

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2291

2005 SENATE JUDICIARY

SB 2291

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2291

Senate Judiciary Committee

☐ Conference Committee

Hearing Date January 26, 2005

Tape Number	Side A	Side B	Meter #
1	X		2750 - End
1		X	420-479
Committee Clerk Signature <i>Maria L. Solberg</i>			

Minutes: Relating to a claimants ability to appeal a workforce safety and insurance decision directly to the district court.

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Sen. Joel Heitkamp - Introduced the bill (meter 2750) I have come to you to provoke thought and to get some debate and discussion going in relationship with the appeals process at Work Force Safety Ins. It is a simple bill and should have a physical not that should have some cost savings by taking this step out of the process. Sited a fictitious case. This eliminate the middle process.

Sen. Traynor asked if **Sen Heitkamps** research has shown him that the WSI's process was a waste of time? Yes, the many that have come to me. You will hear that things are better and I don't dispute or verify that. I would like to see what happens.

Senator Syverson would they have the option of the process or going to court? Yes

Senator Triplett asked why he thought this bill was better then fixing the administrative hearing process if it was broken? We have tried to but as you go through the process you realize that time is an issue.

Sen. Trenbeath asked **Joel**, what this bill contemplates in your mind is to delete the appeals process as if it had gone against you. Yes. If that is the case then I am confused with the last half of line 11 and all of line 12, which seems to give direction to the District Court Judge on what standard of proof and what procedures to use. This is already laid out, it would be an appeal under the same standards if it had come from the office of administrative hearing. Yes. It is not the intent to go into it favoring one way or another. Do you have any statistics on what type of numbers we are talking here? No but I am sure Work Force Safety Does.

David Kemnitz, ND AFL-CIO (meter 3566) On behalf of C.A.R.E. (Concern Advocate for Rights of Employees) we are in favor of this bill. This bill came from of discussion from claimants coming to us. The language came from the LC. We told them what we want and they translate it to the best of their ability. The claimants come to us almost everyday, different people with different problems. CARE is a voluntary group. We tell them to focus their issues and present them. They came up with 13 issues, item 6 was that they should not have to be at the mercy of OIR. He reviewed some more of their issues.

Senator Triplett asked if we have an administrative process, why are we not focusing on fixing the problems in the administrative process instead of going this way. Mr. Kemnitz stated that the process as it is to frustrating. **Senator Triplett** responded that while she realizes this, does he think that they are not fixable. He replied, yes it is fixable-discussion (meter 4354) of Biased

Board Members. **Senator Hacker** stated that if the problem is with the board then why are we opening up for lawsuits in an already overcrowded court process?

Testimony in Opposition of the Bill:

Rob Forward - Staff Counsel for Workforce Safety & Insurance (meter 5000) Gave Testimony -

Att. 1. **Sen. Traynor** discussed the appeal process/paperwork in current system. **Senator Triplett** asked for a better explanation of the process of the independent review and OIR. (meter 6025). He referred to 4th page of his testimony. **Sen. Trenbeath** discussed standard of proof and standards for review. **Senator Triplett** asked cost effect of this process and what would the impact be if the claimant had an attorney by their side earlier. His response was the system works and if we made our process easier it would be problematic. The Senator responded that while you believe the process works, as you can see today, it doesn't work. Have you seen any opportunity today for improving that process, so that the claimants are less frustrated by it. He responded that the complaints are only one sided and our system does not buy into the "usual" process. You do not see any internal issues or problems with your structure that need improvement? No he responded.

Sen. Nelson discussed the workers view. They know their job, they do not know the WSI process and when they go in to meet you, they are alone and you have three people; a claims person, the interviewer and your legal staff. The claimant sits their with no other council. I would be scared to death. You know all the ropes and I do not! Discussion (meter 425).

Judge Gail Hagerty - South Central District Judge (meter 790) Testified - Attachment #2

Allen Hoberg, OAH - If the problem is with the administrative process then fix the process.

Senator John (Jack) T. Traynor, Chairman closed the Hearing

FISCAL NOTE
Requested by Legislative Council
01/21/2005

Bill/Resolution No.: SB 2291

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.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 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.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 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.*

WORKFORCE SAFETY & INSURANCE
2005 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Appeals directly to District Court

BILL NO: SB 2291

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

The proposed legislation provides for claimant appeals directly to district court.

FISCAL IMPACT: Not quantifiable. Direct appeals to District Court may result in longer dispute resolution timeframes and increased litigation costs. To the extent costs are increased, it will be factored into future premium levels. Bypassing the administrative hearing process and conducting evidentiary hearings at the District Court level will create additional burdens on the court system. The courts will see an increase in cases that may have otherwise been resolved more timely and cost-effectively under the current appeal process, whether at the informal or administrative hearing level.

DATE: January 23, 2005

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:	WSI
Phone Number:	328-3760	Date Prepared:	01/24/2005

Roll Call Vote #: /

Senate	Judiciary	Committee
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☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Not Pass*

Motion Made By Sen. Triplett Seconded By Sen. Trenbeath

[illegible]

Total (Yes) 56 No 0

Absent	0
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Floor Assignment Sen. Traynor

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

REPORT OF STANDING COMMITTEE (410)
January 26, 2005 2:37 p.m.

Module No: SR-17-1131
Carrier: Traynor
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2291: Judiciary Committee (Sen. Traynor, Chairman) recommends DO NOT PASS
(5 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2291 was placed on the
Eleventh order on the calendar.

2005 TESTIMONY

SB 2291

AH 1

2005 Senate Bill No. 2291
Testimony before the Senate Judiciary Committee
Presented by: Rob Forward, Staff Counsel
Workforce Safety and Insurance
January 26, 2005

Good morning, Mr. Chairman and members of the Committee:

My name is Rob Forward and I am staff counsel for Workforce Safety & Insurance (WSI). I am here to testify in opposition to SB 2291. The WSI Board of Directors voted to oppose this bill. WSI opposes for three major reasons: 1) It will lengthen the dispute resolution process, 2) It will delay the appeal process and potentially delay injured workers from receiving their benefits; and 3) It will increase litigation costs.

As you know, the purpose of any formal hearing process is to present a set of conflicting facts to someone who is not familiar with them so that an independent opinion can be rendered. The opinion of this individual may or may not resolve the issue. The purpose of this process is important in working to paint a more clear picture of exactly what the facts of the case conclude. WSI currently has a structured six step process beginning with a Notice of Decision and ending with the North Dakota Supreme Court.

Every decision WSI makes regarding the denial of benefits begins as an informal written notice of decision. If there is a disagreement on this decision, an informal internal appeal process is conducted where WSI attempts to resolve the dispute. If there is still a dispute after the informal review, a formal appeal may be filed with either the Office of Independent Review (OIR) or the Office of Administrative Hearings. OIR was established by the Legislature in 1995 to provide a no-cost assistance to workers attempting to resolve disputed issues on a claim. OIR staff help avoid costly and lengthy litigation by opening the lines of communication between all parties.

While they are not required to seek assistance from OIR, attorney fees will only be paid by WSI if the worker first seeks OIR's assistance and subsequently prevails on further appeal. If they skip OIR or are not satisfied with the outcome of the decision, they may appeal to a formal hearing that is held by the Office of Administrative Hearings (OAH) where an Administrative Law Judge is appointed. The Administrative Law Judge is an attorney, independent of WSI, who will hear the facts of the claim and make a recommendation on the outcome of the dispute. After this hearing, WSI's final administrative order is issued and at that point an appeal to District Court may be filed.

On an annual basis over the last five years WSI has seen an average of:

- 1,121 orders issued;
- 449 OIR requests;
- 201 administrative hearing requests --of which 97 are actually held;
- 17 District Court hearings;
- And, 11 Supreme Court hearings.

WSI Legal Data

FYE:	2000	2001	2002	2003	2004	AVG.
<i>Orders Issued</i>	1205	1159	1131	1045	1065	1121
<i>OIR Requests</i>	530	453	478	401	381	449
<i>OAH Requests</i>	226	184	212	213	170	201
<i>OAH Hearings Held</i>	117	89	74	98	104	97
<i>District Court Hearings</i>	26	12	19	8	21	17
<i>Supreme Court Hearings</i>	22	7	10	9	8	11

In short, while an average of 449 cases initially reached OIR, only 22 cases per year --one-tenth of one percent of total claims filed-- reached the district court level.

The change proposed in Senate Bill 2291 would be less efficient and more costly than the current system because it provides for bypassing the informal and administrative levels of the appeal process and instead allows for direct appeals to the district court.

Assuming only 50%, or approximately 225 cases, opt to appeal directly to district court instead of going through the appeal process, the number of disputes reaching the district court level would be almost a 14 fold increase.

Additionally, the burden on the district court system would lengthen the dispute resolution process because of the civil rules of discovery and the courts' busy calendars. And, it logically follows, that if the court system is slower than the current process, injured workers' benefits, should they prevail, would be substantially delayed. Also, under SB 2291, litigation costs would increase for all parties because attorneys would be involved much earlier in the dispute process and fewer cases would be resolved at the informal or administrative level. Ten years ago WSI paid \$1.1 million in fees to attorneys, last year \$224,000 was paid. Under this proposed legislation, the costs could again easily exceed \$1 million.

For these reasons WSI request a do not pass on SB 2291. I would be glad to answer any questions you might have.

