

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1457

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1457
February 4, 2013
Job 18209

Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

WSI liaison program for injured workers

Minutes:

Attachments

Chairman Keiser called committee to order. Roll taken.

Hearing opened.

Representative M. Nelson: Introduced bill. Refer to written testimony, attachment 1.

Chairman Keiser: Has Mr. Renault signed a release with WSI, and is it a general release with committee members on the list?

Representative M. Nelson: He has.

Chairman Keiser: When you spoke with WSI, what information did they give you about cases like this when an individual requires some extra assistance to get through the maze of WSI forms and regulations?

6:08 **Representative M. Nelson:** I have received nothing. They did mention that since Mr. Renault's case, they have added a step where the case worker will call two weeks before termination of benefits. That still leaves it that the worker, who maybe cannot respond to start with, still have to fill out a form and file it. It does not take care of the problem, but I think they have taken some steps to try to deal with this.

6:37 **Representative Ruby:** Aren't there some injured worker advocacy groups which assist the injured worker in going through the process?

Representative M. Nelson: There are those groups. Right now, it is all put on the worker to initiate those relationships. WSI cannot contact those groups and does not have a program to do this. If the worker is fit to initiate the contacts with the advocacy groups, he probably does not need the liaison.

7:40 Representative Kasper: Could you walk through how you'd envision this program working? Where would the liaison be located? How would the process go with the injured worker and the liaison? How would they interface with WSI?

8:05 Representative M. Nelson: What I am looking at is that WSI, through the training of their employees and through connections they make...It will still require WSI employees to make a judgment call. People with minor injuries and the vast majority of people will not any of this. In some cases, the liaison might be a competent family member or a vocational rehabilitation counselor. The bill is very general because there are so many individual cases. The idea is for WSI to have connections with organizations, to be able to contact them, and to ask for someone from the organization to work with the injured worker. In addition, the bill brings up whether they decide to use their continuing jurisdiction or not. This is really a directive to consider these types of cases as part of that when they are evaluating whether to do it. With a head injury, it would be possible that even the doctors not realize that the head injury exists until well down the road, and until then people might think that the individual is difficult to work with or uncooperative. This bill is to put the ball in WSI's court to bring forth this, and the idea is avoid some of the long-term disputes.

10:39 Representative Kasper: I am trying to get to the logistics of the liaison program. Provided scenario.

11:07 Representative M. Nelson: The idea is for situations when the worker is not really capable of making arrangements for a liaison. It's to put WSI in the position of saying that they feel the person may need a liaison, such as the Traumatic Head Injury Association, to help the person negotiation, and then WSI would provide the contact information and would inquire whether the person would like WSI to make the contact for them. Right now, a worker may do that, if capable,

11:37 Representative Kasper: The onus is on WSI to identify when a liaison is needed?

Representative M. Nelson: I'm not saying that this will be perfection. I'm not saying that everyone who needs a liaison is incapable of it. We are trying to get people to have the benefits which they have coming to them rightfully under the law. We are not trying to expand benefits. You can lose your benefits by missing timelines. Depending on what has happened to you, you might not even remember timelines or you might need to compose a letter but are incapable of writing a letter. You can talk to your case worker all you want, but it does not count as legal notice because you did not fill out the paperwork. Yes, this is to put the onus on WSI to use their professional expertise to recognize when a person needs help.

13:00 Representative Kasper: What would be the penalty WSI would face if they missed where a liaison should have been appointed?

Representative M. Nelson: There is no penalty, but under the continuing jurisdiction, if they realize that they should have recommended a liaison, that would be part of their consideration in restoring benefits.

13:28 **Representative Frantsvog:** The responsibility becomes that of WSI to make the initial determination that the individual does or does not need assistance?

Representative M. Nelson: Yes, that is what I am saying. There are benefits not only for the worker but also for WSI when they are dealing with these difficult cases. They are not doctors doing this, so sometimes the expertise would be helpful on their end as well.

Representative Frantsvog: If in a case in which WSI does not see the need for a liaison but the worker feels the need, how does that get resolved? Who makes the final decision on that/

14:26 **Representative M. Nelson:** If a worker feels the need, there is nothing to stop the worker from arranging for someone else to get the information. Right now injured workers can do that. If you're at the point at which you are having an argument, you have someone involved. We are not trying to do a regulatory thing here. The worker could sign a release and have his mother have access to his information. But it's a problem that it requires him to do that. But if he were at the point of disagreeing with WSI about whether he needs a liaison, I'd say that in most cases the worker is probably capable of doing it. We would not necessarily call those people liaisons, but that is really how they function today.

15:22 **Representative Sukut:** If we put this liaison in place, is there a cost associated?

Chairman Keiser: The fiscal notes have been provided.

