

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2167

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanna Hall
Operator's Signature

10/17/03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2167

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2167

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-13-03

Tape Number	Side A	Side B	Meter #
1 & 2		xx	1250 tape 1 side B 945 tape 2 side A
Committee Clerk Signature <i>Lisa VanBerkum</i>			

Minutes: Chairman Mutch opened the hearing on SB 2167 relating to the consideration of after-acquired medical evidence in workers' compensation claims.

Senator Lyson introduced the bill.

Testimony in support of SB 2167

Clayton Natwick, father of Aaron Natwick, spoke in support of this bill. He testified that his son had been injured on a job site of a drilling rig on 10-16-98. His son was denied a claim because an MRI showed nothing wrong with Aaron's back. This was done in Minot at Trinity Hospital immediately following the accident. Clayton stated that the MRI was taken of the low section of the back, and the injury was to the middle section of the back. Aaron Natwick then had 30 days to appeal the denial upon further medical evidence. He had no more evidence as the MRI was taken of the wrong area of the back. By the time they got a lawyer the 30 period had expired. They went to court in Dickinson and was denied again. Worker's Compensation paid the client

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2067

Hearing Date 1-13-03

\$14,000 on 1-10-03. Indian Health Services paid the other medical bills as Aaron had 3 ruptured discs in his middle back and had to have a rib removed, his lung deflated and he was in a body cast for 6 months. The MRI done in Bismarck showed that Aaron did have a back injury and would need surgery. Clayton Natwick stated that his son fell into the cracks of the Worker's Compensation system and this bill would help prevent other's from doing the same.

Senator Heitkamp asks Clayton why this bill would not help his son?

Clayton replied that the time had lapsed and he had accepted the \$14,000 settlement with Workers' Compensation on 1-10-03.

Senator Mutch questions how he hurt himself at work.

Clayton suggested that his son explain. Aaron Natwick addresses the committee. He explained that he was unloading 90 lb. casing guns used to perforate and chevs used on the rig. Aaron explains that he was terminated without notice.

Senator Espgaard asks if Aaron had ever hurt his back before or after the accident.

Aaron replied that he had one cervical sprain in 1994. Aaron testifies that he has been unable to work for 4 years.

Senator Espgaard asks if he accepted the settlement from Workers' Compensation.

Aaron said he had no choice, it was either take it or leave it.

Senator Krebsbach asks Aaron if he is receiving disability or social security.

Clayton asks to interject. He states that his son is too young to receive social security and falls through the cracks with disability. Aaron is supported completely by his parents. He lives with his mother and goes to Clayton for money.

Dave Kemnitz of the NDAFL-CIO speaks in support of the bill. He is a lobbyist for workers.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

Date

Page 3

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2067

Hearing Date 1-13-03

He stated that the testimony of Aaron Natwick was very graphic and descriptive and should make it easy to fix the cracks in the system. He feels that Workers' Compensation should be held to a higher bar.

Senator Every asks Dave how they arrived at a time limit of 4 years rather than 30 days.

Dave explained that a few years ago there was no time limit.

Senator Mutch asks if Dave feels there should be any limitation of time on filing a claim.

Dave explained that there needs to be some kind of adjustment.

Clayton Natwick interjects again. He explains that had Aaron not had IHS he wouldn't have been able to get any medical treatment.

Opposing testimony

Brent Edison, Executive Director & CEO North Dakota Workers Compensation testified in opposition to SB 2167. See attached testimony.

Senator Nething asks Brent Edison how many claims have been rejected for failure to provide enough medical evidence.

Brent Edison states that appx. 20,000 claims per year and the denial rate was 7 or 8%.

He stated that they don't have the data to give them regarding claims like Aaron's and how many were denied.

Senator Nething stated that it was very important that the committee have information regarding the statistics of denied cases.

Brent Edison said he would try to get the information.

Senator Mutch asks about the \$14,000 settlement.

