

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1427

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1427

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 27, 2009

Recorder Job Number: 7873

Committee Clerk Signature

Ellen Letang

Chairman Keiser: Opened the hearing on HB 1427 relating to the injured worker's request for worker's compensation benefits for surviving spouse of permanently & totally disabled injured employee & provide application.

Representative Thorpe~Representative from 5. I put this on behalf of injured workers.

Steven Zaiser~Representative from District 21. I speak to you in support of this bill. The basic aspect of this bill is say WSI cannot deny a bill without giving reason why it was denied.

Sylvan Loegering~North Dakota Injured Workers Support Group. See testimony attachment.

Dave Kemnitz~President of the North Dakota AFL-CIO. See testimony attachment.

Sebald Vetter~C.A.R.E. I support this bill and want to thank Sylvan.

Chairman Keiser: I want to point out that antidotal description of cases, but they have no bearing unless the individual and we have releases available. There is always two sides to a story.

Anyone here is opposition of HB 1427.

Tim Wahlin~Chief of Injury Services for WSI. See testimony attachment.

Representative Ruby: There is a step process with certain appeals and if this is changed it will never get off that one tier?

Wahlin: No, I believe those levels still remain in place. However, in the end, you were unhappy with the results, you simply apply for continuing jurisdiction. If they deny it, that would then become appealable and you would start over relitigating that same issue.

Representative N Johnson: Along that same line, if that first one had gone to the Supreme Court, the process would begin on the same issue?

Wahlin: That's my reading.

Representative Schneider: I don't agree with that, in subsection B, the applicant would have to establish that it is relevant material. If it's not available at the time that the organization issued the order for which would be a stop? So this scenario would just keep relitigating the same thing. That's not necessarily true. There would have to be some new evidence before the applicant could appeal it.

Wahlin: On subsection two you are right. There are two areas where the organization would have to give their reasons for not opening. The language that was struck, now it's paragraph one, seems to for all other cases allow the reappeal. That's the one area of concern because it's overstruck.

Representative Schneider: Can you give me an idea of how many requests there are annually or do you use the decisions that are already final and closed?

Wahlin: We reorganized the process in the last 18 months. In that process we opened up one one deadline for everybody to seek review. There were 428 applications. There are other applications that are general, so 428 understate that number. Probably over 500 in the 18 month period. We don't track them other than that.

Representative Amerman: It could go to the Supreme Court and it could rule in your favor.

Down the line the claimant finds some new evidence and could ask to reopen. So would it go back through the whole process again?

Wahlin: Yes, but we have never tried that.

Vice Chairman Kasper: The person who missed the appeal deadline in 30 days. Do you see any reason why that 30 day time line could not be extended to bring the appeal forward?

Wahlin: Currently that 30 day appeal is set by statute. If there is good cause for missing that appeal period, there is already Supreme Court case to be reopened and reviewed.

Vice Chairman Kasper: What is the percentage of claims reopened versus what you reopened.

Wahlin: That would be an attainable review project.

Representative Amerman: Any employee that is injured and the employer contacts you and that not the case and you are denying that, does the employer have any responsibility seeing that he is the one who deny what happened. Any responsibility or penalty for the employer because he did not inform the employee that he was denying it?

Wahlin: No.

Chairman Keiser: There is a level playing field here. The 30 days applies to both the employer and employee. Extending that date give the employer to hold out longer for getting action for the employee.

Chairman Keiser: This is a sweeping change and the intent is clear. There is a legitimate question whether WSI they have exercised that authority in a fair and quick manner, historically. In the interim, I requested unilaterally, to allow any claimant to bring forward any closed cases to review them. They did review that and what was the percentage of changes?

Wahlin: Maybe, 10%.

Chairman Keiser: So there were some corrections. So is there a different approach from a policy standpoint from the one purposed in this legislation? The other side of the coin is doctor shopping.

Wahlin: With the respect to accuracy of decisions, I would point back to is we will audit those claim files. Secondly, how to continuing jurisdiction, I would point back to the legislators who will come in and review claims.

Vice Chairman Kasper: Can you define continuing jurisdiction?

Wahlin: The statue says that it the organization's ability to go in and revisit any award or denial on its own.

Representative Thorpe: I want to explain why this was a good bill. I heard constant evidence and at wits end how they were treated by members of WSI and no way for an appeal. If they have new and convincing evidence and I'm not talking about the doctor shoppers, the can now internally reopen a case?

Wahlin: That correct.

Representative Thorpe: Why are there so many out there up against a stone wall?

Wahlin: We draw different conclusions. The injured worker believes differently.

Representative Thorpe: You just said, may or may not, you are telling me then that some of them could be legitiment. If they are legitiment, WSI is going to address this concern.

Wahlin: I believe we do this.

Representative Schneider: I think your doctor shopping goes both ways.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment.

Anyone else here to testify in neutral?

Chairman Keiser: Bruce, could you share any discussions with the board on the continuing jurisdiction?

