

2011 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2089

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2089  
January 11, 2011  
12738

Conference Committee

Committee Clerk Signature	<i>Era Liebelt</i>
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## Explanation or reason for introduction of bill/resolution:

Relating to burden of proof in compensation matters; and to provide for application

## Minutes:

Testimony attached
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**Chairman Klein:** Called the committee to order. Roll was taken; all members were present and accounted for.

**Anne Jorgenson Green:** Staff Counsel for Workforce Safety and Insurance. See attached testimony.

**Chairman Klein:** Where are we currently sending the drug tests?

**Anne Jorgenson Green:** The test is either sent to a Department of Transportation certified lab or as an alternative, the test is conducted inside the state and that evidence is used in the presumption statute, but may not have been conducted by a North Dakota Department of Transportation certified lab.

**Senator Andrist:** Does this really have a strong applicable effect?

**Ann Jorgenson Green:** If we are talking about alcohol and the testing didn't take place for a day and a half in all likelihood the alcohol would be back to zero. If, however, the testing took place at a hospital close in time to the workplace injury and testing was completed it is entirely possible that the testing would come back correct, it may or may not be above the legal limit. The issue is the way it is currently tested. If the test comes up positive and the individual is legally under the influence, but if it were challenged and if the test was not conducted in compliance with CFR part 40 you would have to throw out the test.

**Senator Schneider:** Why are we striking over the language in 15 & 16? Don't we want to leave that in?

**Anne Jorgenson Green:** The language included in that arguably could be left.

**Senator Schneider:** Who would be conducting these tests, but for a physician, qualified technician, chemist or registered nurse?

**Anne Jorgenson Green:** I think that part of the concern was that 'qualified technician' language. We wanted to take out all of the language that was contained in the CFR.

**Senator Schneider:** Would it be a big problem to leave that language in?

**Anne Jorgenson Green:** I would want to think that through and double check the CFR, but it is certainly something we can consider.

**Senator Larsen:** What types of test are being used?

**Anne Jorgenson Green:** Typically the test is a urine test or a blood test.

**Senator Larsen:** What is the level of impairment? Does it change with the job type? Is there a guideline?

**Ann Jorgenson Green:** The levels are different. For a CDL driver the level is .04 for alcohol, but under state law the level for impairment is .08. If it is some other controlled substance then the issue is substance specific, but those levels are laid out in part 40 of the CFR.

**Senator Larsen:** If the person is working for a company and they have multiple tasks, say they get injured onsite, will they be tested under what job they were doing, what job they were hired for or what the umbrella job is?

**Ann Jorgenson Green:** The only test is under the CDL holder.

**Chairman Klein:** Are we just laying out the language more clearly? Does it change on a yearly basis?

**Ann Jorgenson Green:** From this point forward we will use the Code of Federal Regulations in affect on August 1, 2011.

**Chairman Klein:** It this a big deal, do we have a lot of this? Is it hard to find workers to pass the ULA test?

**Ann Jorgenson Green:** I don't know if there is a struggle after they are hired.

**Senator Murphy:** If we pass this are we certifying a North Dakota lab?

**Ann Jorgenson Green:** No

**Senator Schneider:** How many claims do you see this affecting retroactively?

**Ann Jorgenson Green:** There are no existing claims that would affect this.

**Chairman Klein:** I would like to be more comfortable with how they are handled now.

**Ann Jorgenson Green:** There really is no practical effect for this proposed change. This came about because of hearing where the presumption was being applied. What opposing council argued was the test that showed that a truck driver was impaired was not useable. The reason we couldn't use it is because the test that was obtained was not proven by a certified lab. So all of the things that happened the way they should have happened, we still had to throw out the results as it was not from a certified lab.

