

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER
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DESCRIPTION

2043

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2043

# 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2043**

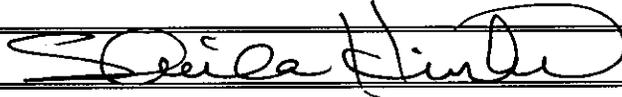
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 9, 2007**

Recorder Job Number: **#811**

Committee Clerk Signature



Minutes:

**A BILL for an Act to amend and reenact section 65-01-16 of the NDCC relating to the period to appeal a workers' compensation decision based on the presumption of compensability for firefighters and law enforcement officers.**

**Jennifer Clark, Legislative Council**

This bill came from interim workers compensation review committee relating to issue of the presumption clause. 65-01-16 **See SB 2043**

New language page 1, and page 2 17-18, 24-27 – nutshell, services of independent review, but that injured worker or employer as well, they would have an additional 30 days to request reconsideration or services of the offices of review to request a hearing.

Language on page 1 if listed for reconsideration, page 2, 17-20 that relates to the questions for office of independent review, bottom of page 2 request for administrative hearing.

**Q? In Favor?**

**Ed Grosbauer – President of the Prof. Firefighters of ND - In Favor**

We'll again address the professional firefighters and law officers just on presumptive legislation that allows an extra 15 days to review and file appeals and ask for assistance from the office of Independent review. Reason for this, the secular nature of our work. Work 24 hour shifts in

Firefighting, Bismarck, Minot, Grand Forks, Fargo, all work 24 hour shifts, only get 4 days off.

This allows a little extra time to get our appeals and requests.

**S. Klein:** Four days off and you wouldn't have enough time?

**E Grosbauer:** The concern is that this paperwork is sent to the firestation and if on vacation for a period of time during the section, and take the 4 days and use vacation afterwards, it could certainly impact the filing of assistance.

**S. Klein:** At the station, everyone has their own mailbox?

**E Grosbauer:** Yes, I can only speak for Grand Forks, this is where I work, but we all have our individual mailbox.

**S. Klein:** My assumption, that if I got something from the government that I would open it immediately.

**E Grosbauer:** Absolutely! If it came to your home, it would absolutely get opened. In some cases this is directed to the city in which case it would be sent to City Hall and gets processed there and comes to the fire station, processed there and put into your mailbox, they're just too many hands on it to make sure [we have timely] filing.

**S. Hacker:** Was change denied from senate bill 2042?

**E Grosbauer:** Yes, it is. There was a timeline.

**S. Hacker:** If we were to make the other bill retroactive, would that clear that whole problem up, even with an appeals process?

**E Grosbauer:** No, 2042 does not address the filing of assistance.

**S. Hacker:** What I'm saying is that if we put an amendment on 2042 and it passes, there would have been no need to file an appeal.

**E Grosbauer:** Only if it's covered the first time.

**S. Hacker:** If we make that bill retroactive...

**E Grosbauer:** I understand what you're saying, my concern is that if it is still denied by Workmen's Comp. Whether it's processed by somebody's who's not familiar presumptive legislation and inadvertently denied, we still have that timeline.

**S Hacker:** But this isn't going to change anything, because the date of this bill would not fix that situation if you have it made retroactive as well. We're well beyond the 45 days out now.

**E Grosbauer:** If, in fact we make the first one retroactive, it will cover in that particular injury would be covered and there would be no need for filing of assistance for ORR. If the first bill is made retroactive, then that claim would be accepted at that point and it wouldn't be an issue. 2043 addresses the future concerns.

**S Hacker:** Have you had other problems? If you would take that case out, that case was fixed, how many other cases, do you have a ball park number.....

**E Grosbauer:** I believe it is the handful that would have missed that. We do our best to make sure that these people get their paperwork done in a timely fashion with appeals filed, would just allow that extra.....if they were on vacation...if it went through City Hall, goes to the firehouse and it sits on the secretary's desk until it's put in the mailbox.

**S Klein:** Do you think they'd go on vacation if they're injured? During his injury period?

**E Grosbauer:** I know a particular case, someone was away from town when they were injured, yes, that has happened.

**Q? In Favor?**

**Tanna Osley: Injured Party *In Favor***

Tell you a little bit of why. I think I missed the deadline by 7 days – part of my appeal at that point. I wanted to contact a professional party, and work together those people, if we're in town or they're in town, none of us were on vacation at that time, just getting together and getting paperwork together and mailed.

**S. Heitkamp:** Tanna, Is it your opinion that we're not opening up the floodgates leaving the doors wide that we're just meeting a need of the specific situation, where people can be on shift, like a fire station for awhile?

**Tanna:** You think it's going to be for everybody involved?

**S. Heitkamp:** the only fear I would have about this fear is that it's opening the door wide open for people being late, this relates directly to not a great number of people in ND. I want your opinion.

**Tanna:** I'm guilty of being late. I don't think it will open the floodgates, I got this letter and I threw it on my desk, didn't open it, I saw what was in there and knew what I needed, I was very nieve. Once it was opened, then I needed to know, "Now what do I do?" Some of it was just a delay in the bill, so we don't really know what to do. Learning process.