Representative Sukut: If there is a cost. When you put the onus on WSI to select this liaison, are we going to get into a situation where clients object to the individual selected by WSI? I can also see that there are costs involved if a professional is chosen as the liaison.

Representative M. Nelson: I don't think the cost would be too much; it would perhaps save money through avoiding disputes. This program makes WSI cognizant of problems. If they cannot find a liaison who will work with someone, that alone will make the case worker aware that this person's case may be difficult or complex. In many cases, there are organizations out there. I see this largely as a volunteer thing. As far as WSI choosing a person, I suppose they could set the program up that way, but I don't see any need for them to do so. Administration is an important thing in any of these issues. If they want to get into that type of administration, I guess they could, but I don't see a need for them to do so.

18:28 **Representative Ruby:** As I hear the discussion and read subsection 2, it seems to me that rather than the organization having a program where they provide a liaison for the injured worker, they are basically a referral entity. They identify based on the requirements in subsection 1 and then refer the worker to a group that may help them. The problem that could happen is that the individual could receive bad information from the group to which they were referred. Is that the liability of WSI or that that group, when in most cases an attorney would most likely be the safe bet in terms of getting proper advice?

19:27 **Representative M. Nelson:** I had not thought a lot about the liability issue. It could be something we add to the bill. By WSI having a program, much of what I foresee is that

they'd have the contacts available; otherwise, an individual may not be aware of those agencies or organization. We're asking for WSI to be cooperative in helping the person access those services.

20:36 **Representative Gruchalla:** 20:38 It seems like in most of these conflicted cases with a dispute, the injured worker ends up with an attorney and then legal fees. Did you envision that this would alleviate some of those issues and head off some of those cases?

Representative M. Nelson: Yes. I see this unending stream of workers who have disputes. By the time we're at the attorney stage, things have broken down and are not functioning the way they should be. In many cases, this could be avoided by having a more open and responsive system up front.

21:44 **Representative Gruchalla:** It appears that some attorneys specialize in these cases. If this is designed to head off these issues up front, I think it would be a positive thing.

22:12 **Representative N. Johnson:** My mind is going to the HIPAA regulations. You're asking WSI to contact some group about some medical dilemma, and I don't know that they have the authorization. Maybe I need to ask them.

Representative M. Nelson: We do need to make a waiver so that information can be shared with those groups as far as basic information on the person and type of injury so they can make the contact. That needs to be part of the bill.

22:52 **Representative Vigesaa:** Did you foresee that the caseworker would be the person responsible for identifying a liaison, or would that be some other structure in WSI?

Representative M. Nelson: Basically, I would say the case worker. I tried to avoid starting an ombudsman program where we would have costs and another layer of management. I was hoping that would not be necessary. At this point, the case worker is the person with whom the worker deals and the person who is seeing them. In most cases, the case worker is going to be the person to identify the need for a liaison.

Support:

24:05 **Stephan Renault, of Dunseith:** Related the events surrounding his injury. Shared example of inaccurate information being provided to WSI by individual providing treatment. Gave example of when representative from WSI was in the doctor's office without his knowledge. Stated that based on input from the case worker, the doctor changed the paperwork about his ability to return to work. Stated that the work assessment was not done until after he had already been returned to work and had stopped working because he did not feel he was ready to go back to work. Provided example of when workplace had him doing work that was not as specified on the paperwork. Stated he told WSI about that but that they did not go after the company. Stated that he walked off the job.

31:29 I have called the congressmen, and I have tried to talk with the governor. They say that I had bursitis before, but I did not; it was a result of the injuries to my bones. A doctor

said that a fall like that results in a brain injury, but they did not study to see what kind of injury I had. When they tested me, my reading level was third grade level. Would you let someone at that reading level make a decision like that? I wrote up a paper because they were going to take away my benefits, and my mother had to rewrite it. WSI did not want to pay for my shots any longer, but my bursitis was due to the bones coming out of my body. If someone had been there to help me out, maybe this would have gone better. Why wasn't I allowed a second opinion? Cheryl Hahn made the doctor change his mind.

35:10 Representative M. Nelson: Could you describe the head injuries you sustained?

Stephan Renault: I repeat a lot of my words. I forget to do things I am supposed to do, and I don't do them on time. My speech gets mess up when I get scared, and that did not happen before.

35:40 Representative M. Nelson: You compensation from WSI is really two categories: disability and medical.

Stephan Renault: They are paying only my medical because they say I did not file the paperwork in thirty days. They kept paying me at that time. I said I'd fill up the paperwork, and then I ended up moving and they kept paying me, so I thought it just went away. I did not know any better.

Representative M. Nelson: Have you received compensation for all of your medical costs?