**Senator Larsen:** If the test is sent out of state doesn't the blood alcohol dissipate?

**Ann Jorgenson Green:** There is a way to preserve a sample.

**Chairman Klein:** Is there anyone else here in support of SB 2089?

**Tom Balzer:** North Dakota Motor Carriers Association. Right now all truck driver's blood tests have to be sent out of state, the blood alcohol content is preserved because you eliminate the presence of the liver and the kidneys to filter it out. We deal with this already. A certain timeframe is necessary. It is very expensive to do. By making this change you allow this to be done in a better way. It is unfortunate that North Dakota does not have a certified lab but in order to make sure that the standards are met we have to send all of our samples out of state.

**Chairman Klein:** We do have labs that are capable of doing this in North Dakota?

**Tom Blazer:** All the major cities have labs that are allowed to do it. The WSI is written in a way that states that it needs to go under the CFR which is by far the strictest.

**Senator Schneider:** What would it take for a lab in North Dakota to achieve accreditation for the Department of Transportation?

**Tom Blazer:** I do not know. I do know that the process is somewhat cumbersome. We have been approached by a lab in Fargo.

**Senator Nodland:** Who bares the cost of the test?

**Tom Blazer:** I would defer to Ann on that one.

**Chairman Klein:** Any other questions for Tom? Anyone else here in support of SB 2089? Anne was asked to answer Senator Nodland's question?

**Anne Jorgenson Green:** The cost would be borne by the employer.

**Senator Nodland:** Would the cost be cheaper if it was in North Dakota?

**Anne Jorgenson Green:** As a threshold matter, yes.

**Senator Laffen:** This would not change the fact that the test needs to go out of state, correct?

**Ann Jorgenson Green:** It would change that and it wouldn't require those tests to go out of state to a certified lab.

**Senator Laffen:** What part of the language changes that?

**Ann Jorgenson Green:** The overstrike on line 16.

**Senator Murphy:** How does the state legislature overrule federal code?

**Ann Jorgenson Green:** We have adopted that part of the CFR as to the levels that we want to adopt for the purposes of intoxication. But we are not bound by the CFR or federal law as we might be in other situations.

**Senator Murphy:** So it is not a federal mandate?

**Ann Jorgenson Green:** That is correct.

**Chairman Klein:** As we do with other laws.

**Dave Kemnitz, President of the North Dakota AFL/CIO:** The building trades of a zero tolerance policy for drug and alcohol abuse. My concern is this: why doesn't North Dakota have a CFR lab? Is it that difficult to have to comply with that certification? What certification is used to approve a lab in North Dakota? And who is doing that? What labs will be certified and who will certify them and under what criteria? The 40 CFR 383.51 I was here when it was put into place and it was because there wasn't another standard to use. If the test is not absolute then who is serving who.

**Chairman Klein:** Dave would you agree the labs are doing our DUI testing currently that those labs must be ok?

**Dave Kemnitz:** The testing itself under the criminal law, they use the 40 CFR 383.55.

**Chairman Klein:** What is your positive spin?

**Dave Kemnitz:** That we are zero tolerance of drug or alcohol use in the workplace. And that our members sustain, uphold and enforce that so that we are not looking for anyway out or lessening of criteria. In any way that we represent workers, if the test results are not rebuttable then we are moving on their rights and the right to adequate evidence.

**Senator Andrist:** For instance, if I am injured and they take a blood test which brings forth a suspicion, WSI gets the records and finds out that I have a certain amount of blood alcohol in my system. Is there enough blood left then, so if I wanted to challenge that

finding it could be submitted to another place? Is the determination of Workforce Safety that I had alcohol in my blood, is it appealable by me?

**Dave Kemnitz:** I believe that Senator Schneider could answer that better than I. I would want medical staff to know exactly what is in my system. For example, if I had taken too many aspirin it would affect the blood test. If they determine that the blood levels are high-that is appealable. I don't know how you overcome it except the purity of the test. We want to make sure the testing is the highest level.

**Leroy Volk:** This part of the bill I agree. I spoke with a sheriff a number of years ago and he told me that if you take a blood test and you wait over 24 hours to process the test that it will raise.

