

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2381

2005 SENATE JUDICIARY

SB 2381

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2381

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 31, 2005

Tape Number	Side A	Side B	Meter #
1		X	4300 - End
2	X		0.0 - End
Committee Clerk Signature <i>Mona L Solberg</i>			

Minutes: Relating to false claims or statements made to workers' compensation; penalty & fiscal note.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen Fairfield, Dist 29 Introduced the bill (meter 4993) I entered this bill on behalf of a constituent in Jamestown. He could not be here but submitted the following testimony. Read Att #1. Everything I am saying is second hand. This case has other issues attached to it. I do not have all the information on this case.

Senator Hacker asked if an appeal had been filed. Yes they did, this has been an on going event and they have used every avenue afforded by WSI.

David Kemnitz, ND AFL-CIO - (meter 183) I received a phone call from the individual in Att #1. He is in a clinic and has trouble getting here. This case points out something the law has

"over reached". Does the punishment fit the crime. He has lost everything in light of what he thought was a small amount of money. WSI files an order and the claimant has to prove clear and convincing evidence. Stated that in page 3, line 5-Medical benefits should never be tampered with. Sited a case of a 17 year old football injury being held against a current claim.

Att #2 Claim flow process

Testimony in Opposition of the Bill:

Tim Wahlin - Staff Counsel at Workforce Safety and Insurance (meter 725) Gave Testimony - Att #3.

Sen. Traynor asked if the "standard of proof" that is now in the law, in the statute or is that "case law"? That is case law. Case law operates within the statute as a preponderance.

Sen. Trenbeath what do you know about the Att #1 case? I can not respond on the case until the claimant has signed a release form.

Sen. Traynor asked how the purpose of receiving benefits is proved. Can you? It is an issue

Mr. Wahlin responded. The link is a presumption. Why else would we be discussing this

Sen. Nelson stated in page 2, you are making the assumption that workers are going to intentionally lie. I have a problem with that. For the most part our workers are honest hard working folks. How can you make that statement. He replied that, he agrees with her and that the vast majority of people they have no issue with. This statement comes from our current statute as it is in place.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Trenbeath stated that he did not like witnesses that he was not allowed to cross examen.

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Senate Judiciary Committee

Bill/Resolution Number SB 2381

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Senator Syverson questioned "willful vs. intentionally"? These are defined in the statute with a fine distinction.

Chapter 9 Def 12.1 They may be described differently for WSI also.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2381

Senate Judiciary Committee

☐ Conference Committee

Hearing Date February 7, 2005

Tape Number	Side A	Side B	Meter #
1		X	3035 - 4720
Committee Clerk Signature <i>Mona L Solberg</i>			

Minutes: Relating to false claims or statements made to workers' compensation.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following:

Sen. Traynor presented (meter 3095) an amendment - Att. #1. He stated that it was very difficult to make a decision on this legislation with only one side of the story. This amendment would open up the records and both sides could be heard equally.

Sen. Trenbeath stated that the trigger for the amendment the last two word "factual inaccuracies" and change it to the more neutral "the disclosures".

Senator Triplett asked for an explanation on what the amendment has to do with the actual bill?

(meter 3309) Discussion. **Senator Triplett** stated that **Sen Fairfield's** bill was to address problems within the contact of WSI not the legislature to sit in judgment of each individual case.

Sen. Trenbeath responded that we are being presented with a bill, intended to cure an ill, for which we are not convinced exists because of the inability to hear both sides of what one side

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Senate Judiciary Committee

Bill/Resolution Number SB 2381

Hearing Date February 7, 2005

insists that there is a problem. That is what generates the amendment. Who would benefit from information being "put out there"? **Sen. Trenbeath** responded that had we had legislation like this at the time we got something like this we may have been able to determine what value this is. We have no way of telling what value it would do with only one side of the story.

Sen. Trenbeath made the motion to amend amendment #1 and **Senator Triplett** seconded it.

All were in favor motion passes.

