

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2308

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2308

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8337

Committee Clerk Signature

Em Libelt

Minutes:

Chairman Klein: This bill addresses the disability benefits for a firefighter who loses his life.

There were a couple of issues in the first bill. We sat down with the department and firefighters to work on the bill.

Ron Guggeisberg, Firefighter, and Member of ND LAST Team: Written Testimony Attached.

Ron addresses some of the problems they are having with the benefits getting to the families and having the process go quicker.

Senator Andrist: Do we define child as eighteen or under or is a child a child forever?

Ron: Eighteen or under, unless they're a full time college student then it's up to age twenty two.

Chairman Klein: I hope there would be some definition in the code of survivor rather than having to try to apply this entire matrix to the law. I can see an issue when we try to create all these definitions in here. Do we have the word survivor in the code currently? The easier it is to read the easier it will be to pass.

Ron: Are you talking about the North Dakota century code.

Chairman Klein: My assumption is they must do that.

Ron: Could it be amended to say, we will follow the definition in the federal public safety benefit, is that something we can do?

Chairman Klein: That's something we will work on this next week.

Senator Andrist: We usually pay these kinds of benefits through workforce safety. I am sure there are provisions in the workforce safety too. Why isn't it in that part of the code there in the workforce safety manual?

Ron: I believe the intent of the bill was to get the money to the family immediately. For instance if they have family living all around the country and they want to get family members back. Some money to buy plane tickets. You're right senator there is funeral benefits through workers compensation.

Chairman Klein: It will not take any benefits away that they are getting through workers comp. Workers comp is more of a longer drawn out process and I also heard an incident where the volunteer firefighter eventually got his workers comp but it was a long process. The intent here is especially when it deals with heart attacks that deal with training. That was hard to sort out. What this bill does is try to get things moving and get that ten thousand dollar payment in ten days.

Senator Wanzek: I am trying to understand why the West Fargo fireman would not be qualified. Is it because of the definition?

Ron: The language in there that disqualified them is municipality. In fact they are not employees of a municipality. They are employees of a corporation.

Senator Wanzek: So these are independent individuals who contract with the city?

Ron: I believe they do have a governing body but it's a corporation. The elect firefighters that run the corporation and they contract with the city of West Fargo for fire protection.

Chairman Klein: The governing body to me, it's certainly never been the intent to exclude anyone. I am thinking the governing body of the city of West Fargo contracts with this group should be able to say we lost someone and they should be covered. We will take a look at that too.

Senator Nodland: Line twenty and twenty one those forty eight hours of the event is that really an issue?

Ron: There seems in all these death benefits there's a cut off time and there has to be one. In this case we chose forty eight hours. There are lots of studies to back this up. Firefighters are one hundred times more likely to have a heart attack while doing training and operations.

Ed Grossbauer, President of Professional Firefighters of ND: I am here representing the firefighters who protect the great state of North Dakota. We are here in support on Senate Bill 2308. I would be remised if I did not thank Chairman Klein, the people from the insurance department and the tax commissioner's office, for their assistance and willingness to allow us to work on this bill. The PPFND shares concerns that were articulated by Ron. We believe the proposed amendment would address the issues that have come to light. The PPFND believe it would make sense that the North Dakota law and definitions would coincide with the US law that is in place. We would respectfully request that you committee adopt the proposed amendment and vote a due pass as amended out of committee.

Lois Hartman, Executive Director of the North Dakota Firefighter's Association: Written Testimony Attached. In support of the bill.

Larry Martin, Account and Budget Specialist for the Insurance Department: We are in favor of 2308. I really don't have a testimony but would be available to answer questions.

Chairman Klein: You heard the discussion on making it more clear as to the estate person or survivors can you shed any light on that particular line?

Larry: You mean just addressing how the bill is?

Chairman Klein: The concern is that the payments to the deceased fire fighters estate, I am assuming there looking at payment with the language of the survivors. I am still wondering if survivors definition is in the code allows for or do we follow the national standards?

Larry: I will have to go look up survivors that information I do not know. As far as going with the matrix. We're in line with that. Just a couple things we want to point out. We would like a process for us to process a payment. We would have to collect W9 for all those receiving benefits. It would allow us to set them up as vendors.

Chairman Klein: Could this slow down the process?

Larry: Vendor registry is outside our department and they have strict rules that they have to follow in order for the state to meet the federal guidelines. That's something we don't have control over. It would slow, depending on how many receiving benefits it would take a little time to get those processed.

Chairman Klein: Larry I would ask that you would spend a little time with the parties. We would like to work that out as quickly as we can. We are going to close the hearing on Senate bill 2308.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2308

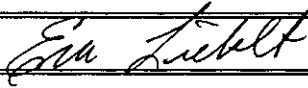
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9167

Committee Clerk Signature



Minutes:

Chairman Klein: Senate Bill 2308. It's not controversial except we wanted to know what "survivor" was and that was probably the primary discussion we had here. There's been a lot of effort between the fire fighter and insurance commissioner to come up the definition to include the words rural fire department and then to provide for that survivor terminology. It was resolved yesterday.

Senator Andrist: Made a motion to pass the amendment.

Senator Behm: Seconded that motion.

Roll Call Vote: Yes: 6 No: 0 Absent: 1

Senator Andrist: Motion to do pass as amended.

Senator Horne: Seconded that motion.

Roll Call Vote: Yes: 6 No: 0 Absent: 1

Floor Assignment: Senator Klein

FISCAL NOTE
Requested by Legislative Council
04/29/2009

Amendment to: Engrossed
 SB 2308

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$0		\$0
Expenditures				\$0		\$0
Appropriations				\$0		\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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).*

This bill clarifies eligibility, payment requirements and survivor succession related to firefighter death benefits through the firefighters death benefit fund and establishes an abandoned infant fire station procedure and reporting immunity in 50-25.1-15.1.

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.*

This bill has no fiscal impact.

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.*

This bill will not affect revenues. Currently Section 26.1-03-17 provides for revenue from premium tax collections to be deposited in the firefighter death benefit fund up to \$50,000 per biennium as may be necessary on a continuing appropriation. SB 2308 does not make any changes to this section.

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.*

There is insufficient data available to determine the effect of this bill on expenditures. SB 2308 does not change the \$10,000 death benefit amount provided under Section 18-05.1-02. The number of claims that may be paid out of the fund is not limited. However, the definitions added in SB 2308 may reduce the number of claims that would otherwise be eligible under current statute.

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.*

This bill will not affect appropriations.

Name:	Larry J. Martin, CPA	Agency:	ND Insurance Department
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Phone Number: 701-328-2930

Date Prepared: 04/29/2009

FISCAL NOTE
Requested by Legislative Council
01/20/2009

Bill/Resolution No.: SB 2308

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 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).*

This bill clarifies eligibility and payment requirements related to firefighter death benefits through the firefighters death benefit fund.

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.*

This bill has no fiscal impact.

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.*

This bill will not affect revenues.

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.*

This bill will not affect expenditures.

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.*

This bill will not affect appropriations.

Name:	Larry J. Martin	Agency:	Insurance Department
Phone Number:	328-2930	Date Prepared:	01/22/2009

adopted

110. Dept.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2308

Page 1, line 1, replace "section" with "sections" and after "18-05.1-02" insert "and 18-05.1-03"

Page 1, line 2, replace "estate" with "survivor"

Page 1, line 7, replace "estate" with "survivor"

Page 1, line 15, replace "estate" with "survivor"

Page 1, after line 22, insert:

"SECTION 2. AMENDMENT. Section 18-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

18-05.1-03. Definition Definitions. For purposes of this chapter, firefighter:

1. "Firefighter" means an individual who is a member of a paid or volunteer fire department that is a part of or is administered by this state, any political subdivision of this state, or a rural fire protection district, or rural fire department.
2. "Survivor" means the spouse of the deceased firefighter or if there is no spouse the individual designated in writing by the deceased firefighter as beneficiary of the Public Safety Officers' Benefit Act death benefit or if no beneficiary is designated the deceased firefighter's estate."

Renumber accordingly

Roll Call Vote #: 1

Senate

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ Pass ☐ Do Not Pass ☒ Amended

Motion Made By Senator Andrist Seconded By Senator Behm

[illegible]

Total (Yes) 6 No 0

Absent {

Floor Assignment _____

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

Date: Feb 11, 2009
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2308

Senate

Committee

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ **Pass** ☐ **Do Not Pass** ☐ **Amended**

Motion Made By Senator Andrist Seconded By Senator Horne

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair			Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Senator Klein

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

REPORT OF STANDING COMMITTEE

SB 2308: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2308 was placed on the Sixth order on the calendar.

Page 1, line 1, replace "section" with "sections" and after "18-05.1-02" insert "and 18-05.1-03"

Page 1, line 2, replace "estate" with "survivor"

Page 1, line 7, replace "estate" with "survivor"

Page 1, line 15, replace "estate" with "survivor"

Page 1, after line 22, insert:

"SECTION 2. AMENDMENT. Section 18-05.1-03 of the North Dakota Century Code is amended and reenacted as follows:

18-05.1-03. ~~Definition~~ Definitions. For purposes of this chapter, ~~firefighter~~:

1. "Firefighter" means an individual who is member of a paid or volunteer fire department that is a part of or is administered by this state, any political subdivision of this state, ~~or~~ a rural fire protection district, or rural fire department.
2. "Survivor" means the spouse of the deceased firefighter. If there is no spouse, the term means the individual designated in writing by the deceased firefighter as beneficiary of the Public Safety Officers' Benefit Act [42 U.S.C. 3796 et seq.] death benefit or if no beneficiary is designated, the deceased firefighter's estate."

Renumber accordingly

2009 HOUSE GOVERNMENT AND VETERANS AFFAIRS

SB 2308

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Senate Bill 2308

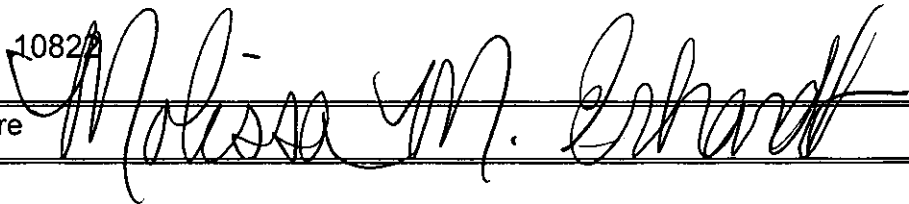
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 3/12/2009

Recorder Job Number: 10822

Committee Clerk Signature



Minutes:

Chairman Grande: Open the hearing on SB 2308. Clerk read the title.

Lois Hartman, Executive Director, ND Firefighters Association: Testimony.

See Attachment # 1.

Chairman Grande: A couple of questions because I see some major changes in the bill. There is going from a "may" to a "shall" is that the first thing and then I have a question about the Rural Fire Fighters and I realize that they were included in the language about as far as "below the volunteers". This is fine but what is this being paid out of and what is their contribution into this?

Lois Hartman: There is no contribution from the fire service into the fund.

There is an appropriation from the insurance tax distribution fund that funded the fund originally.

Chairman Grande: So there is money in that fund and it was designated out for this purpose. Where do we see as the change in the language heart attack,

stroke, being spelled out and do we see that that is going to be a change in what fashion?

Lois Hartman: It is clarification is my understanding so that there is no question a heart attack or a stroke due to an event is covered.

Chairman Grande: Is this standard procedure in other states is that how that is worded?

Lois Hartman: Yes.

Chairman Grande: Any other questions from the committee? Anyone else wishing to speak in favor?

Rebecca Ternes, ND Deputy Insurance Commissioner: We worked pretty hard on redoing the language for this bill this time. From the Insurance Departments perspective we were very unhappy that right after the bill was passed we actually had to use these funds and I think the intent was originally to get these funds very quickly out to the family for costs related to the funeral expenses to get family home and things that the family were just not prepared to take care of. As we started going through our process in our department with regards to what we have to do for OMB and for auditors we found ourselves to be at a bit of a loss. This was a heart attack and it was within 48 hours and heart attack had not been spelled out and we felt it was really necessary to do that.

We wanted to fix this so that it was very clear. You will also see a reference to

something called the Public Safety Officer's Benefit Program and one of the great things about that program is that there are (don't know the word) in the firefighter's districts that work with the program to fill out a form that has a beneficiary on it. One of our concerns in making a payment is; Whom do we make the payment to? Minor children become an issue, multiple people become an issue, obviously the intent of the fund becomes an issue the more checks that are written out. Then the speed of the check becomes difficult as well. So what we did here was try to find a compromise. The spouse's name is first and if there is not a spouse we look at this form for who the beneficiary is or who the beneficiaries are on the form and if not then they must go to an estate and the estate has to be created and a personal representative has to be appointed which may take a little bit longer. In this case that was done and I think the check went out in eight days or so. So we did the best we could with what we had to work with and we feel that this makes it a little more straightforward. So with that I too urge your support.

Chairman Grande: In the survivor language it does say "the individual designated" so that will take care of multi-names?

Rebecca Ternes: We hope so if the forms are filled out correctly.

Chairman Grande: And with that as far as designee of the minor then it would probably have to go to someone else and then the estate would take care of that.

Rebecca Ternes: Yes. It could get a little tricky especially if there are no surviving parents or a parent that is not involved. We are just going to have to work through it I think.

Rep. Meier: Did the sole payment go out right away for the death benefit or was it a statement?

Rebecca Ternes: Yes we did make one check and in this first case it was the estate.

Rep. Nathe: A couple things can an assignment be made right to a funeral home for funeral expenses or must it be made to the family?

Rebecca Ternes: Right now it would go to the spouse or the beneficiary or the estate. I don't believe that would be possible at this time.

Rep. Nathe: Does the family need a death certificate then in order to get that money?

Rebecca Ternes: Very good question, one of my concerns as we go through our next audit will be that, in this case obviously within eight days, we did not have a death certificate, what we will be doing is developing a form that the Fire Chief will have to fill out and sign to verify that there was a death caused by or related to within 48 hours the event. It still remains a concern of ours but the intent is to get a payment out as soon as quickly as possible but we if we have to wait for a death certificate that may not be very quick.

Rep. Nathe: I do know that I had some hand in it with the development of the electronic death certificate system that the state now has. Being that there is two certificates, one with the proof of death and another one with the cause of death. The proof of death is what we use mainly for cashing in insurance policies and those types of things so it actually helps speed it up. But eight days is really lightning fast, I think that is good.

Rebecca Ternes: Thank you. There was a lot of pressure within those eight days to do it faster and we would love to do that if we can and I think some of this will help us to do it as quickly as we possibly can. Can I ask a question?

Chairman Grande: Yes.

Rebecca Ternes: How much quicker does the electronic process work?

Rep. Nathe: Just a matter of getting the Dr. or the funeral home to fill out their portion and then that is it. It really could be a matter of a day or two. If they are electronic.

Rep. Schneider: In situations of a heart attack or stroke within 48 hours with emergency response would that include all runs, for example, firefighters are called on runs on a daily basis if there is a car accident or if somebody calls 911, is that the intention to include all runs as an emergency response, because the preparation is the same.

Rebecca Ternes: Yes, it does include all.

Rep. Kasper: When a Fire Fighter becomes a Fire Fighter is there a form that they fill out for their beneficiary designation and if so do you get a copy of it or does it stay locally or how does that process work?

Rebecca Ternes: I think there are others here who could explain that better but I will do my best. The form that we refer to is called the designation of beneficiaries and it is from the US Department of Justice Public Safety Officers Benefits Program, I can leave you a copy if you are interested, and that does designate a beneficiary. It is not a life insurance form but it is filled out by the Fire Fighter's. They also have a team called the Last Team that goes to Fire Fighter's families in the event that death does occur and we have two members in the State, on either side of the State that will assist the family to go through, not with just us but related to everything related to the death.

Rep. Kasper: I see a problem in the bill, on Page 1, where the amendment starts or the new language starts on Line 14, the insurance commissioner shall pay \$10,000 to a deceased Fire Fighter's survivor. Now if you flip over to Page 2 you define survivor means the spouse of a deceased Fire Fighter. If there is no spouse the term means the individual designated in writing by the deceased Fire Fighter. What if the deceased Fire Fighter on his beneficiary designation did not name his spouse? Who gets the money?

Rebecca Ternes: His spouse would get it first and then his kids.

Rep. Kasper: And that is under what circumstances, I understand. But you see when you have a life insurance form where you name a beneficiary of a death benefit that generally is pretty binding.

Rebecca Ternes: It is one of the issues we grappled with is that there is likely a life insurance policy that could have parents, you don't know who is over there, and we were looking for one place to go to, if there is no surviving spouse, and the Fire Fighter's thought that this form was the best place to go. I think it was a compromise and it was something that we tried work out.

Rep. Kasper: If the Fire Fighter names someone on the beneficiary designation and he or she is married but they don't name the spouse, you will still pay the spouse, you will override the form?

Rebecca Ternes: Yes.

Rep. Amerman: What is the name of the fund that the money comes out of ?

Rebecca Ternes: The fund is the insurance tax distribution fund. It is the fund that all insurance companies pay premium tax to. It is the same fund that we pay out to the fire districts on their grants every year as well.

Rep. Schneider: On Line 21, after the comma where it says "is deemed to be an injury caused while actually in the line of the deceased Fire Fighter's duty." I guess I question the need for that language? I wonder if it would make some sense to just put a period after training event and wonder how the department

● would intend to determine whether that injury was caused acting in the line of the Fire Fighter's duty. It seems to me if you are a Fire Fighter and you went on a run yesterday and the next day you have a heart attack or stroke it would fall under the protections of the statute. What would the process be for the department to then go back and second guess the injury?

