

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2431

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2431

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8607

Committee Clerk Signature

Eric Lebelt

Minutes:

Chairman Klein: Opened the hearing on Senate Bill 2431.

Senator O'Connell: This bill is relating to independent medical examinations required by workforce safety and insurance. The bill is designed to have the worker have his own doctor in the state. It would be fewer miles to drive for the worker. The worker also feels more comfortable with his local doctor. (Senator O'Connell passed out the proposed amendment).

Chairman Klein: This is twofold and someone might not want to make the wrong diagnosis.

Robert Forward, Staff Attorney for WSI: The biggest problem we have is to find a doctor in the state willing to do an examination. We would like WSI to take a look at this amendment.

Senator Potter: What is the impact of the second line?

Robert: Nothing.

Chairman Klein: What is the number of doctors in Minnesota verses North Dakota?

Robert: Minnesota has 17,295 and North Dakota has 1,782 these are non-federal primary physicians.

Sylvan Loegering, Volunteer coordinator, ND Injured Workers Support Group: Written testimony in support of Senate Bill 2431. I don't think staying in state to see a physician or

going out of state affects the results. I have a proposed amendment (handed out). What I am suggesting is offering three doctors and allowing the employee to select from the list.

Chairman Klein: You haven't seen the O'Connell amendment? We've also had the North Dakota physicians in the committee to say how hard it is for them to do the examination and make a recommendation.

Sylvan: We would like to see WSI make a reasonable effort. I don't believe that the employees' doctor writes what the employee wants him to write.

Chairman Klein: We have found that pharmaceutical companies have found a way to influence patients to ask for a particular medication.

Senator Potter: Do you see an unattended possibility with this, that it may delay the employee from getting to the doctor?

Sylvan: I do see some problems.

Dave Kemnitz, President of AFL-CIO: Written Testimony Attached. The bill says 275 miles, so I agree with this bill.

Dean Haas, General Counsel to North Dakota Medical Association: Written Testimony Attached. The most important consideration is the identity of the independent medical examination, IME, physician.

Sebald Vetter, C.A.R.E.: Came to show his support of the bill.

Chairman Klein: Close hearing. I would put the O'Connell amendment on and move this bill.

Moved by Senator Wanzek to accept the amendment by Senator O'Connell.

There was a second by Senator Behm.

Moved by Senator Potter to accept the amendment by Sylvan. Seconded by Senator Andrist.

Senator Andrist: Except change the "shall" to "may".

Senator Wanzek: I am worried about the proper wording and how it fits into the statute.

Senator Horne: I feel putting the word "may" in waters the amendment down.

Senator Potter: That's how I read it as well. We could suggest it and see what they want to do with it.

Chairman Klein: Would it provide with the concern you have, choosing from three?

Anne Green, counsel staff for WSI: For WSI this may have some resource issues. I can't make a suggestion from the board of directors. I have no problem with the amendment except changing the word, "shall" to "may".

Senator Wanzek: Would you see a great problem with trying to find three physicians within the area?

Anne Green: We currently have that issue.

Senator Wanzek: We have to be careful on how we write this so it won't be misconstrued.

Chairman Klein: I think they're doing the effort to find the doctors'. And having to find three doctors and make them available. It's another hurdle to cross. We need to keep it as clean as we can.

Senator Andrist: If they can find three doctors it may help the bureaus' position.

Senator Behm: It helps the injured worker to feel he has more to say.

Senator Wanzek: If we don't adopt it. I encourage them to pursue it on the other side.

Senator Horne: I support the amendment to the amendment.

Chairman Klein: We will recess until 9:15. Meeting adjourned.

There had been a motion by Senator Wanzek to accept the amendment by Senator O'Connell and it was seconded by Senator Behm. Roll Call Vote: 7 to 0.

There was a second motion made by Senator Potter to accept the amendment made by Sylvan Loegering and it was seconded by Senator Andrist.

Chairman Klein: We will hold this a little longer.

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2431

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8701

Committee Clerk Signature

Eva Lebelt

Minutes:

Chairman Klein: We will go to Senate Bill 2431.

Senator Andrist: Senator Potter and I both rather like the concept that the agency could provide the names of three providers, at their option. We decided to give the agency a little time to react. The agency feels the bill would be alright if it was permissive. They testified that it would be very rarely be utilized. Rarely could they find three providers and it holds out false hope for the employee. There also might be an issue of if they thought they had two providers in Bismarck and one in Chicago there's the possibility the injured worker would go to Chicago for no other reason except maybe he had grand kids there. I like the concept but I think I will withdraw my support for it. It sounds like it is holding out a false hope that they can't really fulfill.