Sen. Trenbeath made the motion to move the amended amendment and **Senator Hacker** seconded **Sen. Nelson** and **Senator Triplett** were against amendment. Majority rules and motion passes.

Sen. Trenbeath made the motion to Do Pass bill as Amended and **Senator Syverson** seconded the motion. **Sen. Nelson** and **Senator Triplett** were oppose. Majority rules motion passes.

Carrier: **Sen. Traynor**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

FISCAL NOTE

Requested by Legislative Council
02/09/2005

Amendment to: SB 2381

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				\$0		\$0
Expenditures				\$0		\$0
Appropriations				\$0		\$0

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.*

Anticipate no fiscal impact with Engrossed SB 2381.

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.*

No impact.

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.*

No impact.

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.*

Not applicable.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	02/09/2005

FISCAL NOTE
Requested by Legislative Council
01/25/2005

Bill/Resolution No.: SB 2381

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: False Claims or Statements

BILL NO: SB 2381

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance (WSI), 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 would place additional limits on WSI's ability to terminate benefits and to recoup past benefit payments in situations involving false or misleading claim statements.

FISCAL IMPACT: We do not have access to an appropriate base of historical experience to use in quantifying the anticipated impact of the proposed legislation on rate and reserve levels. However, to the extent the legislation constrains WSI's ability to terminate benefits when fraud is involved as well as diminish the degree to which the current statutes deter fraud, losses will increase and future premium levels will be adjusted accordingly.

DATE: January 27, 2005

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

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

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line*

item, and fund affected and the number of FTE positions affected.

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

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

February 4, 2005

Att #1

2/7

PROPOSED AMENDMENTS TO SENATE BILL NO. 2381

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 65-05-32 of the North Dakota Century Code, relating to exceptions to the workers' compensation confidentiality requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 65-05-32 of the North Dakota Century Code is created and enacted as follows:

If an injured employee or injured employee's representative voluntarily discloses claim information to ^{the public} any representative of the news media and the disclosed information is published or reported by any type of news media, the injured employee waives the confidentiality of this section to the extent necessary for the organization to respond to factual inaccuracies." *disclosures*
the

Renumber accordingly

Date: 2/7/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 238/

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move to Amend, Amendment #1 2 times

Motion Made By Sen. Trenbeath Seconded By Sen. Triplett

Senators	Yes	No	Senators	Sen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		✓	
Senator Syverson	✓		Senator Triplett		✓	
Senator Hacker	✓					
Sen. Trenbeath	✓					

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment _____

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

Date: 2/7/05
Roll Call Vote #: 2

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2381

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Do Pass Amended Amendment

Motion Made By Sen Trenbeath Seconded By Sen. Hacker

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		X
Senator Syverson	✓		Senator Triplett		X
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment _____

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

Date: 2/7/05
Roll Call Vote #: 3

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 238/

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass As Amended

Motion Made By Sen Trenbeath Seconded By Sen. Syverson

Senators	Yes	No	SenatorsSen. Nelson	Yes	No
Sen. Traynor	✓		Sen. Nelson		X
Senator Syverson	✓		Senator Triplett		X
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 4 No 2

Absent 0

Floor Assignment Sen. Traynor

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

REPORT OF STANDING COMMITTEE

SB 2381: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2381 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new subsection to section 65-05-32 of the North Dakota Century Code, relating to exceptions to the workers' compensation confidentiality requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 65-05-32 of the North Dakota Century Code is created and enacted as follows:

If an injured employee or injured employee's representative voluntarily discloses claim information to the public, the injured employee waives the confidentiality of this section to the extent necessary for the organization to respond to the disclosure."

Renumber accordingly

2005 TESTIMONY

SB 2381

AA #1

Testimony on Bill #1495
January 31, 2005

To Mr. Chairman and members of the committee.

My name is Mark Koble, I live in Jamestown and I am an injured worker. I have had four back surgeries and am regretfully looking at a fifth surgery on my back. I was injured at work in 1984, since that time I have returned to work and had to leave work due to my back. Bill ~~1495~~²³⁸¹ needs to be passed so other injured workers don't have to experience the trauma I did.