Rebecca Ternes: That was our intent but I think putting the deeming line in there is that we would not second guess it. If there was a heart attack or stroke within forty eight hours of any type of training event or a run the \$10,000 would be paid out.

● **Rep. Schneider:** Maybe we are saying the same thing then. I guess I am questioning if it is redundant? Because by deeming that means you are making a decision whether it was an injury caused by a response or not and if you just leave it as death by heart attack or stroke, if death occurs within 48 hours of an emergency response or training event. Do you see what I mean I am questioning your department all of sudden playing medical Dr in determining whether the heart attack or stroke was caused in the line of duty or not.

Rebecca Ternes: I don't think we have a problem with that. I think we were doing our best here for this Fire Fighter that passed away and it was unknown territory for us and I think we tried awful hard.

●

Rep. Amerman: I am recalling a case we had involving Workers Comp and I think maybe this is why I addressed it but this individual in the western part of the State had two fires one day and he was dressing in his fire truck at the second fire when he had a heart attack. He did not get workers comp because they could not prove that this was caused by an injury even though he had been fighting these things. I think that was put in to address something like that.

Rep. Froseth: Just in defense of that language I think that it was deemed to be an injury caused for a lack of better terms, you could be out shoveling four feet of snow off your sidewalk within 48 hours after being on a fire call and die of a heart attack, this verifies that it has to be deemed by somebody that it was caused by an event.

Rep. Winrich: I think I have a solution to the language here and I will ask Rebecca if it satisfies her. What if we just inserted the word "including" between those two sentences and then drop off the part that Rep. Schneider doesn't like? So it would read "The payment must be made upon receipt of evidence that the Fire Fighter's death occurred from an injury sustained responding to an emergency response or training event or during an emergency response or training event including a death by heart attack or stroke if the death occurs within 48 hours of the event."

Rep. Schneider: I guess Rep. Froseth was kind of my concern, how does, for example, if a firefighter went on a run yesterday and then that day is shoveling four feet of snow and has a heart attack, the department then make that determination? It seems to me that because the Fire Fighter was a Fire Fighter and went on a run the day before and suffered a heart attack the next day it should be irrelevant of the activities that were occurring at that time.

Rebecca Ternes: You are describing very similar to what happened this last time and it would absolutely be our intent that we would make the payment.

Regardless, if they are shoveling snow or not, if it is within 48 hours of going on an event or at a training we would make the payment.

Rep. Schneider: Okay.

Chairman Grande: Any other questions from the committee?

Ed Grosgebauer, Professional Fire Fighters of ND: We are here in support of SB 2308. In sitting here and listening to the lengthy discussion it is very prudent to what is going on. I believe that Rep Winrich makes a very valid point but once it is written out I think that we could all see that it could probably work that way. I don't think the Insurance Commissioner's office would have an issue with it. I don't have any written testimony to offer today. I stand here to answer any questions that might be coming from the committee.

Chairman Grande: I have a couple of questions and you can probably figure out my direction with this. Rural Fire Fighters and I have an issue with this, that being, what fitness tests do they have to take to volunteer and be on the squad?

Ed Grosgebauer: I can only speak for the professional Fire Fighters that I represent. I don't know what the rural or volunteer organizations do. What standards they are holding them to.

Chairman Grande: You don't know if they have to qualify in any way, shape or form? So we could have seventy year old guys who hears the fire bell and shows up and now we are going to pay him out the benefits and we have no

qualifications. So everybody who wants to in the rural they go out and fight the fire, rightfully so and that is not a criticism, my criticism comes when my Fire Fighters who have to qualify to be a Fire Fighter, must stay physically fit, may lose out on something because the fund went dry or for some other reason. I really worry about why we have the rural Fire Fighter Department added in even down to the heart attack side. Any suggestions as to should we have something that says you have to qualify to be a Fire Fighter and how do we know they are Fire Fighters? Do you have any ideas?

Ed Grosgebauer: I most certainly have ideas but this is not the forum for me to offer those. The ND Fire Fighters Association vigorously supports training consistently everyday of the year and we would love to see every Fire Fighter

certified for Fire Fighter I and Fire Fighter II. We would also like to see those folks participate in the wellness and fitness initiatives that we do as professionals. I am not going to stand here and regulate those people or even suggest we do that. I would like to see it but I can't offer anything further the fact that we would vigorously support having every Fire Fighter in the State of ND certified to Fire Fighter I and Fire Fighter II and also I would like to make it very clear that there is a program called the "Everyone Goes Home Program" that is offered completely and totally free to every Fire Fighter in the State by the ND Fire Fighters Association. We haven't had the participation that we would expect. I can't tell you that every Fire Fighter has participated in the program.

Rep. Kasper: Suppose the Fire Fighter is separated from his spouse and is separated for three or four years, they have no relationship, the kids are gone, that Fire Fighter has designated his grandchildren to be the beneficiary of the proceeds and that Fire Fighter dies. This statute says that the money is going to go to the surviving spouse because they are not married and they are not divorced. Do you have any thoughts about the fact that the Fire Fighters intent would not have been honored even though he had a surviving spouse?

Ed Grosgebauer: That is a very similar situation that I posed to the Insurance Commissioner's office. That concerns me but we discussed having both volunteer and paid Fire Fighters who participate in that last team when they are

on scene make a determination as to who would be the responsible party for lack of better a term. As a compromise we choose to go with the language that was offered. The PSOB, we expect every Chief in the State of ND to make sure that all of their people get provided that. Again that does not address the spouse issue because we heard (coughing) and it would go to the spouse.

Rep. Dahl: A general comment for you and that is the way the law is written in ND with respect to trust and estates you are married until you are divorced. That kind of situation could happen at any point with anybody that is separated from their spouse but has not been divorced yet. We have set that out in other

sections of code where the spouse is first on the list and choose the priority of the estate. I am not sure that we want to put the Insurance Department in the position of determining somebody's relationship.

Rep. Schneider: The statute in its original form just says it is the estate of the Fire Fighter, would you have any objection of just going back to that language, so that is where the funds would be sent?

Ed Grosgebauer: That is one of the biggest issues because we believe the intent of the original bill was to get this money out to that family as quickly as humanly possible. Eight days was what had happened last time and we had expected within 48 hours, that is what we were looking for. The reason we feel that it should be out that quickly is because of the fact that this is an unexpected

thing and there are many, many expenses that are born by that family. Of course, when anyone dies there are unexpected expenses but the line of duty Fire Fighter death brings hundreds, if not thousands of Fire Fighters to the funeral, and we want to make sure that these families can make sure they can get their family to the funeral. We want to make sure that they can provide the goods at their home so that is why the 48 hour thing. Quite frankly we would not like to see it go back to the estate because that extends the time line greatly.

Rep. Kasper: You may not know the technical parts of life insurance but I think I do. Under the law of contracts and under the laws of the beneficiaries and judging (can't understand) life insurance policy. So I suppose the question is, is it a life insurance policy or is it a death benefit, it may not technically be a life insurance policy. But under the beneficiary designation of a life insurance policy the beneficiary designation of a life insurance policy the beneficiary designation overrides any surviving spouse, children, or a will. The beneficiary designation goes outside of the will, it goes outside of the survivor rights. The surviving spouse if there is a surviving spouse has certain laws under the State of ND and the United States Government, which means if there is not a will, the surviving spouse will receive a percentage of the estates and the other heirs will receive a remainder again depending upon the laws of the State that you die in. If there is a will, then the will supercedes the laws of survivorship unless the will disinherits

the spouse because you cannot disinherit a spouse in a will because you have to go back to the minimum distribution amount to the surviving spouse. So the point is in a beneficiary designation of the deceased Fire Fighter if this is a life insurance policy, it seems to me that the law of contracts would say that the beneficiary designation supercedes even what the statute says and that is the problem I have with the way this bill is written.

Ed Grosgebauer: I understand what you are saying but this is a death benefit and not a life insurance policy. There are no premiums paid to augment this coverage so we believe it to be a death benefit. Although I do understand very clearly what you are saying, I don't know that the law would apply right here.

Rep. Nathe: How often is the form that they fill out updated?

Ed Grosgebauer: At this time it is not filled out at all. It is our hope to get all of the Fire Chiefs across the State to get all of their members to fill out the form, at least this first time. Then, hopefully, we can have them update it, once a year, periodically, whatever that sheet deems necessary. I think that if you have a life-altering event, marriage, divorce, any type of situation like that, you would encourage that Fire Fighter to make the appropriate changes.

Rep. Nathe: A Fire Fighter gets killed during an Emergency Response and he is eligible for \$10,000 through this, is he also eligible for WSI/Workers Comp.?

Ed Grosgebauer: He or she should be. That is an extended process to get them qualified for that. Unless they have a pre-existing history it's not going to be (can't understand speaker). (Can't understand speaker). Then that PSO benefit would possibly kick in also and that is a Federal Benefit.

Rep. Nathe: WSI also pays for funeral benefits to up to \$6,000.

Ed Grosgebauer: Yes sir.

Rep. Nathe: Being a funeral home owner we deal with them every so often and I can tell you to get a funeral payment from WSI does take a while. It does take longer than eight days and they do require a death certificate. I think that your approach of trying to get your money into the families hands as soon as possible within 48 hours for funeral expenses is really quite quick. Funeral homes work with families all the time, we outlay money and we work with them as far as getting payment. I appreciate the fact of you trying to get it to them within 48 hours but I do think that you have a little bit more time than that to get the money to the family for funeral expenses if that is what it would be for.

Ed Grosgebauer: The original intent of the bill was not for burial costs and things associated with the funeral homes. It was for lost wages and things like that.

Rep. Kasper: I don't think that this bill requires the death benefit to be paid within 48 hours the 48 hours is talking about if death occurs by a heart attack is

deemed to be eligible. So the death benefit would be paid by the insurance department once they receive the appropriate documents that they need.

Ed Grosgebauer: That is correct. Our grand wishes our that they be paid as quickly as humanly possible.

Chairman Grande: Any other questions? Anyone else wishing to speak in favor of 2308?

Ray Lambert, ND State Fire Marshal: I have no testimony prepared for this. But if I may respond to the questions in regards to the qualifications and who are the volunteer rural Fire Fighters? That is handled under the certifications of each department. It is done annually and updated annually and in the departments each individual Fire Department maintains there standards and brings on board their volunteers. In that, they have to maintain rosters of each individual so that they can't just pick someone up off the street and all of a sudden they become a Fire Fighter and something goes wrong. It is a well-established process that is in place and is maintained by each individual department and that is one of the places that I know the rosters are actually kept. I hope that will clarify that one question.

Chairman Grande: Anyone else wishing to speak in favor of 2308? Favor? Oppostion? Neutral? Closing the hearing on 2308.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work One Senate Bill 2308

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 3/12/2009

Recorder Job Number: 10823

Committee Clerk Signature

Minutes:

Committee Work One:

Chairman Grande: Rep. Dahl has an amendment for 2308 and she would like to ask this question of Mr. Grosgebauer.

Rep. Dahl: I have an amendment before us that would allow a person to have a place to go to with an abandoned infant. In addition to allowing them to bring them to a hospital, they could bring them to a fire station where there is somebody they could hand the child off to. Would your association be in support of that?

Ed Grosgebauer: We have fully supported SB 2400, which I believe is what we are referring to now. We would absolutely be in favor of the bill that was proposed and if it is offered as an amendment then I think we would support it. I would also make mention that I did contact the President of the ND Fire Chief's Association and Chief Kraugen from Minot and let him know that this was going to possibly be offered today.



Chairman Grande: We are closing the hearing on this.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work Two SB 2308

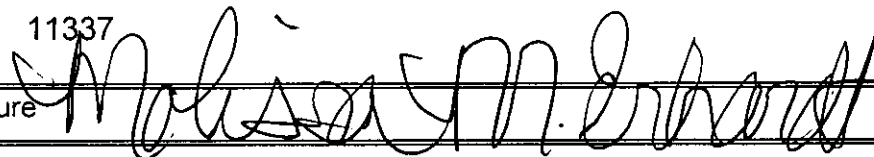
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 03/20/2009

Recorder Job Number: 11337

Committee Clerk Signature



Minutes:

Committee Work Two:

ROLL CALL TAKEN. ALL PRESENT.

Chairman Grande: We will discuss 2308. SB 2308 came to us from the Fire

Fighter's and they are dealing with wanting clarification on the language on their death benefit fund. As you recall they were talking about the Insurance Department and the Fire Fighter's Association trying to make it so the language is clear enough they can get these death benefit payments out as quickly as possible. That is what the current bill in front of us looks like. One of the other things was spelling out death by heart attack or stroke within the 48 hours from the Emergency or training event. That is just a clarification language that it had kind of been understood but it really hadn't been and there was always that kind of gray spot. So they want that to keep placing so everybody knows exactly what the payment is supposed to be.

Rep. Winrich: I have an amendment to this Madam Chair. (Rep. Winrich passed out amendments and explained.) See Attached Amendment Sheet.
I wish to move that amendment.

Rep. Wolf: 2nd.

Chairman Grande: Motion for an amendment by Rep. Winrich, 2nd by Rep. Wolf and is there any discussion? Does everybody understand the amendment? If we take out "is deemed to be an injury caused by acting in the line of duty" there, so what we are going to include is any heart attack or any stroke within 24 hours.

Rep. Winrich: Yes.

Chairman Grande: That would probably include then with this case they were talking about where the gentlemen had been at a fire fighting but was at home shoveling and then the payment went out. So that would clarify any of that.

Rep. Winrich: The intent was not to change the meaning of that section but simply to clarify the wording a little bit.

Chairman Grande: Then it will make it very clear to the insurance department. I see no discussion, all in favor say I. Consent. All. Opposed? None. We have the amended bill in front of us do we have any further amendments?

Rep. Kasper: I do have a discussion point. I do have something I would like to hand out for all of us.

Chairman Grande: Would you like to wait until we do all the amendments and then discuss yours. Rep. Dahl has some amendments.

Rep. Kasper: Yes, that would be fine.

Rep. Dahl: Right in front of you, you have the ND Health Care Association testimony from SB 2400, that was the stand-alone bill in the Senate and it was admittedly killed in the Senate. There are two of us on the committee that think this is a really important issue and the circumstances surrounding this bill is a baby abandoned in Grand Forks at a Fire Station and technically under the Safe Haven Laws that mother would not have been protected and so what we would like to do is to expand the places where somebody can drop off an infant or a child under a year and expand that to include a fire station. What this amendment does is if you look at the actual amendment in Subsection Two; it says; "A parent of an infant may abandon an infant by leaving the infant with an appropriate person at any fire station." So because that language requires you to leave it with an appropriate person there are concerns about if there is a fire and then you would not be protected because you did not appropriately hand off the baby to somebody.

Chairman Grande: Just to keep going on that paragraph; "Neither the parent nor the agent meaning the fire station there, is subject to prosecution under this

because of the abandonment, meaning that is clearing the fire stations for liability also. Just so we are clear on that.

Rep. Dahl: If you just want to take a chance to look at the rest, I think it is pretty self-explanatory. The Hospital Association wanted Fire Stations and hospitals to be broken up separately. You will see some redundant language there but that is the basic gist of the bill or the amendment.

Chairman Grande: Just for further information, Senator Schneider and I were sponsors on SB 2400. When we had placed the bill in, it was the Fire Station language that you see here that was basically the bill. The medical association

asked to break it out so that you can see on Part 3 where it starts in on the hospital language. They had some issue with just keeping it separate so that there was clarity as to how hospitals handle it and how fire stations handle it. Because the fire station has the added piece of once they have the child they transport it to the hospital. Whereas the hospital already has them and that is just to keep it clear. In doing so, if they break it out this way, if we were to pass it and have it broken out in two sections, what it does is it also leaves it for if in the future, ND was to decide nursing homes are another great place for a Safe Haven then we would be able to put in the nursing home portion of the Safe Haven and not have it intermingle with the others. That is why it is broke out in that fashion. Senator Schneider and I had agreed with the Healthcare

Association that we could use a friendly amendment and they still spell it out exactly how it was proposed.

Rep. Amerman: Just for my information, apparently this did not pass muster in the Senate so was the hospital the reason of it or was there something else?

Rep. Dahl: The Fire Chiefs Association opposed this bill. But as I mentioned there are a few of us on this committee that think this is an important extension and would like a second shot at perhaps trying to work something out with the Senate.

Rep. Amerman: Thank You.

Chairman Grande: Just because I have been called and asked to state this; Yes, the Fire Chiefs are in opposition and they had called and asked me to make that statement. In doing so when this was proposed on the Senate side they initially came out in favor of it. Then Bismarck's Chief came out and said, "No, I don't think I want to do this." Then Mandan's Chief came out and said, "Well, we don't know that we could do this, although this doesn't affect Mandan because you have to be open 24/7 and have somebody there and so it was really down to just Bismarck's opposition. They thought they could work it out to just state Fargo and Grand Forks but there just came an issue then Minot said what happens if we are on a fire run so what ended up happening is the Chief's got together and said it's going to have to be all of us or none of us. So now they are

saying, right now we are just going to say none of us. But I will tell you that I have had calls from Fire Fighter's and I don't know if anybody else has, I happen to know most of the Fire Fighter's in Fargo and quite a few of them in Grand Forks, and they want it, the Fire Fighter's want it but their Chief's don't. That is where the rub is right now. They cannot go on record stating they want it because their Chiefs have said "No".

