

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2433

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2433

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8614

Committee Clerk Signature

*Eva Liebelt*

Minutes:

Senator O'Connell: There is two major changes to this bill. Changing the language of the bill. I have prepared a proposed amendment.

Sylvan Loegering, ND Injured Workers Support Group: I am comfortable with this bill. What is a good faith work search or work trial? If the worker doesn't do this he loses his benefits. We need to find out what they mean by this, get it defined.

Senator Horne: Help me to understand what this bill wants to do.

Sylvan: It's taking some out of this section of the law and simplifying it.

Senator Horne: We don't know what the options are?

Discussion continued.

Dave Kemnitz, President of AFL-CIO: We support this bill. WSI has an obligation to insure the employee can get back to work. Finding gainful employment with the help of WSI. The bill turns it more to helping the claimant get past the language.

Sebald Vetter, President C.A.R.E.: I am in support of the bill.

Jody Bjornson, General Counsel for WSI: Written testimony attached. In opposition of the bill.

WSI met with the sponsor and can't accept it in its current form. They, WSI, provides suitable job leads and enrolls them in classes that assists them in developing job seeking skills.

Senator Potter: Typically when WSI committee meets there is a unanimous vote, was this one also?

Jody: I believe it was.

Senator Andrist: You don't like the bill with or without the amendments?

Jody: The bill doesn't do anything meaningful for the Vocational Rehab.

Chairman Klein: If you have any more time, would you sit down with the sponsors?

Jody: Yes that would be something I would like to do.

Senator Wanzek: There might be some unattended consequences.

Jody: With the renewed disability benefits we would have to send out a form and have them apply again. Right now they just come in and we can reevaluate.

Bill Shalhoob, ND Chamber of Commerce: Written testimony attached. We feel this bill is loosely stated. It should say they are going to make a good faith effort.

Tom Basset, ND Motor Carriers Association: I am in opposition of this bill. My understanding is they would have to make two physician contacts and WSI has a more active approach.

Chairman Klein: We will close the hearing.

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2433

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 11, 2009

Recorder Job Number: 9171

Committee Clerk Signature

*Ellen Lubelt*

### Minutes:

Chairman Klein: 2433 is the O'Connell bill that WSI and Senator O'Connell worked on. As a result we have the amendments I am handing out. This dealt with the rehab and the rehab period. What the amendments do according what I've learned is that it actually put the vocational option up front so the workers understand it. The other issue was that they wanted some way of collecting data and reporting it so they can see if what they are doing is actually effective. So they can evaluate the changes where they may not be beneficial.

Senator Andrist: Moved to pass the amendment.

Senator Nodland: Seconded the motion.

Row Call Vote: Yes: 5 No: 2 Absent: 0

Senator Wanzek: Moved a do pass as amended.

Senator Nodland: Seconded the motion.

Roll Call Vote: Yes: 5 No: 2 Absent: 0

Floor Assignment: Senator Nodland

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/05/2009

Amendment to:           Engrossed  
                                  SB 2433

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 notify the employee of the obligation to make a good-faith work search or trial and provide information to the employee regarding reinstatement of benefits if the work search or trial were unsuccessful.

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 2433 w/ House Amendments

BILL DESCRIPTION: Rehab Work Search and Data Collection

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, when the first appropriate vocational rehabilitation option is identified, to notify the employee of the obligation to make a good-faith work search or good-faith work trial and provide information to the employee regarding reinstatement of benefits if the work search or work trial were unsuccessful.

FISCAL IMPACT: The proposed legislation is not anticipated to have a material impact on statewide premium 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.*

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

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/13/2009

Amendment to: SB 2433

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 notify the employee of the obligation to make a good-faith work search or good-faith work trial and requires WSI to maintain data on claims receiving rehabilitation services.