In 2000, I was determined permanently and totally disabled by my doctor. I am unemployable due to my injury and failed surgery. In the summer of 2001 I was reimbursed for parts and gas, as well as receiving a Christmas gift of \$200 from a family friend. It was WSI's assumption that I was working for pay and discontinued my benefits and requested an overpayment of \$65,000.

It was never an intention of mine to scheme to obtain money or fail to report to them any of my activities that were directed by my doctor. My claims analyst and I spoke quite regularly and she was well informed of my condition and any activities that I was doing. I even contacted Mr. Dave Aberle to discuss what I could and could not do. In that conversation I was told that being reimbursed monies was not considered income and did not need to be reported.

The reimbursements I received were considered income by WSI and in February 2003 WSI cut off my benefits. It wasn't until May 2004 that my hearing was scheduled, after being cancelled two times. This left me without income, without my monthly benefits I had to sell our family home and other possessions. I was so traumatized by the actions of WSI that I suffered from depression and posttraumatic stress syndrome, which led me to be inpatient at Prairie Psychiatric Center for a total of ten months.

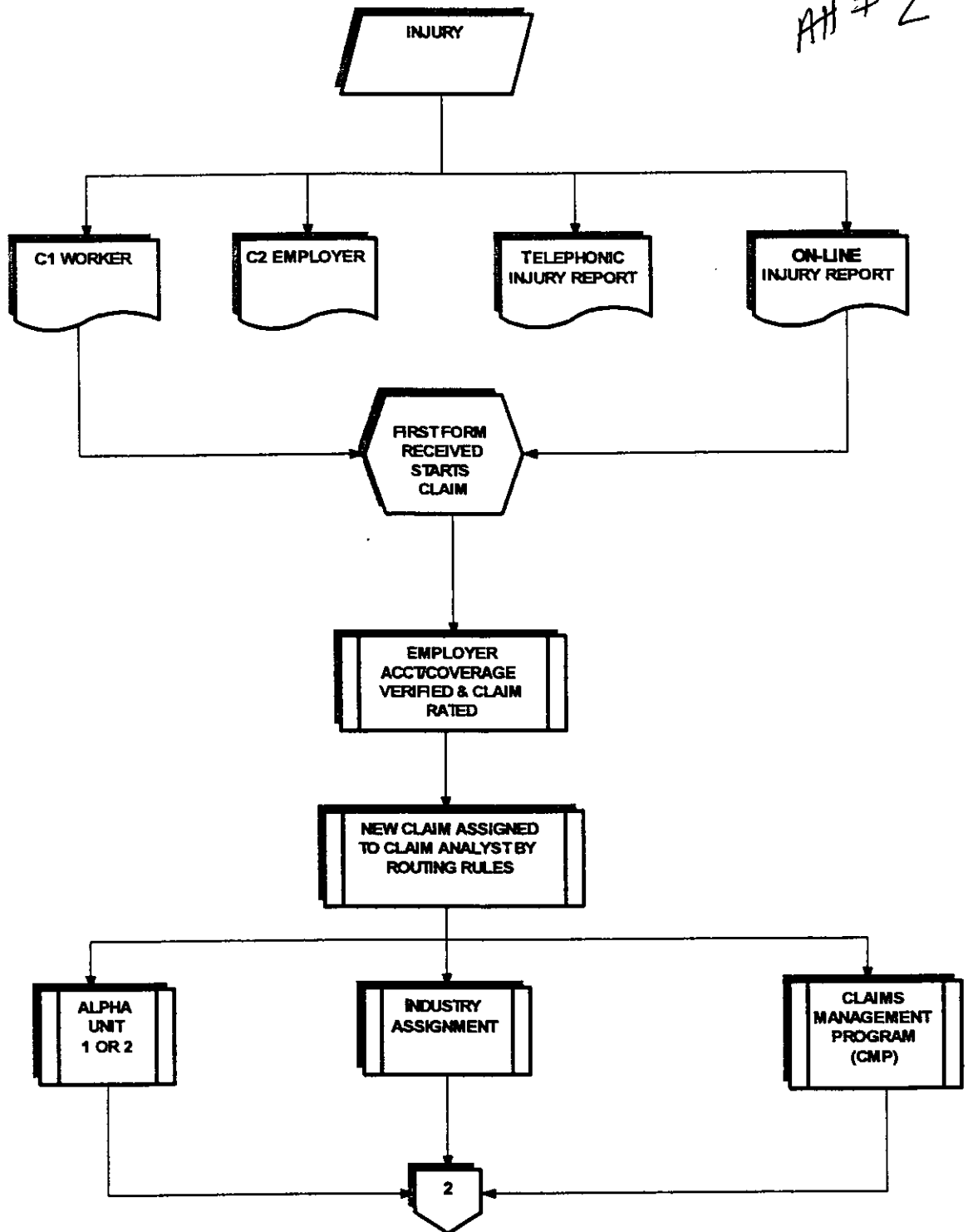
I am an educated injured worker and I believe that Bill ~~1495~~²³⁸¹ should be passed so other injured workers don't have to experience what I did. I am still disabled and probably even more now dealing with depression or the after effects of WSI's conduct.