Stephan Renault: No. When I went to see Dr. Paige, I could have collected for mileage, and I forgot to fill out paperwork or did not do it, and I did not get mileage for that. A lot of times I do not file for the motel rooms that I'm allowed to collect on. I just sign that paper for mileage and put the doctor's name and the date and let them worry about the rest of that stuff because I cannot do it.

Representative M. Nelson: Would your case worker have been aware of these medical expenses?

Stephan Renault: She should be. You have to get approval for the motel before you are allowed to get a motel room.

Representative M. Nelson: So you got approval for the motel, but when you didn't file paperwork, nothing was done.

Stephan Renault: No one said anything or reminded me.

Representative M. Nelson: When you were cleared to go back to work in a seated position, how much time did you spend working in a seated position?

Stephan Renault: They said I'd be answering phones in a heated space, but it was not heated at all. I called Cheryl Hahn several times a day complaining to her. I was not supposed to be climbing, but you had to climb up to get into that place.

38:17 **Representative M. Nelson:** When you returned to work and they told you that you'd be back on top of the water treatment plan in the very place from where you fell, did they have safety harnesses and such?

Stephan Renault: I have pictures on my phone. No one is wearing a harness, even the supervisor.

Representative M. Nelson: Since your disability benefits have been taken away, how have you been supporting yourself?

Stephan Renault: My parents and my girlfriend. Elaborated on physical limitations and financial difficulties.

40:06 **Representative M. Nelson:** I see you're wearing a brace. What's the condition of your knee?

Stephan Renault: I do not have a kneecap anymore. The fellow at Altru said I should have had an ACL brace right from the beginning. Elaborated on physical condition.

41:18 **Representative M. Nelson:** At the present, when you've complained to WSI, what has WSI told you?

Stephan Renault: That only the hospital part, the medical part, would be paid. They took what they were paying me away. At the time they could have trained me to do something else. I asked about going to school, and they said it is too late, that you only get so much time, and that time was up. With my injuries, how am I supposed to do what I used to do?

42:35 **Chairman Keiser:** Could you share with us what kind of information your claims analyst was or was not providing you?

Stephan Renault: They did not tell me I could go back to school or that the paperwork for that was due. No one called me to get the paperwork in.

Chairman Keiser: Did they ever supply you with the paperwork?

Stephan Renault: I don't remember getting paperwork that says I had only thirty days to file it because I quit my job. I quit my job because my health comes first. I can always find another job; I cannot always get my health back.

44:20 **Rebecca Quinn, works for the UND School of Medicine Health Sciences and is under contract with the Head Injury Association of North Dakota:** In my role there, I have been working with people with head injuries for over five years and have often been in an advocacy role. We are a wonderfully stoic state with a high work ethics. A lot of times, when a worker is injured, they are not used to a benefit-entitled mentality, so a lot of times individuals do not know how to seek out advocacy. They've not learned the maze of support systems, so it's a new role for them. It's a whole new world and a confusing process. During that process, people often do not know who is who, who to help them out,

so there is a navigation piece. For an injured worker, the recognition that they need assistance with understanding and navigating is not something that automatically triggers. There does need to be an ombudsman piece, something to let people know that there are services to help them navigate. Gave example. There is not a clear network for injured individuals for how to navigate the system and to find the help they need so that they can fulfill their desire to return to being productive.

51:28 **Representative M. Nelson:** Would people who suffer head injuries be capable of filling out forms for WSI?

Rebecca Quinn: We know little about head injuries. In the last five years, we have become more aware of head injuries. Awareness of the long-term ramifications is growing. The level at which a head injury may impact a person is often not evident at the beginning. The brain is involved in everything we do in terms of everyday functionality. With an individual with a brain injury, it is sometimes difficult for the individual, their family, and their community to recognize how much the injury has impacted the person's skill set. The executive functioning requires a lot of mental thinking.

55:30 **Representative Kreun:** From your experience, how frequently do injuries have this kind of repercussion?

Rebecca Quinn: I would have only anecdotal evidence. I think we have a problem of awareness because we are not looking for it and are not providing the services. A lot of individuals get that they just need to deal with it. By the time I am involved or legal is involved, it is often past the point of return. It is about helping people navigate the system as it stands.

57:20 **Representative Becker:** In this scenario, the people with head injuries fall through the cracks with what they need to do, and this would help them maintain their coverage?

Rebecca Quinn: Yes, that is correct.

Representative Becker: If there is a case worker and they are aware of the issues, why do they not follow up more closely with individuals who need more reminding? Is that not part of their job description?

