies under what conditions the fee may be requested.
- Clarifies apportionment of costs of third party claims and lawsuits.
- Keeps WSI in the loop on potential settlements that may take place without initial agency involvement.

WHY – A lien provision is an effective way to enhance collections efforts of employer dollars. Dollars reimbursed to WSI are credited to an employer's account. Additionally, binding dispute resolution can save all parties time and resources and should be encouraged.

Recovery of Benefits Paid

- Allows WSI to recover benefits paid to an injured worker for a claim accepted by WSI and later accepted in another state.

WHY – Under the current law, WSI has difficulty recovering from the liable state those benefits paid in North Dakota.

FISCAL NOTE:

The proposed legislation will assist WSI in collecting their share of recoveries to which the organization is entitled. The modification of attorney fees and conditions in which they are paid provides an incentive to resolve disputes through a binding dispute resolution process, thus avoiding the costs of a long drawn out court proceeding. Although not quantifiable, to the extent recoveries are increased and costs are reduced, this will be reflected in future premium levels.

Subrogation – if injured worker settles w/ insurance co & does not report a Lien then will be paid

2005 House Bill No. 1122
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Rob Forward, Staff Counsel
Workforce Safety and Insurance
March 1, 2005

Mr. Chairman and Members of the Committee:

Good Morning. My name is Rob Forward and I am staff counsel for Workforce Safety and Insurance (WSI). I am here today to testify in support of HB 1122. This bill makes changes in WSI's subrogation law and creates a lien provision. The WSI Board of Directors is in support of this bill.

Section 1. This section of the bill concerns the reimbursement of all benefits WSI has paid or otherwise would pay in the future to an injured worker harmed by a third party. An example of this situation is when an employee is hurt in a car accident while "on the job" by the negligence of another driver. While the injured worker is entitled to and receives medical and wage benefits from WSI, the accident was the fault of a negligent driver and the injured worker has a right to sue that driver for damages. In the event the injured worker sues for damages, WSI has a right to be reimbursed for up to fifty percent of the benefits paid. WSI's rights in this reimbursement process, and the process itself, are generally known as subrogation.

Under this bill, WSI is requesting the addition of a lien in the amount of the benefits WSI has paid. The lien would be created as soon as the first dollar of benefits is paid. It attaches, or becomes an encumbrance upon, any money to be paid by the third party. The lien is intended to be used in addition to WSI's existing subrogation right and would compliment that right by giving WSI a new remedy for collecting benefits paid. Specifically, this lien is intended to discourage third parties and injured workers from settling personal injury lawsuits without WSI's involvement. Currently, when an injured worker settles their case and releases the third party from liability, WSI's right to recover is extinguished and WSI must attempt to collect its share from the injured worker. This is not an appealing remedy because it requires WSI to sue the same injured worker it is currently assisting.

Under the proposed changes, if WSI does not receive its share of the settlement within thirty days of the money being paid to an injured worker, it may recover its lien amount from all the parties involved, regardless of whether the injured worker released any of those parties from liability. Because this lien is a powerful encumbrance, WSI's ability to use it is tempered: WSI must provide a notice of its lien to the injured worker and the third party before enforcing its lien. And, WSI has only one year from the date it becomes aware of the injured worker's recovery to begin a lawsuit to enforce the lien.

Another proposed change in Section 1 involves the North Dakota Supreme Court's decision in *Lawson v. N.D. Workmen's Compensation Bureau*, 409 N.W.2d 344 (1987). In that case, the Court held that WSI must pay fifty percent of the costs of an injured worker's lawsuit against a third party. Before that court case, WSI interpreted the statute to require WSI to pay fifty percent of the costs of a lawsuit before recovery, and after recovery the costs were retrospectively prorated. The proposed change is intended to clarify the statute so that WSI may once again pay fifty percent of the costs before recovery, and prorate the costs after recovery. It is important to note that costs are prorated only if there is a recovery. If there is no recovery, WSI is responsible for fifty percent of the costs.

Finally, WSI proposes to raise the fees injured workers' attorneys earn for collecting WSI's share of recovery from twenty percent to twenty-five percent in situations where recovery is obtained without starting a lawsuit. And, WSI proposes to raise their fees to thirty-three and one-third percent in situations where recovery is obtained through binding alternative dispute resolution (not intended to include nonbinding processes). These changes are intended to help lessen litigation costs.

Section 2. This section of the bill involves situations where an injured worker has received benefits from WSI and later files a claim with another state for the same injury. Our current law requires an injured worker to reimburse WSI the benefits paid to them during the time period the injured worker was eligible to receive benefits from another state system. In theory, this is to avoid a double recovery.

In practice, there are situations when WSI does not receive reimbursement of benefits it paid because injured workers, private insurers, and other states fashion awards or settlements so that their time period of eligibility does not coincide with the time period WSI was providing benefits. The proposed change is intended to close this loophole by requiring these parties to be mindful that any settlement or reimbursement must consider all benefits received from WSI regardless of how another state or insurer fashions the dates of eligibility in their systems. This change should not prejudice injured workers as it does not affect their eligibility in North Dakota.

This concludes my testimony. I would be glad to answer any questions.