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2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1302

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1302

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 28, 2003

Tape Number	Side A	Side B	Meter #
4		X	2332-4932
Committee Clerk Signature <i>Elizabeth R. Pfeiffer</i>			

Minutes: **CHAIR KEISER**: Opened hearing on HB 1302

GLENN BALTRUSCH: Supports with written testimony.

REP. KEISER: Where has the conflict come in between the doctors and the Bureau. Baltrusch said the Bureau has declined many claims. They do not look at the evidence. Therapies are often denied if the Bureau does not think it is doing any good.

REP. KASPER asked Baltrusch to compare decisions by the Bureau doctors with his own physicians. Baltrusch said he believes the patient should be first regardless of who is paying and he does not feel that happens when he has to go to the Bureau physicians.

TIM EFFERTZ: Said this bill would have helped him earlier. The Bureau is bound by rules. They are the messengers of the Legislature, but take the heat for the rules. However, if you have an avenue to go through the District Courts and the courts feel the claim is frivolous, then you have to pay the WCB's court fees.

DAVE KIMNITZ (ND AFL-CIO): Supports

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House Industry, Business and Labor Committee

Bill/Resolution Number 1302

Hearing Date January 28, 2003

EVAN MANDIGO (WCB): Opposes with written testimony.

MARV SKAR (E.W. Wylie): This would cost the companies. If you allow the employees to choose and then switch doctors when they do not get the answer they want, the employers end up paying more. And if you are a company on the border, you have out-of-state employees and they go to doctors, for example, in Minneapolis.

JODI BJORNSON (WBC): Opposes with written testimony.

DALE ANDERSON (GNDA): Opposes with written testimony.

VICE CHAIR SEVERSON: Closed hearing on HB 1302.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1302

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/29/03

Tape Number	Side A	Side B	Meter #
2		x	38.9-42.0
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** called for committee work on HB 1302.

Rep. Severson moved a Do Not Pass.

Rep. Klein seconded the motion.

Rep. Ekstrom: For the record, I've been working with the Bureau with regard to independent medical examiners. I can't support this bill in its present form. These issues do need to be addressed but I agree with Chairman Keiser and Rep. Klein that passage of this bill as it currently stands would set WCB back several years.

The roll call vote results for a **Do Not Pass** were: 11-2-1.

P

FISCAL NOTE
Requested by Legislative Council
01/14/2003

Bill/Resolution No.: HB 1302

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.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

**NORTH DAKOTA WORKERS COMPENSATION
2003 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION**

BILL DESCRIPTION: Claims Appeals/Medical Care/Jurisdiction

BILL NO: HB 1302

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, together with its actuary, Glenn Evans of Pacific Actuarial Consultants, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed bill:

- Provides for appeals directly to district court, bypassing the administrative hearing process.
- Limits NDWC's continuing jurisdiction over claims properly filed.
- Eliminates NDWC's ability to direct care and utilize preferred providers and managed care programs.
- Requires independent medical evaluations to be conducted by a medical specialist in the employee's state of residence.
- Creates a presumption that the treating doctor is correct and would require NDWC to prove otherwise through the administrative hearing process.
- Allows for workers compensation jury trials at the district court level with de novo review.

FISCAL IMPACT: HB 1302 will reverse many of the legislative changes that were adopted in the early 1990's, particularly those dealing with medical and legal cost containment. We believe that the legislative changes from that period played an important role in NDWC's success in controlling workers' compensation losses in the State. Thus, some or all of those prior gains could be reversed if the proposed legislation passes. It is anticipated that the proposed bill will have a substantial increase in medical, legal,

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and administrative costs.

Rate Level Impact: The similarity between the changes proposed under HB 1302 and the environment in which NDWC operated during the late 1980's and early 1990's provided us a way to quantify, at least approximately, the potential rate level impact of the proposed legislation. Medical costs, when measured in relation to payroll, were more than 45% higher during the pre-reform years than the post-reform years. We believe that the historical comparison demonstrates the likelihood that HB 1302 will increase costs, possibly by a significant amount. However, we do not mean to suggest that passage of the bill will necessarily result in a medical cost increase of 45%. Some of the cost savings can be attributed to a variety of other factors including more effective safety programs, increased fraud control efforts, improved retraining and return to work programs, and streamlined claims procedures. For each 10% increase in medical costs, the corresponding rate level increase is approximately 4.8%. If medical costs increase in the range of 10% to 30%, the corresponding rate level increase would be approximately 4.8% to 14.4%.

Reserve Level Impact: Data limitations certainly prevent us from attempting to develop a formal estimate of the potential impact the proposed legislation will have on reserve levels. However, passage of HB 1302 would likely generate the need for a substantial reserve increase because the proposed changes would apply to all open claims.