Chairman Klein: We have accepted the O'Connell amendment and the amendment on the floor was the Sylvan amendment.

Senator Potter: I have a motion on the floor but do not have a second at this time.

Senator Horne: I will second that.

Senator Potter: My question is at this point, you had expressed earlier that the word may is not adequate and it should perhaps be "shall".

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution No. 2431

Hearing Date: February 4, 2009

Senator Horne: I can accept "may".

Chairman Klein: Any other discussion on the Sylvan amendment?

Roll Call Vote: Yes: 3 No: 4 Absent: 0

Senator Andrist: Moved to pass as amended, Senator O'Connell.

Senator Wanzek: Second

Roll Call Vote: Yes: 7 No: 0 Absent: 0

Senator Andrist will carry the bill.

FISCAL NOTE
Requested by Legislative Council
03/05/2009

Amendment to: Engrossed
SB 2431

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 requires WSI to make a reasonable effort to designate a duly qualified doctor either licensed in the employee's state of residence or, if designating an out of state doctor, within 275 miles in which the injured worker resides to conduct independent medical examinations.

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: Engrossed SB 2431 w/ House Amendments

BILL DESCRIPTION: Independent Medical Examinations (IMEs)

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 WSI to make a reasonable effort to designate a duly qualified doctor either licensed in the employee's state of residence or, if designating an out of state doctor, within 275 miles in which the injured worker resides to conduct independent medical examinations.

FISCAL IMPACT: Not quantifiable. Independent Medical Examinations (IMEs) are requested sparingly and in only a limited number of cases. To the extent the proposed IME doctor selection process results in lengthened claim processing timeframes, it may result in increased costs associated with these claims. Given the relatively few cases where IMEs are utilized, we would not anticipate the proposal having a material impact on statewide premium rate and reserve levels.

DATE: March 5, 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.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	03/05/2009

FISCAL NOTE
 Requested by Legislative Council
 02/06/2009

Amendment to: SB 2431

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

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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

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DATE: February 7, 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.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/07/2009

FISCAL NOTE
 Requested by Legislative Council
 01/28/2009

Bill/Resolution No.: SB 2431

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 requires WSI to make a reasonable effort to designate a doctor licensed in the state in which the injured worker resides to conduct Independent Medical Examinations.

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 2431

BILL DESCRIPTION: Independent Medical Examinations (IMEs)

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 WSI to make a reasonable effort to designate a doctor licensed in the state in which the injured worker resides to conduct Independent Medical Examinations.

FISCAL IMPACT: Not quantifiable. Independent Medical Examinations (IMEs) are requested sparingly and in only a limited number of cases. To the extent the proposed IME doctor selection process results in lengthened claim processing timeframes, it may result in increased costs associated with these claims. Given the relatively few cases where IMEs are utilized, we would not anticipate the proposal having a material impact on statewide premium rate and reserve levels.

DATE: February 3, 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.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	02/03/2009

PROPOSED AMENDMENTS TO SENATE BILL NO. 2431

Page 1, line 11, after "state" insert "or shall make a reasonable effort to designate a doctor licensed in a state other than the employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the employee's residence"

Renumber accordingly

REPORT OF STANDING COMMITTEE

SB 2431: 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 2431 was placed on the Sixth order on the calendar.

Page 1, line 11, after "state" insert "or shall make a reasonable effort to designate a doctor licensed in a state other than the employee's state of residence if the examination is conducted at a site within two hundred seventy-five miles [442.57 kilometers] from the employee's residence"

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2431

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2431

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 2, 2009

Recorder Job Number: 9989

Committee Clerk Signature

Ellen DeTang

Chairman Keiser: Opened the hearing on SB relating to independent medical examinations required by WSI.

David O'Connell~Senator from District 6. Thanked House Industry, Business and Labor committee for the work put into this bill and the next. What this bill is designed to cut down on the distance for an injured worker are required to drive to see a doctor for an independent medical examination and to help create a feel that the doctors are part of the community in which the worker lives. Basically what this does is to get a doctor licensed in this state for under 50 miles.

Rob Forward~Staff Attorney for WSI. See testimony attachment.

Representative N Johnson: This morning we hear about the IME's and IMR's. This just address the IME's, are you purposely leaving out the IMR's?