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 2433

BILL DESCRIPTION: Rehab Work Search and Data Collection

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, when the first appropriate vocational rehabilitation option is identified, to notify the employee of the obligation to make a good-faith work search or good-faith work trial and provide information to the employee regarding reinstatement of benefits if the work search or work trial were unsuccessful. The proposed legislation also requires WSI to maintain data on claims receiving rehabilitation services.

FISCAL IMPACT: The proposed legislation is not anticipated to have a material impact on statewide premium and reserve levels.

DATE: February 13, 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>	02/13/2009



**FISCAL NOTE**  
**Requested by Legislative Council**  
01/28/2009

Bill/Resolution No.: SB 2433

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
<b>Revenues</b>						
<b>Expenditures</b>						
<b>Appropriations</b>						

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 provide an application for renewal of disability benefits when an injured worker asserts they have performed a good faith work trial or search at six months after completion of a rehab option.

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 2433

BILL DESCRIPTION: Post-Rehab Work Search

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 follow-up with injured workers six months after selecting a rehabilitation option to determine if the injured worker is gainfully employed. If not, and the injured worker asserts they have performed a good faith work trial or search, WSI shall provide an application for renewal of disability benefits.

FISCAL IMPACT: Unknown and not quantifiable. We are unclear of the intent of the legislation. Our understanding is WSI shall provide an application for renewed disability benefits when an injured worker asserts they have performed a good faith work trial or search. It is also our understanding under current law that by providing an application for renewal of disability benefits under these circumstances will likely not meet the reapplication standard for reinstatement of disability benefits. To the extent our understanding is correct, we don't anticipate a change in existing claims handling practices and anticipate no fiscal impact with this bill.

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.*

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

PROPOSED AMENDMENTS TO SENATE BILL NO. 2433

Page 1, line 16, replace "The" with "At intervals of thirty days, sixty days, ninety days, one hundred twenty days, and six months following selection of a rehabilitation option, the"

Page 1, line 17, remove "within six months after selecting a rehabilitation option"

Page 1, line 22, replace "an application for renewed disability" with "information regarding options that may exist for the employee to reapply for or take other steps to reinstate"

Renumber accordingly

PROPOSED AMENDMENTS TO SENATE BILL NO. 2433

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 65-05.1 of the North Dakota Century Code relating to data collection of claims that receive vocational rehabilitation services; and"

Page 1, line 6, remove the overstrike over "~~the first~~" and remove "an"

Page 1, line 7, remove the overstrike over "~~return to the same, modified, or alternative occupation, or return to~~"

Page 1, remove the overstrike over line 8

Page 1, line 9, remove the overstrike over "~~marketable skills~~" and remove "selected"

Page 1, line 16, remove "The organization shall contact the employee by"

Page 1, replace lines 17 through 22 with "When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good faith work search or good faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful."

Page 1, after line 22 insert:

**"SECTION 2.** A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:

- a. The stage of rehabilitation services at which closure occurs;
- b. The reason for the closure; and
- c. Follow-up data to determine the effectiveness of job searches and returns to work, including post injury earnings."

Re-number accordingly





**REPORT OF STANDING COMMITTEE**

**SB 2433: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (5 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2433 was placed on the Sixth order on the calendar.**

Page 1, line 1, after "Act" insert "to create and enact a new section to chapter 65-05.1 of the North Dakota Century Code, relating to data collection of workers' compensation claims that receive vocational rehabilitation services; and"

Page 1, line 6, remove the overstrike over "~~the first~~" and remove "an"

Page 1, line 7, remove the overstrike over "~~return to the same, modified, or alternative occupation, or return to~~"

Page 1, remove the overstrike over line 8

Page 1, line 9, remove the overstrike over "~~marketable skills~~" and remove "selected"

Page 1, line 16, replace "The organization shall contact the employee by" with "When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good-faith work search or good-faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful."