**Q? In Favor?**

**In Opposition**

**Tim Wahlen – Staff Council Workforce Safety and Insurance –in Opposition**

**TESTIMONY #1**

**S. Klein:** The additional days is what we're stringing this out by adding in 15 days?

**Tim W:** 3 groups are : employee, employer, provider

If we extend the timeline, it will extend it for all. All the numbers, evidence, the more rapidly claim is filed, the more rapidly it is achieved, the more rapidly we address the situation, the lower the cost on that claim will be, and the higher likely to have a quality result in getting that person back to work. Anytime we extend that change, we expect it will affect our results.

**S. Andrus:** Are we talking about just the section on firefighters and policeman or is this covering all workers?

**Tim W:** This is just for police personnel, fulltime paid firefighters and only the presumption statute that we spoke of earlier, only those claims would qualify.

**S Andrus:** Any other injured worker would only be 30 days is that right?

**Tim W:** That is correct.

**S Hacker:** Are there any other industries that might have similar requests or needs, are they specific to these industries or are there other industries that work shifts like this.

**Tim W:** The industries that come to mind are shift work, have longer shift periods, 4 on 4 off, Other industries would be equally affected if not more, are those industries where people travel. When we issue a decision on a claim, that decision is mailed out to the employer, and the injured worker where the injured worker lists their address. Whether or not the employer handled their portion would have no effect on the employee receiving timely notice of any claims.

**S Klein:** So the notice for the employee could go to their home or to their, in this case, the station they serve. They make that choice when they sign up to the program.

**Tim W:** Yes When the claim is filed, they will list the mailing address on that claim. All correspondence will go to that address.

**S Klein:** At the time of the claim.

**Tim W:** that is correct

**S Klein:** So the claimant could put their home address down if they so chose or their work, it's not required.....

**S Heitkamp:** Seems to me that the argument is that the sooner they make the claim, the better change you have of getting them back to work ...why not 10 days then, why not 5 days?

Why 30 days?

**Tim W:** There is a balance that needs to be struck in there. We need to have enough time to have time to respond, the timeline needs to be short enough so we can give rapid response to the client. 30 days over time.

**S Heitkamp:** I'm trying to find out where the floodgate would be. What we're talking about is the presumption clause, a small group of people out there, firefighters. Firefighters who live in a situation where they may not be at home checking the mail every night, so if WSI is going to get worried about this, then it would beg the question, you raise it in here. Are you against this because it would help injured workers or because it opens the doors to employers now? You make reference to employers now, when this came up, now, it may also include the employers, are we talking about the mayor in the case of GF? Citizens of GF? Who?

**Tim W:** In the city of GF it would be the Human resources Dept.

**S. Heitkamp:** so everyone, if this passes in the Human Resource Dept. in GF, will qualify for an extra 15 days to file for any claim.

**Tim W:** No, only those particular claims that fall under the presumption which gets to the issue, making the exception for a portion of the population.

**S Heitkamp:** I don't dispute that Tim, we're making an exception here the same we did in the first bill you did support. You raised the question in your testimony about the employer, which opens the floodgate debate, and the changing of how things are perceived in terms of when you have to file that claim. The way I read it in the Interim Committee was completely focused as to who it would include for a couple more days, because of the nature of how they live, if you're computer can't handle that, you need to work it out. How could this get to the employer? I'm struggling with that. Explain that to me better.

**Tim W:** Whenever we issue a decision on a claim: denial, acceptance, calculation of wage, or disability period, that order becomes appealed. We use a do process appeal mechanism, it's

appealable by both the employer and the injured worker, whichever side believes there has been a mistake made in appeal. That is simply a note that both sides in this particular case will have an extension of 45 days as written. Open floodgates? No. Concern do we need to go from 30 to 45 days for this narrow population, narrow issue.

**S Potter:** I have 2 arguments: 1. bill has complexity separating this one category of worker, giving them a 45 day timeline 2. 30 days is sufficient Which argument is your choice?

**S Klein:** [moved to continue as just a question]

**S Wanzek:** We're not saying you have 30 days to complete the process, it's 30 days just to send in the notice. You can send it in on the 30<sup>th</sup> day, the process will kick in. It is not unreasonable. It's a written request.

**S Klein:** Written or.....?

**Tim W:** Written appeal to the organization, we will view that appeal broadly, we will broadly construe anything coming in as an appeal. You' are correct. The organization must be notified of the appeal. Does that mean everything will be put together and will be success that day, No, absolutely not. We need to be notified that there is an appeal in the process and that will stop that period until we can further review. I need additional evidence, or testing, absolutely. We do not have to make a case, just get a notice in, I just want appeal this decision.

**S Andrus:** System should move swiftly. For the benefit of the worker, the quicker it moves through the system, the better everybody is served their information we have. Question is: Is this the result of why it brought 2042 to us and we fixed 2042. I don't understand that this would never be an issue again? It seems highly unlikely this would ever become an issue again, if we fixed the case that 2042 addresses.

**Tim W:** It may become an issue sometime in the future. Claim denied or accepted. I don't foresee it affecting case we spoke of earlier in any way.

