

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2072

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2072

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2072**

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 16, 2007**

Recorder Job Number: **1219 & 1220**

Committee Clerk Signature



Minutes:

Rob Forward – Staff Attorney for Workforce Safety and Insurance – *In Favor*

TESTIMONY #1 *Read testimony*

Ammendment Proposed

[m :00 – 9:57]

S Klein: What we have here is a culmination of all the work that we've done.

S Potter: In state auditors audit, they were investigating one of their own employees, is that just a one time glitch? Are your investigators allowed to do any other investigations?

R Forward: Currently made up with 1 manager, 2 investigators and another person who is a part-time investigator. Primary functions are investigating workers fraud, employer fraud, medical provider fraud and also provide broad range of fact-finding functions.

S Klein: Are we going to have another bill to increase your powers? In interim there was some discussion about increasing the power; giving them a little more jurisdiction.

R Forward: We talked about that. One of the last things we can get for our people without legislative movement is the changing license plate and safety belt, the rest of it's been taken care of it.

S Klein: Section 3

S Hacker: Are you storing paper documents for "X" amount of years?

R Forward: The organization started in 1919 with paper files back to 1919. 1995 started imaging documents, kept electronically. 1995 and back are sitting in the warehouse.

S Klein: Section 4 deals with increasing dependency allowance

S Wanzek: I understand you meant to say \$15 a week, not month per child. That would be a \$5 a week increase. 1960 - \$3; 1970 - \$10, now ask be only \$15

S Hacker: If only 1 of 6 states is doing it, why are we?

R Forward: Been batted around, why continue?

S Potter: How many claimants are covered under this? What is the dollar value?

R Forward: we will see about a \$70,000 – \$71,000 per year increase based on the numbers we have now.

S Potter: So there are 14,000 weeks approximately being covered?

S Klein: Any questions on Sec. 5, Sec. 6

R Forward: Section 5, there is a mistake, should be the 59th Legislative session, should have been the last session.

S Klein: Q? Favor?

Bill Shalob – ND Chamber of Commerce –*In Favor*

TESTIMONY #2

Reasonable benefits. Believe Attorney fees are appropriate.

S Potter: Is it done per hour or per case?

B Shalob: refer to Workforce Safety. Not sure I can tell you

S Klein: Q? Favor? Opposition?

Seabald Vetter - *In Favor Except for section 4*

Why do we have to look at other states, what other states are doing. Why don't we run our state the way we want to. \$15 a week, we've got a good budget, should be \$25 a week. Do what we want to be. Who can raise a child at \$15 a week. [m 9:15 gives examples of why should be more]

S Klein: You're in favor of increase, don't think it's enough. You would like to see it higher.

S Hacker: Section 4, not against paying dependent the payments. If were a person already getting payments, I would see this as an additional benefit.

S Vetter: They take 66 2/3 off of that. It's skimpy. The budget is there in reserve, why not help the poor people out?

Opposition?

David Kemnitz – President of ND AFLCIO

TESTIMONY – will submit

Have concerns how claimant addresses bureau and bureau addresses claimant concerns. How does this help work through the system? #1 Section 1, [reads from CC]. Bureau may underestimate something, why would removal help? Needs further council study. What's justice. Don't have the amendments: #2 Bill as written *Peace Officers* in unmarked vehicles. WSI is not a peace officer. Peace Officers put themselves in danger and sometimes have to have an unidentified vehicle. In State of ND the sticker in the window isn't going to put someone in jeopardy. State agencies are servants of the people. If you're on a backroad with an unmarked vehicle that might be different. Stigma to some, insignia to others.

S Klein: Good idea it's good to be parked out in country with a sticker. If there's a state guy sitting out in the middle of the pasture, I think I'm going to have a problem anyway. Want to make sure we don't go a-huntin' we should be just asking questions first. We're talking 2 vehicles.

D Kimnetz: They can go incognito. Is a marked Game Warden safer coming up to a hunter and asking, "What's in your bag?," or safer with no indication of who he is asking same question. Be safer with sticker than not. Risk unidentified surveillance.

S Audit: If fraud, need to root it out, it is better.

D Kemnitz: They have the highest standards, I don't think Secret Service attitude is what is needed.

S Potter: Indicate the opposition to bill, you pointed at a couple sections. Did you get cut off? Section 8 takes away lawyer fees, does rejecting section 8 and leave the digression with the agency satisfy your concerns about section 1, or would you still have concerns?

D Kemnitz: I see it as sets absolute, it protects itself further by Section [m 20:50 – listen to response]

S Potter: Suggesting fee schedule for claimants is not same as within agency.

D Kemnitz: You have: Claimant, law of regulation, claimant's analyst, supervisor, legal department, special investigative unit, oversight, executive bureau, board. Good stack on their side. The claimant is still by themselves. Both sections 1 & 8.

Section 3: WSI asserts have no way of knowing when person dies. If there is a claimant spouse, they will find out. In long-term records. How does the claimant or the dependant's surviving spouses know when to make the request to have the records specifically not destroyed? When will they know when to make a request? Question – why can't Dept. of Health in ND be informed?

S Hacker: Why didn't they document all the records, why didn't they go beyond '95? Why do they have to be destroyed at all?

D Kemnitz: Don't know.

S Wanzek: Someone might not be paid benefits for 30 years. What would be important?

Example of why need these records.

D Kemnitz: [1975 personal example m 26:04 – 27:19]

Section 4: Go to \$15 – applaud that. When raised to \$10 in 1987, only the new applicants go the \$10 instead of \$5; existing still got \$5. 1989 changed it so that EVERYONE qualified; new and existing. If that is the intent this time, good, if not, want it withdrawn.

S Andrist: If law 1985, anyone born at that time would be a dependent anyway, would they?

D Kemnitz: Point was in '87 they raised from \$5 to \$10 for new, but not existing.

S Hacker: See fiscal note, not very much, only \$800 per claimant.

D Kemnitz: Section 5 – no questions, Sec. 6 – nullified status [m 30:54]

S Klein: Where you involved in any of this discussion?

D Kemnitz: connection w/ Board of Directors was minimal, I don't get to review.

Question on "Preferred provider status" Section 7 When you remove administration requirement. [m 32:07] Section 8 Does this help claims?

S Klein: Opposition [m 34:40]

Ed Christensen – Injured worker - Opposition

Talking about fraud and injured workers, the bureau paid a firm in CA some time back to do a survey in ND, they did a study, it wasn't the injured workers, it was the employers that were the biggest frauds. [35:17] This AM only talking about injured workers. "Gary Nelson" bill, written for years and years and now retired, so does come on "here." Price for iron woker is almost twice what it is for a cement worker/laborer. Don't discuss employees, discuss fraudulent employers. There are employers doing fraud, need that clarified.

Leroy Volk- Insured worker - Opposition

Page 6

Senate Industry, Business and Labor Committee

Bill/Resolution No. **2072**

Hearing Date: **January 16, 2007**

[was upset] Was a lobbyist 2 years ago. [m 37:35 testified] Disability, 60% take off top, only get 45%.

Q? CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2072 B**

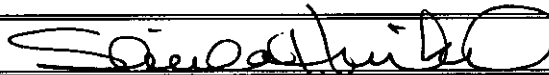
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **January 17, 2007**

Recorder Job Number: **1325 m 19:35**

Committee Clerk Signature



Minutes:

S Klein: 8 Sections Bill discussed at length, S Heitkamp. Discussion in nearly every part.

[Revised copy WFS brought up revised from "monthly to weekly" – passed out]

Discussion?

S Potter: Much of the bill is dealing with attorney fees, one of questions, what's the extent of the problem? Are fees going up or down? How much money talking about? What is the need?

S Klein: That would take some further research, if we need to change our opinions one way or another or the other.

Motion DO NOT PASS SB 2072 Heitkamp

Second by Behm

S Andrist: Saw as attempt to paying the fees that they're directed to do by statute. [23:27 m – talks about administrative code] I wish rather than kill the bill, if the fee and administrative code are proper, than let's change the law.

S Heitkamp: Why does WSI get to set up a whole complete different set of rules other than any other agency in the state? They're saying, "The rules don't apply to us." Why? Why can't they live under the same rules & guidelines as everybody else? I'm sick of them acting like

they get special treatment, from salaries to benefits, to moving. They're no better than any other human being who works for the state. Getting old.

S Potter: There were actually some sections that could be worked, 30 year requirement. I'm an Historian, so destroying documents just freaks me out because I'd kind of like to know what claims were filed in 1919, let's take a look at them. Maybe there's a way to put it all on microfiche or disk. Increasing payments for dependents, I understand, it's reasonable. They've thrown a whole Christmas tree at us. There are parts that are unpalatable, and that's why I move to DNP.

S Klein: I'm somewhat supportive of everything as I've listened to the explanation, but with that, I believe that they needed some opportunity to do some investigative work.

S Heitkamp: 2004 they've spent for 2 people to do investigations, they're not state employees.

They don't have to have the state on their vehicle, they've hired 2 private eyes. 2 pickups

S Potter: Are those the only 2 vehicles they have?

S Klein: Used to have 2 cars, now have 2 pickups.

S Potter: It doesn't just limit it to the investigators [read from bill 27:31m] page 2 line 5 & 6

S Hacker: Some of the agencies work with different public vehicles. I wonder why they put them on in the first place, so they are negated to use the car on Sundays or go do personal errands? We don't know how many vehicles they have. [examples 28:23m]

S Klein: Reads about special investigative vehicles.

S Hacker: I would put an amendment in.

S Klein: We have a motion for a DO NOT PASS.

S Heitkamp: I've been given company vehicles since I was 20 years old, and when you put names on them of who you are, it changes your attitude about what you're doing.

S Klein: More discussion on a DO NOT PASS on SB 2072.

ROLL for DO NOT PASS SB 2072

4 yes 3 no

MOTION FAILS 4 – 3

S Wanzek: I do believe there were amendments.

S Klein: If you're looking at those amendments that were proposed, page 2, line 5, it removes the language "workforce safety and insurance" and on line 7, page 2, line 7, insert section....

S Potter: which amendments are we looking at?

S Klein: They were handed out with Rob Forward's testimony.

S Wanzek: Could you repeat what S Hacker was talking about?

S Hacker: I was just thinking of adding "special investigative unit" behind WFS and insurance.

S Andrist: Tell me, what the amendment does.

S Klein: Says, "the requirements of this section do not apply to vehicles operating....Line 7 after the period.

S Andrist: So this is so they can drive and investigate in an unmarked vehicle?

S Klein: Yes

S Behm: The amendment you just said would be a requirement to put the decals on.

S Hacker: Just the investigative units they don't have to have the decals on.

S Klein: "Central vehicle management system vehicles must display window decals designed by the director" – and we are saying...those requirements only apply to worker's safety.

S Hacker: I'd like to AMMEND THE AMMENDMENTS that they produced to say at the end:
"The requirements of this section do not apply to special investigative unit vehicles operated by WSI."

S Klein: Are the committee members OK with this amendment?

I would like to see it drafted.

S Potter: So we are adding a comma and these 3 words?

S Klein: Yes

S Wanzek: Do we need to AMMEND THE AMMENDMENT, or can we include that as all part of one amendment? I'm somewhat supportive of that, I don't see the need; I think the concern is more in the area of investigations. It's not just the worker, but the employer. Fraud is fraud and I feel compelled to say that, I don't think we're targeting just workers.

S Hacker: I think that when people are trying to hide things whether an injured worker is in a home or at a business, noticing something is wrong or happening, you see these sort of things. I don't have any problem with this.

S Klein: Heard the motions...

S Heitkamp: Quick point - as to why I'm going to oppose the amendment. I think the arrogance of the section itself tends to let the people upstairs understand what they're after. They spend 1.5 million on private eyes. They've got that ability; they've got that fund, if they're in an investigation situation, where they need to check out someone, they're hiring private dicks to do that now. Giving them a couple cars that could turn into Escalades, say, "Hey, we investigated once with this thing," is not where I want to go. Leave it in there, let people see that they don't want to be part of a state agency. I'm going to oppose the amendment.

S Klein: discussion?

S Hacker: MOTION TO MOVE [reviews amendment 39:31m] Insert: "The requirements of this section do not apply to special investigative unit vehicles operated by workforce safety and insurance."

S Wanzek: SECOND THE MOTION

S Behm: Why are we really voting now?

S Klein: What we're doing is voting for an amendment that only allows them to not put the "state fleet vehicle" on the fraud unit vehicles.

ROLL ON DO PASS FOR THE AMMENDMENT

MOTION PASSED 5 – 2 SB 2072

S Andrist: Do you want final action on the bill?

S Klein: Yes

S Andrist: MOTION TO DO PASS AS AMMENDED

S Wanzek: SECOND BY WANZEK

S Potter: For the record, the attempt to chip-piece schedules is really hypocritical. They're paying attorneys, much more for their own attorneys and attorneys are used for worker's safety than claimants are getting. I'm going to oppose the act.

ROLL ON DO PASS AS AMMENDED

MOTION PASSED 4 – 3 SB 2072

CARRIER: Wanzek

S Wanzek: I can assume you're going to say something on the floor?

S Heitkamp: You can be sure of that.

FISCAL NOTE
Requested by Legislative Council
03/09/2007

Amendment to: Reengrossed
SB 2072

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed bill allows for investigator travel in unmarked state fleet vehicles; increases the weekly dependency allowance from \$10 to \$15 per week; provides for the non-dependency death award to be paid to the estate; and provides clarification within the vocational rehabilitation statute.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Reengrossed SB 2072 with House Amendments (Second Engrossment)

BILL DESCRIPTION: WSI Injury Services

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 reengrossed bill with amendments allows for investigator travel in unmarked state fleet vehicles; increases the weekly dependency allowance from \$10 to \$15 per week; provides for the non-dependency death award to be paid to the estate of a deceased employee; and provides statutory clean-up language within the vocational rehabilitation statute.

Reserve Level Impact: The proposed increase in dependency allowance will serve to increase future dependency allowance payments on existing claims by approximately \$70,000 per year. Assuming the dependency payments expire at the age of 18, the accumulated impact for the remaining life of these claims is an increase to discounted reserve levels of approximately \$500,000.

Rate Level Impact: Although the increase in the dependency allowance will serve to increase the costs associated with future claims, it is not anticipated to have a material impact on statewide premium levels (less than one-tenth of one-percent per year).

DATE: March 12, 2007

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	03/12/2007

FISCAL NOTE
Requested by Legislative Council
01/31/2007

Amendment to: SB 2072

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The reengrossed bill allows for investigator travel in unmarked state fleet vehicles; increases the weekly dependency; and provides for the non-dependency death award to be paid to the estate of a deceased employee.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Reengrossed SB 2072

BILL DESCRIPTION: WSI Injury Services

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 reengrossed bill allows for investigator travel in unmarked state fleet vehicles; increases the weekly dependency allowance from \$10 to \$15 per week and establishes the criteria when the dependency allowance will be paid; and provides for the non-dependency death award to be paid to the estate of a deceased employee.

Reserve Level Impact: The proposed increase in dependency allowance will serve to increase future dependency allowance payments on existing claims by approximately \$70,000 per year. Assuming the dependency payments expire at the age of 18, the accumulated impact for the remaining life of these claims is an increase to discounted reserve levels of approximately \$500,000.

Rate Level Impact: Although the increase in the dependency allowance will serve to increase the costs associated with future claims, it is not anticipated to have a material impact on statewide premium levels (less than one-tenth of one-percent per year).

DATE: January 31, 2007

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	01/31/2007

FISCAL NOTE
Requested by Legislative Council
12/27/2006

Bill/Resolution No.: SB 2072

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation clarifies statutes relating to attorney fees; modifies sections relating to investigator travel, claim file destruction, weekly dependency allowances, non-dependency death awards; and clarifies language when changing medical providers.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2072

BILL DESCRIPTION: WSI Injury Services

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 clarifies what the governing statute is relating to the payment of workers compensation attorney fees; allows for investigator travel in unmarked state fleet vehicles; provides for the time period in which claim files can be destroyed; increases the weekly dependency allowance from \$10 to \$15 per week and establishes the criteria when the dependency allowance will be paid; provides for the non-dependency death award to be paid to the estate of a deceased employee; clarifies language when changing medical providers; provides statutory clean-up language within the vocational rehabilitation; and clarification within the attorney fee cap statute.

Reserve Level Impact: The proposed increase in dependency allowance will serve to increase future dependency allowance payments on existing claims by approximately \$70,000 per year. Assuming the dependency payments expire at the age of 18, the accumulated impact for the remaining life of these claims is an increase to discounted reserve levels of approximately \$500,000.

Rate Level Impact: Although the increase in the dependency allowance will serve to increase the costs associated with future claims, it is not anticipated to have a material impact on statewide premium levels (less than one-tenth of one-percent per year).

DATE: January 12, 2007

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-3760	Date Prepared:	01/12/2007

Date: 1-17-07

Roll Call Vote : ~~20~~ 3

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2072

Senate INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number Do Pass AS Amm.

Action Taken

Motion Made By Andrist Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Arthur		✓
Senator Hacker, Nick VC	✓		Senator Heitkamp, Joel		✓
Senator Andrist, John	✓		Senator Potter, Tracy		✓
Senator Wanzek, Terry	✓				

Total Yes 4-3 PASS No

Absent

Floor Assignment Wanzek

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

REPORT OF STANDING COMMITTEE

SB 2072: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2072 was placed on the Sixth order on the calendar.

Page 2, line 5, remove "workforce safety and"

Page 2, line 6, remove "insurance,"

Page 2, line 7, after the period insert "The requirements of this section do not apply to special investigative unit vehicles operated by workforce safety and insurance."

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2072

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2072

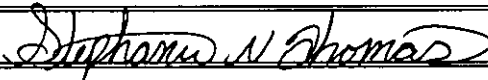
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3897

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on SB 2072.