**SECTION 2.** A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

**Status of claims.** The organization shall collect data regarding the status of claims under which a claimant receives rehabilitation services. The data must include:

1. The stage of rehabilitation services at which closure occurs;
2. The reason for the closure; and
3. Follow-up data to determine the effectiveness of job searches and returns to work, including post-injury earnings."

Page 1, remove lines 17 through 22

Renumber accordingly

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2433



# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2433

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: March 3, 2009

Recorder Job Number: 10014

Committee Clerk Signature

*Ellen Litang*

**Chairman Keiser: Opened the hearing on SB relating to data collection of Worker's Compensation claims that receive vocational rehabilitation services & to amend & reenact relating to work searches by disable workers.**

**Sylvan Loegering~North Dakota Injured Worker's Group Support.** SB 2433 has changed since its inception. It deals with individuals who are disabled and are attempting to return to the workforce. In the current law on the current law (reads lines 16-22-see attachment).

Contact by mail in six months are you back to work or not, if the employee says I can't go back to work because my disability stops me from doing it, then WSI should provide that employee with an application for reapplying for benefits, that's how the law started out. Testimony on that bill pointed out that WSI already is going way beyond what was in the bill in terms of the regular six months. Along the way in the section one in front of you now, the entire lines that I read disappears and it is replaced "remind the injured worker of their duties, good faith & work search" and also let that injured worker know what they can do once they get the benefits reinstated. Then along the way a new section was added and this came primarily because a question was asked "how many of our injured workers get back to work" and the answers were unclear, so a section two was added to the bill which basically calls for the organization to

collecting data in as for the status claims that includes when the job got rehabilitation, why they dropped of rehabilitation and determine the effectiveness of job searches.

**Chairman Keiser:** Do we have any other legislation that was passed this session that addresses this same thing?

**Loegering:** The only thing I can think of is a pilot program; it calls for WSI to have a series of pilot programs where they keep track of systems. I don't know the exact status of that right now but I believe passed in the house. I would be surprised if it doesn't go through.

**Dave Kimnetz~President of the North Dakota AFL-CIO.** In support of SB2433 and to the question, yes, HB 1064, the cost of living adjustments and HB 1062, change of services in pilot programs. What I like about this as I read it, yes it does alert the claimant as to what their responsibilities, duties and what they expect what they fulfill those responsibilities. It has some merit to it.

**Keiser:** On page one, line 20, the language used as this study used the word "work search" yet your documents say "job search". Shouldn't that be consistent?

**Bjornson:** They are interchangeable but we generally call it job search, which document?

**Chairman Keiser:** I have here a good faith job search, your documents say job search not word search.

**Bjornson:** That document is what is given to injured workers so they know their expectations when they are looking for work.

**Chairman Keiser:** It's really a technical thing but we know what's in a name. If I understand it, if we deleted the back page, it's already in HB 1062.

**Bjornson:** Right.

**Bill Shalhoob~North Dakota Chamber of Commerce.** See testimony attachment.

**Chairman Keiser:** Is there anyone else here to testify in opposition, neutral, what are the wishes of the committee? Closes the hearing?

**Chairman Keiser:** I strongly recommend that we change "work" to "job" on line 20.

**Representative Boe:** Earlier in existing law, they called it "work".

**Chairman Keiser:** Maybe they should change their form.

**Bjornson:** We will change the form.

**Chairman Keiser:** I don't think we need section two but that's up to the committee.

**Representative Ruby:** Moves to delete section two, starting on page one, lines 23 & 24 and all of six lines page two.

**Representative Clark:** Second.

**Chairman Keiser:** Voice roll call was taken with all ayes, 0 nays, motion passes.

**Chairman Keiser:** We have SB 2433 before us, what are the wishes of the committee?

**Representative Nottestad:** Moves a Do Pass as Amended.

**Representative Gruchalla:** Second.

Voting roll call was taken on SB 2433 for a Do Pass as Amended with 12 ayes, 0 nays, 1 absent and Representative Nottestad is the carrier.

