

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2071

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2071

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7189

Committee Clerk Signature

Eva Liebelt

Minutes:

Chairman Klein: Opened the hearing on Senate Bill 2071.

Senator Judy Lee: I am here to introduce you to bill number 2071 and the challenges of the definition of employee in relationship with workers compensation. Are they an employee or an independent contractor? We have proposed an amendment for Senate Bill 2071.

Tom Balzer, Managing Director of the North Dakota Motor Carriers Association:

Written Testimony Attached. In favor of the bill.

Senator Horne: We need to define between who is an employee and who is an independent contractor?

Tom: Explains the difference as outlined in the proposed amendments.

Chairman Klein: As an employee he would have coverage and as an independent contractor, he could opt out for workers compensation?

Tom: Correct. This is so the employer knows who he is to cover.

Chairman Klein: Clarity is what we are looking for? Where are you finding the most problem on understanding the distinction between one and the other?

Tom: Both and that is why we are trying to clarify it better.

Senator Nodland: Where does health insurance come in?

Tom: We struggle with that. We are looking for a company to provide health insurance for the independent contractor.

Anne Green, Staff Council at WSI: Written Testimony Attached. In support of 2071.

Senator Horne: Are these workers trying to not have to carry WSI?

Anne Green: Both, some just aren't sure what they fall under.

Chairman Klein: As an independent contractor, because I fall under a certain classification, wouldn't my premium be high?

Anne Green: True. It could be high, so they may choose not to take WSI.

Senator Wanzek: I now could include or exclude myself under the law right now. It just understands what a person falls under?

Anne Green: That's why we have a test to determine where they fall under. The same twenty point test applies to all areas in North Dakota. It could be a general contractor. This one is particularly difficult because of the owner/operator being able to decline a load if he desires.

Senator Horne: Senator Wanzek mentioned agriculture, someone injured on a farm. Are farm workers covered under WSI?

Anne Green: Agriculture is exempted from WSI.

Senator Wanzek: We carry insurance through are property insurance for our workers.

Senator Andrist: It sounds like a good slam dunk bill. If the trucker passes the test and leases his truck out would that be a violation?

Anne Green: The person for whom you carry workers compensation is an employee.

Senator Potter: Absolute protection employers have because they carry WSI?

Anne Green: If there is optional protection in place that is when the other insurance would come in.

Chairman Klein: We will close the hearing on Senate Bill 2071.

Moved by Senator Andrist to pass the amendment. Seconded by Senator Wanzek

Row Call Vote: Yes: 7 No: 0 Absent: 0

Motion for a do pass as amended by Senator Andrist. Seconded by Senator Behm

Floor Assignment: Senator Andrist

FISCAL NOTE
Requested by Legislative Council
01/22/2009

Amendment to: SB 2071

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 amended legislation provides that individuals who either own or hold under lease a motor vehicle (truck) may be considered independent contractors and exempt from WSI coverage if certain factors 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: SB 2071 w/ Amendment

BILL DESCRIPTION: Exemption for Independent Truckers

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 amended legislation provides that individuals who either own or hold under lease a motor vehicle (truck) may be considered independent contractors and exempt from WSI coverage if certain factors are met.

The amended bill results in no change to the fiscal note for the bill as originally introduced.

FISCAL IMPACT: Eliminating the requirement of coverage for certain members of the trucking industry should not have an impact on statewide premium levels. To the extent that some independent owner operators opt out of the workers' compensation system, collected premiums will decline; but WSI should realize a reduction in losses that will offset the drop in income.

DATE: January 23, 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:	01/23/2009

FISCAL NOTE
Requested by Legislative Council
12/22/2008

Bill/Resolution No.: SB 2071

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 provides that individuals who either own or hold under lease a motor vehicle (truck) may be considered independent contractors and exempt from WSI coverage if certain factors 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: SB 2071

BILL DESCRIPTION: Exemption for Independent Truckers

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 that individuals who either own or hold under lease a motor vehicle (truck) may be considered independent contractors and exempt from WSI coverage if certain factors are met.

FISCAL IMPACT: Eliminating the requirement of coverage for certain members of the trucking industry should not have an impact on statewide premium levels. To the extent that some independent owner operators opt out of the workers' compensation system, collected premiums will decline; but WSI should realize a reduction in losses that will offset the drop in income.