Brent Edison explains that he is not permitted by law to discuss Aaron's case.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dan Hall
Operator's Signature

10/17/03
Date

Page 4

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2067

Hearing Date 1-13-03

Senator Heitkamp states that Brent Edison's inability to discuss Aaron Natwick's case put the committee at a big disadvantage. Senator Heitkamp comments that there used to be a process of appealing a case. He states that Aaron's life is very important. He stated that the \$14,000 settlement raised a red flag to him. End tape. Resume on tape #2, Side A.

There is discussion on the limitations placed in the past on appealing a denied case.

The hearing is closed. No Action is taken.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2167

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 02-10-03

Tape Number	Side A	Side B	Meter #
1		xxx	5000
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Vice Chairman Klein opened the discussion on SB 2167. Senator Mutch was absent.

SB 2167 relates to the consideration of after-acquired medical evidence in workers' compensation claims.

There was brief discussion among the committee. Senator Krebsbach proposed amendments. See attached.

Senator Krebsbach moved to AMEND. Senator Nething seconded.

Roll Call Vote: 6 yes. 0 no. 1 absent.

Senator Krebsbach moved a DO PASS AS AMENDED. Senator Nething seconded.

Roll Call Vote: 6 yes. 0 no. 1 absent.

Carrier: Senator Krebsbach.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

FISCAL NOTE
Requested by Legislative Council
02/11/2003

Amendment to: SB 2167

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: Legislative Council Study of After Acquired Medical Evidence

BILL NO: Engrossed SB 2167

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 engrossed bill allows legislative council to consider studying the equity of the current system for how North Dakota Workers Compensation treats after acquired medical evidence in determining an injured worker's eligibility for benefits.

FISCAL IMPACT: No fiscal impact on NDWC is anticipated.

DATE: February 12, 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.*

see narrative

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.*

see narrative

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

Date

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:	02/13/2003

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Halvorson
Operator's Signature

02/17/03
Date

FISCAL NOTE
Requested by Legislative Council
01/08/2003

Bill/Resolution No.: SB 2167

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: After Acquired Medical Evidence

BILL NO: SB 2167

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 permits claims to be reopened based on "after acquired" medical evidence.

FISCAL IMPACT: Not quantifiable. We do not have sufficient information to evaluate the impact of the proposed bill. However, the legislation will likely permit the reopening of a potentially significant number of claims from prior periods as well as claims arising in future periods. NDWC anticipates administrative and legal related costs to increase. Thus, rate and reserve levels will increase accordingly.

DATE: January 10, 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.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

Date

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:	01/10/2003

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Halvorson
Operator's Signature

01/17/03
Date

30067.0101
Title.0200

Prepared by the Legislative Council staff for
Senator Krebsbach
February 4, 2003

JK
2-10-03

PROPOSED AMENDMENTS TO SENATE BILL NO. 2167

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the workers compensation bureau's treatment of after-acquired medical evidence."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. LEGISLATIVE COUNCIL STUDY - WORKERS
COMPENSATION BUREAU TREATMENT OF AFTER-ACQUIRED MEDICAL
EVIDENCE.** During the 2003-04 interim, the legislative council shall consider studying the equity of the current system for how the workers compensation bureau treats after-acquired medical evidence in determining an injured worker's eligibility for benefits. If the study is selected by the legislative council, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Page No. 1

30067.0101

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Ball
Operator's Signature

10/17/03
Date

Date: 2-10-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number 30067.0101

Action Taken Adopt Amendments

Motion Made By Krebsbach Seconded By Nething

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Nething	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	A				

Total (Yes) 6 No 0

Absent 1

Floor Assignment _____

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

Date: 2-10-03
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

Senate _____ Committee _____

☐ Check here for Conference Committee

Legislative Council Amendment Number 30067.0101

Action Taken DO PASS AS Amended

Motion Made By Krebsbach Seconded By Netthing

Senators	Yes	No	Senators	Yes	No
Sen. Jerry Klein, Vice Chairman	X				
Sen. Karen Krebsbach	X				
Sen. Dave Netthing	X				
Sen. Joel Heitkamp	X				
Sen. Mike Every	X				
Sen. Duane Espegard	X				
Sen. Duane Mutch, Chairman	A				

Total (Yes) 6 No 0

Absent 1

Floor Assignment Krebsbach

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

REPORT OF STANDING COMMITTEE (410)
February 10, 2003 3:36 p.m.