Forward: Yes, because IMR's do not involve a physical examination of an injured worker.

Chairman Keiser: The claimant doesn't have to travel.

Forward: Correct, the latest works for IMR's is you package them up and ship to the IMR doctor.

Representative Amerman: On the 0.5% involved IME's here in North Dakota, 3.7 claims filed, wouldn't you say that the population in the workforce, can we really compare them?

Forward: Yes because it was based on a number of claims. I would say it's a good measure even though we have less of a population, you can still say it should be based on the amount of claims.

Representative Vigesaa: You mention that this isn't going to do much or change your current practices. If this bill becomes law, how would the organization implement this?

Forward: What will happen is our claims department will probably formulizing documents and makes a more conscious effort to pick doctors. We have a list of doctors who will not do IME's. It's hard to find anyone who is not on the list, it's very short.

Chairman Keiser: I like the bill except for part and that's the first change on lines 9-14. I even like those but I think we need to amend them somehow. Right now what we have done is put the emphasis on location, so I'm more concern for the injured worker to get the best most qualified person. I think we need to add a qualified doctor or something for the claimant the best review possible. Right now all it has to be a North Dakota doctor. I don't think that's what the claimants want.

Forward: That's something we have discussed. You notice on line eight the very first sentence it set up the tone for a duly qualified doctor but perhaps what we need to do is give a better description of a qualified doctor.

Chairman Keiser: Maybe that takes care of it. I want to make sure that the emphasis become local versus quality.

Dean Hass~North Dakota Medical Association. See testimony attachment.

Sylvan Loegering~North Dakota Injured Workers Support Group. See testimony attachment and three other attachments.

Chairman Keiser: The point I'm going to make is that it's impossible it's been done before, it's not suppose to be done where we take an existing bill that deals with a specific area and bring in an amendment from another section of the code and tie it in.

Loeering: I didn't ask for that. I'm using the other section of the code as a sample where a president and this is not an unheard suggestion.

Chairman Keiser: This part deals with your IME's process. This amendment deals more with the next bill than this bill.

Dave Kemnitz~President of the North Dakota AFL-CIO. I'm in support of SB 2431.

LeRoy Volk~Self. When I was diagnosed and my Bismarck doctor said and continues to talk about his story of a qualified doctor out of state.

Sebald Vetter~C.A.R.E. I'm in support of SB 2431.

Chairman Keiser: Anyone here to testify in opposition SB 2431, neutral, closes the hearing. I would like you to consider is on line 10 after to designate a insert duly qualified doctor and that keeps it consistent with language above and also the language on line 16, that we are making sure we are getting a duly qualified doctor. I would also suggest that Sylvan brought up, although this is dealing with IME's, there really should be no reason to not have a doctor of their choice look at the medical review if they want.

Representative Ruby: As you mentioned and there may not be any case, you said you wanted the best qualified doctor. There may not be the three qualified doctors of that nature in North Dakota.

Chairman Keiser: I'm not talking about the three in what I'm proposing, on line 18 to insert or independent medical review that would then allow an injured claimant to take either an IME or IMR and take it to a physician and review it for me.

Forward: We had a question on the senate side and we helped Senator O'Connell with an amendment. We talked about the radius but not work with MR part on lines 17-18. The senate asked what it means to us and our answer is that it doesn't mean anything us because that right already exists. The court is wide open for the injured worker can take all the medical records and do what they want. So we looked at the addition of the language on lines 17-18 is really stating in fact. The other comment I would like to make if you are going to inserting duly qualified on line 10, you should probably you should do it on line 12 also.

Chairman Keiser: So, one other option is simply to put a period on line 17 after examination and strike the new language there. When we put it in statue like this, they would have that as a right, do we pay for it there?

Forward: No, if you look at line part of 18 and all of 19, the existing statue is procured and paid for by that employee.

Chairman Keiser: So then it's really not necessary?

Forward: No.

Sylvan: If I could readdress the committee, I'm looking at 65-05-28, subsection three, it talks about independent medical examinations and goes on to say that the employee may duly qualified doctor designated by that employee present at the examination procured and paid for by that employee. Then it goes on about the disagreement thing. The statue doesn't say anything about an outside doctor reviewing the written records and filing a comment and go to a third doctor for decision making.

Chairman Keiser: Yes, we understand that.

Sylvan: Personally I would feel better if it was written for the review for the rest of the report.

Chairman Keiser: Let's take this in two parts. Let's take the duly qualified can on line 10 & 12.