Chairman Klein then closed the public hearing on the SB 2089

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2089  
January 18, 2011  
Job Number 12994

Conference Committee

Committee Clerk Signature

*Eva Leibel*

## Explanation or reason for introduction of bill/resolution:

Relating to burden of proof in compensation matters; and to provide for application

## Minutes:

Discussion and Questions

**Chairman Klein:** Opened the discussion on Senate Bill 2089.

**Senator Schneider:** In reviewing the bill, he now has a concern with the overstrike, starting on line fifteen. He feels that it should be in there. He feels the tests should be conducted by a physician, qualified technician, chemist or registered nurse. It begs the question of who would be performing these tests if not any of those people.

**Chairman Klein:** My question would be, using the word, the code of Federal Regulations in effect, would that be inclusive enough?

**Senator Schneider:** Where in the code of Federal Regulations does it say who conducts these tests?

**Chairman Klein:** Said he would get the answer.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2089  
January 26, 2011  
Job Number 13421

Conference Committee

Committee Clerk Signature	<i>Eva Liebelt</i>
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## Explanation or reason for introduction of bill/resolution:

Relating to burden of proof in compensation matters: and to provide for application

## Minutes:

Discussion and Voting
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**Chairman Klein:** Asked Senator Schneider if he had the amendments ready for 2089.

**Senator Schneider:** He did get them from Anne Green, but was concerned with the overstrike. It raised the question of who is qualified and feels it is ambiguous. He would rather have technician and without that he felt there could be law suits. He would like the overstrike removed, all the way up to registered nurse.

Changes in Anne Green's amendments are discussed and made. Senator Schneider's amendment is voted on.

**Senator Schneider:** Moved a do pass on the Schneider amendment.

**Senator Murphy:** Seconded the motion.

Discussion continued

Roll Call Vote: Yes-7 No-0

**Senator Schneider:** Moved a do pass as amended.

**Senator Murphy:** Seconded the motion.

Roll Call Vote: Yes-7 No-0

Senator Schneider to carry the bill

# FISCAL NOTE

Requested by Legislative Council  
03/09/2011

Amendment to:           Engrossed  
                                  SB 2089

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 engrossed bill provides for a specific version of the federal regulations to be used in determining the appropriate alcohol concentration and controlled substance cutoff levels and eliminates the requirement that drug and alcohol testing be performed pursuant to specific DOT law.

**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  
2011 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2089 w/ House Amendments

BILL DESCRIPTION: WSI Drug/Alcohol Presumption Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill provides for a specific version of the federal regulations to be used in determining the appropriate alcohol concentration and controlled substance cutoff levels within the drug/alcohol presumption statute and eliminates the requirement that drug and alcohol testing be performed pursuant to specific Department of Transportation law.

FISCAL IMPACT: No fiscal impact is anticipated.

DATE: March 9, 2011

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>	03/09/2011

# FISCAL NOTE

Requested by Legislative Council  
01/28/2011

Amendment to: SB 2089

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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 engrossed bill provides for a specific version of the federal regulations to be used in determining the appropriate alcohol concentration and controlled substance cutoff levels and eliminates the requirement that drug and alcohol testing be performed pursuant to specific DOT law.

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  
2011 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed SB 2089

BILL DESCRIPTION: WSI Drug/Alcohol Presumption Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The engrossed bill provides for a specific version of the federal regulations to be used in determining the appropriate alcohol concentration and controlled substance cutoff levels within the drug/alcohol presumption statute and eliminates the requirement that drug and alcohol testing be performed pursuant to specific Department of Transportation law.

FISCAL IMPACT: No fiscal impact is anticipated.

DATE: January 28, 2011

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>	01/28/2011

# FISCAL NOTE

Requested by Legislative Council  
12/22/2010

Bill/Resolution No.: SB 2089

**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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 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.*

2009-2011 Biennium			2011-2013 Biennium			2013-2015 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 legislation identifies the federal regulations to be used in determining the alcohol and controlled substance cutoff levels within the presumption statute and eliminates the requirement that drug and alcohol testing be performed pursuant to specific Department of Transportation law.