**Q? Opposition? Neutral?**

**S Heitkamp:** Bring Jennifer back up.

[not present – left the room]

**Tanna Osley:** Want to say again, one of the things that want to bring up, you could make a phonecall and start your appeals process over the phone, I did talk to someone prior to the 30 days and she said it had to be in writing. Between the time I talked to her on the phone and the time it got to WFS, my time had lapsed.

**S Wanzek:** Question – like your tax return, if it's postmarked on the 30<sup>th</sup> day, would that not qualify?

**S Klein:**

*We'll probably bring Jennifer back, try to clarify some of these things and get the understanding of what can be or cannot be, sounded to me like it had to be written, that's the way the law's written.*

**CLOSE THE HEARING ON 2043**

## 2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2043 B**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **January 15, 2007**

Recorder Job Number: **#1091**

Committee Clerk Signature
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Minutes:

**S Klein:** After listening to the issues, I think we need to stay the 30 days as with the other groups and understand, it is possible the letter fell through the cracks as she got her letter as she got her mail at the station.

**S Potter:** I'm curious, what is the Workers Comp Group? Who were they?

**S Klein:** A committee is established late in the last session, 6 members of the Legislature, S Heitcamp, S Klein, R Johnson, R Hammerman, R Keizer, S Espigard [?]

What the committee did was to listen to cases that have been reviewed, some all the way to the Supreme Court and were denied, so they have gone through every opportunity they could and pleading their cases before us.

**S Heitcamp:** There was absolutely nothing you could do about the case in front of you.

Couldn't get through the case with the retroactive issue of the firefighter. Listening to whether right or wrong and trying to learn from it so it doesn't happen to somebody else.

**S Klein:** More proposals are out, the other in the House which deals with 3 other issues, the committee was grueling.

**S Heitkamp:** It was brutal. This bill in front of you was a split vote in that committee. S Espigard recommended this bill.

**S Klein:** Wasn't a slam-dunk.

**S Heitkamp:** Was a split decision. S Espigard moved it forward.

**S Klein:** When we have honest people who represent , a lot easier when you have a face to go with the issue.

**S Heitkamp:** Heard everything from fraud... Wasn't all WSI goofed up.

**S Wanzek:** If you give me another 15 days, I'll just take another 15 days, are we still going to have a problem? Is it 30, 45, 60? If we're going to do it, I think we should extend it to everybody, not just limit it. I think 30's a reasonable amount of time.

**S Andrus:** Perhaps when it was set, it would give them 2 weeks, but maybe just to be safe, give them 30 days. We have so many delays in our process. I'm inclined to vote with S Hacker.

**S Hacker:** Frankly, the time line to me doesn't matter, we should not be treating people any differently; different industries, there are different agencies as well. I can't justify myself treating one different than the other, so really 30-45 days doesn't matter to me.

**S Behm:** If you can't get it done in 30 days, they're something wrong. You might be able to get an extra day if there is something seriously wrong. 30 days should be plenty..

**S Wanzek:** Is there a way to write: "Extending circumstances" but I don't know how to do that, so I'm going to vote for a Do Not Pass.

**S Klein:** A Motion for Do Not Pass from Wanzek, Second Hacker

**S Behm:** that means that they'll only have the 30 days?

**S Klein:** Correct

**S Wanzek:** I guess we leave the law as it is, any injured worker or employer that wants to appeal some decision by WSI has 30 days to file or written requests to appeal.

**S Klein:** Call roll for A DO NOT PASS

Motion: **S Wanzek**

Second: **S Hacker**

Vote: **Do Not Pass 6-1**

Carrier: **S Wanzek**

**S Heitkamp:** She made her case, the firefighters made their case, needs to have somebody speak to it on the floor upstairs.

**CLOSE**



**REPORT OF STANDING COMMITTEE**

**SB 2043: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SB 2043 was placed on the Eleventh order on the calendar.**

2007 TESTIMONY

SB 2043

2043

**2007 Senate Bill No. 2043**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by: Tim Wahlin, Staff Counsel**  
**Workforce Safety and Insurance**  
**January 9, 2007**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in opposition of SB 2043, a proposal submitted by the interim Legislative Workers' Compensation Review Committee. This Bill proposes to amend section 65-01-16, which sets forth specific timelines for the appeal of WSI decisions affecting injured workers' benefits.

The amendment proposes to extend the appeal period from thirty days to forty-five days for appeals falling under section 65-01-15.1 for full-time firefighters and law enforcement personnel.

WSI opposes the extension of the appeal period for this single segment of injured workers because it will create added complexity, increase the administrative tracking requirements, and establish a disparity between this segment of injured workers and the rest of the injured worker population. Additionally, not only would the injured worker be given an extra fifteen days to appeal, but the employer would be granted the same amount of time as well.

Finally, the filing of an appeal requires an injured employee to simply mail a written request to or call WSI within thirty days. It is WSI's position that the thirty day appeal period has functioned adequately to date.

For the foregoing reasons, WSI requests a "Do Not Pass" vote on Senate Bill 2043. I would be glad to answer any questions you might have.

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2043