

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1063

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1063

**House Industry, Business and Labor Committee**

☐ Check here for Conference Committee

**Hearing Date:** January 26, 2009

**Recorder Job Number:** 7692

Committee Clerk Signature

*Ellen Detang*

**Chairman Keiser:** Opened the hearing on HB relating to the worker's compensation coverage for preexisting conditions & provide a report to legislative council.

Jennifer Clark~Legislative Council of North Dakota. Introduces HB 1063 involve repayment of benefits. Continues to explain the bill.

Chairman Keiser: Shares a case about a law enforcement officer.

Tim Wahlin~Chief of Injury Services with WSI. See testimony and amendment attachments.

Vice Chairman Kasper: The original fiscal note says no measurable impact for the 60 day, it make increase the cost. What caused you go from the 60 days back to the 30 days.

Wahlin: This came out of discussion with our board of directors.

Vice Chairman Kasper: What is the fiscal note impact area?

Wahlin: It is a nebulous area. What if's are so hard to quantify when we don't have measurable results. Medical expenses are what we are talking about in this particular case.

How big are they? One payment can be significant and then the other not.

Representative Ruby: Can you come up with any scenarios of situations of the unintended consequences, where the gray area is?

Wahlin: Gray areas that happen regularly are shoulders and knees.

Representative Nottestad: Let's get down to exact costs, how much has WSI recouped from injured workers because of the bill that we are putting in now that would change it?

Wahlin: I don't have figures.

Representative Nottestad: So it's not the huge catastrophic amount.

Wahlin: At this point, I suspect it's not. The concern is if we change how we do business, I hope we are not creating a loop hole.

Chairman Keiser: Even with the 60 days, we have the two provisions A & B below, one of our objectives is that manages these cases as effectively and efficiently as we can. WSI can always reduce their exposure in a medical claims case as much as reasonably possible. You have the authority already built in. Doesn't it give you the incentive to manage the case better when possible?

Wahlin: That correct.

Chairman Keiser: Number two, you made the comment that it could be a significant amount to the fund, to which I would say. When you deny the claim that becomes a real significant payment to the individual claimant.

Wahlin: That absolutely correct.

Chairman Keiser: So we are trying to create an opportunity for the claimant to have a level playing field. If we amend it, WSI will need a new fiscal note.

Representative Amerman: The officer didn't agree with your opinion from the Administrative hearing. They still would have the benefit under this? Do they still have this option?

Wahlin: That correct. Yes, it doesn't prevent you from challenging down the road, it handles our front liability is in respect to WSI.

Chairman Keiser: If this law were to pass as written, at 30 days the agency says this is not compensable, you can stop future compensation, but you would have to cover up the 30 days.

If WSI has to pay out a pretty good size bill it cost them, it significant if the employee has to pay it back.

At that point the claimant would still have the authority to go through the administrative law process and challenge that you were wrong.

Wahlin: That's correct.

Bill Shalhoob~North Dakota Chamber of Commerce. We support this bill. See testimony attachment.

Dave Kimmentz~President of the AFL-CIO. We support the bill. We ask that on page two, line 17, the three words "injured employees or" be removed. Don't put the claimant between the two grinders. Explains the reason why.

Sebald Vetter~C.A.R.E. I support HB 1063.

Sylvan Loegering~North Dakota Injured Workers Support Group. Commends the committee. I agree with Chairman Keiser, if WSI has to pay out a pretty good size bill, it significant it's catastrophic if the employee has to pay it back. This is the reality of the situation. I question the need from 60 day to 30 day amendment. I agree with the Mr. Kimmentz, take the injured employee out of the middle of the situation of the decision making process.

Anyone here to testify in opposition to HB 1063, neutral?

Closes the hearing on HB 1063.

Representative Thorpe: I would like to hear the committee's decision on Kimmentz's amendment. I think it should take it out.

Chairman Keiser: WSI injuries are different from regular injuries. WSI cover work related injuries. WSI cover the physical problem that is related to the accident. We put in here reasonably knows. There is a partnership in this situation between the employer, employee, and the state. Is we don't have this clause in here, what it does potentially, extends

dramatically the fraud component. You knew about and you didn't say anything and you should have said something. Should we be covering a medical condition that is a known condition, it's in the file.