Rep. Nathe: What is Bismarck's reason not to do this?

Chairman Grande: He feels that since his Fire Station's are open they qualify under the 24/7 but they go out on a run and so nobody would be in the station for that hour or hour and half or however long a run might take on a particular day. They are afraid a baby might get left there. The issue comes where it says that you have to drop it off with a person. That is how all Safe Haven's are, you can't just run it into the hospital and drop it off either. It has to be abandoned to a person. The signs that they use in Washington, DC and this doesn't quite do it justice but this is a big sign outside of the fire station in Washington DC.

(Handout given, See Attachment # 2). It is very clear where you abandon babies and where you don't. I just got that from a couple of fire fighter's that were out in Washington, DC this week and they stepped out of their hotel and their hotel was by a Fire Station and they saw that and took it and sent it to me on the phone. I

thought it was really funny and thinking that we can make this obvious.

Rep. Meier: Are the Fire Fighter's worried that if they are out on a fire run and a baby was left are they worried about the liability that would be placed on them?

Chairman Grande: The liability still falls to the mother at that point to the mother for not following the law. They are not breaking the law but the mother is. They don't even say mother and I always thought that was interesting language, they say parent or agent. So I am not quite sure what that means why you have to say agent there.

Rep. Nathe: Are they worried that when they come back from a call and all of a sudden a baby is sitting in the lobby unattended?

Chairman Grande: Yeah, I think that part of it is. When this happened in Grand Forks it was storming. This Mom didn't happen to just leave it outside, not really well taken care of, but flagged down a fire fighter that was shoveling and then ran. Not appropriate, not a safe place to abandon, not a safe haven, but she knew that fire fighter's were people that she could trust to take care of her baby. My time on this had its day in court, this was Rep. Dahl's wanting to push this forward, so please don't assume as Chair or a previous sponsor to this that I am advocating one way or another but in explanation for this, what I thought was interesting was when you think about places you want to leave your child, I grew up in the generation where Peace Officers were the friendly police officer and if you were ever in trouble you always found a police officer, but in this day and

age a lot of people don't feel that same kind of trust for some reason to Peace Officers. I have never lost that feel but I know that there has been some animosity that way. Everybody who sees a Fire Fighter trusts a Fire Fighter, how do you not like the Fire Fighter? The kids run after the Fire Truck.

Rep. Karls: They can't arrest you.

Chairman Grande: All they do is protect and serve you. They don't do anything but help you, so it is the place where people feel comfortable doing it. The Safe Haven for the hospitals is a great thing and it is utilized very quietly. But the problem with some of the Mom's are, if you go in a hospital you are on TV or it is all right there and so they are not comfortable with that. You can go into the Fire Station and you can drop it off and you can walk out the door and not have to worry about it.

Rep. Wolf: In my discussion with my Chief in Minot and he was adamantly opposed to this and I don't think he has even read the amendments, but my question to him was "When you go out on a fire call do you lock the doors?" There is a secretary at the one in Minot, so it is not an empty building with the doors open. My question to him was, "When you leave this building are you locking it up so nobody breaks in if it is supposedly an empty building?" He did not respond to that.

Chairman Grande: I thought that somebody staffed it too and that the building was not totally abandoned but I think that only happens in a few of our fire houses and they are shut down completely when they go.

Rep. Froseth: Rep. Dahl is this permissive or is it binding legislation that they have to provide an (can't understand word). Like if your cities have your main Fire Stations basically and a lot of them have substations throughout, is it going to include every station they have in that city? If we attach it to this bill is this bill in danger of not making it on the floor?

Chairman Grande: I will address that with you in a second if you want to answer his first question?

Rep. Dahl: If they are open 24/7, yes but this is not going to make them put someone there 24/7 in case someone abandons a baby. The burden is on the parent if they want to go abandon their child at a Fire Station, there has to be somebody there to receive the child.

Chairman Grande: One of the things when Rep. Dahl had brought this forward, a couple of issues came forward. First the question of Germaine, well I said I consider it Germaine because the Fire Fighter is insane parts some would offer. Germaine is Germaine to the Chair. The Chair is calling it Germaine. Second, what I had said was if these amendments go on when we come to the sixth order I will request that they be heard separate because I want to see the vote

separate on the two issues. Because if the floor is going to use this to kill a bill we don't want to lose this and so that is where as Chair I want to see it attached but being there would be the question whether or not the body would like to see this on I don't want to lose the bill due to it. As long as the committee is clear, that will be heard separate I don't want to lose the bill over this.

Vice Chairman Randy Boehning: Two questions, I know that the Fire Station that is by me also has a Police Station in it. If the Firemen are gone and they take and drop the baby off with the Police they wouldn't qualify for this thing, correct?

Chairman Grande: They probably wouldn't because, but that would be up to the person in Police Station to say we are not a Safe Haven piece. They may be willing to take the baby and that would be up to them whether they would be willing to that.

Vice Chairman Randy Boehning: The Chief's have been opposed to this, I think we should let them have the permissive language and not the mandatory language in there. We should remove the "shall" and make it a "may". Let the Fire Fighters make their case to the Chief in each city instead of telling them they are going to be a Safe Haven because if they were in the Senate and they killed it over there, if we pass in the House it will not pass in the Senate, with the "shall" in there and forcing it to be a Safe Haven. I guess that is my personal opinion. I

like the amendments, but I think telling them that they "shall" be a Safe Haven and I don't think we want to be telling anybody they should be a Safe Haven. I am not opposed to this but I think the Fire Chiefs are going to say we don't want the responsibility and they are going to fight it in the Senate so hard that the bill we are attaching to it will not pass in the Senate.

Rep. Dahl: My response to that is that we tell people what to do all the time and in the matter of State policy I think it would be very confusing, let's say in Bismarck the Chief doesn't want it so there is no Safe Haven, but you can in Fargo, you can in Grand Forks, and maybe Minot as well, to educate the public where you can safely abandon your children. I just think that it would be far too confusing.

Rep. Nathe: That leads to my next question Rep. Dahl, how is this promoted and how does the word get out? Is this something that the Fire Stations would be responsible for getting the word out or is that something that the Public Health does?

Chairman Grande: I know that when the Fire Fighter's talked to us about putting this bill in on the Senate side they were hoping that when it passed, they actually thought there would be no opposition, so they were so fired up and they were ready to come out in force and do big press conferences. They wanted to be the ones to promote this. So I think that they would find a way to promote it.

Not to make them put up those signs but they would love to have a sign made like that and put on all the (can't understand word.)

Rep. Amerman: I understand Rep. Boehning's concern but I don't think it would do much good because we would be putting the regular Fire Fighter's that are not the Chief's in a very awkward position and I don't know how many it would take to have stamps and I don't how much power Chief's would have or whether they can hire or fire or whatever they can do, so I think we would be putting the regular Fire Fighter's in a very awkward position and I think the amendment has to fly as it is.

Chairman Grande: Personally, I think too, the Chief's have a little more control than we are aware of because the Fire Fighter's that were adamantly in favor of this were the ones that had to call and tell me the Chief says you have to say in committee. Can I have anything off the record on that and they said we would love to tell you what we think off the record and at this point I can't publicly as it would be a problem for them.

Rep. Amerman: The other concern is that it is very possible it could be killed in the Senate but it gives us one more opportunity to argue and get it in conference if need be and instead of not having anything this will give Rep. Dahl one more shot at telling someone what to do and hopefully that will work.

Rep. Winrich: I was just going to comment that Conference Committee's are an especially good vehicle for dealing with that sort of thing because you have a combination of Representative and Senator's and if there sense is that the Senate just won't accept this, it is easier to deal with that in a Conference Committee than it is in a setting like this.

Chairman Grande: The other side to this and this is just the logistics that happened at the end of the sessions. This bill will was heard by Human Services and now it is going to be heard by GVA because we are attaching it to a GVA bill versus a bill that came through Human Services. So I think it would give it another set of eyes if we can get it passed. Maybe they have a way to look at this differently and be able to sell it to their body. Rep. Dahl has these amendments in front of us, do I have a 2nd?

Rep. Schneider: 2nd.

Chairman Grande: All in favor of these amendments say I? All in favor. Consent. Opposed? None.

Rep. Froseth: Procedural question, when you asked to have the amendments heard separately because we have two sets of amendments now on this, are you going to ask specifically to debate or discuss each set separately?

Rep. Kasper: I need to go testify on a bill but I have some amendments too.

Chairman Grande: I will go and check on that now and when we come back I will have that answer. That is a very good question. We will continue at 10:00 am.

Rep. Meier: Once they abandon the child does the individual have any rights to the child?

Chairman Grande: That is in the bill. The Fire Station shall provide the parent or agent with a number identification bracelet linking the child back to the abandoned infant. Possession of the bracelet does not entitle the bracelet holder to take custody of the abandoned infant on demand. But if the individual possesses a bracelet linking the individual to the abandoned infant left at the Fire Station under this section the parental rights have not been terminated; possession of the bracelet creates a presumption that the individual has standing to participate in a protection services action brought under this chapter and then they have to go through the procedure of trying to get their child back. They don't get to just drop them off and two weeks later have them back.

Rep. Meier: Rep. Karls had a chance to visit with the Fire Chief's Assistant on break and his main concerns are as follows: Bismarck has five fire stations, we only have one administrative assistant to help out with administrative duties at one of the Fire Stations and that individual is only on Monday through Friday from 9 am to 5 pm. These Fire Stations average over 2400 calls a year and that

is basically, in a nutshell, why they are so concerned is because they only have one administrative assistant in those Fire Stations from 9 to 5.

Rep. Karls: They stay in one station.

Rep. Meier: I do understand their concerns as well and I do believe the amendment as well too.

Chairman Grande: One of the things with the Fire Chiefs needing to really look this over and the reason why Fire Fighters are looking at it this way is that Fire Fighters are emergency trained. That is why they are the first responder's and they are the ones who get the heart attack patient and deliver the babies, it is not the EMT's, the Fire Fighter gets there first. So when they are abandoning these infants they are not abandoning it to the administrator, they are abandoning it to the Fire Fighter and the Fire Fighter is always there, unless they are on a run. The run issue is an issue and that is why it is so important to note the first line; "by leaving with an appropriate person at any Fire Station."

Rep. Kasper: I agree with the amendment but appropriate does not say it has to be a Fire Fighter.

Chairman Grande: But I am saying it doesn't have to be the administrator. It can be the administrator but it doesn't have to be the administrator so I think that part of the concern is would we have to hire on an administrator in every building and does an administrator have to be there all the time. No, because the

appropriate person is going to be anybody in that Fire Station because they are the ones who are emergency trained.

Rep. Winrich: I talked with the Fire Chief in Grand Forks on break and I would just like to share some of his concerns. When the incident that Rep. Dahl described earlier happened in Grand Forks and he said if in the event that something like that happens again the baby will be taken care of. The Fire Fighter's will take care of it. His feeling is that we don't have to designate the Fire Stations but he is also concerned about the appropriate person language because it is simply kind of general knowledge that you can leave a baby at a Fire Station. We are dealing with people in a very stressful situation, they don't always pay attention to all of the quirks of the law, in fact if they did this mother would have left the baby at the hospital instead of the Fire Station. So they may not know that you have to leave it with an appropriate person. They simply know that Fire Stations are Safe Havens and he said we will take care of a baby if it is left with us, but it is up to the States Attorney to determine whether there will be prosecution involved, the Fire Department is not going to do anything like that, but he would oppose the amendment. I guess I will reluctantly oppose it and I think it is a good idea but I certainly understand his concerns.

Chairman Grande: I think it is interesting that you brought up the State's Attorney piece because I believe that is what Senator Schneider brought up to

and that confusion has been what has caused this issue to come forward with the Fire Fighter's. The States Attorney does not know what to do and he is looking for the fact that we have it in code saying that neither is subject to prosecution because he doesn't know how and when to proceed with prosecution because he would rather not proceed with prosecution to that.

Rep. Froseth: I was just going to ask if it would make it more tolerable if we made it permissive?

Rep. Winrich: I didn't explicitly ask him about that but I don't think so from my conversation with him. But I know that Rep. Dahl also talked with him and she may have a better answer.

Rep. Dahl: Just throwing this out there, if we said instead of an appropriate person "an employee" at the Fire Station, does that clarify?

Rep. Winrich: I don't think it addresses the concern about people under stress. They are not going to stop and read the law book before they take action or something. If the general impression is that you can leave a baby at a Fire Station and maybe that is already out there because of things in other States and that is why it happened in Grand Forks.

Chairman Grande: My concern is if we don't say something about leaving it with some type of a person we are going to end up in the same situation where they get left outside and in ND that just doesn't cut it with me.

Rep. Kasper: If the Fire Chief says they will take the baby, irregardless, it would certainly seem to me they would want this amendment to pass because it outlines in law and protects them in law from all kinds of things particularly liability of doing the wrong thing. So I think the Chief is double-talking and if he will accept the babies he should accept the amendment. It is just plain old logic.

Rep. Winrich: The concern is that he believes that if this were to pass and there is generally some effort to make it known that you can leave a baby at Fire Station or something, that in fact, it is more likely that someone would just drop the baby off without paying attention to the details of the law and the baby would be put in greater danger. In the situation that did happen the women apparently made an effort to attract a Firemen's attention and then left the baby and so on and then brought the attention to it. Again, that is not a good situation but it worked out in this case and it could work out again. But I don't think we want to encourage people to do things that might leave these babies in even bigger jeopardy.

Chairman Grande: Interestingly, she left the baby in a box on top of an electrical box and by chance he went to see what was in the box. He could have went inside thinking that there may have been a bomb and all of a sudden we would have had squad units and that baby would have sat out in that could for half an hour waiting to see if he would be hauled up.

Rep. Wolf: There is a lot of other States that I know that do this and I think that is why people assume that it is a safe place to leave them. I honestly truly as a mother believe that if you choose to abandon your child, they are taking them to a Safe Haven because they care about their children but they just can't take care of them. They are not going to leave them in a basket on a door step when it is 30 below outside. Their intent is to have somebody, where they can safely without the fear of prosecution help that baby to live, because maybe they feel that they are a danger to that child and it is a very desperate situation for a mother to take a baby to a hospital because an appropriate person at a hospital could be a custodian or janitor, they could go in a back door and the first person they see is the greeter and they could leave that baby. So I don't have a concern with the appropriate person part of it, but I just think that this bill is so critically important to give a woman who chooses to have that baby and then realizes that she cannot care for or is a threat or danger to that baby a safe place to abandon her baby. I think that it can be workable and I think that Fire Chief's need to be responsible.

Rep. Kasper: I would say that the bottom line on the reluctance of the Fire Chief's is that they don't want to do the paperwork, plain and simple. There can be no other logical reason in my mind except the paperwork.

Chairman Grande: We have one more amendment from Rep. Kasper.

Rep. Kasper: Chairman Grande and committee members, it sort of is an important thing, but the bill conflicts with what the Fire Fighter's want to do. As you recall we had the discussion about the beneficiary designation on the \$10,000. With the information being passed around, if you flip over to Page 2 on Line 5, "survivor means the spouse of the deceased Fire Fighter." This is dealing with who receives the benefit and on the front page on Lines 14 and 15, "the insurance commissioner shall pay \$10,000 to a deceased Fire Fighter's survivor and you can define survivor as the spouse of the deceased Fire Fighter." If you look at the form (See attachment # 3) I just sent you and talking with the Insurance Department this is the beneficiary designation they wish to use, if you look at Item 1 the benefits are to be paid to the survivors with the following criteria: See Attachment # 3 for listings. And the Insurance Department had real heartburn trying to come up with a beneficiary form that would work for them so I only point this out that if they use this form and if the Fire Fighter is married and has a spouse and children the bill says it all goes to the spouse and if they sign a beneficiary form that says half to the spouse and half to the child they will be violating the law. So it is informational rather than anything else. If they used a normal life insurance beneficiary form which is generic, simply says primary beneficiary and it has a bunch of blanks for names, relationship, address and

generally DOB, and then secondary beneficiary so if the primary beneficiary is dead then the secondary beneficiary applies.

Chairman Grande: Rep. Kasper the language in the bill is first to the PSOBA OB and so the language above it is in conflict with Public Safety Officers Benefit Act?

Rep. Kasper: Chairman Grande, I don't know what you are talking about.

Chairman Grande: You have the language above means the spouse of the deceased, if no spouse, individual designee, because then you refer to it in here the PSOBA and yet that language is used in the bill, so does the bill conflict with itself?

Rep. Kasper: I don't think so because on Page 1 it says the \$10,000 will be paid to the Fire Fighter's survivor and on Page 2 it defines survivor meaning the spouse of the deceased Fire Fighter but on this beneficiary form, which is the form they want to use it conflicts with the law.

Rep. Winrich: But the law says we use this form if there is no spouse.

Rep. Kasper: They would use this form either way because their intent is to have all the Fire Fighter's sign this form when this law passes and you have to sign it while you are alive. It is the form that conflicts.

Rep. Winrich: But this form is not law. The law says this form applies when there is no spouse and if there is a spouse that is the survivor.

Rep. Kasper: If they sign this form they could be under the impression that the spouse and child are going to get half and half because that is what the form says. It is just for information and I am not suggesting an amendment it is just that we have conflict.

Chairman Grande: So if the Fire Fighter's all go and sign this form will it clarify this or will it be in conflict?

Rep. Schneider: This won't trump ND law.

Rep. Kasper: No, it won't trump it, but it will be in conflict. The law will apply. I

am just saying that their form should be modified and they should come up with a form that they can all use.