DATE: January 22, 2003

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

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

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

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

Name:	John Halvorson	Agency:	NDWC
Phone Number:	328-3760	Date Prepared:	01/22/2003

Date: 1/29/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1302

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Severson Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelser	✓		Rep.Boe	✓	
Rep.Severson, Vice-Chair	✓		Rep.Ekstrom		✓
Rep.Dosch			Rep.Thorpe	✓	✓
Rep. Froseth	✓		Rep. Zaiser	✓	
Rep. Johnson	✓				
Rep.Kasper	✓				
Rep. Klein	✓				
Rep. Nottlestad	✓				
Rep. Ruby	✓				
Rep. Troman	✓				

Total (Yes) 11 No 2

Absent 1

Floor Assignment Severson

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

REPORT OF STANDING COMMITTEE (410)
January 30, 2003 10:23 a.m.

Module No: HR-18-1332
Carrier: Severson
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1302: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)
recommends **DO NOT PASS** (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING).
HB 1302 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

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HR-18-1332

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2003 TESTIMONY

HB 1302

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2003 HOUSE BILLS 1302, 1304, 1317, 1370 & 1455

Fifty-eighth Legislative Assembly
Before the House Industry Business and Labor Committee
Evan Mandigo, Member
North Dakota Workers Compensation Board of Directors
January 28, 2003

Mr. Chairman, Members of the Committee:

My name is Evan Mandigo. I am a member of the Board of Directors of North Dakota Workers Compensation. It has been my pleasure to serve on the Board since 1998.

As each legislative session approaches, the Board, along with the staff of NDWC, carefully considers the legislative package ultimately presented to the Legislative Assembly. The process is thorough, analyzing all aspects of NDWC's operations. We believe the proposed legislation presented to this Committee last week represents the legislation that will allow us to improve and provide a system that ensures adequate benefits to our employees at a reasonable cost to employers.

During the legislative session, the Board meets frequently to discuss and evaluate other proposed legislation. The Board has carefully evaluated the legislation before you today and unanimously opposes House Bill No.'s 1302, 1304, 1317, and 1455. We are taking a neutral position on House Bill 1370.

The Executive Staff of NDWC will address the specific concerns we have with the bills we oppose, and provide further information to you regarding House Bill No. 1370. On behalf of the Board of Directors, I respectfully request this Committee recommend a "do not pass" on House Bill No.'s 1302, 1304, 1317, and 1455.

2003 House Bill No. 1302
58th Legislative Assembly of North Dakota
Testimony before the House Industry, Business, and Labor Committee
Presented By: Jodi Bjornson
Vice President of Legal Services
North Dakota Workers Compensation
January 28, 2003

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson and I am Vice President of Legal Services at North Dakota Workers Compensation (NDWC). I am here to testify in opposition to 2003 House Bill No. 1302. The Workers Compensation Board of Directors unanimously opposes this bill. I will briefly address the main concerns with each section of this bill.

Sections 1 and 3 of this bill provides for an appeal of an administrative order directly to district court, allowing an appealing party to forego an administrative hearing prior to a district court appeal. **Section 7** would provide for de novo review by the district court, allowing for the introduction of new evidence and a full-blown jury trial on workers' compensation matters at the district court level.

Under current law, the district court reviews a Workers Compensation decision to determine whether a reasoning mind could come to the same conclusions as NDWC did based upon the evidence. A direct appeal to district court as well as de novo will create additional burden on the court system, increase litigation and associated costs, and lengthen and complicate the appeal process.

Section 2 attempts to provide for the recovery of attorneys' fees if an injured worker prevails at the district court level. This will allow a claimant to recover attorneys' fees without first seeking the assistance of the Office of Independent Review to attempt to resolve a dispute, as current law requires. The Office of Independent Review is

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intended to reduce unnecessary attorney involvement and litigation. This amendment would serve to negate this process.

Section 4 mandates that, absent fraud, NDWC may not deny, at a later date, the occurrence of any earlier determined compensable injury. The proposed amendment would prohibit the correction of a later discovered error. The ability to correct errors is a necessary safeguard in any workers compensation system. Absent fraud, the proposed amendment would allow for the absurd result of the continued payment of wrongly awarded benefits.

Section 5 would allow an injured worker to change physicians at any time and without pre-authorization. NDWC provides medical case management services to injured workers. It is critical that we have the ability to communicate with the providers with respect to medical needs and return to work issues. An established primary physician is key to the success of these services.