DATE: January 6, 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:	01/06/2008

January 8, 2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2071

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact section 65-01-03 of the North Dakota Century Code, relating to the workers' compensation presumption of employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

65-01-03. ~~Person~~ Individual performing service for remuneration presumed an employee.

1. Each ~~person~~ individual who performs services for another for remuneration is presumed to be an employee of the person for ~~whom~~ which the services are performed, unless it is proven that the ~~person~~ individual is an independent contractor under the "common law" test. The person ~~who~~ that asserts that a ~~person~~ an individual is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.
2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:
 - a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.
 - b. The individual is responsible for the maintenance and repair of the truck or tractor.
 - c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.
 - d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.
 - e. Income taxes are not withheld from the individual's compensation.
 - f. The individual generally determines the details and means of performing the services, in conformance with statutory or regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
 - g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship."

Renumber accordingly

Date: Jan 19, 2009
 Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
 BILL/RESOLUTION NO. 2071

Senate

Committee

Industry, Business and Labor

Check here for Conference Committee

Legislative Council Amendment Number Amendment

Action Taken **Pass** **Do Not Pass** **Amended**

Motion Made By Senator Andrist Seconded By Senator Wanzek

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 7

Floor Assignment _____

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

Date: Jan 19, 2009
Roll Call Vote #: 2

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2071

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 Behm

Senator	Yes	No	Senator	Yes	No
Senator Jerry Klein - Chairman	✓		Senator Arthur H. Behm	✓	
Senator Terry Wanzek - V.Chair	✓		Senator Robert M. Horne	✓	
Senator John M. Andrist	✓		Senator Tracy Potter	✓	
Senator George Nodland	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Andrist

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

REPORT OF STANDING COMMITTEE

SB 2071: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2071 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 amend and reenact section 65-01-03 of the North Dakota Century Code, relating to the workers' compensation presumption of employment.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 65-01-03 of the North Dakota Century Code is amended and reenacted as follows:

65-01-03. ~~Person~~ Individual performing service for remuneration presumed an employee.

1. Each ~~person~~ individual who performs services for another for remuneration is presumed to be an employee of the person for ~~whom~~ which the services are performed, unless it is proven that the ~~person~~ individual is an independent contractor under the "common law" test. The person ~~who~~ that asserts that a ~~person~~ an individual is an independent contractor under the "common law" test, rather than an employee, has the burden of proving that fact.
2. In the case of commercial motor vehicles whose gross vehicle weight rating is more than twenty-six thousand pounds [11793.40 kilograms], with an individual operating a licensed truck or licensed tractor for a motor carrier of property, the presumption in subsection 1 is successfully rebutted if all of the following factors are present:
 - a. The individual owns, leases, or enters a purchase agreement to purchase a truck or tractor. The lease or purchase agreement must represent reasonably the value of the lease or purchase of the truck or tractor. The lease or purchase agreement may be with the carrier of property. An unreasonable lease or purchase agreement with a third party, unaffiliated with the carrier, does not affect this factor.
 - b. The individual is responsible for the maintenance and repair of the truck or tractor.
 - c. The individual bears the principal burden of operating costs, including fuel, supplies, vehicle insurance, and personal expenses.
 - d. The individual is responsible for supplying the necessary personal services to operate the truck or tractor.
 - e. Income taxes are not withheld from the individual's compensation.
 - f. The individual generally determines the details and means of performing the services, in conformance with statutory or regulatory requirements, operating procedures of the carrier, and specifications of the shipper.
 - g. The individual enters a written agreement with the motor carrier outlining the nature of the relationship."

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2071

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2071

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9893

Committee Clerk Signature

Ellen Letang

Chairman Keiser: Opened the hearing on SB relating to Worker's Compensation presumption of employment.

Judy Lee~Senator from District 13. This bill is about the self contractor, employee setup and this bill intends to clarify this situation.

Tom Balzer~Managing Director of the North Dakota Motor Carriers Association. See testimony attachment.

Chairman Keiser: What percent of motor carriers could meet all seven of these criteria?

Balzer: That would be tough to answer, I know in North Dakota there are 5000 trucking companies and of that 2500 are one truck companies. So ½ of our companies in our state are owner/operators. Our intention is not to change the status quo. There is no shift in how we define these.

Chairman Keiser: It helps the agency, how does it help the operator and company.

Balzer: There is no definitive answer to a relationship. It gives owner/operator seven solid criteria they know have to be present. It provide clarity to an area that was unclear.