Rebecca Quinn: Ideally, yes. The crux is putting it on WSI to make the determination. I do think there needs to be a thought process as to whether WSI is the party to determine whether an injured worker needs liaison services. Ideally if WSI is aware that an individual needs extra help through the process, they should be helping with some of that. I am talking about brain injuries, but it is true with all cognitive disabilities, whether it be developmental and cognitive disabilities. What is the role for WSI for babysitting that versus the role of an outside party that would help with the process of navigating the system?

1:00:46 **Representative Vigesaa:** If contacted by WSI, would your group be willing to serve as a liaison?

Rebecca Quinn: Yes. We are very small, but I travel throughout the state. It is a role that could be done if contacted by WSI. Representative N. Johnson brought up HIPAA. Just this week, I got a call from a hospital, and the hospital gave generalities because they could not talk to me about the direct client. I provided my phone number so that the individual could contact me, and I offered to fax a release of information form. HIPAA is not the difficulty; it is the triggering even the thought process of recognizing when an outside organization needs to be brought in.

1:02:40 **Renee Pfenning, North Dakota State Building and Trades Council :** Offers support of bill for injured workers in the unique positions outlined on lines 11 and 12.

1:03:19 **Tom Riker, president of North Dakota AFL-CIO:** Supportive of bill. We are talking about a small group. It would be my understanding that 90% to 95% of WSI claims would not be affected by this. This is just for those few cases in which there was a head injury or when the individual needs extra advocacy.

1:04:39 **Representative Kreun:** Draws attention the bill, lines 11 and 12 about the barriers which the organization may consider. Wouldn't that be mainly from the traumatic brain injury?

Tom Riker: There could be individuals who had cognitive difficulty prior to the injury. Provided example of an individual with a limited education and a low reading level.

Representative Kreun: So this is for more than traumatic brain injuries?

Tom Riker: That would be my interpretation.

1:06:34 **Carol Two Eagle:** I carry the pipe for the people, and the focus of that pipe is to heal the sacred hoop. I am also the presiding bishop of the Church of the Helping Hand. Speaking from my own personal files, I have helped approximately twenty-five people navigate WSI claims. Some have pre-existing intellectual disabilities or impairments, such as dyslexia. Such people hide the fact that they cannot read. Gave personal history. These people need a liaison. In the case of WSI, the orientation is that many of their clients are automatically assumed to be lying or are out to defraud. I think that part of the way to get around that, to connect people with liaisons, would be that WSI maintain a list of these organizations and what they are oriented to, and then include that list with the initial paperwork given to the claimant. There is an imperious, arrogant attitude at WSI. Gave example. It would enable a great deal less frustration for those who are trying to get help. They often feel there is a stigma which will be attached if they ask for help, so I feel the offer should be made. They would be the one to make the decision. There may need to be some urging.

1:16:17 **Stephan Renault:** When they did an assessment test, it was about four months after. What the test said and what they were making me do were completely different. The claim number got changed. Cheryl Hahn could not find her paperwork. They should have sent me to an assessment before sending me back to work.

1:17:39 **Chairman Keiser:** Stephan has signed a release. Any committee member can request his file from WSI as pertains to this.

Opposition:

Neutral:

1:19:00 **Bryan Klipfel, director of Workforce Safety and Insurance:** We are here to improve our process. Provided written attachment 3. Elaborated on written testimony. Explained that they are working with a communications firm to make their information easier to understand and at a lower reading level.

1:24:02 **Representative Kasper:** A recurring problem is that when a worker misses a deadline on paperwork and is disqualified from benefits. Are you addressing that issue?

Bryan Klipfel: We have a 30-day timeframe on those (audio unclear) a decision comes out. We have court rulings and so forth that that timeframe is okay. We try to call our injured worker to explain the deadline. If there is a legitimate issue why the deadline was missed, we will go back and look at those under continued jurisdiction will open up those claims again.

Representative Kasper: Who determines legitimate?

Bryan Klipfel: A lot would be on the basis of what the claims adjustor says. If a person appeals the notice that they have missed a deadline, the decision review office often will notify me on some of those claims, or it may get to the supervisor of the claims adjustor. As for a definite type of catch for those things, I don't think we have that.

Representative Kasper: In the bill itself, I see a potential problem for WSI if you're trying to determine subjectively who qualifies for a liaison. What would you do to address that internally?

Bryan Klipfel: I'd have to check, but maybe get more information about some of these resources to our claims adjustors so that they have a list of potential advocates for the injured worker. If they felt there a need, they could refer the injured worker to the advocate. It would be a subjective call for our claims adjustor, but if they needed help making a determination, they could work with our nurses or our doctor.

Representative Kasper: You heard Mr. Renault talk about his claims analyst. One person's subjectivity is another person's final decision. So you have different personalities making decisions that impact people's lives long term. How do you address that?

