

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2055

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2055

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: January 19, 2009

Recorder Job Number: 7183

Committee Clerk Signature

*Eva Lubelt*

Minutes:

Chairman Klein: We will open the hearing on Senate Bill 2055.

Jennifer Clark, Legislative Council: My testimony is neutral. I was council for the interim review committee. The first five bills are the senate bills that come out of that committee. The first one in SB2055, it's the first subsection this is a matter of background if you're a paid firefighter or law enforcement officer there is certain medical disabilities you can come down with and there is a presumption that it was incurred in the course of your employment. That's the section we are in right here. The amendment is pretty narrow. We're changing the burden of proof WSI has to overcome this presumption. The presumption is if you're injured and it's one of these covered disabilities, we're going to assume its work related. In order to overcome that presumption WSI has a certain burden they need to prove and had previously been by showing by competent evidence. We're increasing that burden a bit too clear and convincing. Which I believe the injured worker needs to establish for their burden of proof.

Chairman Klein: So we're dealing with adjectives here? Some having more lawful clout, then what we had.

Senator Potter: Is the preponderance some place between competent evidence and clear and convincing?

Jennifer Clark: That's probably accurate.

Chairman Klein: So what we're doing here is asking WSI to be clearer and convincing more than they're competent. Meaning we raised that bar?

Senator Horne: To me this strongly suggests that WSI must lean toward the worker in this situation opposed to the agency. Is that a fair assessment?

Jennifer Clark: I think the basic reading of this section is yes there is a presumption if that injured worker walks in the door and has disabilities it's presumed that the injury is related to their work.

Senator Wanzek: For the rest of the committee's information. I served on the workman's comp review committee. I think you have to hear the gentlemen's whole story. It is presumed but it comes back to legal terminology and I think this requires clear evidence that it is not the case.

Tim Wahlin, Chief of Injury Services, Workforce Safety and Insurance: (Testimony Written).

In support of Senate Bill 2055.

Discussion followed.

Rick Graba, Fire Captain with the City of Bismarck: (Testimony Written). In favor of Senate Bill 2055 and representing The PFFND.

Chairman Klein: Close hearing on Bill 2055.

Chairman Klein: In this case 2055 as I recall there was no one opposed to the bill and that had a fire captain here. I am looking for any other discussion.

Motion for a do pass by Senator Wanzek. Seconded by Senator Horne.

Roll Call Vote: Yes: 6 No: 0 Absent: 0

Floor Assignment: Senator Horne

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/07/2009

Bill/Resolution No.: SB 2055

1A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The proposed legislation clarifies that the presumption clause can be rebutted if there exists clear and convincing evidence the condition or impairment was not work-related.

B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE  
2009 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2055

BILL DESCRIPTION: Presumption Clause Bill

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 clarifies that the presumption clause can be rebutted if there exists clear and convincing evidence the condition or impairment was not work-related.

FISCAL IMPACT: No material premium rate level or reserve level impact is anticipated.

DATE: January 8, 2009

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	01/08/2009

Date: 1/21/09  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2055

Senate

Committee

**Industry, Business and Labor**

Check here for Conference Committee

Legislative Council Amendment Number 2055

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

Motion Made By Senator Wanzek      Seconded By Senator Horne

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

Total (Yes) 6      No           

Absent 1

Floor Assignment Senator Horne

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

**REPORT OF STANDING COMMITTEE (410)**  
January 21, 2009 12:01 p.m.

**Module No: SR-12-0641**  
**Carrier: Horne**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2055: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2055 was placed on the Eleventh order on the calendar.**



2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2055

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2055

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9888

Committee Clerk Signature

*Ellen Litang*

**Chairman Keiser:** Opened the hearing on SB 2055 relating to the burden of proof under the workers' compensation firefighter's & law enforcement officer's presumption.

**Jennifer Clark~Legislative Council.** Introduces SB 2055. Lines 12-16 is over striking the burden of proof. WSI has the burden of proof now to hit the ball over the net to the injured worker. Also changing the competent of evidence to clear & convincing, I don't know what competent evidence really means. I like the language of the clear and convincing evidence. My understanding is we made it more difficult for WSI to hit the ball back over the net. We made it more clear.

**Representative Thorpe:** I like the language.

**JClark:** It was too easy to hit the ball over the net to the injured worker, now we are making it more difficult to hit the ball back over the net for WSI.

**Representative Thorpe:** By control on line 13 & 14, the language that was struck seemed more liberal than lines 15 & 16. Am I wrong on my assumption?

**JClark:** I think you are correct; it was more liberal in that it may be easier or liberal for WSI.

**Tim Wahlin~Chief of Injury Services, WSI.** See testimony attachment.

**Representative Ruby:** These claims are only allowed for paid full time firefighters?

**Wahlin:** That's correct. There two areas that this presumption reaches. That's full time paid firefighters and law enforcement. Those are the only two classes of individuals that are entitled to the presumption of compensability.

**Representative Vigesaa:** How many cases in a year's time that you deal with law enforcement or firefighter compensability?