Representative Vigesaa: You should have duly qualified on line 11 also.

Chairman Keiser: OK, so all three is really technical and what was intended.

Representative Nottestad: That goes for out of state one, it duly qualified.

Representative N Johnson: Moves an amendment of duly qualified.

Representative Thorpe: Second.

Voice roll call to pass amendment with all ayes.

Chairman Keiser: What would you like to do with lines 17 & 18?

Representative Thorpe: I believe it expands on to me, is that your suggestion to put in "or IMR"?

Chairman Keiser: That was a suggestion that Sylvan made.

1 If you read the sentence without the language, really isn't necessary. They are going to be procuring and paying for whatever they are going to do regardless. They can do anything with it because they are paying the bill. I think is not necessary and would strike it. **That's a motion.**

Second: Representative Sukut.

Chairman Keiser: Further discussion? I'm not sure what difference it makes.

Representative Thorpe: It's in there anyway on line 11 "for later review" in line 17 & 18. I guess where this bill is going, if I was an injured worker, I would to see the language in there.

Roll call was taken on the amendment to strike new language on Line 17 & 18 with 4 yea, 7 nay, 2 absent.

Chairman Keiser: What are your wishes?

Representative Nottestad: Moves a Do Pass as Amended.

Representative Thorpe: Second.

Roll call was taken on SB 2431 for a Do Pass as Amended with 11 yea, 0 nay, 2 absent and Representative Sukut is the carrier.

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Title.0400

Adopted by the Industry, Business and Labor
Committee

March 2, 2009

VR
3/2/09.

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2431

Page 1, line 10, after "a" insert "duly qualified"

Page 1, line 11, after "a" insert "duly qualified"

Page 1, line 12, after the second "a" insert "duly qualified"

Renumber accordingly

Date: Mar 2 - 2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2431

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 Johnson Seconded By Thorpe

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

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

*voice vote
all ayes*

Date: Mar 2 - 2009

Roll Call Vote # 2

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2431

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 _____ Seconded By _____

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

Total (Yes) 4 No ~~5~~ 7

Absent 2

Floor Assignment _____

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

*strike new lang on line 17 & 18
motion for amendment fails*

Date: Mar 2 - 2009

Roll Call Vote # 3

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2431

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	1		Representative Amerman	1	
Vice Chairman Kasper			Representative Boe	1	
Representative Clark	1		Representative Gruchalla	1	
Representative N Johnson	1		Representative Schneider		
Representative Nottestad	1		Representative Thorpe	1	
Representative Ruby	1				
Representative Sukut	1				
Representative Vigesaa	1				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Sukut

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

REPORT OF STANDING COMMITTEE

SB 2431, as engrossed: Industry, Business and Labor Committee (Rep. Kelsner, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2431 was placed on the Sixth order on the calendar.

Page 1, line 10, after "a" insert "duly qualified"

Page 1, line 11, after "a" insert "duly qualified"

Page 1, line 12, after the second "a" insert "duly qualified"

Renumber accordingly

2009 TESTIMONY

SB 2431



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Leann Tschider
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Office Manager

Annette Weigel
Administrative Assistant

**Testimony before the
Senate Industry, Business and Labor Committee
Senate Bill 2431
February 4, 2009**

Good morning Chairman Klein and members of the Senate Industry, Business and Labor Committee. I'm Dean Haas, General Counsel to the North Dakota Medical Association and North Dakota Society of Orthopaedists. We support Senate Bill 2431, which provides that WSI "shall make a reasonable effort to designate a doctor licensed in the state in which the employee resides to conduct the examination before designating a doctor license in another state." We support the bill, believing this amendment may encourage North Dakota physicians to involve themselves in occupational medicine.

Physicians are an integral part of the state's worker's compensation system. Not only are medical services the largest benefit component, but doctor's opinions are essential to most claims determinations, including whether the injury or disease is work-related, the nature of the need for medical care and course of treatment, the extent of the worker's permanent partial impairment, and the disability (i.e., the work restrictions—both its extent and duration).

Fewer physicians are willing to provide medical care to injured workers because such care is accompanied by a significant administrative burden, including answering a large number of questions regarding causation, return to work, and more. WSI is especially prone to interfere in the physician-patient relationship, questioning the physician's opinions, and referring their patients to 'defense-minded' doctors to perform Independent Medical Examinations or Evaluations ("IME's"), and reviews of the injured employee's medical records. We believe that reducing the incidence of out-of-state IME referrals may benefit employees, but might also serve as a signal to North Dakota physicians that WSI is working to strengthen its relationship with the state's outstanding health care professionals, and may consider utilizing treating physicians to conduct IME's.