Vice Chairman Kasper: Do you think this will help clarify that independent trucker really is an independent contractor for IRS guidelines as well or is that something you are not really interested in, only on the WSI side?

Balzer: Yes, the 20 points is based off the IRS standard. We feel that this will help, from the owner/operator contracts that I've seen that are delinquent, one of these seven always happens to be missing in there. There are seven high level standards that should be present.

Vice Chairman Kasper: Let's take it down to the state level, are the independent truckers having a problem with their state income tax being recognized an independent contractors or not?

Balzer: To my best knowledge, they aren't having any issues with the state tax system because the state tax system looks at an independent.

Chairman Keiser: What are we solving here?

Balzer: Issue is to provide as much clarity up front and that will help in everyone understanding the relationship & doing the process that should be doing.

Kapser: Is the intent for independent truckers & trucking firm who are contracting with the independent truckers, to enter into an agreement that would outline these seven points? Is that how you see bill being implemented?

Balzer: That is how we went and constructed this, is we took those owner/operators contracts out there and found the seven key elements. We hope that there is some standardization out there.

Representative Amerman: In the bill you have to answer true to all seven tests. On the 20 points questions, is that just up for interpretation?

Balzer: I will default to Ann Green.

Representative N Johnson: If independent contractor, you would not have some other company that would be paying your work force insurance taxes and you would be covered under that. If you are with a company and not independent, that company is responsible for

your workforce safety insurance and if you are injured, it goes to that employer's charges & if you independent, you are responsible for your own?

Balzer: You are correct, if you are an independent contractor you are your own business.

Chairman Keiser: Just to follow up, it's the heart of this problem, someone who really thinks they are an independent contractor and wants to act like one until there is an injury and then they want to come in under Worker's Compensation. Then we get into defining, after the injury, are they or are they not. The problem is the employer has not been paying premiums and then it becomes a legal issue.

Balzer: That's exactly the problem.

Representative Clark: The problem really develops when there is an injury.

Vice Chairman Kasper: Is there always a signed contract between the independent contractor and the hiring trucking firm whenever they have a job or is there a contract that they sign that good for a year?

Balzer: There are both, most commonly an independent will take one, two or maybe three trucking firms and sign on to them on an exclusive basis. There is usually the long term.

Vice Chairman Kasper: Do they always sign a contract before the trip goes?

Balzer: Unless they have the long term deal, they should. That is why that seventh part is in there, that there is a written contract.

Chairman Keiser: Let's go to page two, subsection f, the current language going to be problematic? It's the only one that I have concern about, it says individually generally determines the details of means of performing the service.

Balzer: That is a subsection that we are struggling with in the drafting process. There is a different relationship there. Our hope is that the agency when they look at this will look at it in the nature businesses. That they understand that this is a time sensitive business and they

know that if it's got to be picked up on Thursday and dropped on Monday, the agency knows that it's not a command and control decision, that it's just part of the business.

Chairman Keiser: The way it's worded will probably be problematic.

Ann Green~Staff Counsel Workforce Safety & Insurance. See testimony attachment.

Vice Chairman Kasper: In section f, if that were changed to state those individuals together determine the details. Does that cause a problem with what we are trying to do as far as separating the two entities?

Green: I guess I can't necessarily speak to that. We thought this through a lot and believe that I listed this language out of a Minnesota administrative rule, correct? What Minnesota chose to do in acknowledging this problem that the test needed clarity and they have a fairly extensive administrative rule that deals with a lot of these elements? The difficulty in the control issue and that's what hangs up the carriers of property, so much of long haul trucking is statutory based. So much what trucking companies are required to do, involve federal regulations. All of these items fall on the driver; they fall on the carrier of property. That issue of control becomes very difficult when trying to peel away the layers of what exactly is the nature of the relationship between carrier of property and the driver. So I would want to think it through for a proposed changed I offered you my opinion.

Chairman Keiser: I do think it is important and our record will reflect this that the committee has discussion and it is the intention that kind of a concept is what we intend to have that subsection f say is that this is a limited partnership between the original company and the independent contractor. There is a relationship and they have some shared control.

Green: That is exactly right. One of the things that WSI spoke with the motor carriers is that we are not interested in supporting legislation that simply permit the carrier of property to not have to pay more comp. We have seen those relationships that don't necessarily reflect a true

independent contract relationship. The carrier of property is going to be in a better position to draft the agreement, call the shot and to make the rules, particularly if that driver needs a job. They may be willing to accept whatever term that is on the table. The test is crafted in such a way that they have to be present.