**Wahlin:** I do not have the numbers before me, certainly less than 100. Traditionally they are an expensive claim because of the compensability that we pay. On average the severity of the time loss claim, around \$20,000 average severity of a presumption claim, falls under this, in the mid 40's, more than doubles the cost. More extensive coverage because of the areas it covers.

**Chairman Keiser:** During the interim, one of the discussions that occurred was the agency was only required to reach the preponderance level to send the ball back over the court where as the claimant had to have the clear and convincing to send the ball over. So this levels the playing field for the agency and claimant, doesn't it?

**Wahlin:** That's correct to the extent under the presumption, if you show that one of the qualified workers shows that there is a heart, lung claim, that the statutes, it automatically presumes compensable. You are absolutely right.

**Rick Graba~Trustee with the Professional Firefighters of North Dakota.** See testimony attachment.

**Chairman Keiser:** Is there anyone here in opposition, neutral? Closes the hearing on SB 2055. What are the wishes of the committee?

**Representative Nottestad:** Do Pass.

**Representative Thorpe:** Second.

**Voting roll call was taken on SB 2055 for a Do Pass with 12 yeas, 0 nays, 1 absent and Representative Amerman is the carrier.**

Date: Mar 2 - 2009

Roll Call Vote # -1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

BILL/RESOLUTION NO. 2065

House House, Business & Labor Committee

Check here for Conference Committee

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

Action Taken  Do Pass  Do Not Pass  As Amended

Motion Made By Nottestad Seconded By Thorpe

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

Total (Yes) 12 No 0

Absent 1

Floor Assignment Amerman

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

**REPORT OF STANDING COMMITTEE**

**SB 2055: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO PASS (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2055 was placed on the Fourteenth order on the calendar.**

2009 TESTIMONY

SB 2055

January 19<sup>th</sup>, 2009

Mr. Chairman and members of the committee, my name is Rick Graba and I am a Fire Captain with the City Bismarck. I am here today representing President Ed Grossbauer and over 300 brothers and sisters of the, IAFF affiliated, Professional Fire Fighters of North Dakota. PFFND members proudly serve and protect over 45% of North Dakota's population in Fargo, Bismarck, Bismarck Rural Fire Protection District, Grand Forks and Minot.

The PFFND is here today in support of SB2055. From the time presumption became law until now it has gone through many positive changes. During the 2007 legislative session "*false positives*" were addressed and during this session the change in language from "*competent evidence to clear and convincing evidence*" is another one of those positive changes. On April 30<sup>th</sup>, 2008 the Workers Compensation Review Committee met and conducted a case review concerning, Noel Walter, a retired Fargo Fighter. The PFFND along with Mr. Walter, is very thankful to the review committee and everyone involved, who took the time listen and present the language change recommended in SB2055.

At the conclusion of the Workers Compensation Review Committee Senator Wanzek commented that, "It is important for everyone to remember that we are all trying to improve system." SB2055 does that and the PFFND ask that this committee to support SB 2055 and recommend a "DO PASS."



2009 Senate Bill No. 2055  
Testimony before the Senate Industry, Business, and Labor Committee  
Presented by: Tim Wahlin, Chief of Injury Services  
Workforce Safety & Insurance  
January 19, 2009

*Same given  
to House.*

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services at WSI. I am here on behalf of WSI to convey support of this bill and to provide information to the Committee to assist in making its determination. WSI's Board of Directors supports this bill.

WSI staff attended the Interim Workers' Compensation Review Committee meetings to provide input on the issues discussed during Committee meetings. WSI supports this modification to the section of workers' compensation law that provides a presumption of compensability for firefighters and law enforcement officers.

The bill essentially states the presumption that the impairment is work-related can be overcome by clear and convincing evidence the impairment is not work-related. Under existing law, the burden on WSI of overcoming the presumption is a showing by competent evidence that the impairment is not work-related.

Although competent evidence is not defined in workers' compensation law, WSI has historically interpreted competent evidence to mean a preponderance of the evidence. A preponderance of the evidence is the general standard of proof in civil cases. A preponderance means that the fact in issue is more probable to be true than not true.

Clear and convincing evidence is a standard of proof established and defined in law. Clear and convincing evidence means evidence which leads to a firm belief or conviction that the fact is true. This is a higher standard of proof than a preponderance

of the evidence. As a result, WSI's burden of proving the impairment is not work related will increase under this bill.

We do not anticipate a material fiscal impact associated with this bill.

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

March 2, 2009

Mr. Chairman and members of the committee, my name is Rick Graba and I am a trustee with the Professional Firefighters of North Dakota. I am here today representing President Ed Grossbauer and over 300 brothers and sisters of the PFFND. Our membership proudly serves and protects over 45% of North Dakota's population in Fargo, Bismarck, Bismarck Rural Fire Protection District, Grand Forks and Minot.

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At the conclusion of the Workers Compensation Review Committee Senator Wanzek commented that, "It is important for everyone to remember that we are all trying to improve the system." SB2055 does just that and the PFFND ask that this committee to support SB 2055 and recommend a "DO PASS."