1:28:34 **Bryan Klipfel:** We try very hard through training. We have meetings with our claims adjustors to make sure they do things the same way. We have policies they need to follow. We try to do the best we can.

2:29:09 **Representative Gruchalla:** 1:29:09 Did the claims analyst in this case handle the case in the way she was trained?

Bryan Klipfel: Our attorney would have more details. As I looked over the claim, it looks like it was handled well. He was called and so forth.

1:30:03 **Representative Ruby:** In identifying who may need extra assistance, isn't it possible that by the time you identify who needs advocacy, it is basically too late?

Bryan Klipfel: You are right. That is one of the reasons we have the interim committee. I feel that we do a good job handling our claims. There might be a handful with issues or uncertainly, but hopefully those will be caught as we move through the process if we have done something wrong.

1:31:28 **Representative M. Nelson:** How do workers become familiar with your continuing jurisdictional abilities?

Bryan Klipfel: I am not sure. I am not sure if we send out that information. I'd have to check on that.

1:31:55 **Representative Kreun:** Is there an ability to put into the policy or procedure that if a head injury was not obviously part of the injury, at the time of medical treatment or assessment the worker be asked if he or she hit their head and that would be noted?

Bryan Klipfel: We base all our decisions on medical, objective evidence. If something comes up later and the medical, objective evidence says it was related to that work injury, we would cover that.

Chairman Keiser: Instead of passing this law, why not just identify those support organizations? In the first mailing, include the list of agencies that are available and which the worker could contact.

Bryan Klipfel: If our claims adjustor knew of the additional information... Within twenty-four hours, our claims adjustors contact the worker, the employer, and the provider. It would be something during that time. The adjustors have a lot of conversations back and forth with the injured workers. If we could get some of the information with the entities involved, we could present that to our claims adjustors.

Chairman Keiser: Or to cover all your bases, make sure that the information is given to all those workers for whom a medical claim has been accepted.

1:35:33 **Representative Ruby:** Who is responsible for building that list?

Chairman Keiser: If we don't put it in legislation, they can handle that however they see fit.

Bryan Klipfel: I could get a card from Rebecca Quinn, and she might have information for me about who we put on a list. Maybe it wouldn't have to be all medical. It could be wage loss.

Chairman Keiser: That would make sense. I think Representative M. Nelson has brought us an important issue. The real question is how best to manage it.

Representative Frantsvog: Does WSI have the ability to go back and look at Mr. Renault's claims and reevaluate those claims?

Bryan Klipfel: I believe we do. We have a meeting tomorrow to review.

Chairman Keiser: The concept of continuing jurisdiction allows WSI the discretion to reopen any claim or any benefit at any time.

Hearing closed.

Representative M. Nelson: After listening to things, I do have a couple of amendments to work on.

This bill will be held.

Meeting adjourned.

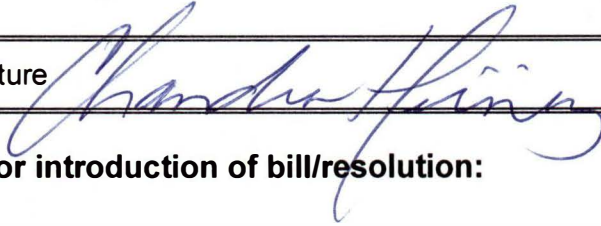
2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

HB 1457
February 6, 2013
Job 18425, from minute 18:00
Recording job contains committee action on various bills

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

WSI liaison program for injured workers

Minutes:

No attachments

18:00 Chairman Keiser draws committee to discuss HB 1457 for updates and action

18:32 **Representative M. Nelson:** I spoke with Jennifer Clark over the concerns WSI brought forward. Really, going through the way things are drafted, the bill does not create the concerns that they were worried about as far as can they only consider those things. The answer is no. Are they going to be liable for these people? The answer is no. With that, I do not have amendments.

Motion for a do not pass made by Representative Ruby and seconded by Representative Sukut.

19:14 **Representative M. Nelson:** Going through Stephan's file, I was struck by how necessary something like this is. What he was treated for over four years relied on what the doctor diagnosed the first time he saw him. Some of these types of things are not evident, especially for someone who is suffering from other severe injuries at the time first diagnosis. In addition, it was also striking with his physical therapy that his ability to follow through with appointments improved. The problem was is that by the time he was keeping most of his appointments, he had already lost his disability benefits. I have to question whether he was capable of protecting himself at the time that those things happened. Our WSI employees are not medical personnel. They don't have expertise in a lot of these particular disabilities. Yet we as a state do have a web of service providers available. WSI is not really taking advantage of that. The goal of this is to get WSI to start taking advantage of the other services to help make their workers aware of what is available. I would ask you not to support the do not pass but rather to support the passage of the bill because we need to send a message to WSI in order to prevent cases like this from happening in the future.