Vice Chairman Randy Boehning: My question is, in our day and age while everyone is getting divorced and remarried and having kids from different wives, so it will go to the spouse and it could actually be technically divided up between two or three other sets of children, correct? If there is a spouse and or children, one half to the spouse, and one half to the child or the children of equal shares.

Chairman Grande: I think that they are going to have to set it out on there on designee forms and the Fire Chief's are going to have to sit down and make sure they do it right. We do have the amended bill in front of us, Rep. Schneider.

Rep. Schneider: Madam Chair, I move a Do Pass As Amended.

Rep. Wolf: 2nd.

Chairman Grande: We have a Do Pass As Amended by Rep. Schneider and a 2nd by Rep. Wolf.

Vice Chairman Randy Boehning: For clarification, what did you find out on splitting the amendments out, if I can ask?

Chairman Grande: We have two options in front of us, we can divide the amendment, so we can pull the amendment off and have the amendment divided so that Rep. Winrich's amendment doesn't fall under the preview of the other amendment and we would take up on the floor only Rep. Dahl's amendments.

They would be debated and move forward or back. Then the bill would go on from there. The other option was let it go and let the debate happen and nobody notices and nobody cares and we pass it, we pass it and it is a done deal. If the bill failed on the floor because of that amendment we would just have to move immediately to reconsider our actions and get it down into the committee and take the amendments off and then bring the bill back. I think the second one sound's cumbersome but that is up to you guys, where do you want to have the fight? Do you want to have the fight in the amendments or in the bill and maybe we don't even have a fight and that was what Rep. Kretschmar because he just really understands a lot of this and he has seen way more floor debates than the

rest of us combined and I said which do you think, he suggested the second one, he said but you are looking at something like that real late in the game.

Rep. Froseth: It would only get to the floor next week if it got out of here today.

Chairman Grande: If it did get out of here today, it go on the floor Monday or Tuesday.

Rep. Schneider: I think we should save our fight for conference committee.

Assuming most of us feel passionate about the amendment I think we should just run it through.

Chairman Grande: So you don't want to pull it off.

Rep. Schneider: I don't think it is necessary.

Chairman Grande: Where do you want to see the fight, in the amendment stage or in the bill stage?

Rep. Amerman: Rep. Dahl where do you want to see the fight?

Rep. Dahl: I'd rather go to conference committee and have it out there.

Chairman Grande: My concern is it might not make it to conference committee so I don't want the bill killed.

Rep. Dahl: I think if we talk to our perspective caucuses I think that there will be the support there to bring it back, if we assured we would bring it back down and take off the amendments.

Rep. Kasper: Rep. Winrich is this going to be a real heartburn for you based upon your talk with the Chief?

Rep. Winrich: No. As said I would reluctantly oppose the amendment. I think the parliamentary procedure would be cleaner if didn't debate the amendment but I don't think I would prevail in that position. I basically like the amendment I just think the Fire Chief has some good points.

Chairman Grande: So let this flow and if it is going down I will have already talked with leadership to make sure we have the motion but that means we have to have the floor ready and so respective caucuses have to be ready to see the beneficiary point and let us bring it back down. I don't think that is a huge problem.

Rep. Kasper: I am not going to make any point on the beneficiary at all it was just for our information.

Chairman Grande: No, just so that portion of the bill would be able to be brought back down and be divided. So you will talk to your respective caucuses.

Rep. Wolf: Could we wait and push it to the floor until Tuesday and that will give us a chance to talk to our caucuses.

Chairman Grande: Let's talk to the caucuses but we don't want to wait too long because the Chiefs are going to come unglued too. We have a Do Pass As Amended Motion in front of us? Clerk will call the roll.

Clerk Erhardt: Roll Call: Yes: 13. No: 0. Absent: 0. Carrier: Rep. Dahl.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. Committee Work Three SB 2308

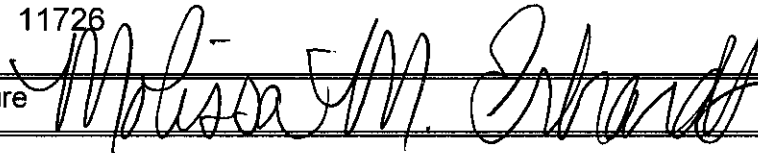
House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Hearing Date: 4/3/2009

Recorder Job Number: 11726

Committee Clerk Signature



Minutes:

COMMITTEE WORK THREE:

Chairman Grande: We have sent SB 2308 out amended as a Do Pass but we have some new information I want to bring forward on it and we will go from there.

Rep Winrich: Do you wish to have a motion to reconsider?

Chairman Grande: We can yes.

Rep. Winrich: I will move that we reconsider our action whereby we recommended a Do Pass As Amended on SB 2308.

Rep. Wolf: 2nd.

Chairman Grande: All in favor? Consent: I. All consented.

Adam Hamm, ND Insurance Commissioner: What brings us here this morning to talk about 2308 again is the result of everybody trying to do the best we can to come up with language for this bill that meets the intent of the Legislature as it relates to this statute and the Fire Fighter's Death Benefit Fund. A little bit of

brief history before we get to what brings us here this morning and this statute has issue which is 18-05.102 came at us from the Fire Fighter's Death Benefit Fund was passed in 2007. I have the complete Legislative history for that and I am not going to go through all of it but I did want to just touch on a couple of things and we can certainly provide this if any members of the committee would like it this morning. There was a lot of discussion with respect to this bill before it was passed and I know that Senator Klein is here and Lois Hartman is here as well and I don't want to speak for them because they can certainly speak on their own behalf. But a couple of the comments that were made and the testimony that was offered during the discussion on this statute before it passed in 2007 to me is reflective of what we are talking about this morning. Lois Hartman indicated in her testimony back in 2007 that one of the primary purposes for the statute was that there would be a death benefit providing funds for a family of a Fire Fighter to care of their immediate funeral expenses should that need arise and then also it was discussed during her testimony that in the general sense this was a line-of-duty death benefit. So with that as a little bit of a back drop for the purpose and intent of the statute, what took place since it was passed is thankfully we have never had to us it since it was passed in 2007 until just recently and a Fire Fighter passed away in the Fargo area and his name was Dan Stets, a few months ago, and the facts and circumstances surrounding that

death were that he responded to a number of emergency calls, similar to what we just went through, on a shift and then I forgot the exact time frame but it was within about 40 some odd hours of that that he passed away of a heart attack. A request was made for a payment under the statute and so for the first time I and my staff had a chance to pour through what we have as a statute, to determine what it means and how it could be applied. I don't know if everyone has it in front of them, but if you have the current version or the First Engrossment of 2308, you can see what the current statute is and that struck through language at the top of Line 7 through lines 14 and of particular importance for us especially this morning is what starts at the end of Line 11 and goes through Line 14, that states "the Insurance Commissioner shall pay \$10,000 to the deceased Fire Fighter's estate. Upon receipt of the request for payment and upon the receipt of evidence that the death occurred from an injury sustained while responding to, during, or within 48 hours after a Fire Emergency." After lengthy discussion within the department the application of that statute that was relied upon and moving forward will continue to be relied upon is that those clauses at Line 13, 14 that talk about responding to, during, or within 48 hours after a Fire Emergency are three separate clauses so you have the responding clause, the during clause, and or within 48 hours clause. So Fire Fighter Stets really fit underneath the third clause, within 48 hours after a Fire

Emergency. But it is conceivable that it could apply to whole a host of potential factual situations. That the Legislature, through your intent, or through the language of the statute you might not want to be the types of circumstances that would be covered by the statute. So before this session began and after the payment was made to the Stets estate, I sat down with Jerry Klein and we talked about it. We talked about the statute and what had happened in the Dan Stets matter and was that reflective, all the different factual situations that could fit under those three clauses, what the statute was intended for. So that is where you see the language now in 2308 that starts at the end of Line 14 and goes down through Line 22. Particularly, of note, Line 20, where it says, "death by heart attack or stroke, if death occurs within 48 hours of an emergency response or training event is deemed to be an injury caused while acting in the line of the deceased Fire Fighter's duties." That language was added to specifically define and identify that a situation like Fire Fighter Stets would be covered but to also try to start to refine what that 48 hours is all about; death by heart attack or stroke. So that brings us to where we are at today. Just within the last few days we have received the second request for payment under this statute and this set of circumstances I wanted to bring to this committee's attention so that there is a full understanding of how broad this statute could be. A Fire Fighter passed away in Grand Forks and his name is Stuart Chase, he died of cancer on March

26th, 2009. He has been fighting that cancer since 2005, that is when he left the Grand Forks Fire Department on disability approximately October 2005, but he passed away March 26th, 2009. There is a request for payment underneath this statute for that set of circumstances and that is what brings me here this morning to talk about what is the purpose and intent of this statute so it is crystal clear so that the department moving forward will have a clearer understanding of those deaths that clearly fit underneath the statute and for everything else there will not be payment. That is what brings me here this morning.

Rep. Kasper: Commissioner Hamm, under current law, if you go back to the area that you talked about starting on the sentence at the end of Line 11, "The Insurance Commissioner shall pay \$10, 000 to the deceased Fire Fighter's estate upon receipt of a request for payment and upon receipt of evidence that the death occurred from an injury." That is what current statute says. How could you possibly under current statute determine that a heart attack or cancer would qualify under the current law?

Adam Hamm: Because there is no limitation on what could or could not be the death that would occur or the injury sustained or the time limit with respect to responding to or during. There are no limitations within the exact wording of the statute and as long as there are going to be reasonable people that disagree as to what those words mean, if there is going to be any error, in terms of the

application of the statute, where is going to be the err in terms of the side of caution, I can tell you from the department's perspective we will always err on the side of making the payment underneath the statute. That is what brings us here today.

Rep. Kasper: I am going to go back, Commissioner Hamm, to what the statute says and at the end of Line 13 it says "an injury" so can you possibly tell me how cancer could be deemed to be an injury and as a further qualifier the death occurs within 48 hours after the fire emergency from an injury. Tell me how you leap from cancer to an injury?

Adam Hamm: With respect to cancer in this case, this case of Stuart Chase, the recent payment request we just received yesterday. He was diagnosed with occupational cancer as a result of fighting fires over the course of the last 30 years. The death occurred from an injury sustained responding to, during, or within 48 hours after a fire emergency. If you die according to the terms of the statute that we have now responding to, or during a fire emergency over the course of thirty years, he contracted cancer and it was diagnosed and he died from that. The preliminary analysis of the statute as it currently exists with those facts is that there will be a payment underneath the statute. Not only under the current statute but under the language of 2308 as it currently exists.

Rep. Kasper: You are not listening or I am not being clear because clear -hand Luke failure to communicate. How can you possibly reach the conclusion that a cancer caused death would qualify for an injury when you say an injury and we have a 48-hour qualifier after the event. How can you possibly under current law say that it would qualify for the cancer victim?

Adam Hamm: I think exactly the conversation we are having right now explains exactly the situation that we have. Reasonable people can disagree. That cancer that he was diagnosed with according to WSI, according to the Grand Forks Fire Department, according to the union, was as a result of him responding to fire emergencies for over thirty years and fighting fires over thirty years and because the current language doesn't exclude that in any way, shape, or form, it does not exclude that, the language in this interpretation could apply.

Rep. Nathe: Commissioner, what kind of language would you like to see in 2308?

Adam Hamm: There has been a lot of discussion in the department and with Senator Klein as to how we can offer language and how we can come up with language that gets to the point of what we are trying to get at. To final those best that clearly fit underneath the statute, and so going forward there will be no discretion, no interpretation that does that fit or doesn't that fit. Automatically, we would know those deaths that there are covered by the statute there would be a

payment and those deaths that are not there would not be a payment. The only thing to me to move closer and closer to that goal is potentially a time limitation, because we want to be careful here, we don't want to exclude for example a Fire Fighter who fights a fire who receives third degree burns over a large part of his body but doesn't die within 48 hours and doesn't die within a couple weeks, he makes it for an extended period of time but then passes away. When you look at the Legislative history going back to 2007 it is clear that that is the sort of death that was supposed to be covered by the statute. So you have to work hard to try to come up with language that doesn't exclude that but yet to try and start to reply to those deaths that shouldn't be covered by the statute. Now whether you do that by bringing that language on Line 19 that starts with the words "death occurred" potentially you could add the language "the death occurred within two years of an injury sustained responding to an emergency response, or training event, or during an emergency response or training event. That would start to be closer and closer to defining the world for these things. Now where we are at it would not impact the situation we have going on in Grand Forks. But if a similar set of circumstances came up a year from now or two years from now, it would. Because remember the facts in this Grand Forks situation, he hasn't been working for the Fire Department for over three years. He was diagnosed with occupational cancer for fighting fires for thirty years but that death that didn't

happen for at least three years after he left the job of being a Fire Fighter. This is a very tough issue and we have to be careful how we define this language.

Rep. Nathe: Commissioner, so in that case if you put the two year limit on it and this gentlemen obviously got cancer from fighting these fires in these buildings and asbestos and what not, how would you propose we take care of something in that situation going forward if you put the two years in here.

Adam Hamm: Don't think I am following your question.

Rep. Nathe: He would obviously be past your two year limit, okay, but yet he received cancer and died of cancer from his work at the Fire Department. So he should be compensated in some way shape or form. How would he be taken care of then?

Adam Hamm: See that would be a situation where he would not be covered by a statute and that gets closer and closer to what I was just saying in terms of are we going to try to refine and define those deaths that are going to be covered by the statute or do we want to continue to leave it open-ended. Because the more open-ended we leave it the more this will become any death will be covered by the statute. I am trying to do the best I can in the manner that the Legislature wants to apply. I am just here to tell you that the way it is drafted now and the way 2308 is drafted, reasonable people can disagree whether or not it is covered or whether it is not covered.

Rep. Karls: When you mentioned his diagnosis as occupational cancer was this also his Drs diagnosis, was it asbestoses or lung cancer?

Adam Hamm: I don't have the answer to that question because we are too soon in the process. What we are basically working off of right now is the telephone discussion that my deputy had with the post up there and the letter that we have received requesting payment. That is as much specifics as we have.

Rep. Froseth: Commissioner, I don't remember this bill when we first heard it and I think we should probably go back to what the original, and Senator Klein could probably pick up on this too, intent of this Legislation was when it was first introduced and I think the original intent was to give families immediate relief. Ten thousand dollars is not much of a death benefit anymore but I think the intent was to get families immediate relief so that they had funding for the expenses necessary for this untimely death and if it is like the case of the fellow from Grand Forks, he would get a death benefit from WSI that would take care of the family, it takes a little longer but maybe Senator Klein could say a couple words what he thinks would be the original intent, I believe that if he could clarify that it might help with some of this problem.

Rep. Winrich: I guess I understand why the use of the "or" the disjunction might imply that those are independent clauses and apply in this case. I guess is it your opinion that the new wording in 2308 that goes from Line 14 down to 22 is

also vague or is there a question of whether that would cover the cancer death or not.

Adam Hamm: To me when you look at 2308 and you start at Line 18 and you go to Line 22, it really is 18 through 20. "The payment must be made upon the seat of evidence that the Fire Fighter's death occurred from an injury sustained responding to an emergency response or training event or during an emergency response or training event. That language doesn't have any qualifiers and it purposely doesn't have qualifiers as to how long after that the death has to occur. Because once again going back to what I said earlier we didn't want to get into a situation where a Fire Fighter suffers third degree burns but doesn't pass away for an extended period of time, we want to make sure that is still covered. But because of that because there isn't that qualifier this situation involving the Fire Fighter in Grand Forks arguably is covered by the statute both as it currently exists and under the new law of 2308.

Rep. Winrich: Let's assume for a moment that it is in fact the intent of the Legislature that a death from occupational cancer that WSI as you said says was caused by fighting fires should be covered. Should this language be clarified in that case to make sure that it is and there is no limit on something like that?

Adam Hamm: Potentially. That is one of the reasons I am here and trying as best as I can explain that I am looking for more than understanding, need exactly

what these words mean, exactly which deaths are covered and which deaths obviously then would not be covered. Because if we are going to have a situation where it is gray at all and there is reasonable interpretation going both ways the department will err on the side of making the payment under the statute. I can tell you that the union has already contacted the department and said that the circumstances surrounding Fire Fighter Chase's death in Grand Forks are covered under the current law and 2308.

Rep. Wolf: We amended this bill. Do you know that?

Adam Hamm: Yes.

Rep. Wolf: So Line 22 isn't even on the bill anymore.

Chairman Grande: It currently now reads, taking up Line 20, event or during an emergency response or training event, including a death by heart attack or stroke; if the death occurs within 48 hours following an emergency response or training event.

Rep. Wolf: I guess I was just wondering if he knew we amended it. The other question I have is if you die of cancer caused by your job this should cover it.

We can't take this bill and list okay this is what they have to die from. We can't do that because it would be an endless list and how would you know if you've covered everything. You are an attorney by trade anyway, correct? You

mentioned about somebody being burned and dying within a couple years so we

don't want to exclude that that is why we don't want that time limit on there, but what if they die in two years and one day or if we put three years what if they die in three years and two days. They have died from an injury caused by their job and if WSI is covering it or it is acknowledging a work related injury especially that give you the backup you needed to pay out on the time frame. If he died of prostate cancer or brain cancer or stomach cancer or any other cancer that was caused from his job and so to me to change it, I just assumed that was the legislative intent last session when I voted in favor of this bill. Was to cover those type things was to give you the discretion or whoever the insurance

commissioner is by pulling this back and limiting it. Do you worry that you are going to run into this two years and one day, we say this 48 hours, and what kept being brought up in the hearing on this is if the Fire Fighter is responding to a fire and he goes home and is shoveling out his driveway and he has a heart attack and he dies we are going to cover that according to this bill. To me occupational cancer is a lot more relevant than shoveling your snow just because you happened to have responded to a fire within forty-eight hours. Do you worry about putting this time constraint on there and we are going to run into issues with that as a solution?