Representative Amerman: The 26,000 pounds, is this official or do you need a CDL or are we talking the significance of the 26,000 pounds?

Green: The 26,000 pounds is size of the big rigs or semi. This bill is not intended to deal with the local, delivery, moving, package delivery or any industry other than long haul over the road truckers, those individuals who are in 24,000 pound tractors.

Representative Clark: What this bill does basically define with an independent contractor for the purposes who's paying Worker's Compensation premiums?

Green: That's absolutely correct?

Representative Thorpe: Is the person who owns his rig, does he come under this to pay Worker's Compensation or is it two or three rigs?

Green: You note that subsection d talks about personal services.

Chairman Keiser: Because of the nature of this business, it does require all state coverage, so if they become by definition independent operators, what do to communicate to them their need all state coverage?

Green: The mechanisms that WSI is to communicate with its policy holders corresponds that we send every month. We will encourage them if this bill passes to take that option. It would seem reasonable that our motor carriers will also embark on a campaign in teaching their membership.

Chairman Keiser: Anyone here to testify in opposition, neutral. Closes the hearing on SB 2071, what are wishes of the committee?

Vice Chairman Kasper: Motions for a Do Pass.

Representative N Johnson: Second.

Voting roll call was taken on SB 2071 for a Do Pass with 12 yeas, 0 nays, 1 absent and

Representative Clark is the carrier.

Date: Mar 2 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2071

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 Kasper Seconded By Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe	7	
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby					
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Clark

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

REPORT OF STANDING COMMITTEE

SB 2071, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2071 was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

SB 2071

TESTIMONY
SENATE BILL 2071
INDUSTRY, BUSINESS & LABOR COMMITTEE
JANUARY 19, 2009

Mr. Chairman and members of the Senate Industry, Business & Labor committee my name is Tom Balzer, managing director of the North Dakota Motor Carriers Association. I am here this afternoon to testify in support of Senate Bill 2071.

Senate Bill 2071 establishes a better tool for Workforce Safety & Insurance to use to understand independent contractor relationships between owner operators and trucking companies.

Currently, the agency uses a questionnaire based on the 20 point common law test. We feel that this method is unsuitable as the questions used in the test do not address the unique nature of these trucking industry relationships. I have listed some of the questions on the questionnaire below and would like to describe how when they are applied to the trucking industry they can lead the examiner to an inappropriate decision.

- Were you given instructions on how to complete the work?
- Does the Hiring Firm have the right to change the methods you use or direct you in how to do the work?
- Are you required to follow a routine established by the Hiring Firm or work certain hours a day?
- Do you furnish a time record to the Hiring Firm?
- Do you report to the Hiring Firm or its representative?
- Does the Hiring Firm allow you a drawing or advances against pay?
- Do you perform similar services for others?
- Do you have the option to decline work from this or any Hiring Firm?
- Are you prohibited from competing with the Hiring Firm either while performing services or during any later period?
- Do you find and schedule your jobs own jobs?

What Senate Bill 2071 does is develops an industry specific higher standard. The relationship must prove compliance with all six precise criteria that are standard in a properly executed owner operator independent contractor relationship. If the relationship is deficient in any one of the six criteria the agency defaults back to the common law test to determine the nature of the relationship.

After the bill was submitted to Senator Lee, the agency and I meet on many occasions to develop language that was appropriate. At the recommendation of Legislative Council a hog house amendment was prepared. This amendment in no way changes the intent of the original legislation; it makes sure that it is placed in the proper section of code and clarifies the language. Mr. Chairman, I would like to walk the committee through the amended language to Senate Bill 2071.

[Review of amendments prepared for Senator Judy Lee by Legislative Council]

Mr. Chairman, this concludes my testimony, I would be happy to answer any questions the committee members may have.

WORKFORCE SAFETY & INSURANCE
2009 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2071

BILL DESCRIPTION: Exemption for Independent Truckers

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 that individuals who either own or hold under lease a motor vehicle (truck) may be considered independent contractors and exempt from WSI coverage if certain factors are met.

FISCAL IMPACT: Eliminating the requirement of coverage for certain members of the trucking industry should not have an impact on statewide premium levels. To the extent that some independent owner operators opt out of the workers' compensation system, collected premiums will decline; but WSI should realize a reduction in losses that will offset the drop in income.