Furness: We had very little discussion in this area. I don't have that amount of claims changing the ruling, but I will get it to you. Explains what happens in his area.

Representative Thorpe: Tim mentioned the board's unanimously voted against this bill. Does the board have one or two workers represented on the board?

Furness: There are two representing workers.

Vice Chairman Kasper: You said that injured workers of hiring an attorney after the review process. Is that coming forward in a bill or could that be changed internally.

Chairman Keiser: That's a bill already through the senate.

Vice Chairman Kasper: Will the attorney fee be paid by WSI.

Chairman Keiser: The attorney's expenses and additional cost for paper and supplies.

Closes the hearing on HB 1427?

What are the wishes of the committee?

Representative Clark: Moves for a Do Not Pass.

Representative Vigesaa: Second.

Representative Thorpe: I did feel the appeal did get a good hearing and I don't feel holding it would change the outcome. So, I guess we could vote.

Representative Ruby: I see this as a revolving door whether it's the employee or employer that not happy. It's an going cycle.

Representative Thorpe: In answer to Representative Ruby's question, I resist that idea.

Somehow WSI has to admit that they are not always 100% right. They need to be given the right to sue to fall back onto.

Voting roll call was taken on with a Do Not Pass on HB 1427 with 8 yea's, 4 nay's, 1 absent and Vice Chairman Kasper is the carrier.

FISCAL NOTE
Requested by Legislative Council
01/16/2009

Bill/Resolution No.: HB 1427

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 makes WSI decisions not to reopen claims under the continuing jurisdiction statute appealable and requires the organization to establish reasons for denying applications for review under the continuing jurisdiction statute when certain criteria are met.

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 1427

BILL DESCRIPTION: Continuing Jurisdiction

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 makes WSI decisions not to reopen claims under the continuing jurisdiction statute appealable and requires the organization to establish reasons for denying applications for review under the continuing jurisdiction statute when certain criteria are met.

FISCAL IMPACT: Not quantifiable. We do not have sufficient information to evaluate the impact of the proposed bill. The legislation will likely permit the reopening of claims from prior periods as well as claims arising in future periods. WSI anticipates an increase in both the number of administrative appeals and the administrative and legal related costs associated with those appeals. To the extent that costs increase, rate and reserve levels will increase accordingly.

DATE: January 24, 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.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	01/24/2009

Date: Jan 27-2009
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1427

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 Clark Seconded By Vigasaa

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	<input checked="" type="checkbox"/>		Representative Amerman		<input checked="" type="checkbox"/>
Vice Chairman Kasper	<input checked="" type="checkbox"/>		Representative Boe		<input checked="" type="checkbox"/>
Representative Clark	<input checked="" type="checkbox"/>		Representative Gruchalla		<input checked="" type="checkbox"/>
Representative N Johnson	<input checked="" type="checkbox"/>		Representative Schneider		<input checked="" type="checkbox"/>
Representative Nottestad	<input checked="" type="checkbox"/>		Representative Thorpe		<input checked="" type="checkbox"/>
Representative Ruby	<input checked="" type="checkbox"/>				
Representative Sukut	<input checked="" type="checkbox"/>				
Representative Vigasaa	<input checked="" type="checkbox"/>				

Ab

Total (Yes) 8 No 4

Absent 1

Floor Assignment Amerman Kasper

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

REPORT OF STANDING COMMITTEE (410)
January 27, 2009 2:52 p.m.

Module No: HR-16-1044
Carrier: Kasper
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1427: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING).
HB 1427 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1427

REMARKS FOR IBL COMMITTEE re HB 1427

Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group

I support HB 1427 allowing review of a claim at injured worker's request. One basic reason is **fairness**. In accordance with current law WSI can and does review cases with or without reason. It may end, diminish or increase compensation previously awarded and may award compensation previously refused or discontinued. The cases of subsequent review that have been brought to my attention involved ending or diminishing benefits. An example is the injured worker who was awarded permanent disability status in 2001. Under continuing jurisdiction WSI reviewed the case in 2007 and decided that the injuries were preexisting at the time of the incident and benefits were discontinued. To my knowledge this discontinuance was based on the existing records and not on new information. On the other hand, an injured worker cannot currently get a claim reviewed, even with good reason. An example of a good reason is the case of an over-the-road truck driver who was on the road (away from home) for 28 days straight. During that time he experienced extreme fatigue and vomiting. When he got back to North Dakota his truck was put in the garage immediately for repair of a leaky exhaust system. He filed for workers' compensation, his claim was received and he went to a doctor, not necessarily in that order. He subsequently got a job driving truck with a combine crew and was away from home for a long period. During that time his employer claimed there had been nothing wrong with the exhaust system and WSI denied the benefits subject to appeal within 30 days. He didn't get his mail, he didn't appeal and the decision became final. Under current law that would be the end of his story. Given the opportunity he could probably prove the employer's claim was false and get his medical expenses paid.