Adam Hamm: That is why I am here having this discussion, this is obviously not a decision for me to make this is a decision for you folks to make as to how you

want the statute to read and how it can be applied. I was simply making a suggestion and if there is a belief within the Legislative body that we want to try to refine or define or characterize which deaths are covered or for how long this period will go. Then I would like to see that happen because otherwise we are in a situation exactly what your question explains. We will be underneath the statute where virtually every death of a Fire Fighter regardless of how long it happens after being a Fire Fighter or responding during fire emergencies will be a covered event, all of them.

Rep. Wolf: I could think of hundreds of death that would not be able to be covered. He is killed in a car accident, he commits suicide, any other form of cancer other than occupational there are thousands of deaths that could happen. I guess is there something that I am missing to think that every death from now on and here on in is going to be covered by this statute.

Adam Hamm: To not take every example you just gave but let's just pick one, the car accident. Under the current terms of the statute, yes, that would be covered. Responding to, during, or within 48 hours after the Fire Emergency, so if the car accident occurred within that 48 hours after the Fire Fighter responded to a fire emergency that would be a covered event. On the golf course, 36 hours after responding to a fire emergency and you got hit by lightning that would be a covered event under the current terms of the statute. There is no cause or

relationship between that clause 48 hours after a fire emergency and what the death occurred from. The statute says the death occurred from an injury sustained, it doesn't define what the death had to be from and it doesn't define what the injury and by breaking it up into different clauses with commas they become independent and responding to, and during have no time frame at all. So the situation with respect to Fire Fighter Chase under my preliminary analysis would be covered and it would be also covered under the new statute coming through 2308 and so this all about discussing what do we want it to cover. Do we want it cover virtually everything or do we want it to try to refine and define it at least with respect to a time frame.

Rep. Wolf: Have you asked the Attorney General for his interpretation on this?

Adam Hamm: No I have not.

Rep. Amerman: We have talked about the WSI issue and this issue here, we have to remember that WSI for the professional Fire Fighter's they have the presumption clause also and it is automatically under a lot of circumstances presumed to be covered under a WSI statute because of the presumption clause. I just wanted to add a little clarification to maybe make a little difference.

Rep. Winrich: Commissioner Hamm, the new language that starts on Line 18,

"The payment must be made upon receipt of evidence that the Fire Fighters death occurred from an injury sustained responding to an emergency response

or training event or during an emergency response or training event, a second independent clause, including a death by heart attack or stroke if death occurs within 48 hours of an emergency response or training event." It seems to me that solves the problem, the injury, the death within 48 hours doesn't necessarily have to be the result of an injury it is a result of a heart attack or stroke. But the injury had to be sustained which limits it to an occupational injury I believe doesn't it.

Adam Hamm: To go back to my earlier answer with Rep. Wolf, because I think that is where you are going, and the whole point of the discussion that Senator Klein and I had and this language that opened as a part of 2308 came as a direct result of what we are talking about right now, so that does tighten that up. But there is a whole host of other factual scenarios that could come up that are not covered either under the current law or 2308.

Rep. Winrich: Just to try to clarify where I am coming from here, one, I think where Rep. Wolf was going almost any time limit is problematic because it sets up a threshold and once you cross that threshold by whatever amount it is over. I think that you would have a similar problem with listing various causes of death unless you do something very specific like heart attack or stroke. If the legislative intent is to cover what is clearly occupational death regardless of what the time limit is, the third degree burns or the occupational cancer as recognized by WSI or whatever, what sort of language do we need to convey that clearly?

Adam Hamm: Therein lies the rub and I wish I had the magic bullet for you and say here is the exact language to put in there and fix all these problems. I don't, I am down here to bring this issue to light to make sure that everybody understands where we could potentially are going to be going at the end of this session. If 2308 were to become law, if 2308 doesn't become law then obviously we are right back to the current statute and I have already talked about how broad the current statute is going to be applied. So once again, I will apply the will of this Legislative Body, I just need to know what it is?

Rep. Winrich: Is it your opinion that current law is broader than 2308, does 2308 narrow it all?

Adam Hamm: Yes it does narrow it in respect to that 48 hours window.

Rep. Nathe: Under the current statute are these two cases, the Fargo and Grand Forks cases the first two that we have paid a claim on.

Adam Hamm: That is correct. These are the first two claims underneath this statute.

Vice Chairman Randy Boehning: Commissioner Hamm, I was just looking at this here and a couple of changes, Line 18 through 22, "The payment must be made upon the receipt of evidence that the Fire Fighter's death occurred from the last emergency response or training event or the last emergency," I see we would have to change some language there. Can we go back to the last

emergency or training event because this was basically brought out and if we can narrow it down to the last event that occurred and then remove our language and overstrike on the last sentence on 13 through 21 and 22. It was deemed to be an injury caused while acting in the line of the deceased Fire Fighter's duty.

Adam Hamm: That is one possible way to do it if the intent is to try to make a one to one causal relationship and actually responding to the fire emergency or during the fire emergency and the death. That is one possibility of doing it.

Vice Chairman Randy Boehning: You brought up the 48 hours and it is a good time frame because there are a lot of things that can happen in 48 hours of a heart attack and stroke. But if someone has a heart attack or stroke during that time does not die but dies in three years from that event, I don't think we can put a time frame in there if it is two years or five years, but the heart attack was caused by the emergency or the event and if he dies five years down the line and was unable to work so I don't think we can put a defined time frame in there whether it is a burn victim or a stroke victim or something on that order. We would have to take the time line off the two years that you were talking about because if it is caused by the training event, there are always complications, and I think that we should take the two years off the last event that occurred.

Adam Hamm: If I follow what you are saying, I agree with your analysis, the two possibilities are it is either possibility one or possibility two or a combination of

them. Possibility one is you try to define the time window and by defining the time window that Rep. Wolf indicated, she is correct there will always be the possibility that a death that the intent of this Legislative Body is that it should be covered it won't be because it will be outside the timeline. That is possibility one and possibility two is try to one to one draw a relationship between actually being at a Fire Emergency and the death occurring and possibility three is a combo of both. But I agree with your analysis.

Chairman Grande: I want to go back to Rep. Froseth's question and whether Senator Klein needs to help out in this or not, I want to know what is the intent?

Jerry Klein, District 14: Just to bring us back to exactly how I came about bring this on and Rep. Amerman and I are on the Workers Comp Review committee and we heard of a volunteer out in western ND who after fighting two fires in the fall died of a heart attack. We also heard that under WSI rules it takes a long time to go through the doctor's orders and to review that and finally they did determine eventually that he was allowed the death benefit. Well, as I am driving home that night and I am thinking about this and there has got to be a better way, and I was selfish in looking at this because of the volunteers. We are volunteers out there we don't get any pay, we just work, we respond, we run, we maybe a business man or employees, so we rush to the fire but in the event we don't come back the thought was maybe there is something that we can quickly do for

the widow or widower and whatever the case maybe, to help that family along in a difficult time. Now in working with the Insurance Commissioner at the time, who was not an attorney, we came up with was what we believed was a rapid response and a way to take care of who we thought was everybody in that narrow area and we expanded it to include the paid Fire Fighter's. Even though knowing that they have other ways of getting revenue to the family whether it's all the other benefits that go with being a paid professional. As a volunteer we don't have those benefits we don't have a presumptive clause either so that is why I sold that as continuing to be a fireman. But in thinking about that, the other issue was, that I remembered I had a good friend in Sherwood many years ago who was also a grocer as I am and who died but one of the other group suffered serious injuries but didn't die for another year after that as a result of those. I was trying to encompass those and never did I think way out there that someday somebody would have gotten cancer some years ago and this would be included in this. We, I believe we got \$50,000 to start this fund, never do we want to ever use it but now we have used it twice within a few months. I guess that the intent was responding to a fire and even coming home this gentlemen died the next day of a heart attack, it is trying to provide something because we still have Worker's Compensation. Generally, all departments are covered but it is a long process to go through all the findings to determine whether or not you qualify. This was an

attempt to get around that, I believe the Commissioner paid the Fargo Fire Fighter within a week, which is really a comfort to the family not knowing exactly what is going to happen. That Madam Chairman is how we got to where we were last session. Where we got to 2308 was the fact that he saw some gray area and we were just trying to tighten that up. That is kind of where I came from we certainly never intended to have this stretched out over a long period of time. I was initially selfish and only looking at volunteers but we did include the paid professionals.

Chairman Grande: Tell me if I am on the right track here, but the whole idea, the purpose behind this is that we have a quick payment out because of a quick death. That would not include then say, I don't mean to be morbid or not sound caring but I have a Fire Fighter who goes in and ends up with a third of his body in third degree burns and this lingers for three years out. It was caused by fighting that fire but it wasn't a quick death so he is going to get already prepared out for all those payments and those issues. This isn't supposed to pay out to him.

Jerry Klein: I guess that I envision that it would have. In reviewing the fourteen deaths I believe since we recorded them that most of the deaths were within a short time frame. They died pretty quick of severe burns and the only case I could find is the case in Sherwood where he did linger for quite some time and

had a tremendous amount of grafting. There are always the lines to be drawn and I am not exactly sure what that is and I guess that is where the Commissioner is going. But I guess our intent was a rapid death and a rapid response in payment. Most of these deaths have occurred where you just don't come home for supper.

Chairman Grande: Those payments were necessary because it came up as emergency status and the other ones where we are dealing with cancer four years out, burn a year later, whatever that case might be, that type of thing would be covered in all the issues and preparation would have probably been started in line there, whereas, this other type where that instant death type thing needed to be handled with some money quickly.

Jerry Klein: That is correct. You hit on all the issues because as a cancer victim spends their time they know what coverage's they have. If Worker's Comp has said they are covering it they have that benefit and a lot of the volunteer's don't have any benefit. If they get something from Worker's Comp that is great and we can tell if somebody dies because of a fire because they were burned to death. It is a lot more difficult in the case that we heard when there is a review of doctor's opinions and somebody didn't sign the right release form and it get's dragged out and the guy actually had a heart attack and he was killed quick. He fought two fires and we look for everybody that we can find on any given day.

Especially on a Sunday afternoon when everybody is fishing so we even drag in some of the older guys. But this was not the event that not even triggered that.

Rep. Froseth: Just a statement and I agree with Senator's Klein recollection of what the intent was and I think it was sort of intended to be a little bit broad. But if you look at Line 16 there is a dual oversight, because Line 16 says a request must be made. "A request for payment from the governing body of the municipality." So even on a volunteer Fire Department first before that request will go through the Insurance Commissioner it has to be made by the city council or county commission of that municipality where that injury occurred. So if they don't offer a request for that payment unless there was due cause from an attending physician or someone else to so you probably have a double check and balance there before it reaches the Insurance Commissioner for payment also. There are no provisions in here for denial of it or if that is totally up to the Insurance Commissioner or not. That is probably the biggest question.

Jerry Klein: Whatever we do right now I know this bill was in the IBL committee on the Senate side and we certainly will continue to work on this whether it is through the Commissioner and trying to get out the proper language and trying to get what we believe is Legislative intent because I guess if you read the intent form last session it really was to that immediate death and that immediate check.

We were just trying to make it so that the Commissioner understands exactly what his responsibility is, of course he hit on hit, when you have attorneys looking at the law, looking at the commas and the occurring, reoccurring, when it happens, we can all pick that apart but I just know what the intent was.

Chairman Grande: I want to just ask then, am I being informed then, that since we did make these wonderful amendments to this bill that even though they are the best amendments to the bill because our committee does the best work, IB and L will not concur so we can continue this conversation and that maybe should allow a week or two to go by before we try to amend into that language that we keep looking at.

Jerry Klein: This would be one of those issues where we would, knowing that you have done great work, and late in the game now we have some new information we would certainly want to work on that and work out those details. So that we have it right and so that we are all comfortable and I know that we can talk about these words a lot but the Fire Fighter's Association would come up here and probably say the same things that I did. We certainly never did envision that cancer would be included in this it really was never the intent.

Chairman Grande: Committee we are kind of running long on this and I know it is an important issue and I wanted to make sure that everybody saw it and had it in front of them. I want to continue to research this issue and I am not sure that

we are going to come up with the best words today. Today I am not comfortable making changes to what we did. I think we came up with some pretty good words but I also think that there is work that needs to be done. So instead of rushing something today and this is just my recommendation and I will certainly go with what the committee wishes. I would like to leave this bill as we have it in front of us the way we voted it out and continue this in to a conference committee so that there is more time spent on researching this. I personally want to read the 2007 minutes and know what exactly intent was and get deep into that and I do want to visit with my friend Ed before I proceed also on that. If that is okay

with the committee what I would like is to just ask the committee that we not reconsider and just move forward and let me as the Chair sign off on the bill that we had in front of us. How we voted it out. That does that make sense to you.

Rep. Winrich: I will move that we rescind our action whereby we reconsidered the vote of this bill.

Rep. Froseth: 2nd.

Chairman Grande: Rep. Winrich moves Rep. Froseth seconds, any discussion on that? All in favor say I? I. Consent all. We will leave it up to the conference committee to fix this.

Rep. Meier: Would we have time to have Lois Hartman come up and just give us a few remarks?

Chairman Grande: Yes.

Lois Hartman, Executive Director of the ND Fire Fighter's Association: In 2007 when this bill that was brought forward the Fire Fighter's Association supported the bill and the funds of getting payment to grieving families of Fire Fighter's due to a death or injury. A death that came from an injury in a fire emergency or training response and my thoughts and recollection is right along with what Senator Klein said. He and I were able to work together and bring that to the Legislature and have it passed and we were very pleased with that and very thankful for the support from the session. But if there are specific questions or concerns I will try and remember what we talked about.

Rep. Karls: I am concerned about the Safe Haven amendments that we have added to this bill.

Chairman Grande: Like I said committee if we get to the floor and that is what is going to kill this bill this bill will come back into committee and we will remove those and pass the bill out. That is not a problem. If we remove the Safe Haven is that an issue for you?

Lois Hartman: No, that is not an issue at all.

Rep. Nathe: Was it your understanding that when this statute was passed last session that the money be used strictly for funeral service expenses or just money to tie them over for expenses. I understand the speed for it all but if I

remember right from Ms. Ternes' testimony when we heard the bill first she emphasized the funeral end of it as far as expenses and getting the money in the families hands to take care of it. Because as you know WSI also provides funeral service money for families too.

Lois Hartman: My understanding was that it was immediate payment for the expenses incurred due to the death of a Fire Fighter. That may be some of the funeral expenses or it may be the cost of bringing family members home for the funeral.

Rep. Nathe: For any expenses that would have occurred during that time.

Chairman Grande: Committee sorry to put you through all that but thought that it was an important discussion we all needed to have today. I just want to make sure that you guys are always informed on what is going on. This was a discussion that kind of came in front of me a bit ago but I was in the middle of a flood and I didn't have a chance to bring it to you until we got back here. We have been trying to work with the Senators and with trying to get the right wording and I think we just need more time.

Rep. Froseth: I think on a bill like this that it is very apparent there is a lot of gray areas and the legislative intent is what is really important especially when you have to make use of the provisions of a bill like this.

Rep. Amerman: May I ask the Commissioner a couple of questions about the fund?

Chairman Grande: Absolutely.

Rep. Amerman: The fund is paid by premium taxes from insurance. How much is in there and what do you accumulate over the couple years before the next session or how does that work?

Adam Hamm: Are you talking about the entire premium tax distribution fund, the whole thing.

Rep. Amerman: If that is where it comes out of or what else is there or are there other things that it can come out of?

Adam Hamm: There is about \$60 million a year that comes in total in a premium tax and that is on every company that is licensed in the business in ND, whether it is property and casualty, and life and health, there is a formula where that can fit it. About \$6.5 million of that or \$6.2, \$6.4 it varies gets paid out to all the fire districts in ND. Then what is left goes right to the general fund. Now there was an allocation for this of \$50,000 that comes out of those premium tax dollars.

Rep. Amerman: So when this \$50,000 goes away you will have to allocate money because there is no funding that keeps flowing into this.

Adam Hamm: Therein, lies another rub. What happens if, because of the way this statute can be applied that the \$50,000 is gone before the biennium is up

then what? There will be an emergency commission and all those issues are going to have to be addressed.

Chairman Grande: Thank you very much. We will move forward with this and see what we can get done.

VK
3/20/09
log

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2308

Page 1, line 1, after "to" insert "create and enact section 50-25.1-15.1 of the North Dakota Century Code, relating to abandonment of an infant at a fire station; and to"

Page 1, line 20, replace ". Death" with ", including a death" and remove the underscored comma

Page 1, line 21, replace "of" with "following" and replace ", is deemed to" with an underscored period

Page 1, remove line 22

Page 2, after line 8, insert:

"SECTION 3. Section 50-25.1-15.1 of the North Dakota Century Code is created and enacted as follows:

50-25.1-15.1. Abandoned Infant - Fire station procedure - Reporting Immunity.