DATE: January 6, 2009

2009 Senate Bill No. 2071
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Anne Jorgenson Green, Staff Counsel
Workforce Safety & Insurance
January 19, 2009

Mr. Chairman, Members of the Committee:

My name is Anne Green. I am Staff Counsel with WSI. I am here to testify in support of Senate Bill 2071 as amended, and to provide information to the Committee as they make their determination. WSI's Board of Directors unanimously supports this bill, with amendments.

North Dakota workers compensation law begins with the presumption that a worker is an employee, unless specifically exempted by statute. An individual who asserts an independent contractor status must meet the factors laid out in a 20 point common law test adopted in WSI's Administrative Code. The challenge in independent contractor relationships is that each relationship is unique and must be analyzed on its own facts. The presence or absence of specific facts tips the scale in favor of a determination. Although comprehensive, the 20 point test does not always speak to the nuances in all industries.

WSI acknowledges the unique business arrangement in the long haul trucking business. A common arrangement in over the road trucking, is the owner/operator of a tractor who "leases onto" a carrier of merchandise. These individuals, as small business owners, are permitted travel freedom, the ability to pick and choose loads, and to decide how often they wish to work.

SB 2071 provides a test in the independent contractor analysis tailored to long haul, over the road, truckers. It provides specificity and clarity to the segment of the trucking industry, owner/operators, who independently move goods across the country. This concludes my testimony. I would be happy to answer any questions at this time.

**TESTIMONY
SENATE BILL 2071
INDUSTRY, BUSINESS & LABOR COMMITTEE
MARCH 2, 2009**

Mr. Chairman and members of the House Industry, Business & Labor committee my name is Tom Balzer, managing director of the North Dakota Motor Carriers Association. I am here this morning to testify in support of Senate Bill 2071.

Senate Bill 2071 establishes a better tool for Workforce Safety & Insurance to use to understand independent contractor relationships between owner operators and trucking companies.

Currently, the agency uses a questionnaire based on the 20 point common law test. We feel that this method is unsuitable as the questions used in the test do not address the unique nature of these trucking industry relationships. I have listed some of the questions on the questionnaire below and would like to describe how when they are applied to the trucking industry they can lead the examiner to an inappropriate decision.

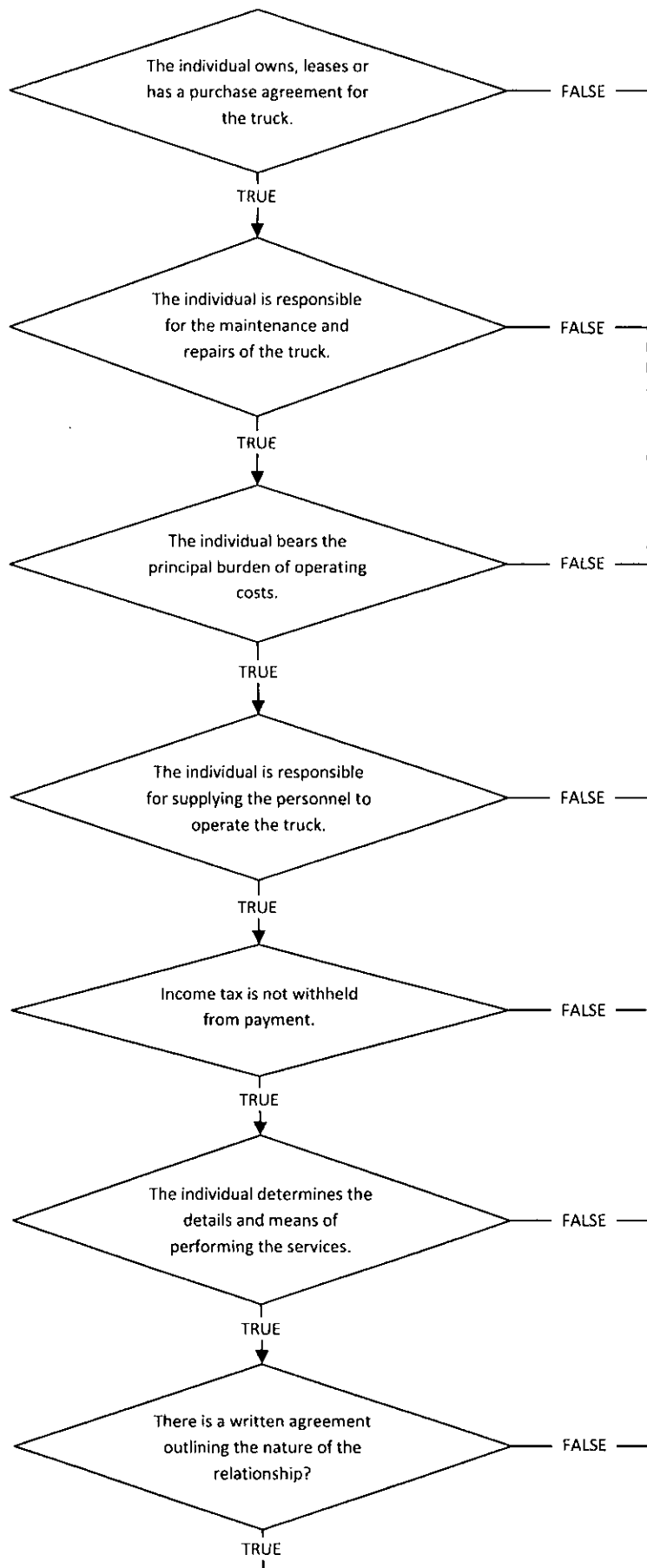
- Were you given instructions on how to complete the work?
- Does the Hiring Firm have the right to change the methods you use or direct you in how to do the work?
- Are you required to follow a routine established by the Hiring Firm or work certain hours a day?
- Do you furnish a time record to the Hiring Firm?
- Do you report to the Hiring Firm or its representative?
- Does the Hiring Firm allow you a drawing or advances against pay?
- Do you perform similar services for others?
- Do you have the option to decline work from this or any Hiring Firm?
- Are you prohibited from competing with the Hiring Firm either while performing services or during any later period?
- Do you find and schedule your jobs own jobs?

