

**2021 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1040**

# 2021 HOUSE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee

Room JW327C, State Capitol

HB 1040

1/6/2021

### Appealing workforce safety & insurance decision

**Chairman Lefor:** Opened the hearing on HB 1040 at 9:34. Members present: Chairman Lefor, Vice Chairman Keiser, Rep Hagert, Rep Jim Kasper, Rep Scott Louser, Rep Nehring, Rep O'Brien, Rep Ostlie, Rep Ruby, Rep Schauer, Rep Stemen, Rep Thomas, Rep Adams, Rep P Anderson

#### Discussion Topics:

Addresses injured employees regarding their perceptions of the extended time

If an appeal is not received by WSI within the thirty-day time period, WSI's decisions are deemed final.

**Chris Joseph~Legislative Management Council-Legal Division (9:34):** Introduced HB 1040.

**Tim Wahlin-Chief of Injury Services at WSI 9:39:** Testified in support & submitted testimony 52 & 182.

No one testified in opposition or neutral.

**Chairman Lefor:** Closes the hearing. What are the wishes of the committee?

**Vice Chairman Keiser:** Moves a Do Pass.

**Rep Adams:** Second.

Roll call was taken on HB 1040 for a Do Pass.

Representatives	Vote
Chairman Lefor	y
Vice Chairman Keiser	y
Rep Adams	y
Rep P Anderson	y
Rep Hagert	y
Rep Kasper	y
Rep Louser	y
Rep Nehring	y
Rep O'Brien	y
Rep Ostlie	y
Rep D Ruby	y
Rep Schauer	y

Rep Stemen	y
Rep Thomas	y

Motion passes 14-0-0 & Rep Thomas is the carrier.

*Ellen LeTang, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1040: Industry, Business and Labor Committee (Rep. Lefor, Chairman)** recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1040 was placed on the Eleventh order on the calendar.

**2021 House Bill No. 1040**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by Tim Wahlin**  
**Workforce Safety and Insurance**  
**January 6, 2021**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin. I am the Chief of Injury Services at WSI. I am here today to provide testimony regarding House Bill No. 1040. The WSI Board is neutral on this bill.

The Interim Workers' Compensation Review Committee heard testimony from injured employees regarding their perceptions of the extended time it can take to send and receive mail to and from WSI and the resulting inadequacy of the thirty-day time frame in which to appeal WSI decisions. If an appeal is not received by WSI within the thirty-day time period, WSI's decision is deemed final. As a result, the proposed legislation to expand the appeal periods from thirty days to forty-five days was recommended by the Committee.

Section 65-01-16, found in Section 1, outlines the appeal process for claim decisions made by the Organization. The first proposed change in Section 1 eliminates language that allows WSI to deem an employer in agreement with a claim, filed by one of its injured employees, when the employer does not timely provide WSI with required employer information. The electronic submission of claim forms and timely filing incentives have helped to make this language obsolete. And, practically speaking, a claims adjuster will consider an employer's response when it is submitted.

The remainder of the proposed changes in Section 1 extend an injured employee's appeal periods from thirty days to forty-five days when the employee disagrees with a decision made by WSI.

By way of background, a notice of decision is issued in a claim when an injured employee's entitlement to benefits is impacted in some way. For example, when WSI accepts, denies, increases, or limits an injured employees benefits, it issues a notice of decision. If the injured employee does not agree with WSI's decision, the employee has thirty days from when the date the decision was mailed in which to request reconsideration.

If the request for reconsideration is not granted by WSI and it determines its decision is still correct, a formal administrative order is issued by WSI to the injured employee. The employee has thirty days from when the order was mailed to request assistance from the Decision Review Office, a separate entity of WSI that attempts to resolve the dispute with WSI if possible.

If the dispute is not resolved by the Decision Review Office, the injured employee has thirty days to request a formal administrative hearing on the administrative order, presided over by the Office of Administrative Hearings.

Should the injured employee elect to forego the Decision Review Office services, the employee has thirty days from the date the administrative order was served on the employee to request a formal administrative hearing.

Likewise, Section 64-04-32, found in Section 2 of the bill, provides the appeal process governing employer disputes. The proposed changes in Section 2 extends similar appeal periods for an employer that disputes a decision made by WSI.

WSI submits there are pros and cons to the proposed legislation. WSI recognizes that delays can occur when using the postal service. These delays can affect appeal periods. This was the intention of the Committee. Any extension will decrease this effect and WSI does accept electronic appeals by email and fax deeming either a written response.

It is anticipated the proposed bill will increase the appeal process timelines. An injured employee could extend the appeal process by forty-five days and an employer could extend it by thirty days. If the appeal is successful, the proper care and treatment for the injured employee or the correct premium payment of an employer will be that much more delayed. This is an obvious con.