22:02 **Representative Ruby:** The reason I made the motion is that I think that the way this is written, the way it would require the caseworker to have already worked with the

person to determine whether or not they could understand it, in many cases they won't know that until they have already missed deadlines or something has already happened. I think it would benefit all injured workers if, as they said they could do, they would provide information about advocacy groups. I think maybe they have gotten the message that they should probably have as many groups and organizations and advocacy groups on their website or sent out with the initial form. Right from the beginning they could send that out for everyone. This seemed to be by trying to help them after the fact, and in most cases that was too late. I think they got the message. I guess they can wait and see. If they haven't, we could require some kind of referral or list that they must post or send with the initial contact. I think it would be better serving all the injured workers, not just the ones they determine are not intellectual or educated or whatever term they want to use.

24:21 Representative Louser: Going back to the testimony, this was a unique scenario. I think there were a lot of dynamics of which we were not aware. Representative Nelson, I am wondering that if we went back to the thirty days from the injury, who do you think would have been Mr. Renault's liaison.

24:57 Representative M. Nelson: Really at this point in time, it would probably have been the head injury association. But thirty days after the injury, they would not have been selected because no one at that point recognized that he had a head injury. I think that were it should have become evident to WSI was actually six weeks after they took his benefits away and tested him. Sending him forms on the first day when he was in the hospital and on pain medication would have denied the very status of the person. At that time, he could not have made those kinds of thoughts. There did not seem to be any introspection on the part of WSI. Sending out more forms to people who cannot handle forms does not fix the problem. His deficits were more evident after they took away his benefits. That's why there is the directive there for continuing jurisdiction. They should consider this because they should have been aware of it at this point. This is written pretty loosely; it does not force them into additional employees. However, it is putting it in code that they need to be aware of these vulnerable people.

27:23 Chairman Keiser: Let me share some perspective. In most cases, in most injuries, the liaison is a family member. It can be someone from an organization or a church. But if ever take a case where an injured worker has a concern and you work with WSI on that, I have never been to a meeting with a claims analyst or the administrative staff where there has not been a family member present. But that may not be absolutely true for everyone. I do complement Rep. Nelson in bringing this forward. I have really been thinking about this. We have individuals on this committee who have been part of the WSI interim committee. The reason I will support the do not pass is that this is way too general, too open. I thought about working it. But I really agree with previous comments that this is an administrative issue. They have to address this administratively, not through law. I thought at first that you had a great suggestion that every injured worker could be provided a list of organizations which could serve as a liaison. But if you're as injured as the individual who testified, what good is the list? But it occurred to me that what should happen is that for certain kinds of injuries, it should be automatic that any claims analyst that has a claim come in with head trauma should flag it and watch it carefully and maybe keep it or not. Why shouldn't there be a specialty claims analyst for severe cases that could really serve as this liaison. Claims analysts would need to refer certain cases to a specialty claims

analyst who works with those agencies on a regular basis. A regular claims analyst has a lot of cases and may not have the time and the connections with these groups to be totally effective. I think it is a real issue and there is an administrative solution. I think Brian from WSI got the message and wants to do something.

31:59 Representative Vigesaa: How many claim analysts are there at WSI?

Chairman Keiser: A lot. I'd guess 30. This is a managed healthcare system, which is entirely different. If you go to WSI, you do not get to say you want a certain procedure; you have to get preapproval. It's a managed healthcare delivery system. Whoever signs up for the interim committee, do not forget this issue.

33:30 Representative Amerman: In reading the bill, it would be something great for the interim committee. I think that we should have a liaison program for legislators to help them negotiate the workers' compensation system.

Roll call vote on the motion for a do not pass. Motion carries.

Yes = 11
No = 4
Absent = 0

Carrier: Representative Sukut

FISCAL NOTE
Requested by Legislative Council
01/22/2013

Bill/Resolution No.: HB 1457

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

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

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

The proposed legislation requires the organization to provide a liaison program for injured workers.

- 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.*

see attached

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

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 01/23/2013

WORKFORCE SAFETY & INSURANCE
2013 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1457

BILL DESCRIPTION: Liaison Program

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation requires the organization to provide a liaison program for injured workers.

FISCAL IMPACT: We are uncertain of the full intent of the proposed program mandate at this time and what additional staff and resources, if any, would be necessary. As we learn more in regards to the details and intentions of the proposed program throughout the legislative hearing process we will reevaluate potential staffing and additional resource needs at that time.