Rob Forward, WSI: Support SB 2072. See written testimony #1.

Rep. Zaiser: How do these seemingly autonomous kinds of pieces of policy get lumped together into one bill? To me it's like a hog house before it's even started.

Rob: It's commonly referred to as our injury services bill, or claims bill. The reason I guess is that generally speaking all of these things do relate in that they do affect our claims process. What I've seen last session and this one is agency bills dealing with employer issues are all put in one bill, and agency bills dealing with primarily claims issues are put into another, and this is our claims bill.

Rep. Ruby: In section 5, if you're dealing with an overall decision, and there is an administrative order, you probably already are granting administrative order, so how can we go back?

Rob: The application is a practical matter which would only apply to the long term, and short term retraining subtenant change, and the reason that date was picked is because that's the date that HB 1171 was given for an effective date which was passed last session.

Rep. Keiser: Why didn't the Senate take those 2 sections out?

Rob: It's my understanding listening to the floor debate there was some confusion about whether or not a notice of decision would still give the injured workers the same appeal rights as they would have under administrative order. I think they quite frankly got it wrong, and through translation it didn't come out the way it probably should have. The application section, I have no idea why they didn't take that out, maybe just an oversight.

Rep. Zaiser: I understand that all of these issues in the bill relate to claims in a general way, but it seems to me that the description on a car is very different then policy kinds of issues addressed in other portions of the bill.

Rob: I really have no explanation that's any different than the first one I gave you.

Rep. Amerman: In section 4 of the amendment you brought in, am I correct everything in this already is law, and the only changes are under #1, or is this all new language?

Rob: You're correct. The only changes are in the first paragraph, and the second paragraph, and it's in the first 4 or 5 lines of the statute. The reason the rest of the thing is in there is that is the advice we got from Legislative Council on how to draft this particular statute.

Rep. Amerman: The cars you're talking about, how many are there?

Rob: There are two. Currently, they are operating two state fleet pickups. Originally, they were given cars, and they were not able to take off the state decals which say ND State Vehicle in the back, and the plates have that OFCL on them, and they thought a clever way to avoid that problem would be that they get a pickup, and try to make it look like they are doing construction work.

Rep. Amerman: Say you get the unmarked cars, and they have surveillance. If they were looking suspicious, and somebody walking down the street seen them there for awhile, do they have an ID to show the public to identify themselves?

Rob: They have a state employee identification card, and most of our investigators also have a means of identification specifically for special investigations unit.

Rep. Boe: Is workforce safety prohibited from leasing a vehicle?

Rob: I'm not sure.

Rep. Thorpe: So, if this were to pass, and state fleet wasn't on the plate, your people that went out could go hunting, or fishing, or all kinds of different things as long as it wasn't identified as a state car, correct?

Rob: Yes, just as any employee could be out messing around, yes that's possible.

Rep. Zaiser: Could the abuse on the unmarked car go into aspects of investigation where they kind of push the limit in terms of how they think they're investigating?

Rob: Without a specific example, or scenario I would have a tough time answering that.

Bill Shalhoob, ND Chamber of Commerce: Support of SB 2072.

David Kemnitz, AFLCIO: Support SB 2072. We support the bill as it's written, but we still have some reservations about the unmarked cars.

Rep. Vigesaa: As I understand it section 4 and 5 were in the original Senate bill, so you didn't oppose the bill as it was presented in the Senate committee?

David: We did oppose, and we did oppose the sections that were removed from the Senate side, and we supported the removal. The debate after that was a discussion with the bureau where we say maybe this was misunderstood, and not as well understood as it could have been.

Hearing closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2072

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: 02-28-2007

Recorder Job Number: 4065

Committee Clerk Signature

Lisa M Thomas

Minutes:

Chairman Keiser allowed committee discussion on SB 2072.

Chairman Keiser: As you will recall, on SB 2072, WSI proposed two amendments to two sections. They were taken out on the Senate side and they are asking that they be reinstated into the bill. We also at the request of Dave Kemnitz, ask Rep. Jasper to comment on one of those sections and so I have passed out to you, his written comments relative to that section, but I also at that point, ask that Rep. Vigesaa get a hold of WSI and ask them to respond to the concerns raised by Jasper on that section. Is someone prepared to do that?

Rob Forward, WSI Staff Council, was present to answer questions.

Forward: I had the opportunity to review Rep. Schneider's letter and I just wanted to point out a couple of things. He indicates that a notice of decision is not something that is preferable because employers don't get it. That point is incorrect. All of the notice of decisions that we are building are sent to the employers. There are times where a claim is an older claim when a notice of decision may not be sent to the employer because the employer may be not in existence anymore. The other point I wanted to make is that without an order, the injured worker is not able to go through the OIR process and that's not correct. An injured worker at anytime can access the OIR process. We have actually had people assisted at the OIR

processing before we issue it. I am not sure what his comment is regarding the motives of the change, I think maybe that at the very heart of their resistance to this bill is that I think they suspect something is being done more than what we said is being done and I can tell you that this is a bit baffling because this change actually has been generated from our staff, the people that handle claims everyday. The basic feeling from them is that when we use notice of decisions in all other aspects of our claims handling, why can't we use it with the vocational rehabilitation situation? When they have asked me that situation, I've looked at it and made an educated or maybe uneducated guess that the reason is when we are given the ability to use a notice of decision on our notice to injured workers was back in 1997 and that was given in a statute of 650116. That statute was passed in 1997 giving us the ability to use NODS in claims situations. The vocational rehabilitation statute predated that. It was from the late 80's or maybe early 90's. When 16 went into affect, it was never recognized or changed in the vocational rehabilitation part. I told the claims people I think back then it was just inadvertent. People had put the NOD statute in and didn't realize they should have changed the vocational rehabilitation statute also.

Rep. Keiser: There were some other concerns that the administrative warden, has with it, certain requirements of notifications of the claimant and what the options are and what the time tables are. If this is the most formal thing we can do and with it are many other elements that get sent to the claimant and may not have those things if I recall. Is that true or not?

Forward: No, that's not true. We are basically mandated to tell the injured worker what we are going to be doing and that takes an abbreviated and easier to read format than NOD. But it tells them all the material things that we are going to be doing and it gives them notice certainly, if we didn't give them enough notice of what is going on, we would have a due process problem.

Rep. Keiser: Of what their options are? Clear information? If you don't like this, this NOD you can go to OIR or do this or that?

Forward: The NOD doesn't do that, nor does an administrative order. The administrative order has an attachment with it that talks about OIR if you want you attorney's fees paid you should contact the Office of Administrative Review. There is a difference in notification about OIR.

Rep. Keiser: Isn't that significant? If I'm a claimant, wouldn't I want that information?

Forward: If it is significant enough to block passage of this amendment then the logic would follow that we need that in all of our Notice of Decisions because there is really no difference between our notice of decision and vocational rehabilitation situations and the rest of our claims processing.

Rep. Amerman: With the OIR, they should know this because if you read the yellow sheet on OIR, where the claimant could take a claim forward through the process and he cannot take it forward if you have attorney fees to pay, they have to go through OIR, correct?

Forward: I think the substance of what you said is correct. You can get through those things, but you won't get your attorney's fees paid. You can hire an attorney and go through the process and avoid OIR, but WSI is under no legal responsibility to pay your attorney's fees.

Rep. Zaiser: In answering Chairman Keiser's question, you brought some interesting points. Would it be appropriate to have those kinds of options for the claimant when you do provide a decision, would not that be good to provide that on every decision?

Forward: I am not sure it would because I think we issue about 32,000 a year and if that would, most of those are never appealed and are not hotly contested issues. If we had that situation, instead of calling their claims adjuster to explain the NOD if they didn't understand it or to seek out information in the claims department, they instead start turning to the OIR people, we would be creating an imbalance in the process. I think it would probably end up in a

new balance of work load. We would be back up here asking for FTE for our OIR people. I don't think I'm exaggerating in saying that. If people start to realizing that "oh, I've got a problem where I don't understand this I'm going to contact OIR instead of my claims adjuster" I think the work load would shift.

Rep. Zaiser: I guess my next question would be isn't this just a part of doing business in the kind of field you are in? Some fields they are just required to provide information, it's just costlier, and it takes time. To me this seems very consumer friendly and one of those things I pointed out to Mr. Blunt during the break, I think you are never going to win the war on Public Relations, but you have got to try to keep your losses at a minimum. I think providing those options is really very consumer friendly and I think it would go a long ways at turning around perception.

Forward: I half agree with you but the point is the statute as it reads now is not that user friendly because in order is necessarily more formal and less user friendly and less understandable and we are trying to change that but it's not as user friendly as the Notice of Decision.

Rep. Ruby: Is a NOD often times a notice of accepting so there would be no reason to have all of that information, or is it only for denying?

Forward: You are correct. It is also accepting.

Rep. Ruby: So why would they need all this information about the OIR when it's in their favor?

Forward: Exactly.

Rep. Vigesaa: So really in your opinion this amendment in section four, that is just clean up to make it consistent with other language?

Forward: Correct.

Rep. Vigesaa: Then also in Rep. Schneider's letter, he references that the proposed amendment would add an unnecessary step in the appeals process. Would you be able to comment on that?

Forward: If I am an injured worker and I file a claim and WSI reviews it, issues a notice of decision accepting that claim and maybe my employer contests that I hurt it in a compensable way, the employer can write in on a scrap of paper and ask for an appeal this decision and it comes in and the next step then is to go to an administrative board. So the employer in my scenario is actually appealing but the injured worker can certainly appeal it too if it is a denial. The next step is to go to administrative order. The step that he is talking about it the one I just described. It doesn't exist for vocational rehabilitation. Instead of going through the informal process of a NOD, we jump right away to a formal order and then from there we go to an OIR review and then to an administrative hearing. I would guess that with the use of a NOD we would see fewer appeals of administrative orders because the injured worker and the employer are going to have an opportunity to understand a little better about what the bureau is proposing to do. The administrative order is a little bit more formal, more confusing, many times you take them to an attorney because you need the explanation. We believe our NODS are better use of everybody's time and we think in the long run it will actually help the process.

Rep. Amerman: I your answer to Rep. Ruby's question, you issue orders, not just in denial, but in acceptance as well?

Forward: NODS (notice of decisions). We can, if somebody appeals that NOD then we issue more.

Rep. Keiser: So for every action that is taken by WSI, you are using NODS, with the exception of Voc. Rehab, you cannot use NODS because it wasn't put into the code?

Forward: That's correct. Keep in mind, we have the ability to use an order, the statute says you can stick right to an order if you want to. We have never done that because it is not that user friendly. We would rather have the informal process take its step first.

Rep. Amerman: Is there a difference in the processes taken to the higher levels of the Administrative Law Judge and District Court? Is the order hold more weight one way than the other?

Forward: No, because theoretically you are never going to have an order, unless you are in the voc. Rehab process, you are never going to have an order unless there was a NOD. It's a step process. I issue a NOD on the decision that if you don't like that, you appeal it. If we are not going to reverse that NOD which we do, we issue an order and you can appeal that. The administrative Law judge only gets a chance to look at the order. They see the NOD but it makes no real affect on them because of the decision is the same and the injured worker's dispute is the same, so the answer is no.

Rep. Zaiser: In the NODS, does it in there say that clearly point out that the claimant has the right to appeal?

Forward: Absolutely. It does. We call it the thirty day appeal language.

Rep. Zaiser: I was wondering if possibly after lunch maybe you could bring copies of a NOD and the administrative order.

Forward: Absolutely.

Rep. Ruby: I feel that we have heard enough information on it and this is just adding to the language and in this area I think it was inadvertently missed at some point. I don't see any testimony as to why this area is more substantial than other areas. So I would move the amendments.

Rep. Ruby moved to adopt the amendments.

Rep. Dietrich seconded the motion.

Rep. Amerman: It is my understanding, that this is a housekeeping attempt. So whether the amendment, trying to minimize and I am trying to figure out why. Even without the amendment, it's not going to make a big thing, it's just in this one area that WSI vocational would have to issue orders and what I have trouble with is on the Senate side, I know there was a number of other amendments that were amended out, one of them being to get rid of records after thirty years to amend it out of this bill and there might have been some other ones. So what my concerns are, none of them are being tried to brought back, but his is being tried to brought back and it's not a big thing whether it gets in or out, so I am feeling a little lost as to why.

Rep. Keiser: It indirectly point out in point blank, but if these amendments are adopted, it does go to conference committee in all likelihood and there is little doubt because the Senate had taken them out and if we put them back in, it is improbable that the Senate will just roll over and say okay.

Rep. Ruby: My understanding of this is it would be interesting to see the information, but the question was brought up if there is another level of process for the injured worker and if I'm reading it right is the answer is yes, not necessarily that it's an extra burden that they have to go through. This is another step to get information. If it is working in the other areas, I see this is not being an issue. Why the Senate decided not to leave this in, I guess we can discuss that in conference committee. From what I have heard I could make a case.

Roll Call Vote: 9 yes. 4 no. 1 absent.

Motion carries and the amendment is adopted.

Rep. Thorpe proposed amendment 78172.0304.

Rep. Thorpe: I have two sets of amendments here and I am using this one first because if this one should pass, I won't need the other one. Basically what this one does is bill number 1283 I

believe that Rep. Amerman had that went through our committee and through the House and then it got defeated, but I thought it was an excellent bill that is very much needed by injured workers as they work their way through WSI. It basically puts liberal construction back into code. The amendments here show how it would go into the bill.

Rep. Thorpe proposed amendment 78172.0304.

Rep. Thorpe moved to adopt the amendment. Rep. Zaiser seconded.

Rep. Zaiser: Rep. Thorpe, does this amendment essentially put in Rep. Amerman's bill on liberal construction into this bill?

Rep. Thorpe: That is what I asked for in council and I took the bill 1283 up to them and they said it would be no problem working that back into this bill. For consideration of the committee, I for a long time have felt that as I understand the liberal construction, it was taken out at that time, with the idea to try to get the fund back in the black in 1993 or 1995 and there were things that the workers gave up at that time and I don't see it as a huge thing, but constructively for instance, if I had a claim with WSI and I had to substantiate my claim that this would give me a little better opportunity because otherwise it's really spelled out if all the l's are dotted and t's crossed and everything then you are out of luck. This would kind of liberally construct for the claimant. As I understand, we do that now for felons and criminals and by golly if it's good enough for them, it should be good enough for injured workers.

Rep. Vigesaa: I am not going to support the amendment. We have already had this bill and had a very thorough testimony and discussion and we acted on the bill and acted on it on the floor and we have made our decision on this and I don't think it's good policy to bring back bills that we have acted upon and put them as amendments on other bills when we have already made our decision.

Rep. Thorpe: I certainly respect and understand your thoughts on this, however, I am going to say that if you look at the OMB budget that gets passed out of here at the end of session there is all kinds of bills that come back and are put on the end of that one so I'm not setting precedence here. I just thought that instead of muddying up the OMB maybe I could introduce it here again. If you all see fit to kill it again, whether I'll go to try to get it on OMB, I don't know. I think there is a legitimate reason for it and I don't fault anybody for their votes. We are all here to do the job the best that we know how. I guess and I hope you respect my position I feel very strongly on this issue and that is why I am attempting to bring it back.

Rep. Amerman: I want to thank Rep. Thorpe in attempting to get one of my previous bills into this bill. Sometimes there is something even though it gets defeated in any phase of things, you still have to try again because it is so important. I probably didn't do a good enough job the first time around and trying to explain the importance of this. I believe that of all the bills probably, not only mine, but of all the bills that have come forth on all sides, as far as WSI bills, this one is the most important one. It's not the most important because it is going to save thousands of injured workers and it's not most important because it's not going to hurt the fund. In previous bills it has been discussed many times and out of twenty thousand claims filed to WSI, only a fraction, for some reason the number four goes to district court and on to the Supreme Court level. This is where the liberal construction comes in is on the court level and it's only brought into play if the evidence is so gray. WSI has denied this all the way up and their case is solid that is how the supreme court is going to rule on the evidence, but if the evidence is gray enough on each side, then if this was in place, they would have to rule toward the claimant because they give up pure and certainly back in 1919. It is only going to come into play if the case on either side isn't made. It's not something that is going to save a whole bunch of injured workers it's nothing that will deplete the fund. The other thing is, as Rep.

Thorpe said, in all kinds of cases there is still construction. Every other department of the state still has construction for their workers and it is still there for the supreme court to look at and it's there for somebody that goes to civil or criminal court and gets convicted and goes on. They think that the Supreme Court has to construe from talking to them, but it was taken out of code for the injured worker. If it's not there anymore, the Supreme Court can't even consider it because we took it out of law and that's why it's so important that they get the same kind of consideration as everybody else.

Rep. Ruby: I am going to oppose the amendment. I agree with Rep. Vigesaa that we have had this discussion and we are talking about the same issue that was brought up during this and the points were all made very well there was just disagreement on whether it was the right thing to do. I look at what's being struck here and of course we are removing language that talks about the things we decided on, merits of the actual claim. Now, you talk about liberal construction, you are talking about penalties and possibly life sentences of possible felons and possible murderers so there is a high level and we all know that there are different levels depending on what you are convicted on. This is more of a civil action that would have a criminal provisions as far as being in favor of one side or the other rather than basing it on the merits of the action and I think the claims as they come in, should be looked at on the merit of the action because I think that is what the determination was made by. Again, there are some provisions in the bill that I think are good and necessary and when you put something like this on and it's already died in the House by a large amount, we would lose the whole bill.