Another problem with one-sided continuing jurisdiction is that decisions can change even if the facts don't. The 2008 Performance Evaluation by BDMP cites a change in philosophy that occurred within WSI in 2006-2007. After adjusting for other factors BDMP says the percent of claims initially denied went up and the percent of appealed claims subsequently reinstated went down. Applying the percentages cited by BDMP to a typical 20,000 injuries per year gives a net increase in permanently denied claims of approximately 500 cases per year.

Injured workers deserve the opportunity to correct injustice, whether it was intentional or not. I strongly urge you to pass this measure.

**January 27, 2009—House I B & L Committee Testimony on WSI bills.
ND AFL-CIO**

David L. Kemnitz; President

HB 1410

Introduced by; Representatives Wald, Grande, Klein; Senator Wardner
A BILL for an Act to amend and reenact section 65-05-09.2 of the North Dakota Century Code, relating to workers' compensation offset for social security retirement benefits.

The ND AFL-CIO supports HB 1410 and feels it is an earnest attempt to rectify some of the 1995 Legislative Session changes that adversely affected claimants.

HB 1427

Introduced by; Representatives Thorpe, Onstad, Zaiser; Senators Bakke, Taylor.
A BILL for an Act to amend and reenact section 65-05-04 of the North Dakota Century Code, relating to an injured worker's request for workers' compensation to exercise continuing jurisdiction.

The ND AFL-CIO supports HB 1427. The over struck language on lines 12 thru 14 point to the essence of problems claimants with newly acquired or additional medical information have with getting WSI to review their denied claim. WSI has the ability to review claims but more often than not WSI refuses to review and adjust these claims.

Because of this experience with WSI refusal to review newly acquired or additional medical information, HB 1427 has been introduced.

The new language in lines 15 thru 21 would provide guidance and form for WSI to follow when the question of review comes up. The changes in our opinion are very appropriate in answering WSI claimant pleas for relief under the act.

HB 1455

Introduced by; Representatives Thorpe, Boucher, Ekstrom, Zaiser; Senator Bakke
A BILL for an Act to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation benefits for surviving spouse of permanently and totally disabled injured employee; and to provide for application.

The ND AFL-CIO supports HB 1455. The surviving spouse of a WSI claimant is more often than not the primary caregiver of the seriously and permanently injured worker. WSI does not provide compensation to these spouses, in addition the wage loss over the period of disability is substantial and resultantly the Social Security benefits for the surviving spouse are drastically reduced. This bill seeks to recognize the support of a surviving spouse/caregiver by awarding a small but measured monthly income stabilizer. This we feel is not only appropriate but also sincerely needed in these instances.

HB 1524

Introduced by; Representatives Amerman, J. Kelsh, Wolf;
Senators Dotzenrodt, Fiebiger, Nething;
A BILL for an Act to amend and reenact section 65-05-33 of the North Dakota Century Code, relating to workers' compensation fraud; and to provide a penalty.

2009 House Bill No. 1427
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
January 27, 2009

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with WSI. I am here on behalf of WSI to testify in opposition to HB 1427 and to provide information to the Committee to assist in making its determination. WSI's Board of Directors voted unanimously to oppose this bill.

North Dakota law currently provides that every benefit determination is appealable. The law has been crafted to provide due process to all North Dakota participants as guaranteed by our Constitutions. As a result, each time WSI grants or denies any benefit, all parties may challenge that determination and receive full review up to and through our State's Supreme Court.

As with every judicial proceeding, upon completion and following the expiration of any applicable appeal deadlines, that determination is final. This finality is necessary to prevent the relitigation, potentially without end, of any issue. To allow unlimited appeals would likely cripple our system and render meaningless any final determination.

In order to relieve the harshest effects of this necessary finality, the organization has been granted the power of Continuing Jurisdiction to review any award, in order to ensure fairness and compliance of law. The refusal to reopen a claim under this provision is currently not appealable. This is necessary in order to maintain finality of litigation on issues that have been previously resolved.

This bill would require the organization to provide reasons for refusing to reopen a claim for review under certain circumstances. More importantly, by removing the provision that states there is no appeal from a determination not to reopen, the organization submits all determinations under this statute would become fully appealable.

This alteration would dramatically alter the current litigation structure and appeal processes. In effect it would eliminate all statutes of limitations. It would allow all final claims, both past and future, to be litigated and relitigated without end. The potential costs are difficult to overstate.

WSI would respectfully urge this committee to vote "do not pass" on HB 1427.

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



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1427
January 27, 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 opposition to HB 1427 and urge a do not pass from the committee on this bill.

The appeals process at WSI has various steps and safeguards built in with the last appeals being district court and the Supreme Court. This bill unnecessarily adds to that process by effectively allowing a second go round if not satisfied with the first decision. The establishment of "relevant, material evidence" in line 18 is subject only to the applicant's naturally prejudices and cannot be held to a consistent standard. We foresee a never ending appeals process based on "new" evidence and disputed claims becoming open ended files that are an actuarial nightmare.

Thank you for the opportunity to appear before you today in opposition to HB 1427. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS