

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

234/2

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2342

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2342**

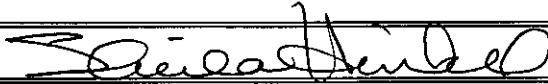
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 6, 2007**

Recorder Job Number: **2904**

Committee Clerk Signature



Senator John Andrist Bill – timely processing of claims

Senator Heitkamp – Reading TESTIMONY # 1 presented by Senator Andrist

[S Andrist unable to attend session as his wife was having surgery]

S Heitkamp: Suggested he would be a co-sponsor of the bill, the bill needs to pass. Early decision-making should be a part of the process, the claimant knows where he stands, he/she the better off he is.

Dave Kemnitz – Pres. AFLCIO - In Favor

Agrees with testimony.

Sebald Vetter – Worker – In Favor

Workman's Comp should respond sooner with a yes or no and not have to wait.

Leroy Volk – Injured Worker - In Favor

I would be working if they would have acted sooner

OPPOSITION

Rob Forward – Attorney WSI - In Opposition

TESTIMONY # 2 – [covered testimony ends 8:36m]

S Klein: In your testimony, you indicated that less than 2% of the claims require a decision that takes more than 60 days?

R Forward: Yes. The numbers right now is that for 2006, out of 20,000 claims, 411 claims that took over 60 days to make a decision. Of those 411, about 64% we accepted.

S Klein: You talk about "unintended effect", putting them at odds. Example?

R Forward: Can read except, polled the claims adjusters on this, and got frank responses.

One of the claims adjusters: [read 10:16m]

Autopsies – the state lab it is usual to get information after 60 days.

S Hacker: Two questions: would it help if we exempted death claims?

R Forward: It would put the family in a better situation.

S Hacker: If 411 went over 60 days, what is the other time?

R Forward: 61days to the longest being 158 days, with the bulk of 411 in the 65-70 days range.

S Klein: Death or injury, if it reached 60 day threshold and you have lack of information it will create a conflict.

R Forward: Yes\

OPPOSITION? [none]

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2342 B**

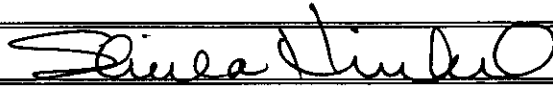
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 7, 2007**

Recorder Job Number: **3025**

Committee Clerk Signature



Requires that WSI reach a determination at 60 day cutoff.:

S Klein: I thought it was a good idea in listening to the testimony that out of 20,000 claims we reach a 411 at the 60 day and almost than ½ of that after 70 days that maybe we are creating a problem. It is the 2% that go over the 60 days was minimal.

S Behm: I'm getting a lot of emails. The people that are dragging their feet, could have gotten it done faster.

S Klein: I'm going by the testimony of the 2% of the 20,000 claims, and yes, there are some folks who have gone over. This bill was a result of S Andrist's constituent who is now at 138 days. My concern is, the claims adjuster who will say, "That will really put us in a box to try to cut this loose, and even if you have more information coming." I don't want that to happen.

S Hacker: We asked how many went over 60 days with 411, and they said the bulk of those is still in the 60's. 5 days, hanging out a little extra, so they can appeal, and go through the whole appeal process, I think we're going to cause more headaches for these workers than if they get accepted on the 67th day. There is a reason why some of these are running longer. They're likely investigating to see if it is a good claim or not.

S Potter: Tough to get the medical establishment to move and provide you with the records I can't take credibility to testimony of WSI, it may be that they picked 60 because the claimants have to have the information in. I would like to amend it to 60-75 days window.

S Hacker: will they get complacent with 90 days?

S Klein: Now they have 90

S Behm: Suggest 75

S Klein: Don't have to crank them out so fast.

S Potter: Now there is no limit. The legislative intent is to get them done as soon as possible.

S Wanzek: In the policy, claims should be settled in a fast, efficient and prudently as possible.

S Klein: In the last 10 years, WSI has been their goal that statistically we know if you don't get people back doing something or making the determination, you're going to have a long term claim, they have put upon themselves to get them out as quickly as possible.

S Wanzek: S Potter said 60 days.

S Potter: To make a claim.

S Wanzek: It was suggested for 75 days, then they would have 30 days to appeal

S Klein: They would have 30 day appeal window for decisions to be made, the clock starts ticking.

S Hacker: Death benefit, is somehow is exempt from the death claims.

S Potter: They should be in such a hurry to deny a claim for somebody who's dead, no hurry, the one amendment is a simple one, we need an amendment on line 7, change word 60 – 75 and on line 8 change 61-76.

S Heitkamp: Why?

S Potter: There are claims that run over 60 days, but the bulk of them run 65, 66, 67 days, this gives them another 15 days to process the claim and not have to deny it.

S Heitkamp: How long can you go without paying your bills, once you get past 60 days. Isn't it a signal for WSI to "step it up?" Once you get past 60 days with people like this, you're in trouble, it's going to start mounting, I like the 60 days. If we amend it up here, you can almost be it's going to be amended in the House and then we'll be sitting in the conference committee. I'm going to resist the amendments.

S Wanzek: Question to S Heitkamp: I couldn't agree with you more, at 60 days is reasonable, we could ask, "why is it taking longer?" 65% of the claims that go over go to the injured worker. If we push too hard, this will result in it negatively.

S Heitkamp: The problem comes when it comes to those working from paycheck to paycheck. Anything to step up the action will help.

S Wanzek: We've all been there.

S Hacker: [Suggested 75 days]

S Klein: So do I understand, 75 days and also some language that separates the death benefit?

S Hacker: I read the bill, we don't need that, death benefit is within 6 months of death.

S Potter: Motion to change 75 days on line 7, 76 on line 8 on amendment.

Second: S Hacker

Vote: 3-3-1 Vote Fails on tie

S Potter: Motion DO PASS

Second: S Heitkamp

Vote 3-3-1 Vote Fails on tie

S Wanzek Motion WITHOUT RECOMMENDATION

Second: S Hacker

Vote 6-0-1

Without recommendation 6-0-1

Carrier: S Hacker

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2342 C

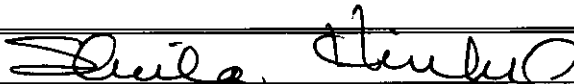
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3057

Committee Clerk Signature



Senator Andrist bill – Retraction

S Klein: Senator Andrist is back, in AM took action on the bill to send WITHOUT RECOMMENDATION

S Wanzek: I move that we **reconsider our actions** on sending the bill out without recommendation.

Second by S Hacker

All in favor: AYE – passed

S Klein: S Andrist, in our discussions today, this was your bill, we passed it as the bill was, it came out 3-3- and 3-3, so we passed it out without committee recommendation. Your bill,

S Heitkamp: It should be pointed out that THESE 3 [Democrats] were with you. There's a couple votes coming up, I hope you keep that in mind.

S Andrist: Basis for the bill was that in today's world you're credible if you can't figure out whether you're going to accept the claim within 60 days or not. There is a way to do that and they need to find a way to do that, I think.

Move a DO PASS by S Potter

Second by S Behm

Vote for a DO PASS: 4 – 3 [neg Klein, Hacker, Wanzek]

Passed 4-3-

Carrier: Behm

FISCAL NOTE
 Requested by Legislative Council
 01/22/2007

Bill/Resolution No.: SB 2342

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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 requires claim approval when no decision has been made within 60 days from the date in which the claim was filed.

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
 2007 LEGISLATION
 SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2342

BILL DESCRIPTION: Timely Claim Processing

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 requires claim approval when no decision has been made within 60 days from the date in which the claim was filed.

FISCAL IMPACT: Not quantifiable as we do not have access to sufficient data to permit a comprehensive evaluation of the potential impact of this proposed legislation.

As we understand the proposed legislation, a claim will be deemed approved if it is still pending sixty days after it is filed with WSI. In the event that a claim is deemed approved under this section, WSI will bear the burden of proving the claimant's lack of entitlement to benefits. Furthermore, WSI will be prevented from seeking repayment or recovery if a claimant incurs an overpayment under this process.

We cannot definitively predict how the claims environment may change under the proposed legislation. To the extent the proposed legislation increases the number of claims dismissals as claims approach the 60 day time period due to lack of information, administrative and legal costs could increase in conjunction with implementation of the proposed time table. To the extent the proposal allows for claims being approved that otherwise should not have been, benefit costs will increase accordingly.

To the extent benefit and other costs increase as a result of this proposal, the costs will flow through future premium rate levels.

DATE: February 5, 2007

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:	328-3760	Date Prepared:	02/05/2007

REPORT OF STANDING COMMITTEE

SB 2342: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2342 was placed on the Eleventh order on the calendar.

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2342

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2342

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 02-28-2007

Recorder Job Number: 4062

Committee Clerk Signature

Lisa M. Thomas

Minutes:

Chairman Keiser opened the hearing on SB 2342.

Senator Andrist introduced the bill. See written testimony.

Rep. Zaiser: I appreciate your sincere comments. I am just curious if within your district if you have had any other people that have talked to you about these kinds of delays in getting a response?

Sen. Andrist: No, I don't have any first hand knowledge. I have had anecdotal information come to me. I don't think it happens often. That to me is the point. It is not going to be a heavy burden to WSI because most of the time they get this covered. It just holds their feet to the fire to make sure that they move forward with the claim and not let it fall through the cracks.

David Kemnitz, AFL-CIO, spoke in support of the bill.