What Senate Bill 2071 does is develops an industry specific higher standard. The relationship must prove compliance with all seven precise criteria that are standard in a properly executed owner operator independent contractor relationship. If the relationship is deficient in any one of the seven criteria the agency defaults back to the common law test to determine the nature of the relationship.

~~I would offer one amendment, which is grammatical in nature. On page 2, line 5 replace "personal" with "personnel"~~

The Senate passed this measure by a vote of 43-0 and we would ask the House to concur.

Mr. Chairman, this concludes my testimony, I would be happy to answer any questions the committee members may have.



The presumption of each individual who performs services for another for remuneration is presumed to be an employee of the person which the services are perform is **NOT** successfully rebutted and the agency must test the relationship under the "common law" test to determine the nature of the relationship. The person that asserts that an individual is an independent contractor under the "common law" test, rather than an employee, still has the burden of proving that fact.

The presumption is successfully rebutted and the individual is determined to be an independent contractor.

2009 Engrossed Senate Bill No. 2071
Testimony before the House Industry, Business, and Labor Committee
Presented by: Anne Jorgenson Green, Staff Counsel
Workforce Safety & Insurance
March 2, 2009

Mr. Chairman, Members of the Committee:

My name is Anne Green. I am Staff Counsel with WSI. I am here to testify in support of Engrossed Senate Bill 2071, and to provide information to the Committee as they make their determination. WSI's Board of Directors unanimously supports this bill.

North Dakota workers compensation law begins with the presumption that a worker is an employee, unless specifically exempted by statute. An individual who asserts an independent contractor status must meet the factors laid out in a 20 point common law test adopted in WSI's Administrative Code. The challenge in independent contractor relationships is that each relationship is unique and must be analyzed on its own facts. The presence or absence of specific facts tips the scale in favor of a determination. Although comprehensive, the 20 point test does not always speak to the nuances in all industries.

WSI acknowledges the unique business arrangement in the long haul trucking business. A common arrangement in over the road trucking, is the owner/operator of a tractor who "leases onto" a carrier of merchandise. These individuals, as small business owners, are permitted travel freedom, the ability to pick and choose loads, and to decide how often they wish to work.

SB 2071 provides a test in the independent contractor analysis tailored to long haul, over the road, truckers. It provides specificity and clarity to the segment of the trucking industry, owner/operators, who independently move goods across the country. This concludes my testimony. I would be happy to answer any questions at this time.