1. Notice of Decision

If you receive a Notice of Decision, and you believe this decision is wrong, you must write to WSI within 30 days of the date the Notice was mailed to you, asking to have the decision reconsidered. Explain why you think the decision is wrong, the relief being sought, and any additional information you want WSI to consider. If you do request reconsideration, one of two things will happen next:

- If, after reviewing the additional information you provided, WSI agrees with you that its decision was wrong, WSI will reverse the Notice of Decision and award benefits
- If WSI does not agree that its decision was wrong, WSI will issue an administrative order further explaining the reasons for the decision.

2. Administrative Order

The administrative order either awards benefits or denies benefits and provides greater detailed facts and legal analysis. If you receive an order from WSI and you believe the decision is wrong, you have two choices.

- You can contact the Office of Independent Review within 30 days from the date the order was mailed to you. In your letter, explain why you think the decision is wrong or explain what other assistance you would like.
- If you choose not to seek the assistance of the Office of Independent Review, you can write to WSI and request a hearing. If you do not request assistance from the Office of Independent Review or request a hearing within 30 days from the date the order was mailed to you, the order becomes final and may not be appealed.

3. Office of Independent Review (OIR)

OIR provides no-cost assistance to workers attempting to resolve disputed issues on a claim. Advocates help avoid costly and lengthy litigation. The program opens the lines of communication between parties and offers an independent review of the claim. Advocates act on behalf of the worker and communicate with WSI staff.

OIR provides the following services:

- General information regarding workers' compensation processes
- An explanation of the basis of WSI's decision
- A review of the claim to identify factors that may justify reconsideration of the claim
- Possible resolutions (with the worker's input) of the dispute
- A letter outlining OIR's findings

4. Administrative Hearing

A hearing request must be made to WSI in writing, and you must explain why you disagree with WSI's decision. WSI's attorney will request that the Office of Administrative Hearings appoint an Administrative Law Judge (ALJ) to conduct a hearing. The Administrative Law Judge is an attorney, independent of WSI, who will hear the facts of your claim and make a recommendation to WSI on whether WSI's decision is correct. You may attend the hearing and testify, and you may also bring witnesses or other evidence you have which supports your claim. After the hearing, the ALJ will issue a recommended decision at which time WSI will conduct a review to ensure that the facts and the law support the decision. WSI will then issue a final order within 60 days.

5. District Court Appeal

If you disagree with a final decision from WSI after an administrative hearing, you may appeal to a North Dakota District Court. In an appeal to the District Court, the District Court judge will review the documents contained in WSI's file and make a determination as to whether WSI's findings are supported by the evidence and by the law. Testimony is not taken, but the judge may ask for additional information on the law. The judge will make a decision and enter judgment.

6. Supreme Court Appeal

If you disagree with the opinion of the District Court judge, you may file a written appeal with the clerk of the District Court for a North Dakota Supreme Court appeal. The Supreme Court reviews WSI's decision, not the decision of the District Court judge, and will ensure that it is in accordance with the law and supported by the facts of the case. The Supreme Court does not hear new evidence or listen to testimony of witnesses.

Attorney Fees:

A worker is not required to seek assistance from OIR. However, attorney fees will only be paid by WSI, up to the caps provided in the North Dakota Administrative Code, if the worker first seeks OIR's assistance and subsequently prevails on further appeal of an order.

Att #2

Testimony on Senate Bill 2291

Senate Judiciary Committee
by: Gail Hagerty, District Judge

Mr. Chairman, Members of the Committee:

I am Gail Hagerty. I'm the presiding judge for the South Central Judicial District. I am here to testify in opposition to Senate Bill 2291.

As you know, the number of trial judges in North Dakota has been reduced from 53 to 42 over a period of about 10 years. The caseloads have continued to increase. You won't be surprised to hear me say that the additional work this bill would add to our schedules would be a problem. There are ever increasing demands on the Court system.

I think legislators are pleased to hear the judges are working hard – but the fact is we are over-scheduled, if not over-worked. It's difficult to get time on a judge's schedule, and people have to wait longer than they'd like to have matters tried. This may cause additional problems for claimants who wish to have matters resolved.

The District Courts currently handle appeals from administrative decisions. When we receive those cases, a record has been made and we generally have a great deal of information available. We are able to identify the issues and use the information relevant to those issues in order to decide cases. In terms of numbers of workers' compensation cases that are appealed to District Court after the administrative process has been exhausted:

For the year 2003: 17 appeals to District Court

For the year 2004: 19 appeals to District Court

Of those cases, roughly a third were appealed to the Supreme Court. The numbers were:

2003: 5 appeals to Supreme Court

2004: 7 appeals to Supreme Court

If this legislation is the result of a concern about the way the administrative process is working, I would suggest the administrative process be fixed instead of sending cases to district court that shouldn't be in district court.