**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  
2011 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2089

BILL DESCRIPTION: WSI Drug/Alcohol Presumption Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, 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 for a specific version of the federal regulations to be used in determining the appropriate alcohol concentration and controlled substance cutoff levels within the drug/alcohol presumption statute and eliminates the requirement that drug and alcohol testing be performed pursuant to specific Department of Transportation law.

FISCAL IMPACT: No fiscal impact is anticipated.

DATE: December 17, 2010

**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>	12/23/2010

PROPOSED AMENDMENTS TO SENATE BILL NO. 2089

Page 1, line 15, remove the overstrike over "~~found by a test required by a physician, qualified~~" and insert immediately thereafter "individual,"

Page 1, line 16, remove the overstrike over "~~chemist, or registered nurse~~"





**REPORT OF STANDING COMMITTEE**

**SB 2089: 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 2089 was placed on the Sixth order on the calendar.

Page 1, line 15, remove the overstrike over "~~found by a test required by a physician, qualified technician,~~"

Page 1, line 16, remove the overstrike over "~~chemist, or registered nurse~~"

Renumber accordingly

2011 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2089

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2089  
March 2, 2011  
14825

Conference Committee

Committee Clerk Signature

*Ellen LeTang*

## Explanation or reason for introduction of bill/resolution:

### Minutes:

**Chairman Keiser:** Opens hearing on SB 2089.

**Anne Jorgenson Green~Staff Counsel for WSI:** (See attached testimony 1).

**Representative Ruby:** On line 15, qualified technicians, I use a company that takes care of our random drug screening for our drivers; do they qualify as qualified technicians?

**Anne Green:** There lies the reason that in the original version of the bill, that language found by a test required by a physician, qualified technician, chemist or registered nurse was removed. If you read the statute in its entirety, the requirement to use in the levels of a certified lab is what the statute requires. Whether an individual is a certified technician, would be a matter to be argued in a hearing, it would be sufficiency of the evidence.

**Representative Ruby:** To do the test in a lab, just getting the sample, handling it properly and the procedure they have to go through, that's where the controversy is.

**Anne Green:** Let me take a step back, the genesis of this bill was an administrative hearing issue where there was a roll over under the influence of alcohol. When a sample was taken at the local larger medical facility, the individual was impaired and the claim was dismissed. What happened at the hearing, the claimants counsel determined and learned the medical facility that conducted the alcohol test was not a certified lab under the DOT. We weren't able to use that alcohol test to maintain the dismissal of the claim and at the end of the day there wasn't enough factual basis to prove that the injured worker was impaired. To prove that injured worker was impaired, the burden was on WSI. We did some research and found that there are no certified labs in North Dakota because the federal DOT regulations for certifying labs are changing. What we found was that we were behind, we haven't changed this piece of statute and this needed to be cleaned up. On the Senate side of the hearing, there was some concern that the individuals who were going to draw the sample or those individuals at the medical facility, needed to be qualified and they didn't want the guts of the requirements for good solid testing and medical facilities to be taken out of the statute. Consequently, the Senate House Industry, Business and Labor Committee put the language back in.

**Representative Gruchalla:** The test was admissible in criminal court?

**Anne Green:** Yes.

**Representative Gruchalla:** Is this the easiest way to correct this?

**Anne Green:** The easiest fix from WSI's perspective is to pull what is antiquated language out of this particular statute, which is specific to WSI. The language in this statute, only addresses the usability of a drug and alcohol test in the context of WSI's compensability determination.

**Chairman Keiser:** On line 15, you have qualified technician, does that include law enforcement personnel?

**Anne Green:** I'm not sure I can answer that question, if it's the gathering of a sample it's yes, but otherwise a physician, maybe not.

**Chairman Keiser:** I'm concerned in whether or not we should add a trained law enforcement officer who can administer tests.

**Anne Green:** I wonder if law enforcement officer isn't covered under a different title, DOT or criminal title. Secondly, I would wonder that sample would have been preserved from the evening before with the police officer and the potential worker. Third of all, from a compensability standpoint, I would wonder if the bump on head arose out of the employment.