This amendment would create significant barriers to the effectiveness of our return to work case managers, physically located at many of North Dakota's larger medical facilities. This program has been very effective in not only bringing about an earlier return to work, but also in increasing communication and understanding of all parties. We anticipate this amendment would increase disability and rehabilitation costs, as well as a prolonged disruption in an employee's ability to engage in an occupation.

Furthermore, we believe this amendment will eliminate the ability of employers in NDWC's safety program to designate specialized medical providers to treat occupational injuries. Designated medical providers are crucial to the success of our safety programs.

Finally, **Section 5** would require NDWC to choose a medical specialist in the employee's state of residence to conduct an independent medical evaluation, if such a specialist is available. This amendment imposes an impractical and unnecessary

burden on NDWC and will only prolong the process of obtaining a physician to conduct an independent medical evaluation. In a state of our size, it is difficult to secure an in-state physician to conduct an independent medical examination. There are a limited number of specialized providers, and physicians are reluctant to conduct an independent medical examination that may render an opinion adverse to that of a colleague's. Depending upon the location of the injured worker, the closest and most appropriate physician for an independent medical evaluation may be located out-of-state.

Section 6 relates to managed care decisions and creates a presumption that the treating physician is correct. This amendment would require NDWC to prove otherwise through the administrative hearing process. Creating a presumption that the treating physician is always correct in treatment decisions would essentially override our managed care program, which is in place to help ensure procedures are not inappropriately or unnecessarily recommended and the treatment is related to the work injury. Section 65-02-20 already provides an appeal process for managed care decisions.

Our actuary projects the fiscal impact of HB 1302 would be a substantial increase in medical, legal, and administrative costs. An increase in medical costs of 10-30%, will produce a premium rate level increase of 4.8-14.4%. Because the proposed changes would apply to all open claims (**Section 8**), the passage of HB 1302 would likely generate the need for a substantial reserve increase.

Due to the issues set forth above, NDWC strongly urges a recommendation of "**DO NOT PASS**" on this bill.

Thank you for your consideration. At this time, I would be happy to answer any questions you may have.

HOUSE BILL NO. 1302
TESTIMONY BEFORE THE HOUSE INDUSTRY, BUSINESS,
AND LABOR COMMITTEE
JANUARY 28, 2003

Mr. Chairman, Members of the IBL Committee

First, I want to thank Rep. Dekrey for sponsoring HB 1302 and putting it before this august committee for hearing. Thank you Rep. Dekrey,

My name is Glen E. Baltrusch and I'm a disabled employee who survived an over-the-road tractor-trailer accident on February 16, 1978. I am also a voter of this great state of North Dakota. I am not a paid lobbyist; nor am I a paid state employee who lobbys this grand legislative body and proposes legislation against the citizens of North Dakota to justify its own existence.

I am here today to testify for your support and passage of House Bill No. 1302. While the North Dakota Workers Compensation Bureau opposes House Bill No. 1302, it should have this legislative body seeing red flags flying all over the place and I'll tell you why as we go through the creation and enactment of a new section to chapter 65-05, and also amends and reenacts six (6) sections of chapter 65 of the North

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Dakota Century Code.

Section 1. allows for an appeal of an erroneous decision by the North Dakota Workers Compensation to be heard in the district court. This amendment reduces the time frame of adjudication proceedings a minimum of ninety (90) days, and would have no fiscal impact.

Section 2. only adds new language to comply with the amendments of House Bill No. 1302 and would have no fiscal impact.

Section 3. allows an employer to appeal an erroneous decision by the bureau to the district court. This is the same amendment provided for the employer as provided in Section 1. for an employee. This amendment reduces the time frame of adjudication proceedings a minimum of ninety (90) days, and would have no fiscal impact.

Section 4. protects employers as well as employees' and is an important component of House Bill No. 1302, as it prevents fraud by the workers compensation bureau upon unsuspecting employers, health care providers, and employees'. This amendment denies an unsuspecting employer from being charged as an injury claim when the injury was from a previous accident. It also prevents

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an employee from being charged medical costs that are related to the injury personally, which the bureau is required by statute to make payment for. This amendment does not remove continuing jurisdiction of the bureau but holds it accountable for its responsibility and obligation by statute as required. This amendment would have no fiscal impact unless the bureau has been fraudulently denying legitimate claims, or committing fraud against employees.

Section 5, provides the fundamental right of a person to select, choose, and continue to have that individuals personal doctor or physician to provide the care required for any injury or disease incurred by that person, just as every legislator and citizen of this state presently does, even our citizens whom are receiving care by a HMO. North Dakota Workers Compensation Bureau shall not mandate my healthcare or that of any citizen of this state unless it shall be liable for malpractice.