**Representative Amerman: Motion to adopt the amendment to strike on page two on line 17 the injured employee or.**

**Representative Gruchalla: Seconded.**

Representative Amerman: When you mentioned fraud, fraud is still here. I don't know if leaving it in or out will make much difference. It's a good amendment.

Vice Chairman Kasper: Do you think that we have to keep the employee in the loop? On line 18 what Chairman Keiser said "reasonably should have known", so it's keeping that employee in the loop.

Representative Amerman: I agree, keeping the employee in the loop. The way the bill is written, WSI finds out that something that was done that they should have been liable for, the injured worker is going to get the notification.

**Takes the roll call for the amendment striking the "injured employee or".**

**Voting roll call for the amendment was 4 yea's, 7 nay's, 2 absent, motion failed.**

What are the wishes of the committee on HB 1063?

**Representative Nottestad: Moves a Do Pass.**

**Representative Schneider: Seconded.**

**Representative Ruby: I have a problem with the erosion of the issue.**

**Voting roll call was taken on HB 1063 with 10 yea's, 1 nay's, 2 absent. Reassignment was given to Representative Schneider from Representative Ruby.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/09/2009

Amendment to: HB 1063

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The proposed legislation outlines circumstances when the treatment of a pre-existing condition can be covered by WSI.

**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.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1063 with Senate Amendments

BILL DESCRIPTION: Pre-existing Conditions

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 outlines circumstances when the treatment of a pre-existing condition can be covered by WSI and provides that expenses incurred cannot be charged against the employer for purposes of experience rating.

FISCAL IMPACT: The proposed legislation will increase benefit costs in the State, but the potential increase is not anticipated to be material in relation to current premium rate and reserve levels. To the extent that costs increase, future rate levels will be adjusted accordingly.

DATE: March 8, 2009

**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.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	03/09/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
12/08/2008

Bill/Resolution No.: HB 1063

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The proposed legislation outlines circumstances when the treatment of a pre-existing condition can be covered by WSI.

**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.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1063

BILL DESCRIPTION: Pre-existing Conditions

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 outlines circumstances when the treatment of a pre-existing condition can be covered by WSI.

**FISCAL IMPACT:** The proposed legislation will increase benefit costs in the State, but the potential increase is not anticipated to be material in relation to current premium rate and reserve levels. To the extent that costs increase, future rate levels will be adjusted accordingly.

DATE: December 26, 2008

**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.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	12/26/2008

Date: Jan 26 - 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1063

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

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

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		1	Representative Amerman	1	
Vice Chairman		1	Representative Boe		
Representative Clark		1	Representative Gruchalla	1	
Representative N Johnson			Representative Schneider	1	
Representative Nottestad		1	Representative Thorpe	1	
Representative Ruby		1			
Representative Sukut		1			
Representative Vigesaa		1			

Total (Yes) 4 No 7

Absent 2

Floor Assignment \_\_\_\_\_

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

Date: Jan 26-2009  
Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1063

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

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

Motion Made By Nottestad Seconded By Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	1		Representative Amerman	1	
Vice Chairman <u>Kasper</u>	1		Representative Boe		
Representative Clark	1		Representative Gruchalla	1	
Representative N Johnson			Representative Schneider	1	
Representative Nottestad	1		Representative Thorpe	1	
Representative Ruby		1			
Representative Sukut	1				
Representative Vigasaa	1				

Total (Yes) 10 No 1

Absent 2

Floor Assignment Schneider

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

**REPORT OF STANDING COMMITTEE**

**HB 1063: Industry, Business and Labor Committee (Rep. Kelser, Chairman)**  
recommends **DO PASS** (10 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING). HB 1063  
was placed on the Eleventh order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1063

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1063

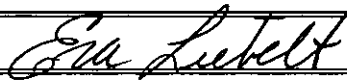
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10038

Committee Clerk Signature



Minutes:

Jennifer Clark, Workers Compensation Review Committee: We've done a little more organization here. The interesting part comes when we start talking about giving WSI the authority to ask for repayment or recouping WSI payment when made in error. We are going to prevent them from going back and asking for repayments for medical services provided in the first sixty days following that day of injury, the critical care period. Unless one of two things happens they can stop that sixty day period if WSI says we have an order out and see there is a preexisting condition that is not related to your work place injury. Here is order saying we are not paying for this forward. The other thing that could happen is if the medical provider knows that it is a condition not related to the work place injury. That would stop that sixty day period.

Chairman Klein: Basically we did not have anything before?

Jennifer: Technically yes.

Chairman Klein: We're talking about the first sixty days?

Jennifer: Correct.

Anne Green, WSI Staff Counsel: Written testimony in favor of the bill.

Chairman Klein: The fiscal note indicates that there is no dollar amount that you can see at this point?

Anne: There is no way of knowing.

Senator Horne: First I thought it would absolve them of reimbursement but after that they are responsible for any misdiagnosed billing?

Anne: That's correct. Medical bills that are paid without WSI knowing it is from a previous circumstance. The intent is not to penalize the injured worker in those sixty days.

Senator Andrist: So if you would discover on day forty five and you discontinue treatment. If he is a police officer with another plan would you try to recover from the private health insurance?

Anne: The way it is processed the private health insurance will kick in. The facility will reimburse WSI and then bill the third party health insurance care.

Jeb Oehlke, ND Chamber of Commerce: Written testimony in support of the bill with an amendment proposal.

Chairman Klein: This came about since it past the house this isn't some issue you could have written?

Jeb: No this is an afterthought.

Sylvan Loegering, ND Injured Worker Support Group: In support of the bill but would like clarification of some of the wording in the bill.

Dave Kemnitz, President, AFL-CIO: In support with some reservations. Shares issues that he is not sure of and in support of. Would like line seventeen through nineteen removed.

Discussion continued on the fairness of the bill.

Seibald Vetter, President of CARE: In support of the bill but a little concerned. What if I didn't know I had this previous condition or didn't doctor for it?

Anne Green: The simplest thing is not to extend the benefit. We're talking about paying for a condition that WSI should not be responsible for. That thinking is we want the earliest and best information.

Senator Andrist: Part of subsection B that puzzles me. If the medical provider should have known why would you penalize the individual if the medical provider didn't let you know?

Anne: That is a good point. The bill is crafted in such a way that we have the best information as soon as possible.

Senator Andrist: Wouldn't you have recourse against the medical provider if he should have known and didn't inform you?

Anne: Not contained in this bill in terms of recourse or penalty if there was something fraudulent about the medical provider another section addresses that.

Continued discussion on making the bill better.

Chairman Klein: Closed hearing.

Senator Andrist: Motioned to move the amendment as proposed by the chamber.

Senator Nodland: Seconded the motion.

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

Senator Andrist: Motioned a do pass as amended.

Senator Nodland: Seconded the motion.

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

Floor Assignment: Senator Andrist.

Date: 3/3/09  
Roll Call Vote #: 1

Roll Call Vote #: 1

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. HB 1063**

## Senate

## Committee

## Industry, Business and Labor

☐ Check here for Conference Committee

**Legislative Council Amendment Number**

### Action Taken

☒ **Pass**

☐ **Do Not Pass**

☒ Amended

Motion Made By Senator Andrist Seconded By Senator Nodland

[illegible]

Total (Yes) 6 No 0

Absent 1

Floor Assignment \_\_\_\_\_

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

Date: 3/3/09  
Roll Call Vote #: 2

## Senate

## Industry, Business and Labor

**Legislative Council Amendment Number**

☒ **Pass**☐ **Do Not Pass**☐ Amended

Motion Made By Senator Andrist Seconded By Senator Nodland

[illegible]

Total (Yes) 6 No 0

Absent ~~1~~ /

Floor Assignment Senator Andrist

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

**REPORT OF STANDING COMMITTEE**

**HB 1063: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1063 was placed on the Sixth order on the calendar.

Page 2, line 8, after "2." insert "a."

Page 2, line 15, replace "a." with "(1)"

Page 2, line 17, replace "b." with "(2)"

Page 2, after line 19, insert:

"b. Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating."

Renumber accordingly

2009 TESTIMONY

HB 1063

**2009 House Bill No. 1063**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by: Tim Wahlin, Chief of Injury Services**  
**Workforce Safety & Insurance**  
**<sup>1</sup>January 26, 2009**

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin. I am Chief of Injury Services with WSI. I am here to testify in support of House Bill 1063, as amended and to provide information to the Committee as they make their determination. WSI's Board of Directors supports this bill, as amended.