Kemnitz: When I read the bill several things come up that show that there was lots of thought put into this. What to do and how to make sure that there is always a door. If I read it correctly, it is the original claim, not an ongoing or something that has already been established and closed and in the sixty day clock runs only on the original claim. Then on line ten I circled the middle of the sentence where it says 'the organization bares the burden of proving the claimants lack of entitlement to benefits'. To me that says that within that sixty days until we

get to a fifty-nine and the bill says we are not sure yet. But now we are going to trigger this acceptance. If they find clear evidence that there is no medical evidence or a new finding, they can go back and say okay, we have proof enough and it's the burden of proof, not clear and convincing or beyond, it's the opening threshold that the bureau then has to reverse that sixty-day clock and that is on ten and eleven. On twelve, there is also an opportunity that if this claim was fraudulent by a claimant it automatically reverses that sixty day push. Then line fourteen starting with the first full sentence, a claimant may not be awarded benefits under the section if the claimant is not cooperating with requests from the organization for additional information needed to process the claim. To me that is a frivolous claims are triggered automatically denial, the trigger is there. So someone can't just throw the claim out there and it's a difficult one and then sits back and waits until you prove me different. That is not the way this is going to run. They have to cooperate with the bureau and the investigation and the medical records and the history of the injury. The claimant has to cooperate and if they don't those sixty days is waived. I think there is some movement on both sides of this and I think the Senator well explained. In giving the attributes to the rider, he and others, it is quite thoughtful on this move and collaborative with the bureau. In the WSI operating report, under the initial acceptance rates of claims, they show that in 2004 they had a ninety three percent initial acceptance rate. They trimmed it down in 2005, it went to ninety-one percent and in 2006 to eighty-six percent and in 2007 eighty-four percent to date. In other areas of claims adjudication and acceptance they targets. They say that the targets are industry averages on standards are difficult to obtain. As there are differences between programs and corresponding laws from state to state consequently target that reflected has met goals, rather than as an industry having a standard. So as I looked at this bill again I see that those sponsors said 'let's set a

target, but let's make sure that mitigating circumstances on behalf of this organization are addressed'.

Rep. Ruby: The question was asked of the sponsor of how have other cases that are going longer, I am just wondering if the times when they are complicated injuries and things that maybe people being treated in different places, are sixty-days too short. I can see that there should be some kind of definitive time but I am concerned of making it too tight where there would be possibly the wrong decision made.

Kemnitz: We are talking about battling entities between a personal insurance and an industrial insurer and whether they have jurisdiction at all. Back to code one, what Sen. Andrist said that it has always been preached that the early intervention is absolutely necessary. There is a particular case that a representative asked me about two days ago. He had a constituent that called him they had what they felt was an on the job injury and had neurological damage where the arm was becoming numb. They were having difficulties getting anyone to accept liability of the medical and so the person wasn't getting medical attention. I went to Sen. Kilzer and asked what we should do. He said the number one thing to do is get medical attention he is only going to get worse if it is neurological and involves the vertebrae in the neck it could be permanent. The Rep. wasn't sure if he had any medical coverage so that stopped that individual. In the instance that the Rep. was called because the bureau wasn't engaging in that decision and saying do something so I directed the Rep. directly to Sandy Blunt. Some of these things need to be moved quicker. In the end, if the bureau proves which is the burden of proof that the claim was not legitimate claim, it is reversed and that claimant now is subject to further medical attention on their own so yes there can be instances of all kinds. In the first position someone needs to make sure that these things are moved along.

Rep. Ruby: In a situation like that I am wondering because the claim could be filed more than likely within twenty four hours, there is just an emphasis to get that claim file or incident file immediately and so there may be times when an incident is filed and possibly an incident is filed and eventually that led to yes, they need some type of and I have had that situation where they need something today and an incident report. But if they came back at a later time and said they had been having some problems and had a doctor look at the ankle or whatever and the incident report was filed and that was the original claim, I am wondering if there might be some instances where that can catch.

Kemnitz: Well, if that is a particular sticking point you may want to hold the bill.

Rep. Thorpe: On lines fourteen, fifteen and sixteen, are you comfortable with the language in there? It looks like this is new language all the way through WSI.

Kemnitz: I think the bureau could answer that closer than I can. My perception as I look at it, it is a new section because it is a new separate from an accepted claim. What we are looking at here, I believe is that claim, the original claim has not been accepted by anyone yet. Some jurisdictions and other applicable law aren't engaged at that time until the bureau accepts the claim. Well this addresses when the bureau does not accept the claim in the sixty days. There has to be a stipulation I am assuming to say that the claimant needs to be cooperative. If they are bed ridden or somehow indisposed, they can overcome that too by that proof or at least witnesses to overcome the not cooperating allegation from the bureau. In this instance because no one has accepted it, yes, I would bet that the language says there isn't anything else in the statute that applies and this would control only in the instance of the sixty days of not being accepted. Once they are accepted, the rest of the chapter applies.