The choice of the IME physician is crucial. Ethical considerations continue to apply to physicians who perform IME's.¹ We believe that the IME process would be improved immeasurably by utilizing physicians who don't perform IME's for a significant portion of their income, but rather treat patients. Physicians whose incomes significantly depend upon performing IME's are more likely to cut corners on a key ethical standard—that the physician objectively evaluate the patient's health, without being influenced by the source of payment, or hope of engendering repeat business.

While there may be better mechanisms to improve WSI's IME procedures, the bill improves the current procedure by requiring WSI to utilize IME physicians who live in the same area as the injured worker. For these reasons, we urge a "Do Pass" on SB 2431.

¹ Council on Ethical and Judicial Affairs, American Medical Association. "Opinion 10.03: Patient-Physician Relationship in the Context of Work-Related and Independent Medical Examinations." *Code of Medical Ethics Current Opinions and annotations*. Chicago, IL, 2008. The Opinion states that:

Despite their ties to a third party, the responsibilities of IMEs are in some basic respects very similar to those of other physicians.... to:

(1) Evaluate objectively the patient's health or disability. In order to maintain objectivity, IMEs should not be influenced by the preferences of the patient-employee, employer, or insurance company when making a diagnosis during a work-related or independent medical examination.

(2) Maintain patient confidentiality as outlined by Opinion 5.09, "Industry Employed Physicians and Independent Medical Examiners."

(3) Disclose fully potential or perceived conflicts of interest. The physician should inform the patient about the terms of the agreement between himself or herself and the third party as well as the fact that he or she is acting as an agent of that entity. This should be done at the outset of the examination, before health information is gathered from the patient-employee. Before the physician proceeds with the exam, he or she should ensure to the extent possible that the patient understands the physician's unaltered ethical obligations, as well as the differences that exist between the physician's role in this context and the physician's traditional fiduciary role.

Senate I,B&L

Wednesday February 4, 2009

ND AFL-CIO position on the following bills.

SB 2431

ND AFL-CIO supports the requested changes in regards to Independent Medical Examinations. It seems reasonable that WSI first seek doctors who 1. live in the community or vicinity of the claimant and 2. at least make every effort to use doctors in the claimants state.

The new language on Page 1 lines 14 & 15 appears to be reasonable. Why does it take a law to ensure reasonable responses from WSI?

SB 2432

The ND AFL-CIO agrees with the elimination of preferred providers chosen by the employer and urges that the right to pick a treating physician be returned to the claimant.

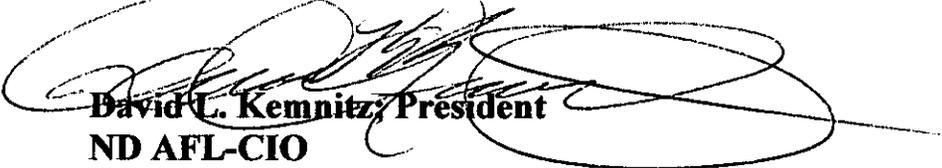
SB 2433

The ND AFL-CIO supports the concept promoted in this bill. The idea that WSI has an equal responsibility in helping a claimant return to "substantial gainful employment" is a good one. The financial incentive for the worker is "substantial gainful employment" and the financial incentive for the WSI bureau is to do what it can to ensure a positive result.

SB 2434

The ND AFL-CIO supports the idea expressed in SB 2434 that gives WSI a financial incentive in returning a worker to "substantial gainful employment".

Respectfully submitted;


David L. Kemnitz, President
ND AFL-CIO

Remarks from Sylvan Loegering, re SB 2431
Volunteer coordinator, ND Injured Workers Support Group
February 4, 2009

This bill has two main sections. I'd like to comment briefly on each of them, raise a concern and suggest an amendment.

The first point is having the organization make a reasonable effort to find in-state doctors to conduct IME's. I have heard numerous complaints that when WSI orders an IME they use out-of-state doctors that find against the injured worker. These complaints don't come out of thin air. BDMP in its performance evaluation finds that 82% of IME's are done by out of state doctors, all from Minnesota, and that 65% of them disagree with the treating physician. According to those numbers, the majority of time an IME is conducted an out-of-state doctor finds against the injured worker. On a different report released to the interim IBL committee last year WSI reports that review of 193 IME's over an 18 month period shows that the IME report was favorable to WSI a majority of the time and were unfavorable to WSI 26% of the time. These official figures confirm what injured workers are saying.