This bill stems from an unfortunate occurrence where a police officer received multiple gunshot wounds while on duty.<sup>1</sup> WSI accepted the claim and paid the associated benefits. While treating for the gunshot wounds, the injured employee was treated for neutrophilia, a blood disorder related to an elevated white blood cell count.

After review of additional medical evidence, Workforce Safety and Insurance denied coverage of the blood disorder, finding the evidence did not indicate the neutrophilia was caused by the work injury. As the law required, WSI went back and reversed payment on the medical bills for the treatment of the neutrophilia that had been previously paid.

The injured worker requested an administrative hearing on WSI's decision. The administrative law judge affirmed WSI's decision indicating the injured employee had failed to establish that his medical care relating to the treatment of neutrophilia was related to his work injury. This decision became final.

House Bill No. 1063 is the Interim Workers' Compensation Legislative Review Committee's proposal to temper the sometimes burdensome result for an injured employee when medical treatment for a condition is initially allowed, but later, as the

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<sup>1</sup> The factual recitation is summarized from the 2009 Legislative Council Report, Workers Compensation Review Committee section.

claim develops, is determined to be a condition not caused by the work injury and coverage is denied.

In particular, the Committee focused on the reversal of payment of medical bills for treatment that had been previously paid. In these situations, WSI is reimbursed for the erroneous payment directly from the medical facility that received the erroneous payment. It is then the injured employee's responsibility to pay the medical facility for the treatment of the non-work related condition.

If the injured employee does not have a private health care insurer to cover the expenses, the injured employee is responsible for payment of the medical bills. Even if the injured employee has a private health care insurer, he or she may still be liable for co-payments and deductibles.

This bill states that during the sixty day time period immediately following the date of injury, if WSI accrues or pays a medical expense within that sixty day time period, and later determines the medical expense was for the treatment of a noncompensable condition, injury or disease, the injured employee is not liable for payment of these medical expenses until:

1. WSI determines it is a noncompensable injury, disease, or condition, plus three days for the injured employee to receive the written notice; or
2. The date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable condition, plus three days.

For example:

- |    |   |        |
|----|---|--------|
| 1. | Employee is injured   | Day 1  |
| 2. | Claim is accepted   | Day 3  |
| 3. | WSI determines part of the claim should be denied   | Day 56 |
| 4. | Injured employee sent notice of decision that he is liable for expenses for days 59 forward |        |

Another example:

- |    |   |        |
|----|---|--------|
| 1. | Employee is injured   | Day 1  |
| 2. | Claim is accepted   | Day 4  |
| 3. | Dr. tells employee<br>part of injury is not<br>work-related   | Day 40 |
| 4. | WSI issues notice to<br>employee stating<br>she is liable for<br>expenses occurring<br>from day 40 (plus three days)<br>forward | Day 54 |

These are only two examples, however; there are numerous scenarios that may occur as each and every claim for injury has a unique set of facts and circumstances. As a result, WSI has concerns that this bill will have unintended consequences that may result in significant liability to WSI. We further want to make it clear that in instances of fraud, the employee is responsible for reimbursing WSI for the entire amount paid in error by WSI.

In addition, to the extent an injured employee covered by this bill has health care insurance, WSI requests the insurer's role be more clearly defined in this process.

Finally, WSI's Board proposes an amendment to shorten the sixty-day window to a thirty-day window. The attached amendment is intended to achieve this result. This concludes my testimony. I'd be happy to answer any questions at this time.

PROSED AMENDMENT TO HOUSE BILL NO. 1063

Page 2, line 8, replace "sixty" with "thirty"

Renumber accordingly



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1063  
January 26, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in support of HB 1063 and urge a do pass from the committee on this bill.

The change to WSI accepting liability for unknown pre-existing conditions for the first 60 days of treatment if the condition was unknown or up until the time the pre-existing condition becomes known will soften the blow to the claimants as they begin to address the problems dealing with the new knowledge.

Thank you for the opportunity to appear before you today in support of HB 1063. I would be happy to answer any questions.

*THE VOICE of NORTH DAKOTA BUSINESS*

**2009 House Bill No. 1063**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by: Anne Green, Staff Counsel**  
**Workforce Safety & Insurance**  
**March 3, 2009**

Mr. Chairman, Members of the Committee:

My name is Anne Green, Staff Counsel with WSI. I am here to testify in support of House Bill 1063 and to provide information to the Committee as they make their determination. WSI's Board of Directors supports this bill.