March 3, 2009

VR  
3/3/09

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2433

Page 1, line 1, remove "create and enact a new section to chapter 65-05.1 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "vocational rehabilitation services; and to"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 6

Renumber accordingly

Date: Mar 2, 2009

Roll Call Vote # 1

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 2433

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) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

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

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

Date: Mar 3

Roll Call Vote # 2

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 2433

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 Gruchalla

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

Total (Yes) 12 No 0

Absent 1

Floor Assignment Nottestad

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

**REPORT OF STANDING COMMITTEE**

SB 2433, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2433 was placed on the Sixth order on the calendar.

Page 1, line 1, remove "create and enact a new section to chapter 65-05.1 of the North Dakota"

Page 1, remove line 2

Page 1, line 3, remove "vocational rehabilitation services; and to"

Page 1, remove lines 23 and 24

Page 2, remove lines 1 through 6

Renumber accordingly

2009 TESTIMONY

SB 2433



**2009 Senate Bill No. 2433**  
**Testimony before the Senate, Industry, Business and Labor Committee**  
**Presented by: Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance**  
**February 4, 2009**

Mr. Chairman and Members of the Committee:

My name is Jodi Bjornson and I am General Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in opposition to SB 2433. This bill appears to propose to require the organization to contact an employee by regular mail within six months after any vocational rehabilitation option has been selected for the employee to determine whether the worker has returned to substantial gainful employment. If not, and the employee asserts there has been a good faith work search or trial and it was unsuccessful due to the work injury, WSI would be required to provide the employee with an application for "renewed disability benefits".

We understand this bill as an attempt to provide information and assistance to an injured employee who has not found suitable work after a work injury. Although WSI is not opposed to the concept of providing assistance and resources to an injured employee to obtain suitable employment, minimal return to work assistance will likely be achieved by this bill, in exchange for a considerable amount of administrative effort required of WSI.

By way of background, While WSI is formulating a vocational rehabilitation plan for an employee, the employee receives wage replacement benefits until a suitable plan is developed. While a new plan is finalized, WSI provides job search and placement assistance for all injured employees. The job search program includes matching injured employees with suitable job leads and enrolling them in classes that assist them in developing job seeking skills. During these classes, WSI consultants provide job-seeking tips on appropriate dress, interviewing techniques, resume writing, and help to

develop a focused and meaningful plan to secure employment. This same process can take place when a plan is reevaluated. For all vocational rehabilitation options but retraining, WSI is already required to reevaluate a vocational rehabilitation plan for an injured employee if they made a good faith work trial or work search but were unsuccessful in securing a job due to the work injury.

For those injured employees who successfully complete a retraining program, WSI currently can provide an award of up to two months' worth of disability benefits to assist the employee in securing employment; pay actual relocation expenses to move the employee where work has been secured; and pay up to one year of post rehabilitation benefits to eligible recipients. To receive further vocational retraining or disability benefits after an employee successfully completes a retraining program, the employee must meet a higher burden than the other vocational options. This is to designed to curb abuse of the retraining programs and to facilitate employment within a vocational field for which an employee is trained.

2009 HB 1062, brought forward by the Interim Workers' Compensation Review Committee, will further expand the two months' of disability benefits for job search to other vocational rehabilitation options. HB 1062 also proposes a vocational rehabilitation pilot program which requires, in part, for WSI to gather statistical information to determine the effectiveness of job search and return to work efforts for each available vocational option. This data will give WSI the ability to evaluate what changes in the vocational rehabilitation program may be required and are most beneficial to an injured employee.

Finally, as we have explained to the sponsor, WSI is required to provide an application for "renewed disability benefits" if the worker asserts the work search or work trial is not successful due to the work injury. The reapplication standard to obtain disability benefits is a higher standard than what exists under current law for most vocational options. In addition, it would be almost impossible to meet the reapplication standard under the circumstances presented in the proposed language.