Finally, the proposed change will require modifications and reprogramming in WSI's claims management system. The appeal language is embedded in forms and WSI's electronic claim management system. All will need to be changed to accommodate this alteration.

Clearly in the balancing and weighing of these competing issues is what the Legislative Assembly, as policy makers, is uniquely qualified to do.

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

**Testimony # 182**

**WORKFORCE SAFETY & INSURANCE  
2021 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1040**

**BILL DESCRIPTION: WSI Appeal Timeframes**

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its consulting actuaries, The Burkhalter Group, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation extends injured worker and employer appeal timeframes from 30 to 45 days after a notice of decision or administrative order has been issued.

**FISCAL IMPACT:** No significant impact to premium rate and reserve levels is anticipated.

**DATE: December 28, 2020**

**2021 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1040**



# 2021 SENATE STANDING COMMITTEE MINUTES

## Industry, Business and Labor Committee Fort Union Room, State Capitol

HB 1040  
2/10/2021

relating to appealing a workforce safety and insurance decision

**Chair Klein** opened the hearing at 9:47 a.m. All members were present. Senators Klein, Larsen, Burckhard, Vedaa, Kreun, and Marcellais.

### Discussion Topics:

- Employee Benefits

**Chris Joseph, Legislative Council** testified neutral to provide information [9:48].  
**Tim Wahlin, WSI** testified neutral and submitted testimony #6133 [9:53].

**Senator Burckhard** moved a DO PASS [10:06]  
**Senator Kreun** seconded the motion [10:06].

[10:06]

Senators	Vote
Senator Jerry Klein	Y
Senator Doug Larsen	Y
Senator Randy A. Burckhard	Y
Senator Curt Kreun	Y
Senator Richard Marcellais	Y
Senator Shawn Vedaa	Y

Motion passed: 6-0-0

**Senator Burckhard** will carry the bill [10:07].

**Chair Klein** ended the hearing at 10:07 a.m.

*Isabella Grotberg, Committee Clerk*

**REPORT OF STANDING COMMITTEE**

**HB 1040: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1040 was placed on the Fourteenth order on the calendar.

**2021 House Bill No. 1040**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by Tim Wahlin**  
**Workforce Safety and Insurance**  
**February 10, 2021**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin. I am the Chief of Injury Services at WSI. I am here today to provide testimony regarding House Bill No. 1040. The WSI Board is neutral on this bill.

The Interim Workers' Compensation Review Committee heard testimony from injured employees regarding their perceptions of the extended time it can take to send and receive mail to and from WSI and the resulting inadequacy of the thirty-day time frame in which to appeal WSI decisions. If an appeal is not received by WSI within the thirty-day time period, WSI's decision is deemed final. As a result, the proposed legislation to expand the appeal periods from thirty days to forty-five days was recommended by the Committee.

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The remainder of the proposed changes in Section 1 extend an injured employee's appeal periods from thirty days to forty-five days when the employee disagrees with a decision made by WSI.

By way of background, a notice of decision is issued in a claim when an injured employee's entitlement to benefits is impacted in some way. For example, when WSI accepts, denies, increases, or limits an injured employees benefits, it issues a notice of decision. If the injured employee does not agree with WSI's decision, the employee has thirty days from when the date the decision was mailed in which to request reconsideration.

If the request for reconsideration is not granted by WSI and it determines its decision is still correct, a formal administrative order is issued by WSI to the injured employee. The employee has thirty days from when the order was mailed to request assistance from the Decision Review Office, a separate entity of WSI that attempts to resolve the dispute with WSI if possible.

If the dispute is not resolved by the Decision Review Office, the injured employee has thirty days to request a formal administrative hearing on the administrative order, presided over by the Office of Administrative Hearings.

Should the injured employee elect to forego the Decision Review Office services, the employee has thirty days from the date the administrative order was served on the employee to request a formal administrative hearing.

Likewise, Section 64-04-32, found in Section 2 of the bill, provides the appeal process governing employer disputes. The proposed changes in Section 2 extends similar appeal periods for an employer that disputes a decision made by WSI.

WSI submits there are pros and cons to the proposed legislation. WSI recognizes that delays can occur when using the postal service. These delays can affect appeal periods. This was the intention of the Committee. Any extension will decrease this effect. However, WSI does accept electronic appeals by email and fax deeming either a written response.

It is likewise anticipated the proposed bill will increase the appeal process timelines. Understand that any increase in the appeal process will likely delay the payment of benefits. Any delay in the payment of benefits will negatively affect injured employees. If the appeal is successful, the proper care and treatment for the injured employee will be that much more delayed. This is an obvious con.

Finally, the proposed change will require modifications and reprogramming in WSI's claims management system. The appeal language is embedded in forms and WSI's electronic claim management system. All will need to be changed to accommodate this alteration.

Clearly in the balancing and weighing of these competing issues is what the Legislative Assembly, as policy makers, is uniquely qualified to do.

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