DATE: January 23, 2013

Date: 2-6-2013
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1457

House Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment

Rerefer to Appropriations Reconsider

Motion Made By Ruby Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman		✓
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee		✓
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla		✓
Rep. Rick Becker	✓		Rep. Marvin Nelson		✓
Rep. Robert Frantsovog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 11 No 4

Absent 0

Floor Assignment Sukut

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

Do not pass

REPORT OF STANDING COMMITTEE

HB 1457: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (11 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING).
HB 1457 was placed on the Eleventh order on the calendar.

2013 TESTIMONY

HB 1457

① 2-4-2013
HB 1457

Testimony of Representative Marvin E. Nelson, HB1457, WSI Liaison

House IBL Committee, Feb 4, 2013

Mr. Chairman, members of the committee;

Injured workers are in a variety of circumstances when they deal with WSI. Many, indeed most, have relatively minor injuries and are taken care of efficiently and satisfactorily. However, there are those who are not able to negotiate what to them is a maze due to either the effects of their injuries or to condition existing before their injuries.

These things, things like traumatic brain injury, mental health, or other mental or physical disabilities act as barriers since injured workers find themselves unable to complete forms, unable to know their rights, and unable to plead their cases in matters of dispute.

Due to this, HB1457 was conceived as a way to try and give injured workers help in negotiating the maze. To give them someone who is indeed on their side and who will know what is happening in their case and be able to assist them in responding.

To be fair, caseworkers are often in a bad situation. They did not generally know workers before their injuries; they do not know what the person was like before. In addition, even doctors have great difficulty in diagnosing, and knowing exactly how to treat things like traumatic brain injury or mental illness. The caseworker might very well think he is dealing with an uncooperative worker who doesn't respond to inquiries and deadlines while the worker may very well not be capable of responding. The worker may seem fine and indeed be fine one moment, and unable to function the next. Difficulty in remembering may make the worker seem like someone who changes his story or lies. This can come from the injuries, from medications or from preexisting conditions.

The worker themselves is also in a very difficult situation. They may not remember things, they may suffer extreme mood swings and indeed may become depressed due to their situation or they may have been depressed before. Very often they would not be trained or understand the complex medical conditions they face even if they were in the best of conditions.

All this makes it very possible that no one involved really understands the situation while it is happening and so HB1457 includes the directive for WSI to consider such situations when considering whether to use continuing jurisdiction under section 65 - 05 - 04 of the ND Century Code. A copy of that section of Code is included.

While this bill is not for a single worker, I have brought Stephan Renault here today to share with the committee his experiences. He fell about 30 feet one winter day from the top of the Devils Lake Water Treatment plant receiving life threatening injuries. Was airlifted to Grand Forks after stabilization and has continuing health problems. Mr. Renault served our country as a special operations officer and is a certified pipe welder. Since his accident, he has had troubles functioning and doing things like filling out forms and writing letters. The result has been he no longer is receiving disability from WSI and cannot

appeal, in addition, though still covered for medical expenses, he has not received full compensation due to his difficulties in filing. He is currently waiting for WSI to allow him to see a doctor for his knee even though a month ago, his WSI doctor referred him to the Univ. of Minnesota Medical Center. WSI prevented him from going there and said they would provide a doctor but have not done so.

So his problems negotiating the maze continue. The Liaison Program is seen as a way to help workers with difficulties negotiate through the paperwork and deadlines. Depending on the difficulties the worker faces, the best liaison would vary. It might be someone familiar with head injuries, it might be a family member, and it might be a vocational rehabilitation counselor. The program is not conceived to be any great burden on WSI or to require new employees. Rather, it's designed to really say to WSI that they need to take the initiative to find people willing to help injured employees. Currently a worker could do this, but it would need a poorly functioning worker to think of it and request such.

I ask for a do pass from committee members on this program that creates no new benefits but is merely designed to help people in a vulnerable situation receive the care they rightly have coming. Thank you.

65-05-01.5. Organization to notify employee of receipt of employer's first report of notice of injury.

If a claim for compensation has not been received by the organization but the organization has received an employer's first report of notice of injury, the organization shall notify the employee that the employer's first report has been received and shall advise the employee of the claim filing requirements of section 65-05-01.

65-05-02. Form in which claim must be filed.

Every claim must be made on forms to be furnished by the organization and must contain all the information required by it. Each claim must be signed by the person entitled to compensation or by the person acting on that person's behalf and, except in case of death, must be accompanied by a certificate of the employee's doctor stating that the employee was physically examined, stating the nature of the injury and the nature and probable extent of the disability. For any reasonable cause shown, the organization may waive the provisions of this section.

65-05-03. Jurisdiction of organization to hear questions within its jurisdiction - Finality of determination.

The organization shall have full power and authority to hear and determine all questions within its jurisdiction, and its decisions, except as provided in chapter 65-10, are final and are entitled to the same faith and credit as a judgment of a court of record.