In summary, WSI prefers to utilize resources for tasks that can reasonably assist an employee in returning to work. WSI respectfully submits this bill is not the best use of resources to achieve this goal. Assuming the passage of HB 1062, WSI will be in a better position to work with the sponsor to identify areas in the vocational rehabilitation programs that may need enhancements.

This concludes my testimony.

## GOOD FAITH JOB SEARCH

Recommendations for good faith job search include but are not limited to the following list of activities:

- Registering with Job Service
- Have an up-to-date resume. Your job seeking skills packet has an outline for resumes.
- Registering for Preferred Worker Program. (For additional information contact , Brad Sibla, with the Preferred Worker Program at 701-328-3876)
- Attended a Job Seeking Skills Workshop; either one we provide or one given at Job Service. Schedules for the job seeking workshops can be found on [www.workforcesafety.com/online-services/preferredworker/workers/JobWorkshops.asp](http://www.workforcesafety.com/online-services/preferredworker/workers/JobWorkshops.asp) or provided by your rehabilitation consultant.
- Making at least 5 job contacts per day. Contacts can include:
  - Visits to job service
  - Internet resources or other employment agencies. If job openings exist; you must show proof of application for the position.
  - Attendance at job fairs is considered job contacts.
  - Provide verification of job fair attendance by outlining the employers you visited with, and the results of the visit.



North Dakota  
Workforce Safety  
& Insurance  
*Putting Safety to Work*

From WSI

PROPOSED AMENDMENTS TO SENATE BILL NO. 2433

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Page 1, line 7, remove the overstrike over "~~return to the same, modified, or alternative occupation, or return to~~"

Page 1, remove the overstrike over line 8

Page 1, line 9, remove the overstrike over "~~marketable skills~~" and remove "selected"

Page 1, line 16, remove "The organization shall contact the employee by"

Page 1, replace lines 17 through 22 with:

When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good faith work search or good faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.

Page 1, after line 22 insert:

**"SECTION 2.** A new section to chapter 65-05.1 of the North Dakota Century Code is created and enacted as follows:

The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:

- a. The stage of rehabilitation services at which closure occurs;
- b. The reason for the closure; and
- c. Follow-up data to determine the effectiveness of job searches and returns to work, including post injury earnings."

Renumber accordingly



## CHAPTER 65-05.1 REHABILITATION SERVICES

### 65-05.1-01. Rehabilitation services.

1. The state of North Dakota exercising its police and sovereign powers declares that disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.
2. The purpose of this chapter is to ensure that injured employees covered by this title receive services, so far as possible, necessary to assist the employee and the employee's family in the adjustments required by the injury to the end that the employee receives comprehensive rehabilitation services, including medical, psychological, economic, and social rehabilitation.
3. It is the goal of vocational rehabilitation to return the disabled employee to substantial gainful employment with a minimum of retraining, as soon as possible after an injury occurs. "Substantial gainful employment" means bona fide work, for remuneration, which is reasonably attainable in light of the individual's injury, functional capacities, education, previous occupation, experience, and transferable skills, and which offers an opportunity to restore the employee as soon as practicable and as nearly as possible to ninety percent of the employee's average weekly earnings at the time of injury, or to sixty-six and two-thirds percent of the average weekly wage in this state on the date the rehabilitation consultant's report is issued under section 65-05.1-02.1, whichever is less. The purpose of defining substantial gainful employment in terms of earnings is to determine the first appropriate priority option under subsection 4 which meets this income test set out above.
4. The first appropriate option among the following, calculated to return the employee to substantial gainful employment, must be chosen for the employee:
  - a. Return to the same position.
  - b. Return to the same occupation, any employer.
  - c. Return to a modified position.
  - d. Return to a modified or alternative occupation, any employer.
  - e. Return to an occupation within the local job pool of the locale in which the claimant was living at the date of injury or of the employee's current address which is suited to the employee's education, experience, and marketable skills.
  - f. Return to an occupation in the statewide job pool which is suited to the employee's education, experience, and marketable skills.
  - g. Retraining of one hundred four weeks or less.
5. If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less. If an option listed in subdivision a, b, c, d, e, or f of subsection 4 has been identified as appropriate for an injured employee and the employee is initially released by the doctor to return to part-time employment with the reasonable expectation of attaining full-time employment, the organization shall pay temporary partial disability benefits under section 65-05-10 until the doctor determines the employee is medically capable of full-time employment.