This bill stems from an unfortunate occurrence where a police officer received multiple gunshot wounds while on duty.<sup>1</sup> WSI accepted the claim and paid the associated benefits. While treating for the gunshot wounds, the injured employee was treated for neutrophilia, a blood disorder related to an elevated white blood cell count.

After review of additional medical evidence, Workforce Safety and Insurance denied coverage of the blood disorder, finding the evidence did not indicate the neutrophilia was caused by the work injury. As the law required, WSI went back and reversed payment on the medical bills for the treatment of the neutrophilia that had been previously paid.

The injured worker requested an administrative hearing on WSI's decision. The administrative law judge affirmed WSI's decision indicating the injured employee had failed to establish that his medical care relating to the treatment of neutrophilia was related to his work injury. This decision became final.

House Bill No. 1063 is the Interim Workers' Compensation Legislative Review Committee's proposal to temper the sometimes burdensome result for an injured employee when medical treatment for a condition is initially allowed, but later, as the

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<sup>1</sup> The factual recitation is summarized from the *2009 Legislative Council Report*, Workers Compensation Review Committee section.

claim develops, is determined to be a condition not caused by the work injury and coverage is denied.

In particular, the Committee focused on the reversal of payment of medical bills for treatment that had been previously paid. In these situations, WSI is reimbursed for the erroneous payment directly from the medical facility that received the erroneous payment. It is then the injured employee's responsibility to pay the medical facility for the treatment of the non-work related condition.

If the injured employee does not have a private health care insurer to cover the expenses, the injured employee is responsible for payment of the medical bills. Even if the injured employee has a private health care insurer, he or she may still be liable for co-payments and deductibles.

This bill states that during the sixty day time period immediately following the date of injury, if WSI accrues or pays a medical expense within that sixty day time period, and later determines the medical expense was for the treatment of a noncompensable condition, injury or disease, the injured employee is not liable for payment of these medical expenses until:

1. WSI determines it is a noncompensable injury, disease, or condition, plus three days for the injured employee to receive the written notice; or
2. The date the injured employee or medical provider reasonably should have known the medical expense is for a noncompensable condition, plus three days.

For example:

- |    |   |        |
|----|---|--------|
| 1. | Employee is injured   | Day 1  |
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Another example:

- |    |   |        |
|----|---|--------|
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| 3. | Dr. tells employee<br>part of injury is not<br>work-related   | Day 40 |
| 4. | WSI issues notice to<br>employee stating<br>she is liable for<br>expenses occurring<br>from day 40 (plus three days)<br>forward | Day 54 |

These are only two examples, however; there are numerous scenarios that may occur as each and every claim for injury has a unique set of facts and circumstances. As a result, WSI has concerns that this bill will have unintended consequences that may result in significant liability to WSI. We further want to make it clear that in instances of fraud, the employee is responsible for reimbursing WSI for the entire amount paid in error by WSI.

This concludes my testimony. I'd be happy to answer any questions at this time.



Testimony of Jeb Oehlke  
North Dakota Chamber of Commerce  
HB 1063  
March 3, 2009

Mr. Chairman and committee members my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the voice of North Dakota. Our organization is an economic and geographical cross section of the state's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing sixteen local chambers with total membership over 7,000 members and ten employer associations. As a group we stand in support of HB 1063. However, we ask that the committee consider a simple amendment to the bill.

The business community agrees with this policy change. WSI's acceptance of liability for unknown pre-existing conditions for the first 60 days of treatment if the pre-existing condition was unknown, or up until the time the pre-existing condition becomes known, will soften the blow to the claimants as they begin to recover from, not only their work related injuries, but also their newly discovered pre-existing condition.

Along with this policy change we ask the committee to amend the bill by adding language to section one which states that the expenses incurred under subsection 2 may not adversely affect an employer's experience rating. The proposed amendment is attached.

Thank you for the opportunity to appear before you today in support of HB 1063. I am happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*

**PROPOSED AMENDMENTS TO HB NO. 1063**

Page 2, after line 19 insert:

- c.     Medical expenses incurred under this subsection may not be charged against an employer's account for purposes of experience rating.

Renumber accordingly