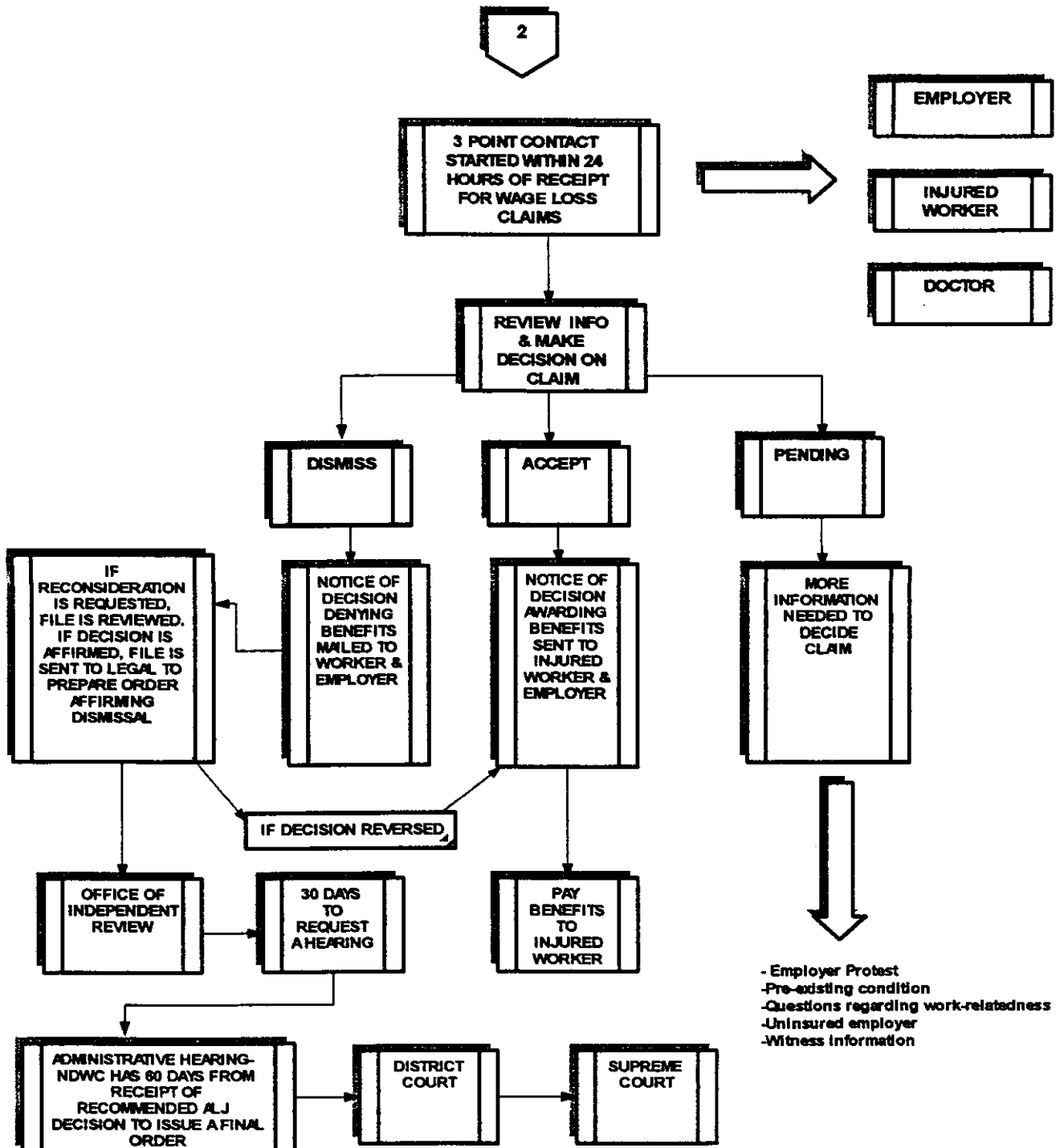
Thank you for your time, I wish I could have been there in person, but was unable to be there due to my back.