6. a. If the vocational consultant concludes that none of the priority options under subsection 4 are viable, and will not return the employee to the lesser of sixty-six and two-thirds percent of the average weekly wage, or ninety percent of the employee's preinjury earnings, the employee shall continue to minimize the loss of earnings capacity, to seek, obtain, and retain employment:
    - (1) That meets the employee's functional capacities; and
    - (2) For which the employee meets the qualifications to compete.
  - b. Under section 65-05-10, the organization shall award partial disability based on retained earnings capacity calculated under this section.
  - c. For purposes of calculating partial disability based on a retained earnings capacity, an employee is presumed to be capable of earning the greater of the state's hourly minimum wage times the hours of release based on a valid functional capacities examination or the wages payable within the appropriate labor market. This presumption is rebuttable only upon a finding of clear and convincing medical and vocational evidence to the contrary. If the presumption is successfully rebutted, the employee may receive partial disability benefits based on a retained earnings capacity of zero.
7. The income test in subsection 3 must be waived when an employer offers the employee a return-to-work option at a wage lower than the income test as defined under subsection 3 or when the organization and the employee agree to waive the income test and the priority options.
  8. Vocational rehabilitation services may be initiated by:
    - a. The organization on its own motion; or
    - b. The employee or the employer if proof exists:
      - (1) That the employee has reached maximum medical recovery;
      - (2) That the employee is not working and is not voluntarily retired or removed from the labor force; and
      - (3) That the employee has made good-faith efforts to seek, obtain, and retain employment.
  9. Chapter 50-06.1 does not apply to determinations of eligibility for vocational rehabilitation made pursuant to this chapter.
  10. If retraining is the first appropriate vocational rehabilitation option identified for an employee, the employee shall notify the organization of the acceptance of the retraining option on a form provided by the organization within thirty days from the date the employee receives notice of eligibility for retraining. If the employee fails to notify the organization of the acceptance of the retraining option within the thirty-day period, the organization shall calculate a retained earnings capacity as provided in subdivision c of subsection 6. A vocational rehabilitation allowance does not accrue as weeks of temporary total disability as defined in section 65-01-02 if the employee successfully completes a retraining program approved by the organization. If the employee fails to successfully complete a retraining program approved by the organization, the vocational rehabilitation allowance paid accrues against the maximum number of weeks of temporary total disability allowed pursuant to section 65-01-02. If an employee attempts and withdraws from an approved retraining program within the first twenty weeks following commencement of the retraining program, the employee, upon request, may receive no more than one hundred





Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
SB 2433  
February 4, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to SB 2433 and urge a do not pass from the committee on this bill.

The new language proposed in lines 18 through 21 is too loosely constructed. Please refer to line 20 and the requirement of the claimant only to "assert" that a "there has been a good-faith work trial or unsuccessful work search." This standard is so easy to reach that it effectively negates a goal of return to work for any claimant that prefers not to work. While we understand this may be a small number of North Dakota workers the language as proposed allows for disability benefits to be never ending and timely case resolution to be compromised.

Thank you for the opportunity to appear before you today in opposition to SB 2433. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*

**Replacement language**

When the first appropriate vocational rehabilitation option is identified for an employee, the organization shall notify the employee of the obligation to make a good faith work search or good faith work trial, and provide information to the employee regarding reinstatement of benefits if the work search or work trial is unsuccessful.