Sebold Vetter, CARE, spoke in support of the bill.

Vetter: I got a few comments on these sixty days. I had a client here last November which signed from November until February. I think sixty days for worker's comp should be enough too. We get less than that. A man has a neck injury and come down to my office twice and the second time he came down there he was going to commit suicide in February and the man had pain real bad. His eyes were popping out of his head and he said he didn't know what he should do. I can't get any help and the doctors told me that I need surgery and they don't approve it. I went over to Chuck and the man got real hostile over there just like I did and he slammed on the table and he says this is enough is enough. I am going to commit suicide and take those people along. I said Chuck you gotta do something. The next day he had an answer. The man went in and got surgery and three weeks later he was working. Why do people have to wait so long and walk around with injuries and try to commit suicide. It is a bill that should be looked at and maybe there should be some changes made, but I think sixty days is enough for them too.

Opposition was heard at this time.

Rob Forward, Staff Counsel for WSI, spoke in opposition to the bill. See written testimony.

Rep. Zaiser: I was just curious if we were to make a change that would ask WSI to explain to the claimant why they need more information and why having a problem and the additional information is needed and why that causes an extension or more than sixty days. Have this with that exception, what do you think of that?

Forward: If communication is the problem that probably would be a welcome change. I can see situations where injured workers don't quite understand the process. I will give you an extreme example that is usually with our death claims. Unfortunately with our death claims, it's one of the claims that would be adversely affected by this. We have a family that has lost someone. We can't make a determination until the state health department does an autopsy

and then does its lab work. I talked to our adjuster that handles all of our death claims before I testified on this in the Senate. She told me that usually she does not get the lab work from the state lab anywhere earlier from eight to twelve weeks after the autopsy is done. That is not due to anything that WSI has done. In that situation, I know we talk to the families and told them that is what is holding up our decision but because criminal take precedence with the state crime lab, the WSI lab work gets shoved to the back and we have to wait. Those families are not always receptive to that.

Rep. Zaiser: Why would you be apposed to something like that and why wouldn't that be a good thing even though certainly, a family wants to get results ASAP, I would think this would be a good intermediate measure that might be beneficial to both parties.

Forward: That is an option. I don't have the authority to say yeah, WSI will do that. I understand your point.

Rep. Keiser: On the death claim you have six months.

Forward: No, the wording says if they file a claim, it's six months.

Rep. Ruby: In the interest of coming up with some specific time frame, you have an alternative recommendation or possible idea, you say less than two percent are required to go longer than sixty days. Is eighty days, where is an acceptable so that the injured worker would know by a certain time and have an idea when they could get the claim or move on to another option?

Forward: I don't have a recommendation. I can tell you what is stats show. I've got claims pending between July 1st, 2006 through I'm not sure when the end date is on that, but we've got claims pending from sixty-one days to highest would be one hundred and fifty-eight days. The majority of the claims pending are in that sixty-one to seventy-five day range.

Rep. Nottestad: You spoke of the death claim as being one of the main concerns of those pending claims that you have, how many of those are death cases?

Forward: I don't know. I know that in 2005 there were thirteen death claims. Seven of those thirteen we were forced to make a decision after sixty days.

Rep. Nottestad: If death claims are the biggest problem, if there were an amendment made making it ninety days or one hundred and twenty days or one hundred and eighty days and sixty days for injuries, respond to that.

Rep. Forward: I am not sure on, on using the death claims as just an extreme example of one problem with the bill. I think WSI still opposes the bill on all claims as it applies. Where most of our numbers are in the higher range, are where people have conditions where you don't have a treating doctor responding quickly. Another big problem is the Veteran's Administration. People have prior medical records for treating with the VA on something, for whatever reason WSI and other medical insurers have a heck of a time getting medical records from the VA quickly so we are waiting on other people many times.

Rep. Keiser: Whatever date we put in, that puts WSI in the position to deny the claim?

Forward: That is correct. I asked some of our claims supervisors about this bill because they are the ones that deal with the nuts and bolts. One of them responded, "Many claims have reached the sixty day threshold or because injured workers have pre-existing conditions such as degenerative disc disease or have had a non-work related prior surgery. So still at day sixty we are pursuing priors and are pursuing clarification from their own doctors. If this bill passes we will be forced to deny the claim for lack of information which in turn will really make our customers angry and they aren't going to be getting the desired results and we will continue to be the bad guys." That comes from the people that do the claims work every day.

Rep. Amerman: Part of the reason that I got from Sen. Andrist was regardless of if you accept it or deny the worker, but then the bills would be paid. Because of this sixty days and time ran out and you denied a claim so then he can appeal, correct?