Module No: SR-25-2178
Carrier: Krebsbach
Insert LC: 30067.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2167: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2167 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to provide for a legislative council study of the workers compensation bureau's treatment of after-acquired medical evidence.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. LEGISLATIVE COUNCIL STUDY - WORKERS COMPENSATION BUREAU TREATMENT OF AFTER-ACQUIRED MEDICAL EVIDENCE. During the 2003-04 Interim, the legislative council shall consider studying the equity of the current system for how the workers compensation bureau treats after-acquired medical evidence in determining an injured worker's eligibility for benefits. If the study is selected by the legislative council, the legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2167

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hallwick
Operator's Signature

10/17/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2167

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 5, 2003

Tape Number	Side A	Side B	Meter #
1	x		17.3-end
Committee Clerk Signature <i>Judith Hammer</i>			

Minutes: **Chairman Keiser** opened the hearing on SB 2167.

Senator Lyson, District introduced SB 2167 at the request of a constituent who thinks that the time limits for response created problems.

Brent Edison, Executive Director of Workers Compensation Bureau, offered testimony neither in support of or in opposition to SB 2167. He stated that the Bureau was opposed to the bill in its original version due to possibilities of litigation. However, now that it has been amended into a study bill, the Bureau is no longer in opposition and has no objections to studying the equity of how Workers Comp handles claims that involve after acquired medical evidence.

Chairman Keiser: What is *after acquired medical evidence*?

Edison: That was one of the problems, it wasn't clearly defined in the bill. After acquired medical evidence is information brought forth after denial of a claim by Workers Comp. Now whether that evidence wasn't available technologically (say an MRI) or if it is evidence contained within a letter from a physician and produced within four years after a claim denial.

Page 2
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2167
Hearing Date March 5, 2003

Even if the case had gone through the courts and been basically decided, it could be reopened again and examined to see if it was compensable.

Rep. Kasper: Under current policy does WCB turn down requests from injured workers if they feel they have additional information to bring forth or is something you'll look at if it is brought in?

Edison: An existing provision allows continuing jurisdiction to reopen claims for certain reasons. One reason is additional information. I don't have statistics on that. Claims are declared closed after four years unless the injury is shown to be the sole cause of the problem. That is frequently used to reopen claims.

Rep. Kasper: Is it statutory to close a claim after four years or is it policy?

Edison: If no bills are submitted for payment, no benefits etc. are paid, no time lost, the presumption in statute is that the claim is closed.

Rep. Kasper: In the last five years, how many circumstances do you recall that relate to this particular bill?

Edison: We categorize according to data fields. One is no medical information, and in a year there were 60 claims for that. Another field of 900 claims references analyst narrative. One concern we had with the original bill is that it referred to over a thousand claims a year. potentially that could have reopened 1000 claims.

Rep. Ekstrom: How does this mesh with ongoing treatments and evaluations?

Edison: We're talking about denied claims here in this study. As currently written, this study, a claim is accepted, the injury is resolved and then after the fact, the claim is denied, a decision is made and litigated and concluded. Someone could come forth with a doctor's letter after that and

Deanne Hall
Operator's Signature

10/17/03
Date

Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2167

Hearing Date March 5, 2003

that could be considered after acquired medical evidence. Conceivably that could be within the scope of the study. Claims are subject to re-review. There could be benefits denied that are looked at again also. If someone is discontinued on wage loss, disability benefits, they could reapply based on change of medical condition.