**New Language**

The organization shall collect data regarding the status of claims that receive rehabilitation services. The data must include:

- a. The stage of rehabilitation services at which closure occurs;
- b. The reason for the closure; and
- c. Followup data to determine the effectiveness of job searches and returns to work, including postinjury earnings.

**2009 Engrossed Senate Bill No. 2433**  
**Testimony before the House, Industry, Business and Labor Committee**  
**Presented by: Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance**  
**March 3, 2009**

Mr. Chairman and Members of the Committee:

My name is Jodi Bjornson and I am General Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in support of the engrossed version of this bill. In its original form, this bill proposed to require the organization to contact an employee by regular mail within six months after any vocational rehabilitation option has been selected for the employee to determine whether the worker has returned to substantial gainful employment. If not, and the employee asserts there has been a good faith work search or trial that was unsuccessful due to the work injury, WSI would be required to provide the employee with an application for "renewed disability benefits".

We understood the original version of this bill as an attempt to provide information and assistance to an injured employee who has not found suitable work after a work injury. Although WSI was not opposed to the concept of providing assistance and resources to an injured employee to obtain suitable employment, we found that minimal return to work assistance would likely be achieved by this bill, in exchange for a considerable amount of administrative effort required of WSI. In addition, the "renewed disability benefits" language appeared to propose a higher standard for reapplication than what exists under current law for most vocational options.

By way of background, while WSI is formulating a vocational rehabilitation plan for an employee, the employee receives wage replacement benefits until a suitable plan is developed. While a new plan is finalized, WSI provides job search and placement assistance for injured employees. The job search program includes matching injured

employees with suitable job leads and enrolling them in classes that assist in developing job seeking skills.

During these classes, WSI consultants provide job-seeking tips on appropriate dress, interviewing techniques, resume writing, and help to develop a focused and meaningful plan to secure employment. This same process can take place when a plan is reevaluated. For all vocational rehabilitation options but retraining, WSI is already required to reevaluate a vocational rehabilitation plan for an injured employee if they made a good faith work trial or work search but were unsuccessful in securing a job due to the work injury.

For those injured employees who successfully complete a retraining program, WSI currently can provide an award of up to two months' worth of disability benefits to assist the employee in securing employment; pay actual relocation expenses to move the employee where work has been secured; and pay up to one year of post rehabilitation benefits to eligible recipients.

To receive further vocational retraining or disability benefits after an employee successfully completes a retraining program, the employee must meet a higher burden than the other vocational options. This is to designed to curb abuse of the retraining programs and to facilitate employment within a vocational field for which an employee is trained.

2009 HB 1062, brought forward by the Interim Workers' Compensation Review Committee, will further expand the two months' of disability benefits for job search to other vocational rehabilitation options.

Working with the sponsor, we were able to craft amendments which resulted in the engrossed version of the bill. The engrossed version requires WSI to notify an employee at the beginning of the vocational rehabilitation process of the employee's obligations to make a good faith work search or work trial, and to provide the employee

with information regarding reinstatement of benefits if his or her efforts are unsuccessful.

Finally, on page 2, the engrossed version of this bill restates a section of 2009 HB 1062 which requires WSI to gather statistical information to determine the effectiveness of job search and return to work efforts for each available vocational option. This data will give WSI the ability to evaluate what changes in the vocational rehabilitation program may be required and are most beneficial to an injured employee.

This concludes my testimony. I'd be happy to answer any questions you may have.



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
SB 2433  
March 3, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in support of SB 2432 and urge a do pass from the committee on this bill.

The new language proposed in lines 18 through 22 addresses communications which WSI should already be sending to claimants. Definitions of "good faith" work search and work trial should at least be in place as policy and providing information regarding reinstatement of benefits merely fulfills the agency's professional obligation. The bill codifies what should be normal procedure and while we question the need, have no objection to the change.

Thank you for the opportunity to appear before you today in support of SB 2433. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*