Rep. Zaiser: I was talking to the executive director of WSI and talking about you know, the whole term worker's compensation and that this is the agency in the state that is set up to help the injured workers, sort of the insurance policy and I think what this does, if there is some question, it errs on the side of the injured workers, something like the review OIR should and I

think this is one of those things I don't think it's going to change and it's a legal concept that's used, it's not unique to WSI and ND. It's a legal frame work. I think this just gives the injured worker that little bit of edge and if WSI was broke and the premiums were high, that would be a different story and this isn't going to give away lots of money. I think this is a good bill and it really gets to heart of what WSI should already do.

Rep. Ruby: If it's not going to change anything, then why have it?

Rep. Thorpe: I am ready to vote, but I wanted to answer Rep. Ruby. I thought he made a good point when he was talking about felons and so on, and life sentences. I just want to remind my colleague that the injured worker that is catastrophically injured for life he also has a life sentence.

Roll Call Vote: 5 yes 8 no 1 absent.

Motion failed. Amendments were not adopted. There was no further action on this bill.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2072

House Industry, Business and Labor

☐ Check here for Conference Committee

Hearing Date: 5 March 2007

Recorder Job Number: 4343

Committee Clerk Signature

Jan Prindle

Minutes:

Representative Boe: I bring this amendment (.0303) forward because this is what I consider WSI's Christmas tree bill and I thought I'd throw my ornament on it. When we talked about this there was no opposition and I didn't think we would run into the troubles that we did. I felt we got a little off subject when we talked about competition of the contractors coming in to the state from out of state. This is not so much about the contractors as it is about the workers. The contractors are coming in and they could care less about this law. They're working their way around that. They bring in out of state workers. This is about the workers. There was some concern by WSI about potential risks to the fund but it would be valuable information to gather over the next two years if we had some participation in this. If you have more questions, I'd be happy to answer them. If we really, really want to kill this we have a second opportunity.

Representative Ruby: Is there any thought or discussion as far as far as if this would go in effect--if another state would then have reciprocity?

Representative Boe: We never talked about that. I don't know. I guess it's a starting point.

Chairman Kaiser: So any company coming in—it covers everybody?

Representative Boe: In the original bill it was going to be narrow on who could qualify but WSI felt that the numbers that would have gathered from that narrow wouldn't give them the

accuracy that they were looking for. They are the ones that thought that they wanted to open it up to involve everybody. **I move the amendment .0303**

Representative Gruchalla: I second.

A roll call vote was taken: Yes: 5, No: 7, Absent: 2 (Kasper and Johnson)

The amendment failed.

Representative Thorpe: This amendment (.0301) would remove sections to do with the requirement of name display on motor vehicles. It would stay the same as it is now. It would take the "exclusive" they are looking for out. My rationale for that is that I don't feel that we should give them exclusive for one agency to use the state cars unmarked. I don't know that we are doing it for any other agency.

Representative Gruchalla: We do it for BCI (Bureau of Criminal Investigation).

Representative Thorpe: I think there will be more and more people coming in looking for the exclusion and that's the reason for bringing forth the amendment to take it out.

Representative Zaiser: I would support the amendment because I think there is potential for abuse and I have heard there has been some abuse in terms of when that is used. The other aspect in the original language of the engrossed bill doesn't specify when they would use it and when they would not use it. To me, at a minimum, I think that should be addressed. I do support the amendment as proposed.

Representative Thorpe: I move the amendment (.0301)

Representative Boe: I second.

Representative Ruby: I am going to resist the motion for this amendment. I think it is important that not every claimant be considered or suspected of committing fraud. I don't believe that they are. But, I think in cases where they strongly suspect it and they need to investigate I was impressed to hear how Senator Heitkamp told some of the people on the interim committee that it was clearly fraud. Some are pretty good at hiding things. I think in

some ways the only way to catch people at that and protect the fund for the people who need it, are pretty important. In situations I think it is necessary to go incognito if they investigate fraud.

Representative Thorpe: I would answer Representative Ruby's thoughts on this. I couldn't disagree with you but I do feel that the agency has every opportunity to use private vehicles or rental cars when they are out on something like that. From the testimony I got there's not very many cases where they would need to be incognito.

Representative Amerman: I need somebody to explain simply—we are removing all of lines 6 through 24?

Chairman Kaiser: I think that might be a mistake on the amendment, but I'll refer to Representative Thorpe. I'm not sure you want to remove all of Section 1. What I think you want to remove is the new language in Section 1. So the amendment you handed out is incorrect but I think we understand what you intend.

Jordon, the intern, interjected and explained how the amendment was correct. The amendment was prepared by Legislative Council.

Representative Thorpe: Another reason was with unmarked cars if they wanted to use them for some personal use, who would know the difference. They are state vehicles and that's what's behind my wanting to change it.

Representative Dietrich: I would think that there would be checks and balances in the supervision of vehicles and their use for personal use. I would give departments that much. I think having unmarked is an excellent tool. When I hear cases of fraud and if we show up in a small town with official vehicles it does give it away. I think it's an excellent tool.

Representative Amerman: The thing I have trouble with is having unmarked cars, WSI is unlike other entities here. They are not under executive branch, judicial branch or legislative branch and not under any branch. In the interim committee when they discussed this, it was

mentioned that in VA they went private and the first step they take to go private, was have

unmarked cars. To me that was a red flag. Arguably, seeing how they are not under any of the three branches, I just think that the way they are heading and I don't think I can go along with it.

Representative Boe: I am going to support the amendment. In testimony I asked them if there was anything that precluded them from renting vehicles. If you were going to try to not stand out a change of vehicle would be a benefit to them then to be locked in to two vehicles. I think it would be a good idea to let them rent and leave this provision out.

Representative Zaiser: I'm going to support the amendment for the reasons Representative Boe indicated. I think this is moving this administration more in to an autonomous role. It separates in other ways. Either it should be private or brought back home in to the state government.

Representative Boe: We're not talking about a fleet here. We're talking specifically their special investigations. They could rent cars but again it's an added expense. Fraud hurts every one not only employers. It hurts employees. It hurts the injured workers. If this is a tool that we can give them to prevent someone from getting benefits they are not entitled to, I don't have a problem with it.

Representative Gruchalla: WSI investigative unit does used unmarked vehicles now; but they do it by hiring private investigators. This would just allow their own investigators go out and do the investigation.

Representative Thorpe: But the language here doesn't specify two or three vehicles. They could within a couple of years have their whole fleet unmarked.

A roll call vote was taken on amendment 0301. Yes: 4, No: 8, Absent: 2 (Johnson and Kasper). The amendment failed.

Rob Forward, staff attorney for WSI: Per Representative Zaiser's request I copied some

samples for you to take a look at as to the type of documents we issue when we make decisions. (See attachments A, B, and C.) He went through each denial form letter discussing them with the committee. The Committee expressed some concerns over the formats and content. Chairman Kaiser asked him to take back to the administrative staff the concerns of the Committee.

Representative Zaiser: (See proposed amendment .0302.) My amendment basically changes on page 2, section b, all the language. The existing language is poorly written. The individual has to prove that they are the child of the injured worker before they receive benefits. I would think it would be up to the WSI to ask enough questions and obtain that information. That's their responsibility. The way I've written it here, the child would receive benefits when it's effective. It's not the child's responsibility. It more clearly identifies that when there is a child of the injured worker, the benefits are there. I think it's a positive change.

Chairman Kaiser: If I read your amendment correctly, if I file a claim today my child starts receiving it whether or not the claim is accepted or not. Rob, when does the claimant receive payment for children? At the time the claim is accepted? At the time the claim is filed? Is it retroactive to the date of the injury?

Forward: If I file a claim for benefits there has to be a decision on whether or not my claim is accepted. Once the decision is made and it's an accepted one, then the dependency law goes back to the date that of the injury. It's paid to me not the child. It's tacked on to my benefit check.

Representative Zaiser: This puts the responsibility on WSI for the dependent to get the benefit.

Chairman Kaiser: I understand that, but it's the first part. . .

Forward: If we were to take that to an ALJ or district court, I believe that the decision would we would have to begin paying from the date that they filed a claim regardless if it is accepted or denied.

Representative Amerman: The date an employee claims "entitlement." He's not going to be entitled until you accept it.

Forward: That would be the bureau's argument but I don't think an ALJ or a district judge or the Supreme Court would agree with that.

Vice Chairman Johnson: The identification of a child with WSI; how is that done through WSI?

Forward: We do ask the claimant questions and it's on their first report of injury form whether or not they have any dependents. We have a form we send out to them asking the name, age and the child has to be dependent on that parent for support and so they have to produce a court order ordering child support if they are divorced or not married. If they are living in the home and it's a family unit, then that documentation wouldn't have to be there.

Representative Zaiser is correct that under the amendment, section 2, part b, that was put in place because we do have situations where we have predominately fathers who do not tell us about children. We do have people coming in 2 -3 sometimes I hear 6 – 10 years after the fact and saying I forgot to tell you about little Bobby and we have to go back and pay that. On all other claims there is a one year cutoff, but with the dependency allowance there is not statute of limitations. What we are trying to do is put a limit on that. If you don't tell us about them right away, we're not going to pay you retroactive.

Chairman Kaiser: What's a date that is reasonable for them to tell you?

Forward: What's reasonable usually is if we send you the documentation to fill out, we ask you if you have dependents and you tell us no or you don't give us any answer.

Representative Zaiser: That's my point. I thought the language needed to be cleaned up.

The other point is that regardless of whose mistake it is whether it's the father's or WSI's or whatever, the poor child shouldn't be penalized for an error and should be able to get that money. If the amendment doesn't read that way, it's really what I wanted it to read.

Representative Ruby: You mentioned if someone gives you proof of the requirement to pay child support that would allow them to be awarded benefits. But if there is a divorce agreement and taxes or . . .

Forward: If they reside with the employee they would get the benefits. If they don't reside we have to have to have the duty of support substantiated by a court order.

Representative Amerman: I work and I get hurt and off for two months. I'm entitled to 66 2/3 and I have two children at home do I know that my children are entitled or am I supposed to guess this on my own.

Forward: There are numerous things that we send you that indicate that you are entitled to a dependence allowance. It's on the first report of injury. There's also a pamphlet we send out with your first packet that lists the benefits that you may be entitled to. The claims analyst in the first contact walks through those things. It's covered.

Vice Chairman Johnson: If the claim is contestable is there a way to change the wording on this that would . . .

Chairman Kaiser: Just take out those proposed amendments because it's in current law. We can continue discussion but my own feelings are when it comes to the kids we can't be penalizing.

Representative Zaiser: The original language talks about when it compensable and it also allows for retroactivity. What brought my attention to this was that it didn't seem clear and put a potential penalty on the child. If that's the language I think its okay. On the other hand we

should put it in just to make sure it's clear. If it's compensable and retroactive, that's my primary objective.

Representative Amerman: I move to adopt this amendment, but remove 'b'. Then it goes back to the date of the determination of compensability.

Chairman Kaiser: Remove lines 7 through 10, and to remove the underscore on "a."

Representative Zaiser: I second.

Representative Ruby: I would support this amendment. There is a good chance there will be a conference committee and if WSI came up with a proposal that would kind of statute of limitations, I'd be open to consider that.

A roll call vote was taken: Yes: 12, No: 0, Absent: 2 (Clark and Dietrich)

The amendment was accepted.

Chairman Kaiser: Are there any further amendments for SB 2072. This for when a worker gets injured, worker's comp will make the payments to them but then they get additionally \$15 per child per week to help support the family. This is an important bill for injured workers.

Representative Zaiser: I move Do Pass as Amended.

Representative Vigesaa: I second.

A roll call vote was taken: Yes: 12, No: 0, Absent: 2 (Clark and Dietrich)

Representative Vigesaa will carry the bill.

Date: 2-28-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2072

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment

Motion Made By Rep. Ruby Seconded By Rep. Dietrich

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Amerman	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Vice Chairman Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Boe	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Gruchalla	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Dietrich	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Thorpe	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Dosch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Zaiser	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Rep. Kasper	<input type="checkbox"/>	<input type="checkbox"/>			
Rep. Nottestad	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Rep. Ruby	<input checked="" type="checkbox"/>	<input type="checkbox"/>			
Rep. Vigasaa	<input checked="" type="checkbox"/>	<input type="checkbox"/>			

Total Yes 9 No 4

Absent 1

Floor Assignment Rep. Vigasaa

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

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2072

Page 1, line 1, replace the first "section" with "sections" and after "39-01-02" insert "and 65-01-01"

Page 1, line 3, after "vehicles" insert ", workers' compensation claims and" and after "and" insert "workers' compensation"

Page 1, after line 24, insert:

"SECTION 2. AMENDMENT. Section 65-01-01 of the North Dakota Century Code is amended and reenacted as follows:

65-01-01. Purposes of workforce safety and insurance law - Police power.

The state of North Dakota, exercising its police and sovereign powers, declares that the prosperity of the state depends in a large measure upon the well-being of its wage workers, and, hence, for workers injured in hazardous employments, and for their families and dependents, sure and certain relief is hereby provided regardless of questions of fault and to the exclusion of every other remedy, proceeding, or compensation, except as otherwise provided in this title, and to that end, all civil actions and civil claims for relief for those personal injuries and all jurisdiction of the courts of the state over those causes are abolished except as is otherwise provided in this title. ~~A civil action or civil claim arising under this title, which is subject to judicial review, must be reviewed solely on the merits of the action or claim. This title may not be construed liberally on behalf of any party to the action or claim."~~

Renumber accordingly

Date: 2-28-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2072

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt 78172-0304

Motion Made By Rep. Thorpe Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson		X	Rep. Boe	X	
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich		X	Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser	X	
Rep. Kasper					
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigesaa		X			

Total Yes 5 No 8

Absent 1

Floor Assignment Rep. Vigesaa

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

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2072

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 65-08 of the North Dakota Century Code, relating to a workforce safety and insurance pilot program for coverage of out-of-state employers;"

Page 1, line 4, after "death" insert "; and to provide an expiration date"

Page 2, after line 22, insert:

"SECTION 4. A new section to chapter 65-08 of the North Dakota Century Code is created and enacted as follows:

Out-of-state employers - Pilot program - Report.

1. The organization shall establish a pilot program as an alternative to subsection 5 of section 65-08-01. The program is available to any out-of-state employer for which employment in this state does not result in significant contacts with this state, and which seeks to temporarily employ one or more North Dakota residents.
2. Under this program, the employer may open an employer account with the organization which is limited in coverage to the North Dakota resident employees. The organization shall require that the employer prepay the estimated premium based on the estimated reportable payroll associated with the North Dakota resident employees. The organization may require the employer to provide any information regarding the North Dakota resident employees hired. The organization may limit the program to employers of specified size based on reportable payroll, may conduct audits as necessary, may charge an increased premium if the premium is directly related to the additional risk associated with the policy and if the premium is not an undue barrier to participation in the program, and shall adopt rules as necessary to implement the program.
3. The organization shall include a report on the status of this pilot program in the annual report to the legislative audit and fiscal review committee under section 65-02-03.3.

SECTION 5. EXPIRATION DATE. Section 4 of this Act is effective through July 31, 2009, and after that date is ineffective."

Renumber accordingly

Date: 3-5-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2072

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken adopt Amendments 78172.0303

Motion Made By Rep. Boe Seconded By Rep. Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson			Rep. Boe	X	
Rep. Clark		X	Rep. Gruchalla	X	
Rep. Dietrich		X	Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser	X	
Rep. Kasper					
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigasaa		X			

Total Yes 5 No 7

Absent 2

Floor Assignment Rep. Vigasaa

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

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2072

Page 1, line 1, remove "section 39-01-02," and remove the second comma

Page 1, line 2, remove "exceptions to the"

Page 1, line 3, remove "requirement of the state name display on motor vehicles," and remove
the second comma

Page 1, remove lines 6 through 24

Renumber accordingly

Date: 3-5-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2072

House Industry Business & Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Move Amendment 78172-0301

Motion Made By Rep Thorpe Seconded By Rep Boe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson			Rep. Boe	X	
Rep. Clark		X	Rep. Gruchalla		X
Rep. Dietrich		X	Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser	X	
Rep. Kasper					
Rep. Nottestad		X			
Rep. Ruby		X			
Rep. Vigasaa		X			

Total Yes 4 No 8

Absent 2

Floor Assignment Rep Vigasaa

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

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL NO. 2072

Page 2, replace lines 7 through 10 with:

- "b. The organization shall pay a dependency allowance under subdivision a from the date an employee claims entitlement to the allowance. The organization may require an employee to submit proof of a child before accepting an employee's claim to entitlement for the dependency allowance."

Renumber accordingly

Date: 3-5-07
Roll Call Vote #: 3

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2072

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 20V

Action Taken Motion Remove lines 7-10 / Indiana A

Motion Made By Rep. Amerman Seconded By Rep. Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<input checked="" type="checkbox"/>		Rep. Amerman	<input checked="" type="checkbox"/>	
Vice Chairman Johnson	<input checked="" type="checkbox"/>		Rep. Boe	<input checked="" type="checkbox"/>	
Rep. Clark			Rep. Gruchalla	<input checked="" type="checkbox"/>	
Rep. Dietrich			Rep. Thorpe	<input checked="" type="checkbox"/>	
Rep. Dosch	<input checked="" type="checkbox"/>		Rep. Zaiser	<input checked="" type="checkbox"/>	
Rep. Kasper	<input checked="" type="checkbox"/>				
Rep. Nottestad	<input checked="" type="checkbox"/>				
Rep. Ruby	<input checked="" type="checkbox"/>				
Rep. Vigasaa	<input checked="" type="checkbox"/>				

Total Yes 12 No 0

Absent 2

Floor Assignment Rep. Vigasaa

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

Date: 3-5-07
Roll Call Vote #: 4

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB2072

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass, AS Amended

Motion Made By Rep. Zaiser Seconded By Rep. Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark			Rep. Gruchalla	X	
Rep. Dietrich			Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 12 No 0

Absent 2

Floor Assignment Rep. Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2072, as reengrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Reengrossed SB 2072 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "section" with "sections" and after "65-05-19" insert "and 65-05.1-06.1"

Page 1, line 3, remove "and"

Page 1, line 4, after "death" insert ", and rehabilitation awards; and to provide for application"

Page 2, line 3, remove "a."