The amendment to subsection 3 of section 5 requires the bureau to select medical specialists within the state of residence when the bureau demands an independent medical evaluation if available. While North Dakota has a number of medical specialists whom are knowledgeable in their fields of study, they are qualified to perform any task required of them and if the problem requires a medi

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cal expert or expertise, that patient may be referred for further evaluation.

The amendments to this section provide the same professional care that a person receives for any injury or disease outside the course of employment. There would be no fiscal impact unless the bureau has been committing fraud.

Section 6. creates a new section to chapter 65-05 of the North Dakota Century Code and applies to disputed treatment. This amendment is self-explanatory and is relative to the health care that all of us receive. The presumption that the medical care by our health care provider is correct, and if the patient objects to the health care determined by the bureau to be necessary and appropriate, the bureau has the burden of proving otherwise. This amendment may have a small fiscal impact as it provides for required medical services that the North Dakota Workers Compensation Bureau currently denies to all injured employees in violation of authority and statute in many cases.

Section 7. allows for de novo appeal in the district court and may be by jury if an employer or employee is wronged by North Dakota Workers Compensation Bureau. Mr. Chairman, Members of the Committee, the word

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"de novo" is defined as "anew", meaning that an employer as well as an employee may have the court review all of the facts in a case, not solely on the narrow scope of what the bureau wants the court to review and is limited on what it can review. Presently, the district court can only review the record transmitted from the bureau and questions of law; not the facts of the case. No fiscal impact unless bureau is deceitful.

Mr. Chairman, Members of the Committee, I know the bureau is going to oppose House Bill No. 1302; but when a governmental entity opposes a person's right to have your personal physician for medical care; opposes the medical care provided by your physician; opposes medical specialists in this state of ours; demands its ability to manipulate benefits at will; and opposes the constitutional right of access to our courts and due process of law to the citizens of North Dakota, there is a severe problem of an adversarial governmental agency that must be brought in check. The afore mentioned opposition should send red flags up everywhere. We have a major problem. House Bill No. 1302 helps clean-up problems with the bureau, and has no fiscal impact unless the bureau has abused its authority by "malfeasance" or "mens rea" or "deceit".

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Mr. Chairman, Members of the Committee, the citizens of North Dakota and myself respectfully requests a "DO PASS" on House Bill No. 1302.

Thank you for your time and consideration.

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10/3/03
Date



**STATEMENT BY DALE O. ANDERSON, PRESIDENT, GNDA, REGARDING
HB 1302, THE NORTH DAKOTA HOUSE BUSINESS INDUSTRY AND
LABOR COMMITTEE, JANUARY 28, 2003.**

Chairman Kelser and members of the House Industry, Business and Labor Committee. I am Dale O. Anderson, President, GNDA, North Dakota State Chamber of Commerce. Thank you for this opportunity to provide testimony in opposition of HB 1302 regarding workers' compensation health care decisions and appeals.

The Greater North Dakota Association is the voice for business and principal advocate for positive change for North Dakota. The organization's membership is an economic and geographic cross section of North Dakota's private sector, including statewide associations and local chambers of commerce, development organizations and convention and visitors associations and public sector organizations. GNDA is governed by a Board of Directors elected by our membership. The GNDA Board Chairman is Dr. Jay Leitch, Dean, College of Business Administration, NDSU, Fargo.

The North Dakota business community has been an active partner with the North Dakota Legislature in making sound improvements to the North Dakota Workers Compensation during the past decade. Any business person can attest to the difficulties created for employers by the current insurance market. We are pleased that the North Dakota Workers Compensation has been able to maintain premium rates and increase benefits. As I meet with business groups across the state, the Workers Compensation Bureau receives high grades for constituency service.

Box 2639 • 2000 Schafer St. • Bismarck, ND 58502 • (701) 222-0929 • Fax: (701) 222-1611 • 1-800-382-1405 • gnda@gnda.com • web site: www.gnda.com

North Dakota's State Chamber of Commerce

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We are concerned about the economic impact of HB 1302. We believe it undoes a lot of the medical cost containment that has been developed over the years.

Thank you Chairman Kelser and members of the House Industry, Business and Labor Committee for this opportunity to discuss the business community's position on HB 1302. We urge a do not pass on HB 1302. I welcome your questions.

The following organizations also oppose House Bill 1302:

**Automobile Dealers Association - Bob Lamp
Bismarck-Mandan Chamber of Commerce - Dave MacIver
Grocer's Association - Tom Woodmansee
Implement Dealers Association - Implement Dealers
Petroleum Council - Ron Ness
Retail/Petroleum Marketers Association - Russell Hanson**

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10/3/03
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