I'm about to say something that may raise the eyebrows of some of the injured workers, but I told you I would tell you exactly what I think. Looking deeper into the numbers, according to BDMP the 65% disagreement is consistent with either in-state or out-of-state doctors. ~~BDMP~~ also reported that the vast majority of IME's by out of state doctors were conducted in ND or within 10 miles from ND. That sounds good if you're from Fargo but not so good if you're from Williston or Belfield. I have been told and I am sure you will hear that WSI has been trying to get in-state doctors and I believe that. BDMP indicated the same thing. I believe it is a good idea for WSI to try to get in-state doctors, the bill only asks them to try so I believe this provision is reasonable.

A bigger issue is the 65% disagreement with the treating physician. Under current law the employee may have his or her own doctor present at the IME if they pay or procure themselves. This bill would also allow the employee's doctor to review the written report and report to WSI. I believe that is a good provision and should be passed. Just to be safe I'd like to address the issue of a bill being considered on the House side that would give extra weight to a treating physician's opinion. I don't see a conflict between that bill and

Sylvan Loegering SB 2431 p 2

this one because they use different terminology. This bill refers to the "employee's doctor" who is chosen to review the case. The other bill refers to "treating doctor". The exact definition hadn't been resolved the last I heard but it sounds like it would be the physician that WSI identifies as the treating doctor. In the event that the "employee's doctor" and the "treating doctor" are one and the same it would not affect this bill but might change what happens if there is a disagreement between the examining doctor and the employee's doctor.

The issue I'd like to raise is again one of perception but we've heard perception is reality. The perception is that "WSI doctors" are paid to side with WSI. Under current law WSI chooses its own third doctor and gets a report if there is a disagreement between the examining doctor and the employee's doctor. WSI then looks at the 3 reports and makes a decision. This is scary to injured workers who remember that until recently WSI could reject an opinion of an ALJ after a hearing. The way it looks is that WSI chooses two of the three doctors and then makes its own separate decision.

There is a provision in the main paragraph of 65-05-28 that delineates a process for choosing a doctor if the organization requires an injured worker to change doctors. I recommend that the same process be used to decide on the doctor who will review the IME report if there is a disagreement. I've provided you with a copy of that paragraph with the pertinent parts highlighted. On the same page is a proposed amendment that would keep WSI in control and allow the injured worker to have some say in the process.

Look at amendment.

Mr. Chairman, members of the committee, I respectfully ask you to vote "do pass" on this bill, preferably with my amendment.

Sylvan Loegering SB 2431 supplement

65-05-28. Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the organization may require the employee to begin treating with another doctor to better direct the medical aspects of the injured employee's claim.

The organization shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the employee shall select a doctor from the list.

An injured employee shall follow the directives of the doctor or health care provider who is treating the employee as chosen by the employee at the request of the organization and comply with all reasonable requests during the time the employee is under medical care.

Providing further that:

Proposed amendment for SB 2431

Prepared by Sylvan Loegering Feb 4, 2009

Note: This amendment has not been reviewed by Legal Council.

65-05-28 subsection 3 paragraph a

As it exists now:

a. In case of any disagreement between doctors making an examination on the part of the organization and the employee's doctor the organization shall **appoint an impartial doctor** who shall make an examination and shall report to the organization.

As amended:

a. In case of any disagreement between doctors making an examination on the part of the organization and the employee's doctor the organization shall **provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the employee shall select a doctor from the list** who shall make an examination and shall report to the organization.



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**Testimony before the
House Industry, Business and Labor Committee
Senate Bill 2431
March 2, 2009**

Good afternoon Chairman Keiser and members of the House Industry, Business and Labor Committee. I'm Dean Haas, General Counsel to the North Dakota Medical Association and North Dakota Society of Orthopaedists. We support Senate Bill 2431, which requires WSI to make a reasonable effort to designate a doctor within 275 miles of the employee's residence when scheduling an independent medical evaluation. We support the bill, believing that not only will the amendment reduce the travel for employees, but may reduce the incidence of adverse IME's, and so encourage North Dakota physicians to involve themselves in occupational medicine.

Physicians are an integral part of the state's worker's compensation system. Not only are medical services the largest benefit component, but doctor's opinions are essential to most claims determinations, including whether the injury or disease is work-related, the nature of the need for medical care and course of treatment, the extent of the worker's permanent partial impairment, and the disability (i.e., the work restrictions—both its extent and duration).