Page 2, remove lines 7 through 10

Page 2, after line 22, insert:

"SECTION 4. AMENDMENT. Section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.1. Rehabilitation award.

1. Within sixty days of receiving the final vocational consultant's report, the organization shall issue ~~an administrative order under chapter 28-32 a~~ notice of decision detailing the employee's entitlement to disability and vocational rehabilitation services.
2. If the appropriate priority option is ~~short term or long term training retraining~~, the vocational rehabilitation award must be within the following terms:
 - a. For the employee's lost time, and in lieu of further disability benefits, the organization shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or was entitled to receive, prior to the award.
 - b. The rehabilitation allowance must include an additional twenty-five percent when it is necessary for the employee to maintain two households, when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the organization by rule.
 - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the organization. Catastrophic injury includes:
 - (1) Paraplegia; quadriplegia; severe closed head injury; total blindness in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury, which renders an employee permanently

and totally disabled without further vocational retraining assistance; or

- (2) Those employees the organization so designates, in its sole discretion, provided that the organization finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from an organization decision to designate, or fail to designate, an employee as catastrophically injured under this subsection.
- d. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the employee resides, provided an equivalent program exists in the public college or university.
 - e. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
 - f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed two months' disability benefit, to assist the employee with work search.
 - g. If the employee successfully concludes the rehabilitation program, the employee is not eligible for further vocational retraining or total disability benefits unless the employee establishes a significant change in medical condition attributable to the work injury which precludes the employee from performing the work for which the employee was trained, or any other work for which the employee is suited. The organization may waive this section in cases of catastrophic injury defined by subdivision c.
 - h. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:
 - (1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the organization, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee completes retraining. The benefit continues until the employee acquires substantial gainful employment.
 - (2) Beginning the date at which the employee acquires substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured

employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1, or the employee's actual postinjury wage earnings, whichever is higher.

- (3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
 - (4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
 - (5) For purposes of paragraphs 1 and 2, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
 - (6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.
3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.

SECTION 5. APPLICATION. The rate in subsection 10 of section 65-05-08 contained in section 2 of this Act applies to each eligible employee on or after the effective date of this Act. Section 3 of this Act applies to deaths occurring on or after the effective date of this Act. Section 4 of this Act applies retroactively to all claims filed on or after January 1, 2006."

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2072

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2072 Conference Committee**


Senate Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: **April 9, 2007**

Recorder Job Number: **5820**

Committee Clerk Signature



WSI bill

C Wanzek, S Klein, S Behm

R Vigesaa, R Johnson, R Amerman

9:00 am

All members present

S Wanzek: *Asked the House to explain their amendments. Let you explain them.*

R Vigesaa: I'll go through the changes the House made, Section 2, amended out under section 10, # B where it talked about the "organization..." *read from bill.*

We decided that should come out, that if an injured worker had a dependent child should be paid regardless of when he notified them he had a dependent child. He should receive the payment from the point of injury forward if they had a dependent child that met the qualifications of being dependent.

We amended out subsection B. The amendment would have put a limit on retroactivity, and felt that if the employee had a child, they should have been paid for the whole time.

S Wanzek: You felt they would receive only after the date it was affirmed there was a dependent child.

R Vigesaa: That's correct. It was unanimous in our committee. Then we put back in section 4 & section 5, and the Senate amended out other sections as well. When we heard the testimony in our committee, WSI primarily wanted to change, was how they deliver their notice of decision and wanted it consistent throughout the process. They wanted to clean up language in retraining, long term or short term was named "retraining." This was a part that was omitted.

Section 5 was application of those amendments. Was taken out in the Senate.

Section 3 remained in the bill, We amended section 5 back in because it because it contains the application process.

S Klein: The issue about the notice of decision or administrative order, what is the down side to having a decision of order?

R Vigesaa: We were visiting about our testimony, the majority of our conversation, WSI would like it to be the same for all of their orders, I think it would be helpful as the committee discussing that process. Primarily, it was to make it consistent with the other awards.

R Johnson: I thought it was to clean it up and be easier to read and follow for the injured worker.

R Amerman: The amendments put back in on the House side, section 4, WSI wanted them put them back in, to make it more uniform, I resisted those amendments, for a number of reasons, the rehab part of it is kind of last resort as you're going through this system, whatever comes out of that, whether the injured employee can rehab and go back to work at their job, or maybe have to relocate for minimum wage. In 1981-91, through rehab, a lawyer was supplied, this part of the WSI workers Comp was like a process, in '95 those lawyer fees were taken out, that was considered that important, the other things that when administrative order, if it goes to a NODs (notice of decision), it is sent to the claimant, and the claimant has to write back to

WSI within 30 days to appeal. Now they don't have a lawyer, so whatever is written in the decision and sent back to WSI, physical, mental, whatever is in the notice, WSI can turn it against them, they are individuals that are injured. The administrative order can be skipped. By leaving the administrative order in there, it is good for the injured worker, there is not downside, to take it out would be detrimental to the injured worker.

R Vigesaa: I'd like to call Rob Forward, WSI to take the podium.

S Wanzek: The issue is with the administrative order, for information order, I don't think we have lawyers in this committee, I understand there are ramifications for each order. Rob Forward is a lawyer to explain between: notice of decision and administrative order.

R Vigesaa: I would like to ask a question of Rob forward.

Rob Forward goes to podium.

R Vigesaa: We were given these in committee, is this the old order in the new format?

Rob F: The document is the old order, and is an example. Right hand is the new order, have gone through the form process, haven't started using in vocational area yet.

R Vigesaa: Going in that direction?

Rob F: Yes

S Wanzek: You're saying there is the new version that is being used?

R Vigesaa: They are coming out of the administrative order. The old order was cumbersome and very legal and hard to understand. The order featured, is much more friendly.

S Klein: Has your question been answered?

S Wanzek: Could you explain Decision vs. Administrative order?

Rob F: We have to make a decision. 1st we sent them a notice of decision, it is a letter type document, in searching through our forms and looking through our documents, I picked the hyper-tension one, and would be . Notice of decision goes out and employee can appeal, they

will go through process. It is an informal hashing of the decision. If agency doesn't want to change their mind, issues a administrative order at that time. An attorney is involved, if still not changed, there is a hearing, goes to district and supreme court. At this time, almost all our claim decision in all the employer decisions are handled in that way. 1. NOD 2. Order 3. *Hale Jay* (?) decisions 4. District court 5. Supreme Court

Vocational rehab awards skips the NOD process and goes right to order. Our current process and the vocational rehabilitation is different.

R Johnson: By doing this process you're giving the injured employee one less opportunity, because you're skipping the decision and going to the administrative order? You're losing one opportunity to investigate or ask for more information?.

Rob F: Absolutely. That was coming into the session, introducing that in a claims package, we didn't feel there would be a problem, it would give opportunity to hash out situations. If there are fewer NODS, there would be less litigation, less formality for injured worker, we revamped the orders, we were trying to make the process better for injured worker.

S Klein: By passing this, then we haven't eliminated the administrative order, that could still be part of the entire scheme of things, instead of skipping the NOS, we would have notice of decision, then we would go to legislative order.

Rob F: Absolutely. That may have been my fault by not explaining it, it may have been lost in the wash. It is not loss. We want to use the informal process. Our claims adjusters DO change their minds.

R Amerman: Also, within, the administrative order is still there, by putting the NODS in there, *reads from example*. You have an injured worker, and figure out how they should be rehabilitated, and they should figure out how they should be rehabilitated based on what they write in their letter.

Rob F: Correct, in theory. As a practical matter, we see, anything for the injured worker on appeal, I disagree with R Amerman, because I do not believe there is very little actually is ever used against an injured worker. The only time I've seen where the NOD is used against, only where there was fraud.

R Amerman: This is really STILL where you issue an administrative order vs. a NODs.

S Wanzek: *Read from the bill.* After receiving the report, WSI must issue a report after 60 days, if the decision is contrary to the injured worker's belief, does he have additional time to file a decision, then another 30 days to work it out before you get to an administrative order?

Rob F: Yes, that's correct. They get copies of the VCR. Vocational Rehabilitation Report. It doesn't happen in a vacuum. The past arguments from late '80s, what is was decided, it wasn't needed, it's not happening in a vacuum. Injured worker, he gets the information and knows it's been worked on.

R Johnson: By the language being changed, would that give them 30 more days, after than, the administrative order, expand the time?

Rob F: It is 33 days added.

R Vigesaa: If we went to the notice of decision on notice for injured worker, and they do not agree, you're saying they don't have to come up with their own ideas, that's an answer to WSI?

Rob F: Yes. We have been given orders to interpret injured worker's appeals orders broadly and literally.

S Behm: The part I don't understand is why don't they get a lawyer anymore? They have to be taken care of.

Rob F: I understand your point, good point. The problem is, if you take the logic to process, if in fact, it's complicated, get rid of the NOD process and have just administrative orders, when

they put NOD process in, they took the attorneys out. What it was creating were needless appeals and attorney costs being run up. If you're going to use this in the bill, you would have to eliminate the NODs process.

S Wanzek: This does not eliminate the administrative order for the injured worker, it's just moved down the line and adds time to the injured workers' final decision, and will add another time period, there are other things that we would gain personally. We don't want to eliminate the administrative order. We can visit on Weds., and hear the other side.

CLOSE

Copies of the Old and New layout of WSI provided by Representative Johnson. Copies made and given to all members of the committee.

Next session was set for Weds. April 11, 9:00 am.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2072 Conference Committee B**

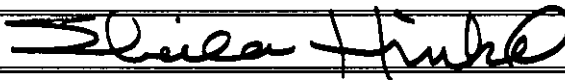
Senate Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: **April 11, 2007**

Recorder Job Number: **5882**

Committee Clerk Signature



SB 2072 Weds. April 11

All members present

Chairman Wanzek, Sen. Klein, Sen. Behm

Rep. Vigesaa, Rep. Johnson, Rep. Amerman

S Wanzek: I have copies for you with decisions, we heard WSI at the last meeting, it was requested that we hear a claim attorney speaking on notice of decision works vs. administrative order.

Steve Latham, Attorney, Bismarck, ND, rare breed, represents claimants in WC There are few attorneys that do that. Here in my capacity as an attorney that represents claimants. 6505.106.1 which requires WSI asks that they report, 'Proposed change is "notice of decision," 6501.16 This is a step backwards, There is no time restraints on that. They have 30 day deadlines, *covered how the deadlines fall 3:15m* Be better to have WSI to issue an administrative order within 60 days of any time they issue a notice of decision. The problem with no deadlines for WSI is that in some cases, it has been 6 months after a notice of decision has been issued before an administrative order has been issued.

Section 6 rehabilitation plans – under 6505.101 and basically, section 6 is a vocational plan of last resort, Section 6 dispute is returning the employee back to a job with minimum wage.

Problem arises, the benefits are terminated, if you are going to prolong the time period for the employee to get to the administrative order, you're starving them out. It is an unfortunate process. The intent is to put the pressure on the claimant. Sometimes they are for Social Security benefits. Section 6 are contentious hearings, some are from IME results. The ones that go to administrative hearing is where they have a good case. If there is a vocational plan put together with a treating physician approves it, and the job is in the functional capacity evaluation results, those that are appealed are not. I would be unfortunate if you build more delay into this process.

The administrative order by WSI that the claimant has the opportunity to obtain assistance, in helping resolve this claim. Only after the administrative order can they request assistance from OYR.

Suggests how to get the claimant to make claim and understand

S Wanzek: Is there a benefit to administrative order?

Steve L: The sooner they can claim, the better it is. The benefit for an administrative order, they can resolve the matter sooner.

S Wanzek: I appreciate what you're saying in the time delay, if we go in that decision, it could end up with the administrative order, it would be administrative order.

Steve L: They have yet to change their mind with an administrative decision. WSI gets periodic reports. Takes 3-6 months for rehabilitation plan.

S Wanzek: In a scenario, maybe if anyone is in agreement on a vocational plan and the injured claimant agrees on that, would they have to have administrative order?

Steve L: Yes. Not much more difficult than administrative order which requires a lot more time.

S Wanzek: I'm not sure if we're clear, or...

Rep. Amerman: by looking at this I the bill through the process, the one thing that stood out to me, adding the decision or the amendment, I thought it would make it a longer process, this just solidified my thoughts, this is just another step before the administrative order, if issued right away, they could get some help. Leaving the amendments in, prolongs that, an individual may go through the whole process, it may be a long, long time, it is a delicate time in their lives. People will think, why do we need another step, there has to be some closure as quickly as possible.

S Behm: If I understood Steve right, we would be better with the amendment off of there.

S Wanzek: *Handed out general information.*

R Johnson: we talked about this, have you read this. WSI has an unlimited time. According to this statute, after they receive a notice of decision, read from Workforce Safety and Insurance booklet. How do you read that?

Rep. Johnson: Refers to # 5, after an injured worker has had 30 days to respond to a decision, after 60 days they have to review it and issue back an administrative order, either by denying it.

S Wanzek: If they don't comply, they are against the law.

Rep. Johnson: With Administrative order it jumps section 4.

S Wanzek: In vocational rehab it is different.

Rep. Johnson: There was a question earlier, then it would go to administrative order.

S Klein: Rep. Johnson is correct, I don't know why they would want to drag this process out. There is information in the room on history why this section is being treated differently, in all other areas we use, why this case would go to the administrative order.

S Wanzek: I have to be careful, I don't want to hold the meeting over again.

Rep. Amerman: Rob had testified last time, you could write on a napkin and talked to a friend, and she said she filled one out and wasn't accepted,

S Klein: Since a couple of Supreme /court decision, they have to allow that in. To dispute what Mr. Forward said, they have to widen that, I'm wondering if it was an order decision or 6 months?

Rep. Amerman: Not 6 months, about 3 years.

S Wanzek: Is committee ready for a motion? Do you want to digest it more? One more meeting?

S Behm: If you're more comfortable, I am too.

S Wanzek: It was suggested to have someone speak, but don't' want to hold this over again and see if we can't come to a conclusion.

Rep. Amerman: Maybe since we've heard the opposite,

S Klein: Legislative history it was a part of this issue. It's been handed out.

S Wanzek: Rob if you have that information, would you hand it out?

R Johnson: I wasn't here yet.

S Wanzek: I need to get other committee meetings out of the way, and study this one more thoroughly.

Conference Committee Closed.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2072 Conference Committee C**

Senate Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: **April 12, 2007**

Recorder Job Number: **5964**

Committee Clerk Signature



WSI bill:

All members present

Chairman Wanzek, Sen. Klein, Sen. Behm

Rep. Vigesaa, Rep. Johnson, Rep. Amerman

S Wanzek: Are we any further ahead then we were yesterday.

S Klein: The last thing we had was a discussion about the testimony from March 17, 1997. I think if you had an opportunity to read this particular paragraphs in parenthesis on page 4, you can kind of see that the intent was to provide notice of decision in all areas and explain the areas, and explain the reasons why and preparing in reading that, that it seems to me that the bureau brought this bill in as a housekeeping bill to correct what we may have done inadvertently there. Page 9, that's where it shows that they removed it, the administrative order practice, see easily that this is to make it easier, we're not eliminating the administrative order. We're trying to find a way to reach an agreement instead of spending a lot more time and dollars as we bring in the attorneys. I'm not sure that we couldn't stand what the House has done.

Rep. Amerman: In the blue part where it says, "*read from form – notice of decision*"

I don't think in '97 when the legislation was proposed, that the administrative order was inadvertently left out. I wasn't there, so I'm only surmising. I got to think that the '97 legislation says, "you can have a NODs for the other things but not the vocational things." This was 1997, now if it's inadvertently left out, I can give you a sample, the last session, the Secretary of State comes in with a lot of bills to update voting laws because of technology and a number of things. And then comes in this session and says, "now, we brought this forth last session, this inadvertently got left out." That's only one session, if this was inadvertently left out in '97, why wasn't it, with all the legal staff and everything that WSI put in in '99, why wasn't it put in in 2003, 2005, to me, this wasn't inadvertently left out. Also, you'd have to testify that this is good for putting the NODs in vs. the administrative orders. It's good for the claimants, as it will give another opportunity to make their case instead of going to the administrative order right away.

If you multiply by two in ten years, it was so good for claimants, then why wasn't the advocates for claimants, like Mr. Kemnitz and other people, if that was so good and missed in 1997, why hadn't they come forward with a bill to put it back in earlier than this? To me, it's NOT a mistake that this part of the code was left in so there IS administrative order for the rehabilitation of vocational. You can't inadvertently miss this for 10 years.

S Klein: I don't want to be argumentative here, but this House bill 1270, read the paragraph, it says under the current law, *read from the law*, "creating notice of decision." I don't have the bill here, I'm guessing there is a chapter that was missed as it sometimes happens when you're referring to vo rehab. The way I read it, it certainly says that was the intent, I guess that's where I'm going.

Rep. Amerman: The intent, that's one person's testimony. Maybe you're looking for motions, I would just like to say, by leaving this one administrative order in there, if you take it out, it's another step as I've said before, that they'll have to go through, if it's been the system for

months or years, it prolongs them, they're injured, they're out there, they're trying to pay bills, they want decisions, the rehab, wherever it's put, they'll have to make decisions for the rest of their lives on how to support their family be it telemarketing or whatever it is. It doesn't need to be prolonged by leaving in the administrative order. It's been this way since '91, even better back in the '70s and '80s or whatever. Leaving this one administrative order does not harm workers, WSI at all, it's just means that when they get to this point in their process, rehab and vocational life-long decisions, the administrative order which is a more detailed order than a notice of decision, that they have the best opportunity. If you leave it as it is, it doesn't hurt WSI, this is the only place in the whole system that they have to make an administrative order, and they've been doing it for years and years and years. It will hurt the claimant if you take out the administrative order. If you leave it like it is, it will just flow, if you take it out, it will prolong it, in my opinion.