Rep. Ekstrom: I hear complaints about the independent medical exams, professionals you hire, the fact that most of them are out of state. Do you see the scope of this getting into kinds of discussion about the independent medical exam process?

Edison: We do retain doctors in North Dakota and we do go out of state, mostly to Mayo Clinic. I don't think this bill addresses that issue.

Rep. Dosch: Do I understand that you have provisions in policy to handle reconsideration claims and that this bill was brought in because of one individual?

Edison: Yes, that's what Senator Lyson stated.

Rep. Thorpe: What effect does the four years have on WCB's review process? Does a worker have any recourse beyond the four years?

Edison: The concern with the four years is that the timelines that WCB has for people to present evidence and request reconsideration are consistent with the timelines administrative agencies practice and pretty typical of deadlines people have to deal with agency action. In four years we could consider evidence from a variety of physicians, letters, opinions and we could present that throughout the entire process and there'd always be uncertainty on whether that dispute was finalized. If an injured worker went through all the steps I've outlined, he can still request that his claim be reopened under Section 65-05-04. That section is used to consider difficult claims and to resolve them.

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hall
Operator's Signature

10/17/03
Date

Page 4
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2167
Hearing Date March 5, 2003

Dave Kemnitz, President of the North Dakota AFL-CIO, appeared to offer oral testimony in support of SB 2167. This is an opportunity for this body to take a closer look at all the various players impacted by after acquired medical evidence. Physical injuries can be evident, treated and made whole, but internal organ injuries can result from those physical injuries. Chemical exposure can cause damage that is not evident and quantified until years later. I suggest that a comparison of our system to the health care system in Canada be considered. I'm surprised the insurers are not here today. Let's treat our citizens fairly. A study should bring together Workers Compensation, claimants, private insurers and Human Services (who represent the uninsured) so that as much input as possible is considered and so that this study could have some real merit. As there was no one else present to testify in either support of opposition to SB 2167, the hearing was closed.

Rep. Dosch moved a Do Not Pass. He stated that there are so many studies being proposed, issues for interim studies have to be prioritized.

Rep. Klein seconded the motion.

Rep. Thorpe stated that he will resist the Do Not Pass motion. He thinks this is a good area to study, that the cause seems encompassing enough to be considered.

Rep. Ekstrom also resists the Do Not Pass. The business of ongoing evaluation and after acquired medical information affects so many claimants, not just the one constituent that inspired Senator Lyson to introduce this bill.

Rep. Zaiser also resists the Do Not Pass, stating that it is an important area to study.

Page 5
House Industry, Business and Labor Committee
Bill/Resolution Number SB 2167
Hearing Date March 5, 2003

Rep. Ruby: Good arguments were presented but I'd rather see a bill that defines the problem cohesively, offers a solution and lets us decide if we ought to require WCB to do it. A good bill and testimony would get the players to the table.

Rep. Zaiser: Could this be hog housed, fine-tuned in such a way to make this workable within this legislative session?

Rep. Thorpe: The Senate voted unanimously on SB 2167.

Chairman Keiser: I do agree with several of the comments I'm hearing. If we are have a package of Workers Comp bills to study in the interim, this might be a good point to take a close look at. I thank Labor in their participation in crafting current Workers Comp policy. We are the lowest paying premium state in the whole country. And we'll be increasing the benefits side because we've passed some good legislation. There are 4-5 cornerstones that created ND's program that is working. One beneficial thing was removing attorneys from the process. A second point was changing the point at which files could be closed. There were cases that dragged on for twenty years, the four year limit brings closure. All this having been said, though, I have to support the motion for a Do Not Pass at this time.

Results of the roll call vote were: 10-4-0.

Rep. Dosch will carry this on the floor.