1. As used in this section:
 - a. "Abandoned infant" means an abandoned infant as defined in section 27-20-02 and which has been left at a fire station in an unharmed condition.
 - b. "Fire station" means a fire station that is open and operating twenty-four hours a day seven days a week and which is continually staffed with full-time, paid firefighters who are licensed as emergency medical services professionals under chapter 23-27.
2. A parent of an infant may abandon the infant by leaving the infant with an appropriate individual at any fire station. An agent of the parent may leave an abandoned infant with an appropriate individual at a fire station with the parent's consent. Neither the parent nor the agent is subject to prosecution under sections 14-07-15 and 14-09-22 for leaving the abandoned infant at a fire station.
3. A fire station shall accept an infant abandoned or left under this section. The fire station may request information regarding the parents and shall provide the parent or the agent with a medical history form and an envelope with the fire station's return address. Neither the parent nor the agent is required to provide any information.
4. The fire station shall provide the parent or the agent with a numbered identification bracelet to link the parent or the agent to the abandoned infant. Possession of an identification bracelet does not entitle the bracelet holder to take custody of the abandoned infant on demand. If an individual possesses a bracelet linking the individual to an abandoned infant left at a fire station under this section and parental rights have not been terminated, possession of the bracelet creates a presumption that the individual has

standing to participate in a protection services action brought under this chapter or chapter 27-20. Possession of the bracelet does not create a presumption of maternity, paternity, or custody.

5. The fire station may provide the parent or the agent with any relevant information, including:
 - a. Information about the safe place for abandoned infant programs;
 - b. Information about adoption and counseling services; and
 - c. Information about whom to contact if reunification is sought.
6. Within twenty-four hours of receiving an abandoned infant under this section, the fire station shall report to the department that an abandoned infant has been left at the fire station. The report may not be made before the parent or the agent leaves the fire station.
7. The fire station and the fire station employees and agents are immune from any criminal or civil liability for accepting an abandoned infant under this section.
8. Upon receiving a report of an abandoned infant left at a fire station under this section, the department shall proceed as required under this chapter if it appears that the abandoned infant was not harmed, except the department may not attempt to identify or contact the parent or the agent. If it appears the abandoned infant was harmed, the department shall initiate an assessment of the matter as required by law.
9. If an individual claiming to be the parent or the agent contacts the department and requests to be reunited with the abandoned infant, the department may identify or contact the individual as required under this chapter and all other applicable laws. If an individual contacts the department seeking information only, the department may attempt to obtain information regarding the identity and medical history of the parents and may provide information regarding the procedures in an abandoned infant case. The individual is under no obligation to respond to the request for information, and the department may not attempt to compel response to investigate the identity or background of the individual."

Renumber accordingly

Date: 3/19/19

Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2308

House Government and Veterans Affairs Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 2

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Schneider Seconded By Wolf

Representatives	Yes	No	Representatives	Yes	No
Chairman Grande	✓		Rep. Amerman	✓	
Vice Chairman Boehning	✓		Rep. Conklin	✓	
Rep. Dahl	✓		Rep. Schneider	✓	
Rep. Froseth	✓		Rep. Winrich	✓	
Rep. Karls	✓		Rep. Wolf	✓	
Rep. Kasper	✓				
Rep. Meier	✓				
Rep. Nathe	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Dahl

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

REPORT OF STANDING COMMITTEE

SB 2308, as engrossed: Government and Veterans Affairs Committee (Rep. Grande, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2308 was placed on the Sixth order on the calendar.

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Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2308

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2308

Senate Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: April 20, 2009

Recorder Job Number: 11983

Committee Clerk Signature

Era Lubelt

Minutes:

Chairman Klein: Opened the hearing on SB 2308. This was a simple little bill that helped the Insurance Commissioner decide on how the death benefit would be paid out however, you see section three now becomes a whole new anvil. Representative Dahl will you explain that.

Rep. Dahl: To begin with in respect to the first section of the bill, I looked over the committee minutes and we did change some of the language although I don't think it is substantive. There was a member who thought it could be said better. So that was the purpose of the amendment with regard to the first section. And then Mr. Chairman you are correct, the House did add a, safe haven provision for fire stations. Basically it mirrors what is done in regards to abandoning an infant at a hospital. This would apply to fire stations that are opened twenty-four hours a day, seven days a week and they would have to leave the child with a staff member or an appropriate person which is also the case with hospitals. And then it just provides some procedures for the fire station to follow. Pretty close a mirror of what is already provided for hospitals.

Chairman Klein: I know we heard this in the Senate but not in our committee. So I am kind of trying to get up to speed and as I recall, some of the concerns were how the distressed mother of father would know exactly whose fire stations are manned twenty-four hours and if they

should be looking through the century code determining where they're going to drop their child off. Would they know what the rules are and whether or not it applies to them? We need to get up to speed here.

Rep. Dahl: You may have heard that this did occur in Grand Forks. There was a baby brought to a fire station, so there is some sense out there that a fire station is a safe place to bring babies. There are a number of states; specifically surrounding us that do provide for fire stations. They are rural like we are and wouldn't be operating twenty-four/seven. In addition there are signs that you can get, (shows example of sign), that says safe haven but only when staff members are present, to let folks know that this is an appropriate place to leave their child.

Rep. Grande: The National Safe Haven Alliance is an organization that handles all fifty states laws dealing with safe havens. Has put together various types of signs such as this one and they are about eighteen by eighteen and they go outside of the fire station, police station and hospitals, whatever the state has chosen. Each state has different laws; there are thirty-six states that use fire stations. Some of them being rural such as South Dakota, Wyoming, Montana and Minnesota. So there is precedence where you do deal with volunteers of part time fire stations and how they utilize them. They seem to work in those other states just by making sure everybody understands who is in the fire station and what the rules are and how it works and once they post the signs, there hasn't been anything reported at least that we have been able to get out of National Safe Haven as problems, dealing with that type of an issue. As long as the signs were posted.

Rep. Dahl: I have a list of states that has allowed fire stations to become safe havens. (She read from a list).

Chairman Klein: Committee so I can get up to speed, what does the department think, Lois?

Lois Hartmann, Executive Director of the North Dakota Firefighters Association: I represent all firefighters, at all fire departments in North Dakota. When the safe haven bill was brought to my attention and I was asked to review it, I was immediately opposed to it because some fire stations, even the paid stations are not staffed all the time twenty-four/ seven. By that I mean if they are out on a call they don't have excess staff to leave at the fire station, everybody in that station goes to a call or if they go to their normal work there may not be anyone left to sit at that station. In case an infant was dropped off or to do other work, their staffing requirements are limited and they can't do that. So some stations although they are a full time departments are not staffed at all times because they are out doing work. I called a couple of firefighters to make sure that knowledge that I did have, was correct and it was confirmed. So I have a strong concern with this provision.

Chairman Klein: Lois, I believe I heard in the discussion just now, that you have to hand the infant to someone. Wouldn't that calm the fears and I understand we are talking about someone who is distressed if they are giving their child up. But under the provisions here, it's my understanding that they need to give it to someone.

Lois: Physical handoff, my concern with that is who is going to educate those distressed parents that it has to be a physical handoff? I was not at Grand Forks when that incident happened so I can't give you personal information on how that actually went down. My understanding was it was not a personal handoff. That brings in a set off risks that I am not willing to accept.

Rep. Dahl: What I said before was that this is also the case with hospitals; you have to handoff the baby. So certainly there is public awareness of this.

Rep. Schneider: It should be noted on the House side, it was never our intention to increase personal or change staffing requirements in any way. What the bill says about a handoff is to

make it as easy as possible for a distressed mother to handoff a child because the alternative is pretty bleak.

Chairman Klein: The distress I am having is, it is on my bill and I am trying to save them both, or at least my share of the bill.

Rep. Grande: This bill was brought forth on the Senate side at the request of firefighters. So I don't want that to be lost in the mix here. Firefighters are very much in favor of this, and I speak really on behalf, at least of the Fargo and Grand Forks firefighters. Those were the only ones I spoke to but that was the request made to the Senator and me, was by firefighters. After the administration started to think that this might be some extra work for them, that's when the opposition came in. So I just want to be really clear. It wasn't the firefighters that opposed this and I think if you would speak to firefighters and not have to worry about the administration, they would be very much in favor of this.

Senator Wanzek: I don't recall getting equally involved or engaged in the discussion on this issue before but as I think about it, in most of these cases these people would not be stable or in their right mind at the moment to where they are going to come in and identify themselves and go through the whole process of following these rules. I am imagining these are more for the sake of the firefighters then they are for the individual. The firefighters are responsible for other duties and it does create a little bit of concern.

Chairman Klein: Is there concern of the liability for example. If we don't get this in place, doesn't something like Good Samaritan apply?

Lois: We do have a Good Samaritan law in North Dakota and it covers firefighters. The concern that was brought to me by firefighters was for this provision was a liability issue and what happened if that distressed parent doesn't really know the rules and they ring a door bell and leave the child and go? What happens to that child if there is nobody there and who is

liable if there is no one in that station and they don't know they are to hand it off. There is some issues there.

Rep. Grande: With or without this bill that is happening. So with this bill at least we have the ability to say the parent didn't do it properly. That's the issue that the states attorney in Grand Forks, he didn't know if he was to proceed or not with prosecution. So we are looking for some clarity here. As to when and if this can take place, that's why we have safe haven laws, so we can say do this, put the child in the correct hands, do the right thing. That way we are freeing them of some of that liability and that makes it easier for this process to take place. The best trained officials in the state are the fire fighters; they're the one everybody trusts.

Senator Wanzek: I am just not sure we will get this settled in one committee. Obviously it is going to be hard to say no. Are you assuming there are a lot of places that don't have a hospital?

Chairman Klein: Do we have any numbers on how many are dropped off at hospitals?

Joe, Bismarck Fire Chief and North Dakota Fire Chief's Association: By no means is it our intent to come across as opposed to the good intent. I believe what we wanted to say is, we want to share information with you so you have the full set of facts when you make your decision and some of the conversation this morning was reassuring. I would like to share with you some information and it is not that we are afraid of more work, that's not the point. It is not an administrative issue, it is more of these are our concerns and if they are known maybe they can be dealt with. Part of the amendment that addresses the appropriate person, we're not sure what that actually means. In a lot of our fire stations that may be a mechanic or secretary. Eight to ten hours a day our stations are vacant. If there were clerical staff or mechanic is that an appropriate person? The fire fighters that I have been talking to, but I don't see that push coming from there. But if the need is there, the fire service is always there to lend a helping

hand. That is another issue we were not sure what is the actual need? Is there something where the persons don't go to the hospital, we didn't know that. Those are just facts or statements we would like you to be aware of. It is not the extra work; it's whether you are aware of these issues. The ultimate decision is yours.

Chairman Klein: So Joe you are not saying you don't like the idea it just adds more questions and concerns?

Joe: To do a good deed for the citizens and to protect life that is why we exist. So if that need is there and it is decided that this must be, we have a few concerns that I have addressed here. I am trying to think how we will work through the, "shall" in here. I suppose if you put something forth you deal with it. Will we drop the ball, will we fail? I hope not but this is new to us. We will try to study what you are asking of us.

Chairman Klein: Joe, you heard about the signs and I suppose you could opt out and not have the signs by your station. My understanding is you would almost have to qualify for a sign like this.

Joe: I was not aware of this sign and some of the verbiage on there does put us a little more at ease. That decision in our community would be of course my boss and the city commission as far as what they ultimately decide to do. Again if we have a satellite station that is vacant throughout the day and that sign addresses those concerns that we might have. Are we the right place, all I can say to you is how we are staffed and that it is not always EMT's, if that is satisfactory at least you know more about us?

Rep. Schneider: Are goal throughout all of this was to provide clarity. I guess that was my question if we made the ballot choice, where individual fire stations could decide if they wanted to be a safe haven or not. Would you be opposed to that, if not, would your station in Bismarck choose to be a safe haven?

Joe: I would not make that decision. I would make the information known to the city council and give them the information that we might and might not be staffed. I don't know what the ultimate decision would be but I think that allowing the community to decide may be advantageous.

Rep. Grande: Just to be clear the definition means that the fire station is opened and operated twenty-four hours a day seven days a week continually staffed full time, paid firefighters, licensed as emergency medical service professionals. If they don't meet that requirement they are not a safe haven.

Joe: In all fairness, I would have to say that to my knowledge there is no fire station in North Dakota that would meet those requirements. There are none that are continually staffed.

Rep. Grande: Then we don't have to worry about it.

Chairman Klein: I guess we have to look at the folks who brought concerns to me.

Senator Wanzek: The one difficult thing to put are arms around here, we are making an assumption, in my mind a person who would do this obviously is not in a stable mind. We are making an assumption we can control what they do. I think I am seeing an effort to clarify for those in the fire station as to how you would handle it when the situation happens. We can't control how they do it or how they leave the baby. I would think whether we have a law or not, if someone leaves a baby you are going to take care of it.

Joe: I did ask a number of our firefighters what would they do, what would be their first reaction? They would call law enforcement and metro ambulance to come and get the baby and take that baby to the hospital. So we would do whatever we can to help, if there is a need to help further we would. If that was the intent of this bill. Whatever you are able to decide, at least fire chiefs were able to share some information with you.

Rep. Grande: We were hoping to have a location to leave the baby. Other states leave it vague enough that you can abandon the baby by just walking up to a fireman and I guess I would rather not have people walking up as a firefighter is working and just hand off the baby. It says medical personal in some of these laws. We were trying to narrow it down and make it somewhat workable and if that type of language needs to be worked on, we are more than willing to work on that.

Chairman Klein: Just to get those numbers quickly, I'd like to call on Tara, does this happen quite often?

Tara Melhauser, Director of Children and Family Services Division: We are the people who are in charge of child safety, and safe havens. We have worked with our fire partners for a number of years. I can tell you the law went into place in 2003 we had one case of a child that was abandoned at a hospital under the provisions in current law. The current law does not require that anybody be identified in a hospital. The parent can push the carriage into the hospital and leave. We hope the parent comes in so we can get some background information of the child but it doesn't require an identified person. We also have had the one situation where the child was abandoned at the fire station in Grand Forks this year. Again I understand that there was not an identified individual sought out in that. So those have been the two abandonments we have had. Have we had abandonments at other places that we just don't know and don't know as child abandonment, not that we recognize in child protective services. Prosecutors have discretion in these cases, to charge or not to charge. I would see this as falling under a child that is abandoned at a fire station, falling under the prosecutors discretion. They would decide whether they thought this was an important enough offense to charge as a criminal offense. Are concerned at the departments prospective, is that these are desperate, stressed parents, who are probably not thinking clearly, may not be reading signs clearly, who

need to leave their child and know that someone is going to step in. I think this is more of an impulsive process that happens when a parent is desperate and doesn't know what else to do. We want to make sure that when the parent is in that position that we have given them an environment that will assure that someone is right there to receive that child. Either because there is a hand off or they're in a setting where someone is immediately attentive to that child's medical or needs.

Senator Horne: What does the current law read as far as the age?

Tara: It is under one year of age. North Dakota's law is significantly broader than most other states. Most other states have it up to 3 to 6 months. We're one of the few states that go up to a year. For those that read the paper, you'll remember last year in Nebraska they had this situation where they allowed up to the age of eighteen. They had all sorts of abandonment.

They quickly called a special session.

Chairman Klein: What I think we will do is, I will continue to work with the insurance department on the part we wanted to fix. We will adjourn and reschedule.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2308

Senate Industry, Business and Labor Committee

☒ Check here for Conference Committee

Hearing Date: April 22, 2009

Recorder Job Number: 12122

Committee Clerk Signature

Eia Liebelt

Minutes:

Chairman Klein: Called the meeting to order. (Representative Carlson: sitting in for Representative Grande). Representative Grande stopped by yesterday and dropped off some amendments. We have two issues here and will start at the first part of the original bill. They're has been some difficulty in the insurance commissioner just needed to have more tools in figuring how he would pay out a firefighter death benefit. Representative Grande and I spent some time at the insurance commissioner's office and we worked out some language to address the concerns that the commissioner had and also try to get back to the Legislative intent of providing for a death benefit on a sudden death. In the line of duty or during training if death occurs within 48 hours. In paying it out the insurance commissioner would ask the fire chief, the question was who would be the trigger person. The governing body chief or the chief's second if the chief happened to be the one that didn't come back.

Senator Wanzek: This is new language correct? Should it all be underlined or underscored?

Chairman Klein: It probably should be underscored.

Rep. Dahl: With this new language how much discretion lies with the insurance commissioner? Does it ask him to make a subjective decision at any level?

Chairman Klein: The idea here is to get totally away from subjectivity that was his problem with the original language. That is the original stricken language because when the first event happened in Fargo last fall he had a difficult time deciding who to pay, who the survivor was, and where does this go. That's why the bill was introduced to be clear and to understand how this would get paid out and to make sure it was being paid out in a very timely manner. The hope here is to be still around a week.

Rep. Dahl: So the insurance commissioner gets a request and some sort of evidence, death certificate or whatever and then according to the definition, any death within forty eight hours after that response is deemed in the line of duty?

Chairman Klein: Any death within forty eight hours after participating in an emergency response, so they have to be responding to a fire, it has to be related to a fire event or training event. So if they are going home for the day and in a car and have an accident that is not included.

Rep. Dahl: It says if it occurs within forty eight hours of an emergency response or training event. That seems to me if there is a training event and they die forty eight hours later, even if it is an accident, it just says death.