S Behm: To me, there is too much time between WSI and they refuse it and then it has to go to administrative order, there is just too long a time in there. It should be shortened. They have bills to pay and they're not getting any money in the meantime. It bothers me somewhat, I'm just one voice.

S Wanzek: We're at where we're at. The question is, I'm somewhat sympathetic to prolonging the deal, then on the other hand, what if a vo rehab decision is made, and everyone is in agreement, including the claimant, I understand with the administrative order it will be more costly and more formal. Why would we want to go through that trouble? Everyone is in agreement. I understand it is more costly. If they are in agreement, why can't we move on?

Rep. Amerman: This is the first time I've heard it is more costly. Corvel who does the rehabilitation goes through this, they've already done all the process, WSI is going to take this, unless you know some numbers, I don't know why it would be more costly.

S Klein: It is more costly because when you are retaining some sort of council under the decision, you wouldn't necessarily need that, would you?

S Wanzek: That's the way I understand it. Involving attorneys makes it more costly.

S Amerman: The administrative order, I don't see where the council comes in. Claimant doesn't have council, it's administrative order, the council comes in, then they go to OIR and they don't get council until they go to OIR, there are no council fees until they go through the OIR.

S Behm: The trouble is that the claimant has to flip these bills unless he wins the case, I don't know if this is right or wrong, sometimes the poor guys been out of work, they don't got no money.

S Wanzek: Another questions, if it's an administrative order, they DON'T flip the bill if they lose the case?

Rep. Johnson: I think from my understanding, quite often, claimants will get attorneys when they get administrative orders because they're so complicated that they involve them. If it's overturned, then WSI would pay the attorney costs. What I thought the NOD would do, has a less formal system in place before you get this legalistic type of document, to say, "this is what it's about, here's what we're thinking for training or rehab or whatever it might be," and resolve it before there are legal fees. Whether they are covered or not, they are up front legal fees, even if you lose, you still pay your attorney.

Rep. Amerman: I think you're off base, because when you get the administrative order in this rehab thing, that tells you, "this is why we disagree" or whatever, then you go right to OIR. If the claimant has an attorney when you get this administrative order, they can't recover anything there because they haven't gone through OIR yet. It's in the law that even if they win and get ½ their attorney fees, you HAVE to go through OIR. The administrative order comes

before that, so if a claimant had an attorney, that's there expense, that's never recoverable because they haven't gone through OIR.

Sen. Wanzek: As I understand, if the claimant had his case analyzed as far as what the program for vocational rehab should be. The WSI, hasn't made a decision on that, that analysis was forwarded, so WSI makes a decision, we approve of this or disapprove and when the determination is made, the injured worker can agree or disagree. The informal decision lets us know which way the WSI is going. The worker never had any indication which direction WSI is going, the vocational rapoire is for both the bureau and the worker, right?

Rep. Amerman: I don't think it goes to the injured worker.

Sen. Wanzek: I got the report, now the worker needs to know what's WSI's view on this? So the very first view is the administrative order, it makes sense that the first order should be, if informal, at least it gives the worker the indication what WSI has, they either agree with it, or appeal. If you go to administrative order directly, I'd be totally opposed to the bill. WSI always makes an INITIAL decision and we're talking about the initial decision being made as far as vo rehab and it goes right to the administrative order in the current law.

Sen. Klein: Move to Accede to the House Amendments

Rep. Vigesaa: Second motion

Rep. Amerman: I'd just like to say that this adds one more hurdle to someone who has been out of work and is injured. We're buying a bill of goods.

S Klein: This creates an efficient, streamlined method and will add speed to this. We've seen that WSI wants to get them out. If they are temporarily or fully impaired, this cuts through the plan quickly and closer to the problem.

Rep. Amerman: One more comment. I want to thank you, you run a fair committee, and allow WSI to speak and allowed for an advocate for workers to speak, you went above and beyond what conference committees usually do. You almost opened up a full committee, so thank you.

Sen. Wanzek: These decisions are never easy.

Roll call on Senate Accede to House Amendments – 4 yea, 2 nay Passed

(nays are Sen. Behm & Rep. Amerman)

**REPORT OF CONFERENCE COMMITTEE
(ACCEDE/RECEDE)**

Bill Number SB 2072 (, as (re)engrossed):

Date: 4-9, 4-11, 4-12

Your Conference Committee 1BL

For the Senate:

For the House:

	Att B	C				Att B	C			
	4-9	4-11	4-12			4-9	4-11	4-12		
C. WANZER	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
S. KLEIN	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
S. BEHN	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
				NO	NO				NO	NO

recommends that the (SENATE/HOUSE) (ACCEDE) to (RECEDE) from

the (Senate/House) amendments on (SJ/HJ) page(s) _____ -- _____

_____ and place 2072 on the Seventh order.

_____, adopt (further) amendments as follows, and place _____ on the Seventh order:

having been unable to agree, recommends that the committee be discharged and a new committee be appointed.

((Re)Engrossed) _____ was placed on the Seventh order of business on the calendar.

DATE: _____

HOUSE CARRIER: _____

SENATE CARRIER: _____

LC NO.	of amendment
LC NO.	of engrossment
Emergency clause added or deleted	
Statement of purpose of amendment	

MOTION MADE BY: S. Klein

SECONDED BY: R. Viggsaa

VOTE COUNT: 4 YES 2 NO — ABSENT

PASSED

REPORT OF CONFERENCE COMMITTEE

SB 2072, as reengrossed: Your conference committee (Sens. Wanzek, Klein, Behm and Reps. Vigesaa, N. Johnson, Amerman) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 824-826 and place SB 2072 on the Seventh order.

Reengrossed SB 2072 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2072

Revised

2007 Senate Bill No. 2072
Testimony before the Senate Industry, Business, and Labor Committee
Rob Forward, Staff Attorney
Workforce Safety and Insurance
January 16, 2007

Mr. Chairman and Members of the Committee:

My name is Rob Forward and I am a staff attorney for Workforce Safety and Insurance (WSI). I am here to testify in support of SB 2072. The WSI Board of Directors supports this bill. This bill is divided into eight subsections. Each of these subsections addresses a different area of workers' compensation law. I will address each in order.

Section 1. This section of the bill involves attorney's fees of injured workers. Currently, WSI pays the attorney's fees of injured workers under sections 65-02-08 and 65-10-03. WSI is the only North Dakota state agency that regularly pays attorney's fees incurred by citizens opposing the agency. Recently, the North Dakota Supreme Court in *Rojas v. Workforce Safety and Insurance*, 723 N.W.2d 403, held that section 28-32-50 applies to WSI even though WSI's statutes already require payment of fees. This had the effect of granting attorney's fees in excess of the fee limits established in the workers' compensation statutes. Section 28-32-50 is not a workers' compensation statute; rather, it is a part of the Administrative Agencies Practice Act. WSI anticipates that the practical effect of the Court's holding will be that attorneys will attempt to circumvent the fee limits established in workers' compensation law and in the process of doing so, extend litigation times and drive up litigation costs. The proposed change would keep in place the established plan for limits on attorneys' fees and avoid an increase in litigation by excluding WSI from section 28-32-50.

Section 2. This section will allow WSI's Special Investigations Unit to operate vehicles without the state decals and state fleet license plates. Surveillance is a necessary method of investigating fraud and these telltale displays make it harder for investigators to avoid detection by individuals under investigation. In order for this method to be effective, the persons being investigated cannot be aware of the surveillance. If detected, WSI's investigators lose a valuable tool and face a potentially unsafe situation. Additionally, such clear identifiers place undercover investigators in harms way as it identifies them as state officials.

WSI has had ongoing discussions with the Department of Transportation regarding this proposed change and the most recent discussion led to WSI's proposed amendment to this bill that has been handed out with my testimony. The amendment has the same objective as the original bill, and is merely a better-written means of achieving the same result. Consequently, WSI is requesting that this amendment be accepted along with this bill.

Section 3. This section allows WSI to destroy claim files in which there have been no benefits paid for at least thirty years. Currently, WSI may destroy a claim file ten years after an injured worker has passed away. But as a practical matter, this does not happen because WSI has no efficient way of knowing when an injured worker passes away. As a result, WSI is not destroying these files. The reason WSI is seeking the change is to give the agency workable and reasonable parameters on document retention that strike a fair balance between good customer service and administrative costs.

Section 4. This section proposes an increase in dependency allowance payments to injured workers. With this change, if an injured worker submits proof of a dependant child he or she will receive fifteen dollars a week during the time the worker is receiving disability payments --a five dollar a month increase per child. This benefit has not increased since 1987. Our research concludes that this type of benefit is paid in only six of the fifty-one workers' compensation jurisdictions in the United States. Of those six jurisdictions, four pay the benefit in a weekly amount per dependent like North Dakota. Of the four, the highest rate paid is fifteen dollars per week by Rhode Island. The others are five, six, and ten dollars per week.

Section 5. This section modernizes the statute regarding benefits paid when a worker dies as a result of a work injury and no dependents exist. This statute was amended by the 59th Legislative Assembly to increase the benefit amount and WSI now proposes a change in the way this benefit is paid. Currently, the benefit is paid based on a statutorily-specified familial hierarchy. This is an antiquated method which deprives workers of the flexibility of declaring to whom this money should be allocated in the event of their death. The proposed change directs WSI to pay the benefit to the deceased worker's estate; thereby assuring if the worker has a will, the money would be distributed under the will's residual clause to whomever the injured worker has designated. If the injured worker does not have a will at the time of death, the benefit money, along with the rest of the assets in the estate, would be paid under the intestate succession statute in North Dakota's probate code.

Section 6. This section corrects an inadvertent omission in the statutory plan regarding the changing of doctors for injured workers. Currently, injured workers treating with a designated medical provider under a preferred provider program are able to switch to other designated medical providers without a referral and without authorization from WSI. Workers that are not under a preferred provider program are required to obtain a referral from the treating doctor or authorization from WSI before a different doctor can be seen. The change in this section will apply the referral and authorization requirements uniformly and require workers who are treating with a designated medical provider to obtain a referral from the treating doctor, or authorization from WSI, before treating with another doctor.

Section 7. There are two proposed changes in this section. The first allows WSI to notify workers about rehabilitation awards with a document called a notice of decision instead of an administrative order. A notice of decision is a less formal and more expedient way to inform workers about benefits and is commonly used by WSI in almost all other aspects of claims management. The reason for the change is to make the claims administration process more uniform. Injured workers will not be prejudiced by the change. In fact, workers may benefit from the additional appeal review that will be available as a result of the use of a notice of decision. The second change is merely to correct an oversight in the statutory language. During the last legislative session, the terms "short term" training and "long term" training were replaced in our workers' compensation law with the term "retraining." The words "short term or long term training" were inadvertently left in this statute when they should have been deleted. There will be no substantive effect from this change.

Section 8. The change in this section involves maximum limits of fees WSI pays to injured workers' attorneys in appeals to a district court. Currently, an injured worker's appeal of an agency decision is first taken through the administrative process for resolution. There are limits on the amount that WSI may pay to the injured workers' attorneys for their work during this part of the process if they win. Likewise, if the injured worker continues to appeal to the next level, the district court, and they win, there are limits on the amount the attorneys may be paid. However, at the district court level WSI has the discretion to exceed those limits under certain circumstances. WSI is asking for this discretion to be removed. Attorneys seek to exploit this statutory discretion to claim fees in excess of the maximum limits and in doing so they can extend litigation and drive up litigation costs. By removing WSI's discretion, litigation costs and timelines can be better managed.

WSI requests your favorable consideration of SB 2072. I would be happy to answer any questions you may have at this time.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2072

Page 2, line 5, remove "workforce safety and"

Page 2, line 6, remove "insurance."

Page 2, line 7, after the period, insert "The requirements of this section do not apply to vehicles operated by Workforce Safety and Insurance."

Renumber accordingly

Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2072, SB 2073, SB 2123

Mr. Chairman and members of the Senate IBL Committee, thank you for the opportunity to follow up my oral testimony.

In summary, the ND Chamber supports SB 2072 and SB 2073. We oppose section one of SB 2123 dealing with the change of classification of newspaper delivery service from independent contractors to employees. We do support section four dealing with experience rating of employers understanding that the maximums will rise by administrative rule as outlined in the attached letter from Sandy Blunt of WSI.

As requested I am also attaching a list of the chambers and employer organizations the North Dakota Chamber represents when testifying on WSI bills. Again, thank you for your time.

2072
#2

**The following chambers are members of a coalition that support our 2007
Legislative Policy Statements:**

Beulah Chamber of Commerce - 107

Bismarck - Mandan Chamber of Commerce - 1080

Cando Area Chamber of Commerce - 51

Chamber of Commerce Fargo Moorhead - 1800

Crosby Area Chamber of Commerce - 50

Devils Lake Area Chamber of Commerce - 276

Dickinson Chamber of Commerce - 527

Greater Bottineau Area Chamber of Commerce - 153

Hettinger Area Chamber of Commerce - 144

Langdon Chamber of Commerce - 112

Minot Chamber of Commerce - 700

North Dakota Chamber of Commerce - 1058

Wahpeton Breckenridge Area Chamber of Commerce - 293

Watford City Area Chamber of Commerce - 84

Williston Chamber of Commerce - 401

West Fargo Chamber of Commerce - 400

Total Businesses Represented = 7236 members

#2
2072

Associations Represented by ND Chamber for WSI

Associated General Contractors of North Dakota

Independent Community Banks of ND

Johnsen Trailer Sales Inc.

North American Coal

North Dakota Auto/Implement Dealers Association

North Dakota Bankers Association

North Dakota Healthcare Association

North Dakota Motor Carriers Association

North Dakota Petroleum Council

North Dakota Retail/Petroleum Marketers Association

Utility Shareholders of North Dakota

#2
2072

Amendment to SB 2072

**Submitted by David L Kemnitz, President
North Dakota AFL-CIO**

Page 1 – Section 1 “strike from the bill” NDCC Section 28-32-50

- See ND Supreme Court Ruling – Rojas v. Workforce Safety and Insurance No. 20060087

Supreme court decision illuminates need for 28-32-50

“The purpose of N.D.C.C. 28-32-50 is to ensure that private parties are not deterred from challenging unreasonable government action because of the expense involved and to deter an administrative agency from taking a position that lacks substantial justification.”

Page 1 & 2 – Section 2 “strike from the bill”

- WSI is not deemed a Peace Officer entity. It is adverse in its nature in attempting to limit its liability. That role is not protecting the public interest and should not give them anonymity when investigating claimants.

Page 2 – Section 3 “strike from the bill”

- It is one thing to destroy documents of deceased claimants, and WSI does that now. It is another matter in destroying past claim history of the living.

Page 2 – Section 4

- Good move, small fiscal impact. Our question is, will present dependents receive the raise?

Page 2 & 3 – Section 5 – No comment

Page 3 – Section 6 – No comment

- Entire premise of payment only to preferred provider is wrong.

Page 3 – Section 7 “strike from the bill”

- An attorney – Trial Lawyers or Bar Association can explain in detail the loss of a claimant’s ability to adequately defend an appeal of WSI decisions if section 7 of SB 2072 is enacted.
- Chapter 28-32 provides rules that ensure detail of reason for decision of WSI, Section 7 changes that for the worse for claimants i.e. removes due process.

#3
2072

2007 Reengrossed Senate Bill No. 2072
Testimony before the House Industry, Business, and Labor Committee
Rob Forward, Staff Attorney
Workforce Safety and Insurance
February 26, 2007

Good afternoon, Mr. Chairman and Members of the Committee:

My name is Rob Forward and I am a staff attorney for Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am testifying in support of Reengrossed Senate Bill 2072. This bill has three sections and WSI is proposing an amendment that would add two more sections. The amendment is being handed out with my testimony. Each of the bill's sections addresses a different area of workers' compensation law and I will cover each in order.

Section 1. This section of the bill would allow WSI's Special Investigations Unit to operate vehicles without the state decals and state fleet license plates. These telltale displays obviously make it harder for investigators to avoid detection when conducting surveillance. Surveillance is a necessary method of investigating fraud and in order for it to be effective, the people under investigation should not be aware of the surveillance. If detected, WSI's investigators lose a valuable tool and face potentially unsafe situations.

Section 2. This section proposes an increase in dependency allowance payments to injured workers from ten dollars to fifteen dollars. With this change, if an injured worker submits proof of a dependant child, he or she would receive fifteen dollars a week per child during the time the worker is receiving disability payments. This benefit has not increased since 1987.

Section 3. This section modernizes the statute regarding death benefits paid when workers die as a result of their work injuries and they have no dependents. This statute was amended by the 59th General Assembly to increase the benefit amount, and now WSI proposes that you change the way the benefit is paid. Currently, the benefit is paid to a few statutorily specified relatives. This is an antiquated method which deprives workers of the flexibility of declaring to whom this money should be allocated in the event of their death. The proposed change directs WSI to pay the benefit to the deceased worker's estate; thereby assuring that if a worker has a will, the money would be distributed under the will's residual clause to whomever the injured worker has designated. If the injured worker does not have a will at the time of death, the benefit money, along with the rest of the assets in the estate, would be paid under the intestate succession statute in North Dakota's probate code.

Six sections of the original bill did not pass the Senate. After careful consideration, WSI believes that two sections should be reinstated. Consequently, WSI is requesting that the attached amendment be accepted along with this bill. This amendment adds Sections 4 and 5.