Respectfully,

Mark Koble

AH # 2





Att #3

**2005 Senate Bill No. 2381
Testimony before the Senate Judiciary Committee
Presented by: Tim Wahlin, Staff Counsel
Workforce Safety and Insurance
January 31, 2005**

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin and I am staff counsel at Workforce Safety and Insurance (WSI). I am here to testify in opposition to SB 2381 which would place additional limits on WSI's ability to terminate benefits and to recoup past benefit payments in situations involving false or misleading claim statements. The WSI Board of Directors opposes this bill.

The 54th Legislative Assembly directed WSI to establish a Special Investigations Unit (SIU). One of the unit's primary responsibilities is to investigate credible allegations of provider, employer, and injured worker fraud. The proposed changes in SB 2381 specifically address the level of proof required in an investigation related to injured workers as well as the penalties that can be pursued. Consequently, today's testimony will only focus on injured workers and not employers and providers.

Currently, an individual who commits workers' compensation fraud risks forfeiting all their future benefits. Additionally, they may also be required to reimburse WSI for those benefits paid based upon the false claim or false statement. In order to trigger these statutory consequences, the burden is on WSI to prove by a "preponderance of the evidence" the following elements:

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

A major concern with this bill is its attempt to limit: "The amount forfeited or the amount reimbursed to the organization . . . to the difference between the amount of benefits erroneously awarded and the amount of any benefits to which the individual would have been eligible had the claim or statement been accurate."

In short, if SB 2381 becomes law, an individual who is receiving WSI wage benefits and additional unreported income would only be required to repay the difference between what WSI can show by "clear and convincing evidence" was received as a result of the work and the amount they would have received had they reported the work. What this ignores is the individual has demonstrated by their conduct that they are capable of working and earning an income.

Under WSI's interpretation of this provision, a system is created where an individual may intentionally lie to obtain benefits with little or no consequence. The net effect of the provision would be to water down civil penalties for fraud to such a degree that the deterrent effect of our current legislation would in all likelihood end.

Another concern WSI has with the bill is that it would serve to effectively eliminate the forfeiture of medical benefits as a consequence of fraud. The bill directly states: "The organization may not terminate an individual's medical benefits under this section unless the individual willfully misrepresented the individual's physical condition or ability with the purpose of obtaining medical benefits to which the individual knew the individual was not entitled."

In the vast majority of physical misrepresentation cases, fraudulent conduct is done with the intent to obtain disability benefits or wage replacement benefits and not medical. Consequently, this bill will allow an individual to lie to WSI in order to gain wages and still retain medical and other benefits on a false claim.

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

For the stated reasons, WSI asks for a "do not pass" recommendation on SB 2381. Thank you for your consideration. If you have any questions, I'd be happy to answer them.