**Representative Boe:** If someone was charged and convicted of DUI, that's not good enough to deny the claim?

**Anne Green:** Under current law, WSI cannot rely on the presumption of impairment to dismiss the claim. However, under your scenario, what you have given me is a conviction for criminal driving under the influence. The burden of proving a criminal conviction is beyond reasonable doubt, so that is correct.

**Representative Boe:** The changing of the specific 49 CFR 383 to the code of federal regulations in effect, that's just generically to cover us? Why are we replacing it with the code of regulations in effect?

**Anne Green:** It made sense in case the CFR were to renumber.

**Representative Boe:** If it wasn't a numerical change but an actual change, that would change it also?

**Anne Green:** That's correct.

**Chairman Keiser:** You cannot reference something that might occur two or three years down the road.

**Vice Chairman Kasper:** On page 2, line 6, can you give a review of the preponderance of the evidence.

**Anne Green:** Preponderance of the evidence means that is more worthy of belief or 51%. It's more likely than not.

**Representative M Nelson:** One part talks about the test that has to be required by these medical personnel and other part talks about the test be required by company policy. Does WSI have the ability to require the test?

**Anne Green:** Statutorily we do not have the authority to mandate a test unless we were in a situation where we were in a vocational educational program or questions about ongoing medical management of a claim. There are very specific situations where we could mandate a test.

**Representative Gruchalla:** Line 15, the word "required", shouldn't that be change to "conducted"?

**Anne Green:** I agree that there is some ambiguity in that particular language.

**Chairman Keiser:** Would you object if we changed it to "conducted"?

**Anne Green:** Seems to say a test "required" by one of the entities, to get to the answer that they are seeking.

**Chairman Keiser:** I think Representative Gruchalla is right.

**Chairman Keiser:** Further questions? Anyone else here to testify in support, in opposition, in neutral? Close the hearing.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2089  
March 7, 2011  
15043

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Burden of proof in compensation matter and provide for application

## Work Committee Minutes:

**Chairman Keiser:** Opens the work committee session on SB 2089.

**Chairman Keiser:** You notice that on page 1, line 15, this goes back to drug and alcohol related testing, rather than use "required" use "conducted". Somebody suggested that "conducted" was a more appropriate word. We asked WSI to review it and they came back in full agreement that "conducted" was the more appropriate term.

**Vice Chairman Kasper:** Moves to adopt the amendment 11.8032.02001.

**Representative N Johnson:** Second.

**Chairman Keiser:** Further discussion?

Voice vote, motion carried?

**Chairman Keiser:** SB 2089 is before us, what are the wishes of the committee?

**Representative Nathe:** Moves for a Do Pass as Amended.

**Representative Kreun:** Second.

**Chairman Keiser:** Further discussion?

Roll call was taken for a Do Pass as Amended on SB 2089 with 13 yeas, 0 nays, 1 absent and Representative Boe is the carrier.

11.8032.02001  
Title.03000

Prepared by the Legislative Council staff for  
Representative Keiser  
March 3, 2011

VR  
3/2/11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2089

Page 1, line 15, overstrike "required" and insert immediately thereafter "conducted"

Renumber accordingly

Date: March 7

Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2089

House House Industry, Business and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.8032.0201

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Motion Made By Rep Kasper Seconded By Rep Johnson

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative Frantsvog			Representative M Nelson		
Representative N Johnson					
Representative Kreun					
Representative Nathe					
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

*voice vote - motion carried*

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: March 7

Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2089

House House Industry, Business and Labor Committee

Check here for Conference Committee

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

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Motion Made By Rep Nathe Seconded By Rep Kreun

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe	Ab	
Representative Clark	✓		Representative Gruchalla	✓	
Representative Frantsvog	✓		Representative M Nelson	✓	
Representative N Johnson	✓				
Representative Kreun	✓				
Representative Nathe	✓				
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep Boe

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

**REPORT OF STANDING COMMITTEE**

**SB 2089, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2089 was placed on the Sixth order on the calendar.**

Page 1, line 15, overstrike "required" and insert immediately thereafter "conducted"

Renumber accordingly

2011 TESTIMONY

SB 2089

**2011 Senate Bill No. 2089**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by Anne Jorgenson Green, Staff Counsel**  
**Workforce Safety & Insurance**  
**January 11, 2011**

Mr. Chairman, Members of the Committee:

My name is Anne Jorgenson Green, Staff Counsel for Workforce Safety & Insurance (WSI), here to testify in support of this bill.