Fewer physicians are willing to provide medical care to injured workers because such care is accompanied by a significant administrative burden, including answering a large number of questions regarding causation, return to work, and more. WSI is especially prone to interfere in the physician-patient relationship, questioning the physician's opinions, and referring their patients to 'defense-minded' doctors to perform Independent Medical Examinations or Evaluations ("IME's"), and reviews of the injured employee's medical records. We believe that reducing the incidence of out-of-state IME referrals may benefit employees, but might also serve as a signal to North Dakota physicians that WSI is working to strengthen its relationship with the state's outstanding health care professionals, and may consider utilizing treating physicians to conduct IME's.

The choice of the IME physician is crucial. Ethical considerations continue to apply to physicians who perform IME's.¹ We believe that the IME process would be improved immeasurably by utilizing physicians who don't perform IME's for a significant portion of their income, but rather treat patients. Physicians whose incomes significantly depend upon performing IME's are more likely to cut corners on a key ethical standard—that the physician objectively evaluate the patient's health, without being influenced by the source of payment, or hope of engendering repeat business.

While there may be better mechanisms to improve WSI's IME procedures, the bill improves the current procedure by requiring WSI to utilize IME physicians who live in the same area as the injured worker. For these reasons, we urge a "Do Pass" on SB 2431.

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Despite their ties to a third party, the responsibilities of IMEs are in some basic respects very similar to those of other physicians.... to:

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- (2) Maintain patient confidentiality as outlined by Opinion 5.09, "Industry Employed Physicians and Independent Medical Examiners."
- (3) Disclose fully potential or perceived conflicts of interest. The physician should inform the patient about the terms of the agreement between himself or herself and the third party as well as the fact that he or she is acting as an agent of that entity. This should be done at the outset of the examination, before health information is gathered from the patient-employee. Before the physician proceeds with the exam, he or she should ensure to the extent possible that the patient understands the physician's unaltered ethical obligations, as well as the differences that exist between the physician's role in this context and the physician's traditional fiduciary role.

2009 Engrossed Senate Bill No. 2431
Testimony before the House Industry, Business, and Labor Committee
Rob Forward, Staff Attorney
Workforce Safety and Insurance
March 2, 2009

Mr. Chairman, Members of the Committee:

My name is Rob Forward and I am a staff attorney for Workforce Safety and Insurance (WSI). I am here to testify on Engrossed Senate Bill 2431. The WSI Board of Directors supports the engrossed version of this bill.

This bill requires WSI to make a reasonable effort to find doctors to perform independent medical examinations (IMEs) who are geographically closer to injured workers so that IMEs are more convenient. Specifically, WSI must attempt to use a doctor licensed in North Dakota or attempt to find a doctor who will perform the IME at a site within 275 miles of the worker's home.

For the sake of this discussion, I point out that it is difficult to locate doctors within North Dakota who are willing to provide IME services, and WSI has repeatedly indicated to you and to other committees that we would prefer to use North Dakota doctors.

Also, and perhaps more importantly, WSI does not use IMEs very often. Two separate and independent reviews of WSI's IME practices have indicated that, compared to the rest of the industry, WSI's utilization rate of IMEs is low. Indeed, one of the reviews calculated that only **0.5%** of filed claims involved an IME. In comparison, the review indicated that workers compensation insurers in Minnesota had a utilization rate of 3.7% of claims filed, and a comparable state fund had a rate of 10.1%. DA Dronen Report, February 2007.

As a practical matter, this bill does not significantly alter WSI's handling of IMEs. The Claims Department already makes reasonable efforts to fulfill the specifics of this legislation. For that reason, the bill does not appear to hinder the agency's ability to obtain medical opinions. And the idea of trying to make the process more convenient for injured workers is obviously an agreeable goal.

That concludes my testimony. I'd be happy to answer any questions that you might have.