Section 4. This section has two proposed changes. The first allows WSI to notify workers about their rehabilitation awards with a document called a notice of decision instead of an administrative order. A notice of decision is a less formal and more expedient way to inform workers about their benefits, and is commonly used by WSI in almost all other aspects of claims handling. The reason for the change is to make the claims handling process more uniform. Injured workers will not be prejudiced by the change and in fact, they may benefit from the additional appeal review that will necessarily follow the use of a notice of decision. This change does not remove any part of the appeal process from the Administrative Agencies Practice Act. If an injured worker were to appeal a notice of decision about their rehabilitation, they would follow the same dispute process under section 65-01-16 as they would for most other claims disputes: an informal review is conducted, a decision is either reversed or affirmed with an administrative order, and if that order is appealed an administrative hearing is conducted, etc.

The second change is merely to correct an oversight in the statutory language. The words "short term or long term training" were inadvertently left in this statute when they should have been deleted during the last legislative session when "short term" training and "long term" training were replaced in our workers' compensation law with the term "retraining". There will be no substantive effect from this change.

Section 5. This section merely explains how the bill is to be applied and is necessary so that WSI has a clear guide on how and when the statutory changes take effect.

WSI requests your favorable consideration of Reengrossed Senate Bill 2072. I would be happy to answer any questions you may have at this time.

PROPOSED AMENDMENTS TO REENGROSSED SENATE BILL 2072

Page 2, after line 22, insert:

"SECTION 4. AMENDMENT. Section 65-05.1-06.1 of the North Dakota Century Code is amended and reenacted as follows:

65-05.1-06.1. Rehabilitation award.

1. Within sixty days of receiving the final vocational consultant's report, the organization shall issue ~~an administrative order under chapter 28-32~~ a notice of decision detailing the employee's entitlement to disability and vocational rehabilitation services.
2. If the appropriate priority option is ~~short-term or long-term training,~~ retraining, the vocational rehabilitation award must be within the following terms:
 - a. For the employee's lost time, and in lieu of further disability benefits, the organization shall award a rehabilitation allowance. The rehabilitation allowance must be limited to the amount and purpose specified in the award, and must be equal to the disability and dependent benefits the employee was receiving, or was entitled to receive, prior to the award.
 - b. The rehabilitation allowance must include an additional twenty-five percent when it is necessary for the employee to maintain two households and the employee elects to commute to and from school on a daily basis rather than maintain a second household and the distance from the employee's residence to the school or training institution is at least thirty miles, or when the employee meets other criteria established by the organization by rule.
 - c. The rehabilitation allowance must be limited to one hundred four weeks except in cases of catastrophic injury, in which case additional rehabilitation benefits may be awarded in the discretion of the organization. Catastrophic injury includes:
 - (1) Paraplegia; quadriplegia; severe closed head injury; total blindness in both eyes; or amputation of an arm proximal to the wrist or a leg proximal to the ankle, caused by the compensable injury, which renders an employee permanently and totally disabled without further vocational retraining assistance; or
 - (2) Those employees the organization so designates, in its sole discretion, provided that the organization finds the employee to be permanently and totally disabled without further vocational retraining assistance. There is no appeal from an organization decision to designate, or fail to designate, an employee as catastrophically injured under this subsection.

- d. The rehabilitation award must include the cost of books, tuition, fees, and equipment, tools, or supplies required by the educational institution. The award may not exceed the cost of attending a public college or university in the state in which the employee resides, provided an equivalent program exists in the public college or university.
- e. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, additional awards for actual relocation expenses to move the household to the locale where the claimant has actually located work.
- f. If the employee successfully concludes the rehabilitation program, the organization may make, in its sole discretion, an additional award, not to exceed two months' disability benefit, to assist the employee with work search.
- g. If the employee successfully concludes the rehabilitation program, the employee is not eligible for further vocational retraining or total disability benefits unless the employee establishes a significant change in medical condition attributable to the work injury which precludes the employee from performing the work for which the employee was trained, or any other work for which the employee is suited. The organization may waive this section in cases of catastrophic injury defined by subdivision c.
- h. If the employee successfully concludes the rehabilitation program, the employee remains eligible to receive partial disability benefits, as follows:
 - (1) Beginning the date at which the employee completes retraining, until the employee acquires and performs substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury, and the employee's wage-earning capacity after retraining, as measured by the average wage in the employee's occupation, according to criteria established by job service North Dakota in its statewide labor market survey, or such other criteria the organization, in its sole discretion, deems appropriate. The average weekly wage must be determined on the date the employee completes retraining. The benefit continues until the employee acquires substantial gainful employment.
 - (2) Beginning the date at which the employee acquires substantial gainful employment, the partial disability benefit is sixty-six and two-thirds percent of the difference between the injured

employee's weekly wages before the injury, and the employee's wage-earning capacity after retraining, as determined under paragraph 1, or the employee's actual post injury wage earnings, whichever is higher.

- (3) The partial disability benefit payable under paragraphs 1 and 2 may not exceed the limitation on partial disability benefits contained in section 65-05-10.
- (4) The partial disability benefits paid under paragraphs 1 and 2 may not together exceed one year's duration.
- (5) For purposes of paragraphs 1 and 2, "substantial gainful employment" means full-time bona fide work, for a remuneration, other than make-work. "Full-time work" means employment for twenty-eight or more hours per week, on average.
- (6) The organization may waive the one-year limit on the duration of partial disability benefits, in cases of catastrophic injury under subdivision c.

- 3. If the appropriate priority option is return to the same or modified position, or to a related position, the organization shall determine whether the employee is eligible to receive partial disability benefits pursuant to section 65-05-10. In addition, the organization, when appropriate, shall make an additional award for actual relocation expenses to move the household to the locale where the claimant has actually located work.

SECTION 5. APPLICATION. The rate in subdivision a of subsection 10 of section 65-05-08 contained in section 2 of this Act applies to each eligible employee on or after the effective date of this Act. Subdivision b of subsection 10 of section 65-05-08 contained in section 2 of this Act applies to benefits for dependents submitted on or after the effective date of this Act regardless of the date of injury. Section 3 of this Act applies to deaths occurring on or after the effective date of this Act. Section 4 of this Act applies retroactively to all claims filed on or after January 1, 2006."

Chairman Keiser, members of the IBL committee. At your request, I've had a chance to review Section 4 of the proposed amendments to SB 2072.

This amendment would change the way notice is given in rehabilitation awards from the current administrative order to a document called a notice of decision.

Notice of decisions are commonly used within WSI, however, I would urge this amendment not be adopted as an Administrative Order is beneficial for many reasons. An Order is a more formal document that spells out the options of going through the OIR process, the request of a hearing and the availability of attorney fees should the party prevail.

At some point - both employees and employers need to be informed of their legal rights and options. The Order accomplishes this step.

I fear the proposed amendment would add an unnecessary step in the appeal process while further confusing both employers and employees. Further, this change would provide less notice to the parties - - notice of decisions are typically only given to the claimant, whereas an Order is given to all parties involved. Certainly, an employer would want to be made aware of a voc-rehab plan in case they choose to appeal.

Finally, I would question the motives of such a change. With only 30 days to appeal either document, I fear even more employees and employers would miss this deadline on a less informal document called a decision.

I'd urge the committee to not adopt Section 4 of the proposed amendment and preserve the Administrative Order that informs all parties of their legal rights and options.

Respectfully,

Rep. Jasper Schneider

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2601 12th Avenue SW
Fargo ND 58103-2354

Sandy Blunt, Executive Director/CEO

November 30, 2004

«to_recip_nm»
«to_recip_addr_block»

«empadblk»

Injured Worker: «iw»
Claim No.: «claimno»
Body Part: «bodypt»

Birth Date: «bd»
Injury Date: «injurydt»

NOTICE OF DECISION DENYING BENEFITS - HYPERTENSION

Please read this notice carefully as it may require action within 30 days. This notice is to inform you of Workforce Safety & Insurance's (WSI) decision to deny benefits.

You have filed a claim for hypertension. After review of the evidence in the claim file, your request for benefits is denied.

As a law enforcement officer or firefighter, your claim for benefits alleging you suffer from hypertension is governed by N.D.C.C. § 65-01-15.1, if a law enforcement officer or firefighter does have hypertension, except for certain limited circumstances, it is presumed by law to have been caused by the officer or firefighter's employment. However, in order to have an objective medical diagnosis of hypertension, it is necessary to have more than one elevated blood pressure reading obtained on each of three separate visits over a period of one to several weeks.

In this particular instance, we have only received documentation indicating an isolated high blood pressure reading. An isolated high blood pressure reading is not sufficient for a proper diagnosis of hypertension; therefore, your claim for benefits is denied. If you have additional evidence to support a diagnosis of hypertension, please provide it within the 30-day appeal period of this decision.

You may wish to consult with your physician to schedule a series of blood pressure readings to make a proper determination as to whether you have hypertension. Should you have blood pressure readings in the future that demonstrate an objective diagnosis of hypertension, you may file a claim for benefits at that time.

If you feel this decision is incorrect, please respond, in writing, within 30 days of the date on this Notice requesting a review. You must explain why you think the decision is wrong and what you think the correct decision should be. Please enclose any additional information for WSI to consider. Please be advised that the request for reconsideration must be in writing from you, not your physician. If you do not submit your request for a review within 30 days, this decision will be final. If you agree with this decision, nothing more is required from you.

Your personal insurance provider may require a copy of this denial in order to process your request for payment from them.

Sincerely,

«ca», Claims Analyst
«calocation»

FL702-27

A

ORDER OF NORTH DAKOTA WORKFORCE SAFETY AND INSURANCE (WSI)

Claimant: Rob Forward
Date of Birth: mm/dd/yyyy
Claim Number: 2006-7489X3
Date of Alleged Injury: 01/04/2006

Alleged Injury Occupation: Attorney
Alleged Injury Employer: State of North Dakota
Employer Account No.: 0145XX46

Alleged Injury: Lumbar spine

Decision: This claim is denied.

FACTUAL BACKGROUND

February 26, 2005: Claimant was treated at Hurtback Clinic and complained of upper and lower back pain that started when he was playing basketball that day.

March 20, 2005: Claimant was treated at the Hurtback Clinic and indicated he was experiencing a lot of lower back pain and soreness due to playing volleyball during the weekend.

April 2, 2005: Claimant was treated at Hurtback Clinic and indicated his upper back pain had decreased since he took time off from activities such as basketball.

April 5, 2005: The chiropractic notes indicate claimant could still feel the pain in his upper back, but not as bad.

April 26, 2005: The chiropractic notes indicate claimant was experiencing the same extreme upper back pain as he did when he started treatment. Claimant indicated he was able to play basketball last week without much pain, but then he went hiking and he started experiencing pain.

Claimant did not mention any work incident or work-related causes during any of the above-described visits to Hurtback Clinic.

April 28, 2005: Claimant was examined by Dr. Smith, M.D. for continued neck and upper back problems. Dr. Smith noted the claimant had been seeing a chiropractor since February. Claimant's pain was over C7 of the cervical spine. Dr. Smith diagnosed claimant as having no trauma, probable sports sprain. Dr. Smith ordered x-rays and an MRI scan. Claimant did not mention any work incident during his doctor visit of April 28, 2005.

May 3, 2005: Claimant underwent an MRI of his cervical spine which showed no abnormalities.

May 10, 2005: Claimant was treated at Hurtback Clinic and the chiropractic notes indicate claimant was experiencing upper back pain during the last week which was made worse by playing basketball that day.

May 17, 2005: Claimant was treated at Hurtback Clinic and the chiropractic notes indicate claimant was lifting a stove during the weekend and he started to experience upper back pain.

May 26, 2005: Claimant was treated at Hurtback Clinic and the chiropractic notes indicate claimant climbed a tree to retrieve a volleyball and he experienced upper back pain.

May 30, 2005: Claimant was treated at Hurtback Clinic and the chiropractic notes indicate claimant's muscles spasms in his upper back decreased, but he was experiencing increased tenderness.

Claimant did not mention any work incident or work-related causes during any of these chiropractic visits.

June 9 and 20, 2005: Claimant followed up with his chiropractor for his neck and upper back pain. No mention of any work incident.

January 3, 2006: Claimant was seen by a new chiropractor, Dr. Jones, at Ache Chiropractic Clinic for complaints of left lower back pain that traveled into his left leg. Claimant indicated his pain started about a month ago and playing sports or any type of movement exacerbated his symptoms. Claimant showed signs of lumbar and sacroiliac segmental dysfunction complicated by lumbar facet syndrome and myalgia.

January 25, 27, and 31, 2006, and February 2, 5, and 7, 2006: Claimant followed up with Dr. Jones for low back complaints. Claimant indicated he had participated in a volleyball tourney on January 24th and his low back pain flared up.

March 6, 2006: Claimant was seen by Dr. Jones. Claimant had spent the last couple nights in the hospital as his wife delivered their baby and claimant was sleeping in a chair which exacerbated his back pain.

March 10, 2006: Claimant returned to Dr. Jones and complained of low back pain. Claimant indicated his new baby was keeping him awake at night and he tried playing some basketball last night, but his back pain was too bad.

The chiropractic notes from Ache Chiropractic Clinic do not mention any work incident or work-related causes reported by claimant.

November 25, 2006: Claimant completed an Incident Report at his place of employment indicating he sustained a lower back strain. Claimant did not provide an accident date or time, or an accident location. Claimant described his injury as an "ongoing injury, lower back pain because of condition of office." Claimant further indicated his low back injury was ongoing and his back has hurt for years.

November 25, 2006: The employer submitted Claimant's First Report of Injury. On this form, Claimant indicated that over the years, with the setup of his office, he had to constantly look right while entering information on a keyboard located straight ahead. Claimant also indicated he had limited mobility from a small working area, and he felt that his current low back pain was due to his small office and the limited mobility it provided him. Claimant indicated his treating doctor was Dr. Jones with Ache Chiropractic.

November 26, 2006: WSI spoke to the employer. The employer indicated claimant had never reported any low back pain or medical appointments. Claimant reported to the employer on November 25, 2006, that due to the way his monitor and keyboard are placed, and due to him turning his head to key in data, this caused low back pain. The employer advised WSI that claimant did minimal keying and data entry, and most of his job duties did not include much computer work. The claimant has a swivel chair.

The employer further indicated claimant was very active and played basketball three times per week, volleyball once per week, and hiked on a regular basis.

January 14, 2007: WSI issued a Notice of Decision Denying Benefits.

February 8, 2007: Claimant submitted a written request for reconsideration indicating it is difficult to determine when his back started giving him problems because there was no injury date. He had to guess when his back started bothering him so he picked a date at about the time he decided to go see a chiropractor. Claimant indicated his physical recreational activities triggered the pain in his back, but were not the cause of his problem. Claimant indicated his office space is in a closet that has dimensions of 3.5 feet by 10 feet, and a ceiling that is 2 inches above his head. His computer monitor cannot be in front of him because it hits the wall, thus he has to twist while he types.

FINDINGS OF FACT

There is no objective medical evidence establishing that claimant sustained a progressive low back injury arising out of and in the course of his employment. The medical records do not provide any information of a work-related cause for claimant's low back pain. Claimant did not report any work incident to the treating doctors. The doctors' notes discuss a sports sprain and claimant's recreational activities as the causes for his low back pain. There is no diagnosis linking claimant's current symptoms to his work activity.

CONCLUSIONS OF LAW

A compensable injury means an injury by accident arising out of and in the course of employment which must be established by medical evidence supported by objective medical findings. *N.D.C.C. § 65-01-02*. Claimant has the burden of proving by a preponderance of the evidence that he is entitled to benefits under the North Dakota State Workers Compensation Act. *N.D.C.C. § 65-01-11*. There are no objective medical findings of a work-related low back injury in the chiropractic or medical records. Therefore, he is not entitled to benefits on this claim.

ORDER

This claim is denied.

Dated this _____ day of _____, 2007.
Workforce Safety and Insurance

Kim Ehli, Claims Director

Main Office
1600 East Century Avenue, Suite 1
PO Box 5585
Bismarck ND 58506-5585



Workforce Safety
& Insurance
To us, it's personal.

www.WorkforceSafety.com

Sandy Blunt, Executive Director/CEO

Fargo Service Center
2601 12th Avenue SW
Fargo ND 58103-2354

NOTICE TO CLAIMANT

Enclosed is a copy of an Administrative Order. This Administrative Order either awards benefits or denies benefits and provides greater detailed facts and legal analysis. If you have any questions concerning this Order or believe the decision in this Order is wrong, **you have two choices:**

1. You can **request assistance from the Office of Independent Review (OIR)** within 30 days from mailing date of this Order – OIR will then conduct an independent review of the claim. A request for assistance from (OIR) must be made in writing. *NOTE: OIR provides no-cost assistance to claimants. OIR is part of Workforce Safety & Insurance (WSI), but is independent of WSI's Claims Department.* OIR advocates are not attorneys and, by law, cannot provide legal advice. If the OIR process cannot resolve the disputed issue, you will receive a Certificate of Completion and a letter from OIR. **If you still disagree with WSI after receiving the Certificate of Completion, you may request a hearing (see *When requesting a hearing*, below).** A hearing request must be made in writing within 30 days from the mailing date of the Certificate of Completion.

To contact OIR: write 2525 E Rosser Ave Ste 4, Bismarck, ND, 58501-5077; telephone (701) 328-9900 or 1-800-701-4932; e-mail advocates at wsioir@nd.gov; or visit their office at 2525 East Rosser Avenue, Suite 4, Bismarck, ND – no appointment is necessary.

- OR -

If you **choose not to seek assistance of OIR**, you can write to WSI and request a hearing. You must request a hearing within 30 days from the mailing date of the Order (see *When requesting a hearing*, below).