Chairman Klein: The language came from the heart attack victim in Hebron, some years ago and it was a seventy year old who was a volunteer and responded to two events and died the next day. Although the firefighter from Fargo was fairly young, and had a heart attack. The language here is written by attorneys, so that's why we have two representing the House on this one. It's all about the comma's I've been told. I thought the language before was so plain and clear that I thought everybody could understand it but apparently we found some flaws when we really had to go by the law. This was a 2007 bill.

Rep. Carlson: I have too much history with the WSI stuff on presumptive clause and this would be a separate benefit of anything they receive from that correct?

Chairman Klein: Correct. WSI will continue to pay.

Rep. Carlson: This will not have any effect on those benefits by doing this?

Chairman Klein: Correct.

Senator Horne: Have you or others visited with the fire fighting folks, have they seen this? Do they like this language?

Chairman Klein: Only in passing. This whole bill was written in response to volunteers and not the paid professionals who are still covered under life insurance policy and they have a pension and benefits. Volunteers just respond anytime of the day or night and generally we do it because it is a good thing to do in your community.

Rep. Dahl: If you can help remind me of the source of the funding is of this particular benefit.

Chairman Klein: Maybe I can ask someone from the commissioner's office.

Rebecca Ternes: It is the premium tax fund.

Senator Wanzek: In the death of a paid fireman in the line of duty, doesn't WSI provide a death benefit as well in those situations? Above and Beyond?

Chairman Klein: Yes. The case in Hebron the doctor put down natural causes on the death certificate, which created a long drawn out claim that was eventually settled. But the family had no idea whether or not they were going to get anything. I listened to that case from WSI a couple of years ago and that is where this idea came from. Are we okay with that section?

Rep. Grande and I discussion as to the safe haven language. There is still resistance with the Fire Chiefs across the state. I said maybe we could get some by in if we said if the department wants to opt in they opt in and if they don't they won't have the sign and they wouldn't be named as a safe haven.

Rep. Dahl: Rep. Grande and I did talk about this a little bit more yesterday and I am not sure, I think she thinks this is the place to start a discussion. But I am not sure she is whole heartily set on this either. We did a little bit of more research and in South Dakota and Montana. Both states of which are rural and in speaking with their departments of health there hasn't been any instances of abandoned babies at fire stations in those states. So I guess it kind of turns the argument that this will be a strain on resources or personal. It just isn't something that is utilized nearly ever. So we sort of talked about that and I think this amendment here could be problematic because if we give the impression that if someone walks by a fire station and see's the sign they may think all fire stations are that way. It could just get very confusing. I think that, this at will sort of participation could be more confusing.

Chairman Klein: Rep. Dahl, I think it doesn't matter because we are going to have confusion regardless. Even if five departments in North Dakota opt in, there is going to be the confusion is to the Fessenden department, is the Harvey department. I guess my bigger concern I don't know that I can get this to stick in the Senate side. People have picked up that it's hung on somewhere already and I've been in a lot of those conversations and I am trying to get something here that we can get by in. At this point I've got a little bit of by in but whether or not it is going to resolve in what I was hoping for I don't know.

Senator Wanzek: I think the effort is a very noble one and I think everybody certainly wants to see anybody that is in a state of mind where they are that desperate and not certain what to do with a recognized area that's a safe haven in a sense. Maybe this can be a compromise; I think the chairman is right, I think the question could be divided on the floor. As for what the Senator from district 35 says, Politics is the art of the possibility. This might be the step in that direction for some degree where it would leave some discretion for those fire stations that believes they can't meet or carry out the duties.

Rep. Carlson: In regards to what Senator Wanzek said, I don't think it can happen, I don't believe you can separate a conference committee report on the floor. I think you take the conference committee up or down and you can't take any part of it apart. So if you reject it you reject it and it goes back to you guys for more work. But I don't think you can divide it.

Senator Wanzek: Mr. Chairman I stand corrected.

Senator Horne: With that in mind I certainly wouldn't want to lose the clear explanation and we need to get the death benefit through first. The fireman dying in the line of duty for responding to an incidence, so whether we do it the baby part of it we do want to make it acceptable enough so they can except that otherwise we lose that death benefit . I don't think any of us want to do that. This may be the way to do it, make it an optional opportunity.

Rep. Dahl: I don't have a problem with the first part that we discussed previously. I think that it is an important bill. In respect to section two and three of the bill. I do think it is important and I do think there is a sense out there that there are safe places to bring a child and I just think logistically this is not as problematic as some would say that it is. Looking at the evidence in other states this is an expansion of a safe place to bring a child who is in need and the mother or guardian to drop off their child with no questions asked. I do remain opposed to this latter part of the amendment.

Chairman Klein: Should we divide this and have a motion on the first half and discuss the second? Senator Wanzek do you have any thoughts on.

Senator Wanzek: I do realize conference committees are held a little differently. I guess I got confused as far as voting on the whole bill. I am not sure if we can divide your, what we could probably do is make a motion and to either accede to the House amendments and further amend, with the first part of your amendment.

Chairman Klein: I don't know how much work we can do on this. My thought is Rep. Dahl is to go back to the way it was with all the language and just every twenty four seven fire department , would be, or do you have another idea that we haven't heard? I know there is resistance throughout the state because whether it is not a problem or not.

Senator Wanzek: Mr. Chairman on further observation I am thinking we can get the ball moving and at least get the first part off the table. I would make a motion that we would adopt the amendments that you presented but by dividing the last statement or part of the amendments and removing them from the motion. It would only address section one and two. I think we can do that it would pretty much change the whole bill. At least we can get that settled and put to the side.

Senator Horne: Seconded the motion.

Chairman Klein: The clerk will call the roll on the motion by Senator Wanzek.

Roll taken: Passed 6-0

Rep. Schneider: I would agree but won't the Senate first have to accede to the House Amendments?

Senator Wanzek: As I look at it, we are more or less acceding to section three. And ultimately the final motion will be to accede to the House amendments and adopt this part along whatever we decide on section three.

Chairman Klein: Committee I would like to take a run at this language I have here.

Rep. Dahl: I think this is also somewhat incomplete because I think Rep. Grande was hoping to get some funding and this is not the complete picture of what she wanted to do.

Rep. Schneider: I had similar conversations with Rep. Grande and I don't know if going through the motions of a vote is necessary. Perhaps we need to talk to our chairman one more time and see how we want to proceed.

Chairman Klein: I have the language taken care of what I think is important and maybe at the next meeting we come up with something. We will have to do that next time. Closed the meeting.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB2308

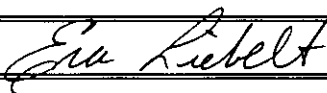
Senate Industry, Business and Labor Committee

X Check here for Conference Committee

Hearing Date: April 24, 2009

Recorder Job Number: 12183

Committee Clerk Signature



Minutes:

Chairman Klein: Opened the hearing on Senate bill 2308. Senator Stenehjem is sitting in for Senator Wanzek. Committee we've had a lot of discussion on this and I certainly sense that the House members are passionate about the safe haven issue. Section one we pretty much agreed to, we have amendments for that. Rep. Grande do you have some additional things wanted to look at on the safe haven side.

Rep. Dahl: One point of information, I looked at the Good Samaritan Act and there was some talk that they would be covered if a baby would be brought to them. There is an exception under the Good Samaritan Act that does not encompass the person that at the time of the emergency was employed expressly or actually for the purpose of providing emergency medical aid. So I don't think the firefighters would be exempted. The safe haven does provide protection.

Rep. Grande: You had accepted those first set of amendments dealing with one and two. Also on those amendments was the amendment stating, a fire station will be a designated safe haven by having proper signage outside of the building. I didn't know since I was not here.

Chairman Klein: That was not accepted. We only took that language from the upper portion. They are two different issues.

Rep. Grande: That's all I wanted to know. Since I wasn't here I just wanted to clarify that.

Chairman Klein: From my perspective Rep. Grande, everything that is currently in section three as you sent it to the Senate is still as is.

Rep. Grande: Thank you for that clarification. That was my only point.

Chairman Klein: After we passed the amendment on section one, but there was some questions about the governing, we crossed out governing body and it should really say the fire chief or the fire chief's designee.

Rep. Grande: So for clarification may I read it. (She reads from the amendment).

Chairman Klein and Representative Grande discuss the wording in the amendment that was passed.

Chairman Klein: For the record paid fire departments are include in that city fire departments.

Senator Horne: May we get a copy of that?

Copies were handed out.

Chairman Klein: I think that leads to where we were trying to be specific because we had governing body there earlier. Is there any discussion on section three?

Rep. Grande: I would like to further amend the amendment to have this language.

Senator Horne: I will second the motion.

Row was called for do pass on the amendment.

Row Call Vote: Yes 6 No 0

Chairman Klein: We have before us 2308 section one corrected and all of section three.

Senator Stenehjem: Are there any other amendments that I don't see here that passed out of the House?

Chairman Klein: An amendment which describes what the line of duty death means.

Rep. Grande: I move that the Senate accede to the House amendments and further amend.

Senator Horne: I will second the motion.

Senator Stenehjem: To my understanding we will have a safe haven at the fire station, where you are going to be able to drive by and drop of some little infant at any little fire station.

Rep. Dahl: It applies only to stations that are opened twenty four hours a day and our staffed, twenty four hours a day.

Senator Stenehjem: So I have this little baby that I don't want for some reason and I go by a fire station and how do I know it's opened, it's not like the light is on? How do you know there is someone there and even if there open they might be out at a fire.

Rep. Grande: That is why you would have to leave the infant with an individual at the station. So you would have to go to the door and go in.

Senator Stenehjem: So I can just go up to the hospital and ring the door and run? What is the big problem with the hospital part?

Rep. Grande: There is nothing.

Senator Stenehjem: So why do we need to do a fire station?

Rep. Grande: Because in January of this year we did have an individual that thought it was okay to use the fire station. Leaving liability on the fire station side and the mother's side, prosecution didn't understand am I suppose to follow through and do this; does it fall under safe haven? So this clarifies that part of the safe haven law.

Senator Stenehjem: Why don't we add police stations in?

Rep. Grande: That would be nice if you wish to add that in.

Rep. Dahl: A lot of states do allow for the police stations. Some think it would be intimidating to go into a police station, so we are just trying to extend it to fire station. People feel safe with

the fire fighters and there not intimidating like a police station. So this is an extension of our current safe haven law.

Chairman Klein: I believe the safe haven law of 2003 that started with the hospitals was an attempt to provide the drop off person, so there is no retaliation and that they would feel they could drop it off there. In this case it is some of that but also to provide cover for the fireman?

Rep. Dahl: The Good Samaritan Act does not apply to medical emergency professionals. With this portion of the bill, it does provide protection.

Chairman Klein: Under the Good Samaritan Act, for example as a firefighter with only advanced first aid, if I do not go beyond my training I am covered under Good Samaritan.

Senator Stenehjem: I think if you didn't drop them off at the fire station you wouldn't even need that part of it. They wouldn't be there. You're trying to give protection under the Safe Haven Act and they wouldn't need that protection if you didn't have them being dropped off there. You think that at a fire station if somebody brought a child to the fire station and said they didn't want them they wouldn't handle them?

Rep. Dahl: We do think they would handle them. It gives the guardian or parent protection and it gives the fire station protection.

Chairman Klein: Committee my thought is that this is an opportunity for the Senate who has already killed the bill like this, to hear it and maybe it's been lobbied differently and one way or another they will have another opportunity to vote on it. I think that's where the committee is going here and I thought we'd take a run upstairs and see what happens.

Rep. Grande: For information for the Senator, it doesn't happen a lot. But the chance that it does happen we are looking for the opportunity to save one more baby. They can turn around and dump it in a dumpster or they can hand it to a fireman.

Senator Stenehjem: They can hand it in at a police station; or a worker at McDonald's.

Rep. Grande: They sure could but the liability falls in an area we are trying to get rid of.

Senator Stenehjem: I value life as much as you do and they could just drop it off at my house.

Rep. Grande: I know you do.

Rep. Dahl: And you would be covered.

Rep. Grande: And you would be covered but the fireman isn't and so we are trying to cover that.

Rep. Dahl: We did a little research and other states do allow fire stations, they are rural like we are and to their knowledge no one has utilized it but it is there in case it does need to be used.

Senator Stenehjem: Would there be any interest of our desire to make it a permanent piece of legislation or at least that these communities could designate their fire stations if they so see fit? And if they didn't want to, that could be a compromise.

Chairman Klein: We have talked a bit about just providing for that signage that would be for opt in. That also created some questions about which departments are a safe haven? The departments had some issue with that too.

Rep. Grande: Almost all the other states use the signage system but we just didn't want to push that at this point. But if that is where the state wanted to head after trying something like this and they felt now we understand how it works and we want to proceed, even to follow what the National Alliance of Safe Havens is doing, then we could look down that path in the next biennium. Right now we are just trying to open the doors for an opportunity of a safe haven. The opportunity for this, the reason I feel fire stations work so well. One everybody trusts the fireman, the fireman is the friendly guy and in that the fire stations we are talking about are also the first responder stations. They are also medically prepared; they're the ones that are first out the ones that always go. So it would be no different if you had the drop off at a

McDonald's. Let's say the mother abandons the baby at McDonald's instead. The firefighter is

the one who is going to be called to go get the baby and bring it to the hospital. What this does is just lets the mom bring it to the fire station. It eliminates that emergency call step. Instead of going out to the emergency the emergency comes to the fire station.

Chairman Klein: Any other discussion? Hearing none the clerk will call the role.

Row Call Vote: Yes 6 No 0.

Date: 4-20-09

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB 2308** as (re) engrossedSenate IBL Committee☒ Check here for **Conference Committee**

- Action Taken ☐ SENATE accede to House Amendments
- ☐ SENATE accede to House Amendments and further amend
- ☐ HOUSE recede from House Amendments
- ☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____ -- _____

☐ **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.

Motion Made By _____ Seconded By _____

Senators				Representatives			
	Attend.	Y	N		Attend.	Y	N
		e	o			e	o
		s				s	
Senator Klein	X			Rep. Dahl	X		
Senator Wanzek	X			Rep. Grande	X		
Senator Horne	X			Rep. Schneider	X		

Vote Count _____ Yes _____ No _____ Absent

Senate Carrier _____ House Carrier _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

Roll Call Vote #: _____

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB 2308** as (re) engrossedSenate IBL Committee☒ Check here for **Conference Committee**

- Action Taken ☐ SENATE accede to House Amendments
☒ SENATE accede to House Amendments and further amend
☐ HOUSE recede from House Amendments
☐ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) _____ -- _____

☐ **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.

Motion Made By Senator Wanzek Seconded By Senator Horne

Senators					Representatives				
	Attend.		Y e s	N o		Attend.		Y e s	N o
Senator Klein	X		✓		Rep. Dahl	X		✓	
Senator Wanzek	X		✓		Rep. Carlson	X		✓	
Senator Horne	X		✓		Rep. Schneider	X		✓	

Vote Count 6 Yes 0 No 0 Absent

Senate Carrier _____ House Carrier _____

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

Date: 4-24-09Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. **SB 2308** as (re) engrossedSenate IBL Committee☒ Check here for **Conference Committee**

- Action Taken ☐ SENATE accede to House Amendments
☐ SENATE accede to House Amendments and further amend
☐ HOUSE recede from House Amendments
☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 1030 -- 1031☐ **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.

Motion Made By _____ Seconded By _____

Senators				Representatives			
	Attend.	Y	N		Attend.	Y	N
		e	o			e	o
		s				s	
Senator Klein	X	✓		Rep. Dahl	X	✓	
Senator Stenehjem	X	✓		Rep. Grande	X	✓	
Senator Horne	X	✓		Rep. Schneider	X	✓	

Vote Count 6 Yes 0 No 0 AbsentSenate Carrier Senator Klein House Carrier Rep. Grande

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 2308

That the House recede from its amendments as printed on page 1030 and 1031 of the Senate Journal and pages 1155, 1156, and 1157 of the House Journal and that House Bill No. 2308 be further amended as follows:

Page 1, replace lines 8 through 24 with:

18-05.1-02. Payments from firefighters death benefit fund. The insurance commissioner shall pay ten thousand dollars to a deceased firefighter's survivor upon receipt of a request for payment and evidence of a line of duty death from the ^{fire} governing body of a municipality ^{fire} having a paid fire department or the ^{fire} governing body chief or chief's designee of a city ^{fire dept.} or rural fire dept, or rural fire protection district ^{fire} that does not have a paid fire department.

Page 2, after line 6, insert:

2. "Line of duty death" means a death that was due to an injury sustained while performing firefighter duties if the death occurred within forty-eight hours of participating in an emergency response or training event. Death from a heart attack or stroke is deemed to be a line of duty death if it occurs within forty-eight hours of an emergency response or training event.

Page 2, line 7, replace 2. with 3.

Page 2, line 22, after the first period insert: "^A fire station ^{will} wishing to be designated as a safe haven can do so by having proper signage on the outside of the building."

§ 3 of House Amendments

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2308

That the House recede from its amendments as printed on pages 1030 and 1031 of the Senate Journal and pages 1155-1157 of the House Journal and that Engrossed Senate Bill No. 2308 be amended as follows:

Page 1, line 1, after "to" insert "create and enact section 50-25.1-15.1 of the North Dakota Century Code, relating to abandonment of an infant at a fire station; and to"

Page 1, line 6, remove the overstrike over "~~from firefighters death benefit fund~~" and remove "~~to deceased~~" ^{bf} ^{bf} ^{bf}

Page 1, line 7, remove "firefighter's survivor" ^{bf}

Page 1, line 16, after "payment" insert "and evidence of a line of duty death" and remove "governing body of a municipality having a paid"

Page 1, line 17, replace "department or the governing body" with "chief or fire chief's designee", after "city" insert "fire department, rural fire department," and remove "that does not have a" with an underscored period ^{replace}

Page 1, remove lines 18 through 21²

Page 1, line 22, remove "be an injury caused while acting in the line of the deceased firefighter's duty"

Page 2, after line 4, insert:

"2. "Line of duty death" means a death that was due to an injury sustained while performing firefighter duties if the death occurred within forty-eight hours of participating in an emergency response or training event. Death from a heart attack or stroke is deemed to be a line of duty death if it occurs within forty-eight hours of an emergency response or training event."