REMARKS FOR IBL COMMITTEE re SB 2431

Sylvan Loegering, Volunteer Coordinator, ND Injured Workers Support Group

March 2, 2009

In planning testimony on these bills I try to look at them as I believe injured workers would view them. I believe a typical worker will be apprehensive when told to have an IME. Chances are they have the impression that an out of state doctor will deny their benefits. I'm not saying that is what happens, but it is what many people have heard. It is a perception based on a certain amount of fact. According to the 2008 Performance Evaluation by BDMP the IME result is disagreement with treating physician 65% of the time. WSI's report presented to the Interim IBL committee last year says that in 193 cases over an 18 month period the results were "favorable to WSI" 58% of the time and "unfavorable to WSI" only 16% of the time. (See handout) As an aside, the choice of terms in that report disturbs me. Decisions are rated as "favorable" or "unfavorable" to WSI. Does that mean that favorable to WSI is unfavorable to the injured worker and vice versa? It seems to me that WSI should be on the same side as the injured worker. The point is that for many injured workers the perception of IME's is negative. Instead of seeing WSI as the source of comfort and relief they expect a battle in order to get relief from their injuries.

This bill calls for an attempt to have IME's done in-state or closer to the injured worker's residence. That is a good thing. Even better, it allows an injured worker's doctor to weigh in on the results without having to be present at the IME. That rule alone makes this bill worth supporting.

As it exists, SB 2431 is a good bill but we can make it better. Imagine that you are an injured worker whose doctor disagrees with what you consider the WSI doctor. To resolve the dispute WSI will name another of its own doctors to settle it. (At least that is how you see it as an injured worker.) That hardly raises the comfort level with the IME system. Everything still seems out of your control.

We can amend this bill and give the injured worker some feeling of control by using a procedure that is already in place for another set of circumstances. There are times when WSI feels that an injured worker should change doctors. When that is the case WSI follows 65-05-28. WSI names three doctors and the injured worker picks one of those three. I have included a copy of that part of the statute with the key sentences emphasized.

I believe a similar approach to choosing the third doctor who will review the dissenting opinions and report to the organization would give the injured workers some sense of involvement. It probably wouldn't change the outcome but it could help with perceptions and we've all heard perception is reality.

As you look at the key portion of 65-05-28 you will see some differences between that and my proposed amendment. In deference to the proclaimed difficulty for WSI in finding doctors to do IME's I ask for a "reasonable effort" to provide a list of three doctors. For the same reason, instead of asking for a list of "three doctors who specialize in the treatment of the type of injury the employee sustained" I ask for "duly qualified" doctors, which is the description already used to describe doctors chosen to make an examination and report to the organization.

Since I live 3 hours away and have another life I don't have the luxury of immediate access to legislators and legislative council. This amendment is not in the exact format you are used to. For example, the portion to be deleted is red instead of overstruck. I don't believe you or legislative council will have to change the wording.

In interests of full disclosure I did propose a similar amendment to the Senate IBL committee. It was moved, seconded and discussed but eventually not added to the bill. This amendment is different in the sense that it asks for a reasonable effort and has a less restrictive description of the third doctor. I have discussed this amendment with Senator O'Connell, the original sponsor of SB 2431 and he has no problem with the amendment being added to the bill. I frankly can not imagine a valid reason for anyone to object strongly to this amendment.

BACKGROUND: For my reference I used the following underlined and italicized portion of the main paragraph of 65-05-28:

Examination of injured employee - Paid expenses - No compensation paid if claimant refuses to reasonably participate. Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the organization may require the employee to begin treating with another doctor to better direct the medical aspects of the injured employee's claim. *The organization shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the organization's request the employee shall select a doctor from the list.* An injured employee shall follow the directives of the doctor or health care provider who is treating the employee as chosen by the employee at the request of the organization and comply with all reasonable requests during the time the employee is under medical care. Providing further that.....

Results of WSI, IME Data Sweep and Review

Presented to Interim IB&L Committee 8/21/08

Results for period 7/06-12/07 (18 months)

- The data was accessed reviewed and compiled manually
- This is not necessarily a comprehensive listing

For this time frame we identified 193 IME's completed

Location of the Examination:

Within North Dakota:	60	(31%)
Within 10 miles of North Dakota:	<u>82</u>	
	142	(74%)
All other Locations:	51	(26%)

Results of the Examination:

Favorable to WSI:	113	(58%)
Unfavorable to WSI:	50	(26%)
Mixed Response:	30	(16%)

Proposed Amendment for SB 2431

Sylvan Loegering March 2, 2009

Amend Page 1, line 20 - 23:as follows:

a. In case of any disagreement between doctors making an examination on the part of the organization and the employee's doctor the organization shall **[appoint an impartial doctor duly qualified] make a reasonable effort to provide a list of three duly qualified doctors.** **At the organization's request, the employee shall select a doctor from the list** who shall make an examination and shall report to the organization.