NOTE: if you do not request assistance in writing from the Office of Independent Review OR if you do not request a hearing in writing within 30 days from the date the Order was mailed to you, the Order becomes final and may not be appealed.

When requesting a hearing:

A hearing request must be made to WSI in writing, and you must explain why you disagree with WSI's decision. Don't worry about legal terminology or format, just state in your own words what you feel is specifically wrong with WSI's decision and what you feel should be done to correct it. You should also include any additional information that you believe will show why the Order is wrong. WSI will review your request for a hearing, and, if WSI still believes its decision is correct, your claim will be assigned to one of the attorneys who represent WSI in claims disputes. These attorneys work in private law firms throughout the state. WSI's attorney will request the Office of Administrative Hearings appoint an Administrative Law Judge (ALJ) to conduct a hearing. Once an ALJ has been appointed, a notice of the date, time, and location of hearing will be mailed to you. You may attend the hearing and testify, and you may also bring witnesses or other evidence you have which supports your claim. You may hire an attorney to represent you during the hearing process (see *Payment of attorney fees*, below). Your employer may also attend the hearing.

Payment of attorney fees

Your attorney fees will be paid by WSI according to the limits set by law **IF** you first asked for help from the Office of Independent Review and received a Certificate of Completion from them **AND** you prevailed at the hearing (or at the District Court or Supreme Court levels).

NOTICE TO EMPLOYER

Enclosed is a copy of an Administrative Order. If you believe the decision outlined in this Order is wrong, you can ask for a hearing. **To ask for a hearing, you must write to WSI's Legal Department** within 30 days from the mailing date of this Order explaining why you think this Order is wrong. The case will then go to a formal hearing. At the hearing, you can present your case as to why the Order is wrong and how it should be changed. You can have an attorney represent you at the hearing, but no attorney fees will be paid by WSI regardless of the outcome of the hearing.

Rev (05/2003)

BEFORE WORKFORCE SAFETY AND INSURANCE
BISMARCK, NORTH DAKOTA

CLAIM NO. claim number

EMPLOYER ACCOUNT NO. employer acct number

In the Matter of the Claim of)	
)	
IW name)	ORDER AWARDING
)	REHABILITATION BENEFITS
for compensation from Workforce)	PURSUANT TO
Safety and Insurance.)	N.D.C.C. Ch. 65-05.1

Workforce Safety and Insurance (hereinafter WSI)
reviewed the entire file in this case and, based upon that
review, makes the following:

FINDINGS OF FACT

I.

Claimant filed an application for workers'
compensation benefits in connection with an injury sustained on
date of injury, while employed by employer's name, town & state,
as a occupation.

II.

WSI accepted liability in this case and paid the
associated medical expenses and disability benefits.

III.

Vocational rehabilitation services under Chapter 65-
05.1 have been initiated by WSI, and claimant has undergone
medical and vocational assessment as required by that chapter.

IV.

Claimant has not sustained a catastrophic injury within the meaning of N.D.C.C. § 65-05.1-06.1(2)(c)(1).

V.

Claimant's significant work history includes the following: work history. Claimant's average weekly earnings at time of injury were \$wages at injury.

VI.

Claimant's medical limitations restrict claimant to restrictions work. The Functional Capacities Assessment dated date of FCA, is incorporated herein by reference.

VII.

The claimant's first appropriate rehabilitation option under N.D.C.C. § 65-05.1-01(4) is short or long-term.

VIII.

The greater weight of the medical evidence indicates claimant is unable, as a result of the injury, to return to substantial gainful employment within the claimant's previous vocation, and is precluded by physical limitations and external employment restrictions and transferable skills, from participating in substantial gainful employment without training.

IX.

To substantially restore claimant's earnings capacity, claimant shall enter into training at name of school, town &

state, in the course.

X.

Claimant's training program begins on start date, and continues through end date, or upon completion of the course work required in course, whichever is first to occur, as long as claimant continues to pursue the above-identified vocational rehabilitation program.

XI.

Prior to entering a formal vocational training program, claimant shall attend the adult learning center program from beginning date, through ending date.

XII.

The vocational rehabilitation allowance is equal to \$weekly disability benefit per week, which does/does not include a weekly dependency allowance, and which does/does not include an additional 25% rehabilitation allowance. OptionalClaimant's eligibility for a weekly dependency allowance is only payable during the time that his/her dependent(s) meet the definition of "child."

XIII.

leave in if cla gets add'l 25% The \$ per week is the sum of claimant's weekly disability benefits and an additional 25% rehabilitation allowance. WSI will not pay the additional 25% rehabilitation allowance for any time the

claimant is not maintaining a second domicile, commuting to and from school, or enrolled in and attending a WSI approved training program.

XIV.

Claimant is eligible to receive payment of reasonable training and schooling costs in connection with the claimant's training program, as approved. (Claimant's training costs include): type of equipment/tools.

XV.

The vocational rehabilitation plan provides vocational opportunities which are compatible with claimant's restrictions and limitations, and will return claimant to substantial gainful employment as required by N.D.C.C. § 65-05.1-01(3).

CONCLUSIONS OF LAW

I.

Claimant suffered an injury by accident arising out of and in the course of his/her employment on DOI.

II.

The first appropriate rehabilitation option under N.D.C.C. § 65-05.1-01(4) is short or long-term.

III.

Training is necessary, feasible, and reasonable, and will significantly restore claimant's earnings capacity.

IV.

Upon completion of claimant's vocational rehabilitation program, and absent a significant change in medical condition and proof of wage loss attributable to the work injury, claimant will not be eligible for further temporary total disability benefits.

V.

optionalUpon completion of claimant's vocational rehabilitation program, claimant may be eligible to receive partial disability benefits pursuant to N.D.C.C. § 65-05.1-06.1, for a period not to exceed one year. Claimant's eligibility for partial disability benefits is contingent upon the requirements of N.D.C.C. § 65-05.1-04, in which claimant must perform a good faith work search and work trial upon seeking, finding, and maintaining employment.

VI.

Upon successful completion of claimant's vocational rehabilitation program, claimant may be eligible to receive job search benefits at WSI's discretion for a period not to exceed two months pursuant to N.D.C.C. § 65-05.1-06.1.

VII.

The training award has been determined to be sufficient to substantially restore claimant's earnings capacity, as required by N.D.C.C. § 65-05.1-01(3). Claimant has failed to prove he/she is entitled to vocational rehabilitation

benefits beyond those provided by this order.

VIII.

Claimant must attend the adult learning center program and training at name of school. The rehabilitation allowance will be suspended if the claimant is not faithfully pursuing the training program or if the claimant has discontinued the training program.

ORDER

IT IS ORDERED that reasonable and necessary medical expenses be paid according to the North Dakota Medical and Hospital Fee Schedule for treatment directly related to claimant's injury of date of injury;

IT IS FURTHER ORDERED that claimant's training program shall begin on start date, and continue through end date, or upon completion of the course work required in the above-identified program, whichever is first to occur;

IT IS FURTHER ORDERED that claimant attend the adult learning center program from start date, through end date;

IT IS FURTHER ORDERED that claimant's rehabilitation allowance be paid in the sum of \$weekly disability benefit per week, optional sentencesubject to any changes in the dependency allowance, provided the claimant continues to pursue the above-identified program;

only if cla gets add'l 25%IT IS FURTHER ORDERED that

WSI not pay the additional 25% rehabilitation allowance for any time the claimant is not commuting to and from classes on a daily basis, maintaining two domiciles, or enrolled and attending a WSI approved vocational training program;

IT IS FURTHER ORDERED that WSI pay training costs while claimant is attending the above-identified program;

IT IS FURTHER ORDERED that claimant remain in compliance with this order by successfully pursuing the training program pursuant to N.D.C.C. § 65-05.1-04 and by completing the above-identified program;

IT IS FURTHER ORDERED that benefits be discontinued by administrative order if claimant is noncompliant with the terms of the above-identified program, absent good cause shown to the satisfaction of WSI;

IT IS FURTHER ORDERED that claimant is not eligible for rehabilitation benefits beyond those provided by this order;

IT IS FURTHER ORDERED that absent a significant change in medical condition and proof of wage loss attributable to the work injury, and upon completion of training, claimant is not eligible for further temporary total disability benefits, as claimant will be employable within the chosen vocation;

optionalIT IS FURTHER ORDERED that following completion of training, claimant may be eligible to receive partial disability benefits pursuant to N.D.C.C. § 65-05.1-06.1,

for a period not to exceed one year. Claimant's eligibility for partial disability benefits is contingent upon the requirements of N.D.C.C. § 65-05.1-04, in which claimant must perform a good faith work search and work trial upon seeking, finding, and maintaining employment;

IT IS FURTHER ORDERED that upon successful completion of claimant's vocational rehabilitation program, claimant may be eligible to receive job search benefits at WSI's discretion for a period not to exceed two months;

IT IS FURTHER ORDERED that a copy of this order be served on all parties in interest, as provided by law.

Dated this _____ day of _____, 2007.

WORKFORCE SAFETY AND INSURANCE

Kim Ehli
Claims Director

bility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section. For purposes of this section, "law enforcement officer" means a person who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, a county sheriff's department, or a city police department. The presumption does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter or law enforcement officer ends.

Source: S.L. 1997, ch. 527, § 4; 1997, ch. 529, § 2.

Construction with Other Laws.

Where claimant was injured before becoming subject to the terms of § 65-01-15, the date of injury was the governing date and the presumption under § 65-01-15.1, applied. *Wanstrom v. North Dakota Workers Comp. Bureau*, 2000 ND 17, 604 N.W.2d 860 (2000) (decided under 1995 version as it appears in the bound volume).

Failure to Rebut Presumption in Previous Enactment of this Section.

Medical expert's opinion that regular smoke exposure was not a substantial causative factor for a firefighter's lung disease was legally insufficient to rebut the presumption formerly contained in 65-01-15.1 that a firefighter's lung disease arose in the line of duty. *Wanstrom v. North Dakota Workers Comp. Bureau*, 2001 ND 21, 621 N.W.2d 864 (2001).

65-01-16. Decisions by organization — Disputed decisions. The following procedures must be followed in claims for benefits, notwithstanding any provisions to the contrary in chapter 28-32:

1. The organization shall send a copy of each initial claim form filed with the organization to the claimant's employer, by regular mail, along with a form for the employer's response, if the employer's response has not been filed at the time the claim is filed. Failure of the employer to file a response within fourteen days from the day the response form was mailed to the employer constitutes the employer's admission that the information in the claim form is correct.
2. The organization may conduct a hearing on any matter within its jurisdiction by informal internal review of the information of records.
3. The organization may issue a notice of decision for any decision made by informal internal review and shall serve the notice of decision on the parties by regular mail. A notice of decision must include a statement of the decision, a short summary of the reasons for the decision, and notice of the right to reconsideration.

4. A party has mailed by the reconsideration decision and additional evidence. The organization's review of the request for reconsideration may not be reheard.
5. Within sixty days of the organization's decision, the organization may rehear the decision. The organization's review of the request for reconsideration may not be reheard.
6. A party has the right to request a review of the decision in which the organization's decision is affirmed.
7. A party has the right to request a review of the decision in which the organization's decision is affirmed.
8. Rehearings must be held in accordance with the provisions of this section. The organization's officers to conduct the hearing, and the organization's findings, conclusions, and orders, representing it in the hearing.
9. Within sixty days of the organization's decision, the organization may rehear the decision. The organization's review of the request for reconsideration may not be reheard.
10. A party may appeal the decision to the court in accordance with the provisions of this section.
11. Any notice of decision must be served on the parties by regular mail. A notice of decision must include a statement of the decision, a short summary of the reasons for the decision, and notice of the right to reconsideration.
12. This section is effective regardless of the date of the decision.

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CC SB 2072

4. A party has thirty days from the day the notice of decision was mailed by the organization in which to file a written request for reconsideration. The request must state the alleged errors in the decision and the relief sought. The request may be accompanied by additional evidence not previously submitted to the organization. The organization shall reconsider the matter by informal internal review of the information of record. Absent a timely and sufficient request for reconsideration, the notice of decision is final and may not be reheard or appealed.
5. Within sixty days after receiving a request for reconsideration, the organization shall serve on the parties by regular mail a notice of decision reversing the previous decision or, in accordance with the North Dakota Rules of Civil Procedure, an administrative order that includes its findings, conclusions, and order. The organization may serve an administrative order on any decision made by informal internal review without first issuing a notice of decision and receiving a request for reconsideration.
6. A party has thirty days from the date of service of an administrative order in which to file a request for assistance from the office of independent review under section 65-02-27.
7. A party has thirty days, from the date of service of an administrative order or from the day the office of independent review mails its notice that the office's assistance is complete, in which to file a written request for rehearing. The request must specifically state each alleged error of fact and law to be reheard and the relief sought. Absent a timely and sufficient request for rehearing, the administrative order is final and may not be reheard or appealed.
8. Rehearings must be conducted as hearings under chapter 28-32 to the extent the provisions of that chapter do not conflict with this section. The organization may arrange for the designation of hearing officers to conduct rehearings and issue recommended findings, conclusions, and orders. In reviewing recommended findings, conclusions, and orders, the organization may consult with its legal counsel representing it in the proceeding.
9. Within sixty days after receiving the recommended findings, conclusions, and order, the organization shall serve on the parties, in accordance with the North Dakota Rules of Civil Procedure, its findings, conclusions, and posthearing administrative order.
10. A party may appeal a posthearing administrative order to district court in accordance with chapter 65-10.
11. Any notice of decision, administrative order, or posthearing administrative order is subject to review and reopening under section 65-05-04.
12. This section is effective for all orders and decisions on all claims regardless of the date of injury or the date the claim was filed.

Source: S.L. 1997, ch. 532, § 1; 1999, ch. 553, §§ 1, 2; 2003, ch. 561, § 3.

Effective Date.

The 2003 amendment of this section by section 3 of chapter 561, S.L. 2003 became effective August 1, 2003.

Cross-References.

Administrative Agencies Practice Act, see N.D.C.C. ch. 28-32.

Ex-Parte Communications.

The appellate court harmonized subsection (8) of this section with N.D.C.C. ch. 28-32 to allow the Bureau to consult with its outside litigation counsel when reviewing a pending ALJ recommendation, but to preclude those consultations from being ex parte. *Lawrence v. North Dakota Workers Comp. Bureau*, 2000 ND 60, 608 N.W.2d 254 (2000).

Remedies for Violation.

Appellate court reversed trial court's judgment directing the North Dakota Workers

Compensation Bureau to award benefits to claimant and instead directed that the case be remanded for reconsideration and rehearing where ex-parte communications took place between the Bureau's outside counsel and the Bureau and its in-house counsel. *Elshaug v. North Dakota Workers Comp. Bureau*, 2000 ND 42, 607 N.W.2d 568 (2000).

DECISIONS UNDER PRIOR LAW

Notice of Decision.

Former section 65-01-14 outlined the procedure when a claim for benefits or reapplication for benefits was made under this title, and contemplated a "notice of decision" when a final determination was made on a claim or on a reapplication; it would have been absurd to require the bureau to issue a "notice of decision" every time the bureau conducted any investigation or review of a claimant's file. *Tobley v. Alm*, 515 N.W.2d 137 (N.D. 1994).

65-01-17. Agricultural employment exemption — Custom agricultural operations. For purposes of the agricultural service exception to hazardous employment under subsection 21 of section 65-01-02, an agricultural employer that engages in a custom agricultural operation, which is the planting, care, or harvesting of grain or field crops on a contract-for-hire basis, exclusive of hauling by special contractor, retains the exemption unless the employer's custom agricultural operations are based outside this state or require more than thirty actual working days of operation during the calendar year.

Source: S.L. 2001, ch. 577, § 1; 2003, ch. 561, § 2.

Effective Date.

The 2003 amendment of this section by

section 2 of chapter 561, S.L. 2003 became effective August 1, 2003.

CHAPTER 65-02

WORKFORCE SAFETY AND INSURANCE ORGANIZATION

Section

- 65-02-01. Workforce safety and insurance — Director — Division directors.
- 65-02-01.1. Workforce safety and insurance.
- 65-02-01.2. Organization to establish personnel system.
- 65-02-02. Oath of office.
- 65-02-03. Organization — Quorum — Effect of vacancy — Vacancies which must be filled within thirty days — Repealed.
- 65-02-03.1. Workforce safety and insurance board of directors — Appointment.

Section

- 65-02-03.2. Compensation of board members.
- 65-02-03.3. Board — Powers and duties.
- 65-02-04. Chairman — Repealed.
- 65-02-05. Office space for organization — Expenditures from fund for employees and supplies — Travel.
- 65-02-05.1. Building maintenance account — Continuing appropriation.
- 65-02-06. Expenditures by organization from fund — Employment of full-time special assistant attorneys general authorized.

Section

- 65-02-06.1. Allocation
- 65-02-07. Organization
- 65-02-08. Rulemaking
- 65-02-08.1. State action
- 65-02-09. General
- 65-02-10. Organization
- 65-02-11. Process and
- 65-02-12. Hearings
- 65-02-13. Organization
- 65-02-13.1. Expenditures
- 65-02-14. Organization
- 65-02-15. Workforce
- 65-02-16. Removal of
- 65-02-17. Binding and
- 65-02-18. Administrative

65-02-01. W

sion directors. The director is serves at the pleasure of any division established. The director must be

Source: S.L. 1919, ch. 73, § 1; 1921, ch. 1 § 1; 1925 Supp., § 396 § 1; 1931, ch. 314, § 1; R.C. 1943, § 65-0201; S. 1967 Supp., § 65-0201; § 77; 1989, ch. 295, § 1; 1997, ch. 528, § 2; 2003

Effective Date.

The 2003 amendment of section 3 of chapter 561 became effective August 1, 2003.