65-05-04. Organization has continuing jurisdiction over claims properly filed.

If the original claim for compensation has been made within the time specified in section 65-05-01, the organization at any time, on its own motion or on application, may review the award, and in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, may award compensation. There is no appeal from an organization decision not to reopen a claim after the organization's order on the claim has become final.

65-05-05. Payments made to insured employees injured in course of employment and to their dependents.

The organization shall disburse the fund for the payment of compensation and other benefits as provided in this chapter to employees, or to their dependents in case death has ensued, who:

1. Are subject to the provisions of this title;
2. Are employed by employers who are subject to this title; and
3. Have been injured in the course of their employment.

If an employee applies for benefits from another state for the same injury, the organization will suspend all future benefits pending resolution of the application. If an employee is determined to be eligible for benefits through some other state act, no further compensation shall be allowed under this title and the employee must reimburse the organization for the entire amount of benefits paid.

65-05-06. Payment of compensation in lieu of claim for relief against employer.

The payment of compensation or other benefits by the organization to an injured employee, or to the injured employee's dependents in case death has ensued, are in lieu of any and all claims for relief whatsoever against the employer of the injured or deceased employee.

65-05-07. Injured employee given medical and hospital service required - Furnished artificial limbs and appliances for rehabilitation - Fee approval.

The fund shall furnish to an injured employee reasonable and appropriate medical, surgical, and hospital service and supplies necessary to treat a compensable injury. The fund may furnish artificial members and replacements the organization determines necessary to rehabilitate an injured employee.

Feb. 4, 13

This concerns our son Stephen
T. Renault, who was seriously injured
in a fall at work.

Besides his broken bones, he
also had facial and head injury. We
noticed that he repeats a lot of
things, sometimes even forgets his
train of thought. We feel that
his head was hurt more than
they thought. His reading
level even went down.

(2) HB 1457
2-4-2013

Mrs. Mrs. Stephen Renault

OME Ink

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2-4-2013

2013 House Bill No. 1457
Testimony before the House Industry, Business, and Labor Committee
Presented by: Bryan Klipfel, Director
Workforce Safety & Insurance
February 4, 2013

Mr. Chairman, Members of the Committee:

My name is Bryan Klipfel, Director of Workforce Safety and Insurance. I am here to provide information to assist the Committee in making its determination. WSI's Board of Directors recommends a Do Not Pass on HB 1457.

Navigating the workers compensation system can be a daunting task. It can be more difficult when a worker is already compromised due to a work injury. He or she has been hurt on the job; they are in need of medical and disability services and may have no prior experience with our system. The staff at WSI understands these circumstances. Based on that experience, we have, over time, enhanced the services available to injured workers who need additional assistance as they move through the workers compensation system.

An injured worker's first and primary point of contact is their claims adjuster. Claims adjusters are trained to be responsive and to provide follow-up. They reduce conversations to writing and they send follow-up requests and reminders in writing. If the injury is serious enough, the claims adjuster will request a medical case manager be assigned to the injured worker. A vocational rehabilitation consultant may also be assigned when it's determined that the injured worker may not be able to return to work with the pre-injury employer or when the pre-injury employer may require assistance with developing transitional work.

Any calls that come into WSI are answered by our customer service unit. Normally, customer service will be able to assist the injured worker with their questions. If not, the injured worker will be referred to their assigned claims adjuster.

The Interim Legislative Workers Compensation Review Committee (WCRC) was established to listen to the concerns of injured workers and, if needed, request changes to WSI policy or law. The WCRC has heard dozens of injured worker's suggestions to better the workers compensation system and continues to hear the requests of injured workers, legislators and members of the public to improve WSI.

Due to the recent efforts of the WCRC, we have implemented two recommendations which attempt to communicate more clearly with injured workers. If disability benefits are being discontinued, the claims adjuster must place a phone call to the injured worker in advance of sending a written notice of discontinuation of benefits. We have also reviewed our written correspondence and made changes in order to make it easier to understand.

During the 2011 Legislative Assembly, the WCRC crafted legislation which resulted in a benefit permitting an injured worker up to five hundred dollars to have an attorney review his or her case.

Internally, "Constituent Services" provides specialized assistance with WSI when an injured worker has contacted his or her representative lawmaker or the Governor's office. The "Decision Review Office" provides assistance to injured workers after an administrative order is issued. On average, DRO modifies 17% of the decisions they review in the injured worker's favor.

Lastly, WSI's "continuing jurisdiction" statute (found at North Dakota Century Code §65-05-04) permits WSI the ability to review an erroneous adjudication within the system at any time, and correct it.

This concludes my testimony. I am happy to answer any questions that you may have.