Date: 3/ 5 /03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2167

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do NOT Pass

Motion Made By

Dosch

Seconded By

Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe		✓
Vice-Chair Severson	✓		Ekstrom		✓
Dosch	✓		Thorpe		✓
Froseth	✓		Zaiser		✓
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tleman	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment

Dosch

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Operator's Signature

Deanna Hall

Date

10/17/03

REPORT OF STANDING COMMITTEE (410)
March 5, 2003 11:57 a.m.

Module No: HR-39-3943
Carrier: Dosch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
SB 2167, as engrossed: Industry, Business and Labor Committee (Rep. Kelser, Chairman) recommends **DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2167 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-39-3943

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanne Hollister
Operator's Signature

10/17/03
Date

2003 TESTIMONY
SB 2167

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Deanna Hallwick
Operator's Signature

10/17/03
Date

**2003 Senate Bill No. 2167
Testimony before the Senate Industry, Business,
And Labor Committee
Presented by: Brent J. Edison
Executive Director & CEO
North Dakota Workers Compensation
January 10, 2003**

Mr. Chairman, Members of the Committee:

My name is Brent Edison and I am the Executive Director and CEO of North Dakota Workers Compensation. On behalf of the NDWC Board of Directors, I am here to testify in opposition to 2003 Senate Bill No. 2167. This bill would require Workers Compensation to reopen a claim and reassess compensability based on an undefined standard of "after-acquired medical evidence". It also allows a worker to appeal a decision not to reopen a claim, as well as a four-year time frame to request reopening. I will briefly address the main problems with this bill.

Current law allows an injured worker one year from the date of injury to file a claim for benefits, and two years to file a claim in the case of a death. The injured worker has the burden of proving entitlement to benefits. NDWC works very hard to make sure that injured workers have adequate opportunities to present the information necessary to support their claims. This is evidenced by NDWC's denial rate of between seven and eight percent. In comparison, the industry average is nearly a 15 percent denial rate.

Currently, adequate safeguards are in place to review a decision to deny benefits. First, an injured worker may request reconsideration of an initial denial of benefits. If NDWC does not change its decision as a result of the request, the injured worker may then request a formal order be issued and an administrative hearing held. Moreover, an injured worker has the right to seek assistance from the Office of Independent Review to resolve disputes. At any of these stages in the appeal process, the injured worker has the opportunity to gather additional information, including medical evidence, to assist in proving entitlement to benefits.

If an injured worker fails to appeal or does not prevail in the administrative hearing, he or she can still request NDWC to reopen the claim under NDCC § 65-05-04. This provision allows NDWC to reopen a claim that had been previously determined to be final. Although there is no appeal from a decision not to reopen an issue, NDWC has demonstrated a willingness to reopen claims when warranted by the evidence.

This bill as proposed may dramatically alter the current structure and appeal process for North Dakota Workers Compensation. In effect, it would extend the statute of limitations to file a claim from one year to five years. It would also allow a worker to relitigate an issue that had previously been determined to be final under the law, including issues previously resolved in the courts. The anticipated cost to relitigate these issues would be significant. The typical cost to litigate a claim at the administrative hearing level is in excess of \$2,000. If the worker proceeds to the district court or to the Supreme Court, those costs would obviously be significantly higher. NDWC's costs to relitigate these claims would be paid by the Fund, regardless of the outcome of the additional litigation.

Another major concern is "after-acquired medical information" is not defined in this bill. Therefore, "after acquired medical information" could conceivably be information as simple as a statement from any physician indicating the medical problem is related to a work injury. There is no requirement that any after-acquired information be "new", or that it be objective evidence.

Given the due process protections afforded injured workers under existing law, including the right to reopen claims under Section 65-05-04, there is no need to burden the Workers Compensation Fund with the administrative and litigation costs associated with this bill. Accordingly, on behalf of the NDWC Board of Directors, I respectfully urge this Committee to vote do not pass on SB 2167.

Thank you for your consideration. If you have any further questions, I will be glad to answer them at this time.