#1
CCSB2072

**1997 North Dakota Legislative Assembly
TESTIMONY ON HOUSE BILL NO. 1270**

By: Reagan R. Pufall
Date: March 17, 1997
Before: Senate Industry, Business, and Labor Committee

Mr. Chairman, members of the Committee, I am an attorney for the Workers Compensation Bureau, and I am here today to request your favorable consideration of House Bill No. 1270. This Bill, if enacted, will clarify and streamline the law governing Workers Compensation claims decisions and litigation. In recent years, the Bureau has dramatically improved the timeliness of its hearing process. This Bill will help the Bureau continue to make further improvements.

It should be noted that this Bill, while lengthy, is mainly a clarification and restatement of existing law. It contains some useful substantive improvements, but does not fundamentally change the existing system. This Bill's primary effect will be to make the law easier to understand and use by adopting plainer language and removing ambiguities.

Background

The general law governing how state agencies make decisions and resolve disputes is the Administrative Agencies Practices Act, located in Chapter 28-32 of the Century Code. It is not practical for the Workers Compensation Bureau to follow all of the procedures in Chapter 28-32 every time it makes a decision, because the Bureau receives more than 20,000 claims each year, and has a number of decisions to make throughout the course of each claim. If the Bureau had to schedule a formal hearing and issue a legal order on every decision, the process would immediately break down, and claimants would never receive benefits in anything close to a timely manner.

In recognition of this situation, there is a statute that provides procedures for workers' compensation claims, located at section 65-01-14 of the Century Code. This statute provides that the Bureau can make claims decisions based on an internal review of the evidence on file, rather than by a formal

hearing, and can issue those decisions in the form of short, plain-language notices rather than by formal legal orders. It is only if the worker or the employer objects to the decision that the Bureau is obliged to issue a legal order, and if the party still objects, a formal hearing is held. The right to have a hearing on demand protects the legal rights of workers and employers, while the ability to make decisions initially without first holding a hearing permits the Bureau to get its work done efficiently. Most government agencies that pay high volumes of financial benefits have similar procedures.

There used to be a problem with the litigation system. Prior to August, 1995, there were four Assistant Attorneys General assigned to the Bureau to handle claims issues. They were responsible for providing legal advice to the claims department and for personally conducting all the claims hearings and court litigation. All hearings were presided over by two non-law trained hearing officers, whose offices were in the Bureau. This system simply did not have the resources to keep up with the volume of work. They fell far behind in providing hearings for workers and employers who thought a decision was wrong. Thanks to legislation passed in the 1995 session, a new litigation system took effect in the summer of 1995. In the new system, there are two in-house lawyers who provide legal advice within the Bureau and supervise claims hearings and litigation. The litigation is handled by three outside law firms, who provide lawyers to represent the Bureau in administrative hearings and court cases on an as-needed basis. Hearing officers are now law-trained, and are provided on an as-needed basis by the Office of Administrative Hearings. The Bureau now has the resources to provide prompt and fair hearings to employers and workers who think a Bureau decision is incorrect.

When the new legal system came on line in August of 1995, the first order of business was to clean up the mess left by the old system. A backlog of more than 1,000 hearing requests had piled up, some of which were more than a year old. The workers and employers who had requested those hearings had been waiting a long time for their "day in court." We have now worked our way through this backlog and are current on requests for hearing. Under the old system, when a hearing request finally made its way to the front of the line, which could take many months, it took more than five months from when a hearing date was requested until the hearing was actually held, on

average. Under the new system, hearing dates are requested much sooner, and a hearing is then held in less than three months, on average.

Remarkably, this new system, which can provide better and faster hearings because it can draw on a larger supply of better trained hearing officers and lawyers, also saves money. Under the old system, most cases had to be settled, because there were not sufficient resources to take good cases to hearing. The new system has the resources to defend meritorious orders, so the amount of money paid in settlements has dropped dramatically. Even after paying the fees of our outside law firms, the Bureau is saving on average about \$172,000 per month as compared to the old system.

In light of the success of the new hearing and litigation system, fundamental change is not needed. However, there are several problems with the current law that need to be addressed, to prevent confusion and help bring about further improvement.

One problem is that the current law is difficult to read and understand. Reading the current laws does not give you a clear picture of how the system works. In fact, even attorneys who are quite familiar with the process can spend hours studying and discussing the statutes and still not reach agreement on various procedural issues. The main purpose of this Bill is to restate the law in plain language, so that reading the law will convey a clearer picture of the process, and to reduce the uncertainties that can lead to unnecessary litigation and delay. This Bill also makes several changes to improve the system.

SECTION 1 OF THE BILL

Paragraph 1, Initial Claims

Paragraph 1 of the new law provides that when the Bureau receives a claim from an injured worker, if the Bureau has not already received the employer's report on the injury, it will send a copy of the claim to the employer. The employer then has 14 days to respond. If the employer does not respond, it is assumed that the employer agrees with the facts stated by the worker on the claim form. Under current law the employer has 30 days, but this is too long and creates unnecessary

delays in getting claims decided in a timely manner.

Paragraph 2. Internal Review

When the Bureau is deciding whether to accept a claim, or making any other decision on a claim, it makes the decision based on its own review of the information on file. Legally this internal review is considered to be the first "hearing" on the matter. This is the same as under the current law.

Paragraph 3. Notice of Decision

When the Bureau has made a substantial decision on a claim, it sends out a notice of decision. This notice contains a short and plain statement of the decision and the reason for it. It also informs the worker and the employer that they have 30 days in which to ask the Bureau to reconsider the decision.

There is one change here from the current law. Under the current law, the Bureau can issue any decision by a notice except for three types of decisions: permanent impairment awards, vocational awards, and the termination or denial of disability or vocational services. Current law requires that these types of decisions be issued in the form of formal legal orders. There is no good reason why these types of decisions cannot be announced by notices of decision. Preparing formal legal orders for all these decisions is time consuming and inefficient. Everyone will be better served if decisions can be issued more quickly and efficiently by notices.

The practice at the Bureau in the past has been to issue most decisions by order rather than by notice. The Bureau is in the process of expanding the use of notices of decision, to reduce the need for preparing legal orders, which can cause delays in claims. This project has been quite successful, and this Bill will allow the Bureau to make full use of this time-saving measure.

Paragraph 4. Request for Reconsideration

The worker and the employer have 30 days in which to request, in writing, that the Bureau reconsider a notice of decision. If there is no written request to reconsider, the decision is final. The request must explain what is wrong with the decision, and can include any additional evidence or

information the Bureau should consider. There are no formal, legalistic requirements here. A simple letter is usually sufficient. Then the Bureau reconsiders the decision in light of the request and any new evidence submitted. It might reverse or change the decision, or it might conclude the decision was correct. This is a simple and efficient way for workers and employers to point out possible mistakes to the Bureau. There is no substantive change from current law.

Paragraph 5, Administrative Orders

After receiving a request for reconsideration, the Bureau has 60 days in which to reconsider the decision. It then must either issue another notice of decision reversing the decision, or it must issue an administrative order. The order could reverse, alter, or confirm the notice of decision.

In some cases the Bureau can choose to skip the notice of decision and request for reconsideration steps, and proceed to issue an administrative order announcing a decision right away. This is because sometimes it is clear that a party is going to want a formal hearing on a pending decision, so issuing a notice and waiting for the request for reconsideration before issuing an administrative order that can be taken to a hearing would just cause an unnecessary delay.

Paragraph 6, Worker Adviser Program

An injured worker who believes an administrative order is wrong has 30 days in which to request assistance from the Workers' Adviser Program. The Workers' Adviser Program offers information and assistance to workers who have questions or concerns about an order they have received. Workers do not have to request Workers' Adviser assistance, but if they do so, and then they still go on to a hearing, they can have their attorney fees paid if they win.

Paragraph 7, Request for Hearing

A worker or employer has 30 days after an order in which to request a hearing in writing. If a worker has gone through the Workers' Adviser Program and still wants a hearing, the worker has 30 days after completing the Program in which to request a hearing. This paragraph, and the amendment to the Workers' Adviser statute that is presented in Section 4 of this Bill, resolves a problem with the current Workers' Adviser law. Current law seems to say that every worker who

requests Workers' Adviser assistance will be sent to a hearing. Since most workers who get help from Workers' Adviser are satisfied with the result and don't want a hearing, this provision of the law doesn't make any sense. This Bill provides that workers who get help from Workers' Adviser don't automatically get a hearing, but they have 30 more days in which to request a hearing if they want one.

This paragraph requires that hearing requests include a specific statement of the alleged errors in the order and what relief is being sought. Some claimants' lawyers have argued that they can demand a hearing without stating what they think is wrong with the order. This is an absurd position that would result in the Bureau and the employer having to go to hearing without even knowing what the alleged issue is. Current law actually requires a statement of specific grounds in a hearing request, and this Bill just clarifies what is required.

Paragraphs 8 and 9, Administrative Hearings and Posthearing Orders

It is only at this point in the process that any part of the Administrative Agencies Practice Act in chapter 28-32 comes into play. The hearing is conducted in accordance with the provisions of chapter 28-32 governing administrative hearings. The hearing officer presides at the hearing and issues Recommended Findings and Conclusions and a Recommended Order. The Bureau reviews these to determine whether to adopt them or whether to issue different findings and conclusions in its posthearing order. This is similar to the current law.

This paragraph also provides that the Bureau can consult with the attorney who represented it in the hearing when it reviews the hearing officers recommendation. After the hearing officer issues the recommendation, the attorney who appeared at the hearing advises the Bureau on whether the recommendation should be reviewed more closely before being adopted, and if so explains the concerns regarding the recommendation. In the vast majority of cases the attorney advises the Bureau to adopt the recommendation, and the Bureau is able to do so quite promptly. Even in most cases in which the attorney suggests a closer review, the Bureau still adopts the recommendation. In less than 1% of cases does the Bureau issue Findings, Conclusions, and Order that differs from the recommendation.

Some claimants lawyers have argued that it is improper for the Bureau to consult with its own attorneys in this way, arguing that this is an ex parte communication under section 28-32-12.1. The Bureau believes this argument is incorrect, but this Bill will resolve the matter with clarity and put the issue to rest. As a practical matter, if the Bureau could not consult with its own attorneys on hearing officer recommendations, the result would be to create substantial delays in the hearing process, and substantial increases in litigation costs. The attorney who has handled the case through the hearing process is completely familiar with it, and can advise the Bureau within days after the recommendation is issued whether there is any cause for closer review. As a consequence, the Bureau is able to issue final post-hearing orders, on average, within a week after receiving a recommendation. If the Bureau had to start from scratch and review the hearing record on every recommended order internally without any input from the attorney who knows the case well, an enormous backlog would quickly form, and injured workers and employers would have to wait months after a hearing before receiving a final order. Furthermore, if the Bureau had to schedule a time and date for representatives of the worker and the employer to participate and present arguments just so the Bureau could speak to its own attorney, this would in effect create an entire new stage of litigation, and again would result in substantial delays.

Since the new litigation system began in the summer of 1995, the Bureau has had its orders upheld in about 65% of the cases that have gone to hearing, and has been reversed in the other 35%. The Bureau contracted the Office of Administrative Hearings to appoint independent hearing officers in order to get an independent perspective on each case. Whether upheld or reversed, the Bureau almost always adopts the hearing officer's recommendation. However, the Bureau must be able to identify those few cases in which the hearing officer has made a mistake of fact or law, or has reached an incorrect decision, that is clear enough or important enough to warrant the issuance of a final order altering or rejecting the recommendation. This Bill meets that need.

Paragraph 10, Appeals

A worker or employer can appeal a posthearing order to district court, and can appeal the court's decision to the North Dakota Supreme Court. This is the same as current law.

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This Bill closes a loophole that exists in the current law. For most agencies, there has already been a formal hearing held and a hearing record has been developed before an order is issued announcing a decision. Therefore, chapter 28-32 provides that those orders can be appealed directly to district court, without having to go through a rehearing first. However, for the Bureau, the first "hearing" is the internal review, and the "rehearing" is when there is a formal hearing at which evidence can be presented and a hearing record made. Technically, under current law, an appeal can be taken to district court directly from an initial order, but in workers' compensation cases it doesn't make much sense to do so, because there is no hearing record for the court to review on appeal. Therefore, the vast majority of workers and employers who disagree with an order go to a hearing first, before deciding whether to appeal to district court. In the few cases that are appealed directly to district court without going to hearing first, the usual result is that it is a waste of time, because the court has to remand the matter for further development of the record. This Bill closes the loophole, and requires all workers' compensation cases to go to hearing before being appealed into the court system.

Paragraph 11, Continuing Jurisdiction

As under current law, all workers compensation decisions are subject to the broad authority granted by section 65-05-04 for the Bureau to correct erroneous decisions.

SECTIONS 2 THROUGH 7 OF THE BILL

Sections 2, 3, and 5 make minor language changes so that other statutes will refer to the new statute created by Section 1 rather than to 65-01-14, which is repealed by Section 6 of the Bill. Section 4 clarifies the issue relating to requests for Workers' Adviser assistance that was discussed in paragraph 7 above. Section 7 provides that this Bill will be effective for all claims filed after July 31, 1997, regardless of the date of injury.

This concludes my testimony in support of House Bill 1270. Thank you for your consideration.

FOR REFERENCE: THE CURRENT VERSION OF 65-01-14

65-01-14. Informal decision by bureau. Notwithstanding sections 28-32-05, 28-32-08, and 28-32-13, the following procedures must be followed when a claim for benefits or reapplication for benefits is made under this title:

1. All claims must be filed on forms furnished by the bureau for that purpose.
2. Upon filing of a claim, including the claimant's statement and physician's certificate, the bureau shall send a copy of the claim, along with a form provided for the employer's response by regular mail, to the employer, if the employer's response is not filed at the time the claim is filed.
3. The employer has thirty days from the day a copy of the claim is mailed to the employer by the bureau to file or mail a response. Failure of the employer to file a response to the claim within thirty days constitutes an admission by the employer that the allegations stated in the claim form are true. The bureau may reopen a determination made without an employer's report on its own motion, pursuant to section 65-05-04, on the grounds it deems sufficient.
4. The bureau shall make its informal decision on the claim after filing of the claim and the physician's certificate. The bureau shall issue a notice of decision, including a short summary indicating the reason for decision, and shall serve the notice on the parties by mailing a copy to the parties by regular mail. The bureau is not required to make findings of fact and conclusions of law when it makes an informal decision. Any party may, within thirty days of the date of mailing of notice of initial award, request reconsideration by filing a written request for reconsideration. The request may be accompanied by affidavits, medical records, or other evidence not previously submitted to the bureau. No later than sixty days following filing of a request for reconsideration, the bureau shall issue an order conforming to the requirements of chapter 28-32. Following issuance of an order, any party may request rehearing or file an appeal in accordance with chapter 28-32. If a timely request for reconsideration is not filed, the decision of the bureau is final, subject only to reopening of the claim under section 65-05-04. The provisions of section 65-10-01, relating to appeals from decision of the bureau, apply only when the bureau issues an order following a timely request for reconsideration.
5. The bureau may hold informal proceedings to determine any matter subject to its jurisdiction. The bureau shall issue to the parties a notice of decision, including a short statement or summary indicating the reason for the decision, and notice of the right to request reconsideration as provided by this section. The bureau may convene a formal hearing prior to issuing an administrative order, if the bureau so desires.
6. After acceptance of a claim, the bureau may continue to pay medical charges, disability benefits, or a vocational award for time loss without issuing notice of award.
7. The bureau shall issue an administrative order under chapter 28-32, when it makes a permanent partial impairment award, vocational award, or when it terminates or denies disability or vocational services. The bureau shall issue an informal decision on an initial determination of disability benefits.

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Sandy Blunt, Executive Director/CEO

November 30, 2004

«to_recip_nm»
«to_recip_addr_block»

«empadblk»

Injured Worker: «iw»
Claim No.: «claimno»
Body Part: «bodypt»

Birth Date: «bd»
Injury Date: «injurydt»

NOTICE OF DECISION DENYING BENEFITS - HYPERTENSION

Please read this notice carefully as it may require action within 30 days. This notice is to inform you of Workforce Safety & Insurance's (WSI) decision to deny benefits.

You have filed a claim for hypertension. After review of the evidence in the claim file, your request for benefits is denied.

As a law enforcement officer or firefighter, your claim for benefits alleging you suffer from hypertension is governed by N.D.C.C. § 65-01-15.1, if a law enforcement officer or firefighter does have hypertension, except for certain limited circumstances, it is presumed by law to have been caused by the officer or firefighter's employment. However, in order to have an objective medical diagnosis of hypertension, it is necessary to have more than one elevated blood pressure reading obtained on each of three separate visits over a period of one to several weeks.

In this particular instance, we have only received documentation indicating an isolated high blood pressure reading. An isolated high blood pressure reading is not sufficient for a proper diagnosis of hypertension; therefore, your claim for benefits is denied. If you have additional evidence to support a diagnosis of hypertension, please provide it within the 30-day appeal period of this decision.

You may wish to consult with your physician to schedule a series of blood pressure readings to make a proper determination as to whether you have hypertension. Should you have blood pressure readings in the future that demonstrate an objective diagnosis of hypertension, you may file a claim for benefits at that time.

If you feel this decision is incorrect, please respond, in writing, within 30 days of the date on this Notice requesting a review. You must explain why you think the decision is wrong and what you think the correct decision should be. Please enclose any additional information for WSI to consider. Please be advised that the request for reconsideration must be in writing from you, not your physician. If you do not submit your request for a review within 30 days, this decision will be final. If you agree with this decision, nothing more is required from you.

Your personal insurance provider may require a copy of this denial in order to process your request for payment from them.

Sincerely,

«ca», Claims Analyst
«calocation»

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