Page 2, line 5, replace "2." with "3."

Page 2, after line 8, insert:

"SECTION 3. Section 50-25.1-15.1 of the North Dakota Century Code is created and enacted as follows:

50-25.1-15.1. Abandoned infant - Fire station procedure - Reporting immunity.

1. As used in this section:

- a. "Abandoned infant" means an abandoned infant as defined in section 27-20-02 and which has been left at a fire station in an unharmed condition.
- b. "Fire station" means a fire station that is open and operating twenty-four hours a day seven days a week and which is continually

staffed with full-time, paid firefighters who are licensed as emergency medical services professionals under chapter 23-27.

2. A parent of an infant may abandon the infant by leaving the infant with an appropriate individual at any fire station. An agent of the parent may leave an abandoned infant with an appropriate individual at a fire station with the parent's consent. Neither the parent nor the agent is subject to prosecution under sections 14-07-15 and 14-09-22 for leaving the abandoned infant at a fire station.
3. A fire station shall accept an infant abandoned or left under this section. The fire station may request information regarding the parents and shall provide the parent or the agent with a medical history form and an envelope with the fire station's return address. Neither the parent nor the agent is required to provide any information.
4. The fire station shall provide the parent or the agent with a numbered identification bracelet to link the parent or the agent to the abandoned infant. Possession of an identification bracelet does not entitle the bracelet holder to take custody of the abandoned infant on demand. If an individual possesses a bracelet linking the individual to an abandoned infant left at a fire station under this section and parental rights have not been terminated, possession of the bracelet creates a presumption that the individual has standing to participate in a protection services action brought under this chapter or chapter 27-20. Possession of the bracelet does not create a presumption of maternity, paternity, or custody.
5. The fire station may provide the parent or the agent with any relevant information, including:
 - a. Information about the safe place for abandoned infant programs;
 - b. Information about adoption and counseling services; and
 - c. Information about whom to contact if reunification is sought.
6. Within twenty-four hours of receiving an abandoned infant under this section, the fire station shall report to the department that an abandoned infant has been left at the fire station. The report may not be made before the parent or the agent leaves the fire station.
7. The fire station and the fire station employees and agents are immune from any criminal or civil liability for accepting an abandoned infant under this section.
8. Upon receiving a report of an abandoned infant left at a fire station under this section, the department shall proceed as required under this chapter if it appears that the abandoned infant was not harmed, except the department may not attempt to identify or contact the parent or the agent. If it appears the abandoned infant was harmed, the department shall initiate an assessment of the matter as required by law.
9. If an individual claiming to be the parent or the agent contacts the department and requests to be reunited with the abandoned infant, the department may identify or contact the individual as required under this chapter and all other applicable laws. If an individual contacts the department seeking information only, the department may attempt to obtain information regarding the identity and medical history of the parents and may provide information regarding the proceduress in an abandoned infant case. The individual is under no obligation to respond to the request for

information, and (e) department may not attempt to compel response to
investigate the identity or background of the individual."

Renumber accordingly

Date: April 24, 2009

Roll Call Vote #: 1

2009 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2308 as (re) engrossed

Senate IBL Committee

☒ Check here for **Conference Committee**

- Action Taken
- ☐ SENATE accede to House Amendments
 - ☐ SENATE accede to House Amendments and further amend
 - ☐ HOUSE recede from House Amendments
 - ☒ HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ pages(s) 1030 -- 1031

☐ **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.

Motion Made By Rep. Grande Seconded By Senator Nodland

Senators					Representatives				
	Attend		Y e s	N o		Attend		Y e s	N o
Senator Klein	✓		✓		Rep. Dahl	✓		✓	
Senator Stenehjem	✓		✓		Rep. Grande	✓		✓	
Senator Nodland	✓		✓		Rep. Schneider	✓		✓	

Vote Count 6 Yes 0 No 0 Absent

Senate Carrier Senator Klein House Carrier Senator Nodland

LC NO. _____ of amendment

LC NO. _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

REPORT OF CONFERENCE COMMITTEE

SB 2308, as engrossed: Your conference committee (Sens. Klein, Stenehjem, Horne and Reps. Dahl, Grande, Schneider) recommends that the **HOUSE RECEDE** from the House amendments on SJ pages 1030-1031, adopt amendments as follows, and place SB 2308 on the Seventh order:

That the House recede from its amendments as printed on pages 1030 and 1031 of the Senate Journal and pages 1155-1157 of the House Journal and that Engrossed Senate Bill No. 2308 be amended as follows:

Page 1, line 1, after "to" insert "create and enact section 50-25.1-15.1 of the North Dakota Century Code, relating to abandonment of an infant at a fire station; and to"

Page 1, line 6, remove the overstrike over "~~from firefighters death benefit fund~~" and remove "to deceased"

Page 1, line 7, remove "firefighter's survivor"

Page 1, line 16, after "payment" insert "and evidence of a line of duty death" and remove "governing body of a municipality having a paid"

Page 1, line 17, replace "department or the governing body" with "chief or fire chief's designee", after "city" insert "fire department, rural fire department,", and replace "that does not have a" with an underscored period

Page 1, remove lines 18 through 22

Page 2, after line 4, insert:

"2. "Line of duty death" means a death that was due to an injury sustained while performing firefighter duties if the death occurred within forty-eight hours of participating in an emergency response or training event. Death from a heart attack or stroke is deemed to be a line of duty death if it occurs within forty-eight hours of an emergency response or training event."

Page 2, line 5, replace "2." with "3."

Page 2, after line 8, insert:

"SECTION 3. Section 50-25.1-15.1 of the North Dakota Century Code is created and enacted as follows:

50-25.1-15.1. Abandoned Infant - Fire station procedure - Reporting immunity.

1. As used in this section:

a. "Abandoned infant" means an abandoned infant as defined in section 27-20-02 and which has been left at a fire station in an unharmed condition.

b. "Fire station" means a fire station that is open and operating twenty-four hours a day seven days a week and which is continually staffed with full-time, paid firefighters who are licensed as emergency medical services professionals under chapter 23-27.

2. A parent of an infant may abandon the infant by leaving the infant with an appropriate individual at any fire station. An agent of the parent may leave an abandoned infant with an appropriate individual at a fire station with the parent's consent. Neither the parent nor the agent is subject to prosecution under sections 14-07-15 and 14-09-22 for leaving the abandoned infant at a fire station.
3. A fire station shall accept an infant abandoned or left under this section. The fire station may request information regarding the parents and shall provide the parent or the agent with a medical history form and an envelope with the fire station's return address. Neither the parent nor the agent is required to provide any information.
4. The fire station shall provide the parent or the agent with a numbered identification bracelet to link the parent or the agent to the abandoned infant. Possession of an identification bracelet does not entitle the bracelet holder to take custody of the abandoned infant on demand. If an individual possesses a bracelet linking the individual to an abandoned infant left at a fire station under this section and parental rights have not been terminated, possession of the bracelet creates a presumption that the individual has standing to participate in a protection services action brought under this chapter or chapter 27-20. Possession of the bracelet does not create a presumption of maternity, paternity, or custody.
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 - a. Information about the safe place for abandoned infant programs;
 - b. Information about adoption and counseling services; and
 - c. Information about whom to contact if reunification is sought.
6. Within twenty-four hours of receiving an abandoned infant under this section, the fire station shall report to the department that an abandoned infant has been left at the fire station. The report may not be made before the parent or the agent leaves the fire station.
7. The fire station and the fire station employees and agents are immune from any criminal or civil liability for accepting an abandoned infant under this section.
8. Upon receiving a report of an abandoned infant left at a fire station under this section, the department shall proceed as required under this chapter if it appears that the abandoned infant was not harmed, except the department may not attempt to identify or contact the parent or the agent. If it appears the abandoned infant was harmed, the department shall initiate an assessment of the matter as required by law.
9. If an individual claiming to be the parent or the agent contacts the department and requests to be reunited with the abandoned infant, the department may identify or contact the individual as required under this chapter and all other applicable laws. If an individual contacts the department seeking information only, the department may attempt to obtain information regarding the identity and medical history of the parents and may provide information regarding the procedures in an abandoned infant case. The individual is under no obligation to respond to the request

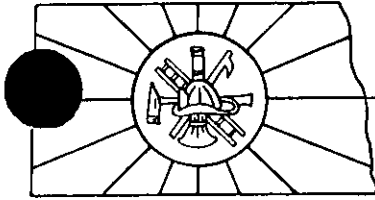
for information, and the department may not attempt to compel response to investigate the identity or background of the individual."

Renumber accordingly

Engrossed SB 2308 was placed on the Seventh order of business on the calendar.

2009 TESTIMONY

SB 2308



Organized June 4, 1884. Incorporated January 20, 1901

North Dakota Firefighter's Association

P.O. Box 6127 • Bismarck, ND 58506-6127

Phone: 701-222-2799

Fax: 701-222-2899

Good Morning Senator Klein and members of the Senate Industry, Business and Labor Committee. My name is Lois Hartman, I am the Executive Director of the North Dakota Firefighter's Association. I appear before you this morning in support of SB2308.

The North Dakota Firefighter's Association is very appreciative of Senator Klein's work in providing the Line of Duty Death Benefit for the firefighters. Unfortunately, we did experience a death that qualified for the benefit. That process revealed some questions about the program.

The first was concerning any tax liability for the benefit. The benefits are tax exempt under IRS Ruling No 77-235, IRS 1977-28 and the federal estate tax Ruling 79-397. After discussion with the State Tax Department, I learned that the North Dakota tax law mirrors the federal tax law, so the benefit is also exempted from state tax.

The language on line 17 of the bill does not address rural fire departments or corporate fire departments. I would like to request that language be added to the bill as follows.

Line 17, after district “, rural fire departments”

The membership of the North Dakota Firefighter's Association is very appreciative of Senator Klein's work in providing this benefit. Mr. Chairman, I would be happy to answer any questions of the committee.

Mr. Chairman and committee members,

My name is Ron Guggisberg. I am a firefighter and member of the North Dakota's LAST Team. The primary mission of the LAST team is to provide assistance and comfort to the family and department and help with filing DOJ-PSOB, state and local benefits. All other aspects of team functionality are secondary, but are made available because of the possible needs of the families and the fire service throughout North Dakota during a difficult time.

Other services offered by the LAST Team include-

- Acquiring resources for a LODD funeral
- Honor Guard Assistance
- Assisting with anything the family, fire department, funeral director , and clergy needs while remaining transparent

During my LAST Team training at the National Fire Academy in Emmetsburg, MD we were addressed by several family members of Fallen Firefighters. They shared their feelings of going through the process of applying for benefits after the loss of their firefighter. Some of the things they said were-

- It was hard having to relive the incident every time a form asked for specifics of how my husband died.
- Forms and benefit claims can be confusing on a good day, but impossible if one is grieving. I needed a lot of emotional support.

- One of the most difficult parts of the benefits process was answering the questions “date of death,” “date marriage ended,” and “filling status: married or single?”
- I felt like I was receiving money in place of my husband.

I am here today to suggest a possible amendment to the bill before you. The suggestions I would make is to amend the bill to include all of North Dakota’s Firefighters and clarify who receives the benefit. By amending this bill to, “The Insurance Commissioner shall pay ten thousand dollars to survivor(s) of a deceased firefighter. Survivor shall be defined using criteria set forth in The Public Safety Officers Benefits Act of 1976- 42 U.S.C. CHAPTER 46, SUBCHAPTER XII. Firefighter shall be defined using the same act.”

By changing this language, I believe we could prevent going through the same trial and error process the Department of Justice has already been through.

Public Safety Officers' Benefits Program
Documentation Instructions for Volunteer Fire Departments

The Public Safety Officers' Benefits (PSOB) Act requires that a Volunteer Fire Department (VFD) be organized, formed, or chartered by a unit of government to act on its behalf in providing fire services to the general public. To establish the eligibility of your VFD under the PSOB Act, please provide the following documentation:

A. If VFD is a nonprofit/chartered corporation:

1. A statement, signed by an elected official such as a mayor, county commissioner, etc. and also notarized, which states:

“The (insert name of VFD) is legally organized and is authorized by the (insert name of government agency) to act on its behalf by providing fire services, as its primary function, to the community of (insert name of jurisdiction).”

2. A certified copy of the charter or minutes of the government agency's meeting establishing the VFD as that government agency's VFD.

B. If VFD is a unit of government which utilizes volunteers:

1. A statement, signed by an elected official and also notarized, which states:

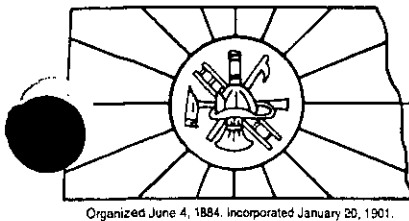
“The (insert name of VFD) is a unit of (insert level of government), government, using volunteer firefighters.”

Please do not hesitate to contact the PSOB Office at 202-307-0635 or toll-free at 888-744-6513 if you have any questions about fulfilling this requirement.

PSOB Benefit Matrix

1. If there is a spouse and no child* or children, all to the spouse.
2. If there is a spouse and child or children, one-half to the spouse and one-half to the child or children in equal shares.
3. If no spouse, and children only, all to the child or children in equal shares.
4. If no spouse or children, then to the individual designated by the officer as beneficiary on file with the officer's agency, or if no designation, to the individual designated as the beneficiary on the most recently executed life insurance policy on file with the officer's agency.
5. If none of the above, to the officer's parents in equal shares.

*"Child" is defined as any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the officer's death, is either 18 years old or under, or between 19 and 22 and a full-time student, or who is incapable of self-support due to a physical or mental disability.



*North Dakota
Firefighter's Association*

P.O. Box 6127 • Bismarck, ND 58506-6127

Phone: 701-222-2799
Fax: 701-222-2899

*Attachment
#1*

**SB 2308
House Government and Veterans Affairs Committee**

Good Morning Representative Grande and members of the House Government and Veterans Affairs Committee; my name is Lois Hartman, I am the Executive Director of the North Dakota Firefighter's Association. I appear before you this morning in support of SB2308.

The North Dakota Firefighter's Association is very appreciative of Senator Klein's work in providing the Line of Duty Death Benefit for the firefighters of North Dakota. Unfortunately, we did experience a death that qualified for the benefit. That process revealed some questions about the program.

The first was concerning any tax liability for the benefit. The benefits are tax exempt under IRS Ruling No 77-235, IRS 1977-28 and the federal estate tax Ruling 79-397. After discussion with the State Tax Department, I learned that the North Dakota tax law mirrors the federal tax law, so the benefit is also exempted from state tax.

The language issues with the line of duty death benefit have been worked out in the Senate. Therefore, the North Dakota Firefighter's Association is in full support of this bill and respectfully request a do pass vote from this committee.

Proposed Amendment to Senate Bill 2308

Mr. Winick.
Attachment
#1

Page 1, Line 20, replace the first period with a comma, after the comma insert "including a", and replace "Death" with "death"

Page 1, line 21, replace ",is deemed to" with a period

Page 1, remove line 22

Attach #2





Designation of Beneficiaries



North Dakota Firefighter's
Association
Organized April 4, 1904
Incorporated January 26, 1961

Attachment #3

U.S. Department of Justice Public Safety Officers' Benefits (PSOB) Program

WHO RECEIVES PSOB BENEFITS IF THE CLAIM IS APPROVED?

Benefits are paid to survivors according to the following criteria:

1. If there is a spouse and no child* or children, all to the spouse.
2. If there is a spouse and child or children, one-half to the spouse and one-half to the child or children in equal shares.
3. If no spouse, and children only, all to the child or children in equal shares.
4. If no spouse or children, then to the individual(s) designated by the officer as PSOB beneficiary on file with the officer's agency, or if no designation then to the individual designated as the beneficiary on the most recently executed life insurance policy on file with the officer's agency.
5. If none of the above, to the officer's parents in equal shares.

Include

*"Child" is defined as any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the officer's death, is 18 years old or under, 19-22 and a full-time student; or 19 and older, and incapable of self-support due to a physical or mental disability.

This form is for use in declaring a beneficiary for any PSOB benefits that your survivors may be eligible for in the event of your death. The circumstances in which the beneficiaries identified here might be eligible for the PSOB benefit are identified in Step 4 above and would not apply if there is an eligible spouse or children. Should you wish to complete this form, it must be retained with official departmental records.

I, _____ (print full name), as a member of _____ Fire Department, hereby designate the following beneficiary(s) for any PSOB benefits that may be paid in the event of my death:

Name	Address	Relationship	Percent (must total 100%)
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Officer signature: _____ Date: ____/____/____

Witness signature: _____ Date: ____/____/____

- definition of child look

18-05.1-2. Payments from firefighters death benefit fund. The insurance commissioner shall pay ten thousand dollars to a deceased firefighter's survivor upon receipt of a request for payment and evidence of a line of duty death from the fire chief or fire chief's designee of a city fire department, rural fire department, or rural fire protection district.