Under current law, an injured employee's voluntary use of alcohol or a controlled substance creates a presumption that a workplace injury was due to the impairment caused by the use of drugs or alcohol and consequently, not compensable. The burden is on WSI to prove the impairment.

To prove the impairment, current law requires testing performed by a "U.S. Department of Transportation certified lab" as required by the United States Secretary of Transportation under 49 of the Code of Federal Regulations, part 40. The U.S. Department of Transportation maintains a list of certified labs that may be used for U.S. Department of Transportation drug testing. North Dakota does not appear on the list because no laboratory in North Dakota is certified under the standards required by the U.S. Department of Transportation.

The proposed changes to the statute do not dilute in any way WSI's burden to prove an individual was impaired by alcohol or drugs. This bill doesn't propose to change the cut-off levels determined by law to be the threshold of impairment. Those remain the levels set by state and federal law.

Passage of SB 2089 would permit North Dakota labs to conduct drug and alcohol testing. No potential defenses are lost to injured workers who wish to challenge a decision of WSI. Rather, by permitting any North Dakota lab to conduct testing, employers and law enforcement have testing resources and facilities within close proximity to secure evidence against individuals whom they believe are impaired.

This proposed change permits the presumption statute to have its intended effect. Without it, for all intents and purposes, the statute becomes void.

That concludes my testimony. I am happy to answer any questions you may have.

Testimony 1

**2011 Engrossed Senate Bill No. 2089**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by Anne Jorgenson Green, Staff Counsel**  
**Workforce Safety & Insurance**  
**March 2, 2011**

Mr. Chairman, Members of the Committee:

My name is Anne Jorgenson Green, Staff Counsel for Workforce Safety & Insurance (WSI), here to testify in support of Engrossed SB 2089.

Under current law, an injured employee's voluntary use of alcohol or a controlled substance creates a presumption that a workplace injury was due to the impairment caused by the use of drugs or alcohol and consequently, not compensable. The burden is on WSI to prove the impairment.

To prove the impairment, current law requires testing performed by a "U.S. Department of Transportation certified lab" as required by the United States Secretary of Transportation under 49 of the Code of Federal Regulations, part 40. The U.S. Department of Transportation maintains a list of certified labs that may be used for U.S. Department of Transportation drug testing. North Dakota does not appear on the list because no laboratory in North Dakota is certified under the standards required by the U.S. Department of Transportation.

The Senate Industry Business and Labor committee amended SB 2089 by reinserting the original statutory language, "found by a test required by a physician, qualified technician, chemist or registered nurse" on lines 15 and 16 of the engrossed version of the bill. The amendment addressed a concern of the committee that tests are conducted by the proper personnel. The engrossed version of the bill maintains the intent of the bill, to continue to rely on the CFR

for the level of impairment only, while using local resources in North Dakota to obtain those levels.

The proposed changes to the statute do not dilute in any way WSI's burden to prove an individual was impaired by alcohol or drugs. This bill doesn't propose to change the cut-off levels determined by law to be the threshold of impairment. Those remain the levels set by state and federal law.

Passage of SB 2089 would permit North Dakota labs to conduct drug and alcohol testing. No potential defenses are lost to injured workers who wish to challenge a decision of WSI. Rather, by permitting any North Dakota lab to conduct testing, employers and law enforcement have testing resources and facilities within close proximity to secure evidence against individuals whom they believe are impaired.

That concludes my testimony. I am happy to answer any questions you may have.