

2009 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2434

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2434

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8615

Committee Clerk Signature

Minutes:

**Chairman Klein:** Opened the hearing on SB 2434.

**Sylvan?:** testified in support of SB 2434, (See attachment #1) This bill deals with for any reason the worker had his/her disability benefits stopped. The problem comes in actual wage loss and wage earning capacity. They cannot prove an actual wage loss if they haven't been working.

**Dave Kemnitz,** President of the North Dakota ALF-CIO, supports SB 2434. I looked at a section and understanding these individuals are trying to get back into the workforce, they have to demonstrate they were making an amount or wage before the injury. The language needs to be changed because it is tricky and if a client doesn't have guidance, they will fall through the cracks.

**Dean Haas:** testifying on behalf of self, and testified in support of SB 2434. I wrote about workers comp in a law review. The statute as it is written governs how a worker is handled.

**Seibolt Vetter:** Director of C.A.R.E testified in support of SB 2434. One of the members in our organization had 3000 applications out there and couldn't find work. He had a four year degree, and found nothing. Stated on his application was his physical restrictions, and this is the reason he couldn't find work. Finally, he found work at McDonalds. What do you do with a

guy like this? He can't get a job? Has no wage loss? How can he show wage loss when he can't get a job?

**Anne Green:** Staff Counsel for WSI testified in opposition to SB 2434. (See attachment # 3)

**Senator Horne:** How much of a wage los must they have?

**Anne Green:** It has not been defined

**Senator Horne:** This doesn't mean a reduction in wages?

**Anne Green:** It means the actual wages lost, you didn't get a check because you were injured.

**Senator Potter:** Eligibility to re-enter the wage market, do your benefits end even if you cannot find a job?

**Anne Green:** If WSI issues a vocational plan-that decision becomes final and you are eligible to re-enter the workforce, the benefits end.

**Senator Potter:** So the benefits end whether or not you actually get a job?

**Anne Green:** That is correct. This is the way the Supreme Court has interpreted the law.

**Senator Wanzek:** Would they then qualify for unemployment?

**Anne Green:** Potentially, I am not an expert in unemployment benefits.

**Senator Behm:** Help me understand what is meant by "non-compliance".

**Anne Green:** Benefits stop if the injured worker isn't following the rules. Injured worker doesn't follow the rehabilitation schedule set forth by the doctors.

**Bill Shalhoob,** representing North Dakota Chamber of Commerce, testified in opposition of SB 2434. (See attachment # 4)

**Chairman Klein:** closed the hearing on SB 2434

**Senator Andrist:** Motion for a Do Not Pass

**Senator Nodland:** Seconded

**Chairman Klein:** Let the record indicate that Senator Potter in "annoyed" by fiscal notes.

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

Bill/Resolution No.: SB 2434

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 changes the standards for reapplication for benefits.

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 2434

BILL DESCRIPTION: Reapplication for Benefits

**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 eliminates the requirements that an injured worker has to sustain a significant change in their compensable medical condition, an actual wage-loss, and the injured worker has not retired or voluntarily withdrawn from the labor market before disability benefits can be reinstated. The bill would require WSI to reinstate disability benefits if, as a result of the injury, there exists a loss of earnings capacity of at least 10% of the employee's pre-injury wage for a period of at least five consecutive calendar days.

**FISCAL IMPACT:** Not quantifiable. We do not have access to sufficient data to permit a comprehensive evaluation of the potential rate level and reserve impact of this proposed legislation. The legislation will likely permit the reopening of claims from prior periods as well as claims arising in future periods. WSI anticipates that the legislation will act to increase costs, possibly by a material amount. The proposed change may also act to increase the level of uncertainty of any actuarial estimates because of the increased potential for upward loss development (increases in cost estimates) associated with very old injuries.

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



**REPORT OF STANDING COMMITTEE (410)**  
February 4, 2009 5:05 p.m.

**Module No: SR-22-1683**  
**Carrier: Andrist**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**SB 2434: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO NOT PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). SB 2434 was placed on the Eleventh order on the calendar.**



2009 TESTIMONY

SB 2434

#1

## Testimony for SB 2434

SB 2434 is a bill that is looking out for injured workers. Under the current system, the injured worker needs to go through many cumbersome steps to show that their injury has changed and that change has negatively impacted their wage earning abilities. This bill would require the injured worker to show that their injury that initially placed them on workers compensation has negatively affected their earning capacity by 10%.

There shouldn't be a timeline on how long an injury can affect a person and that injury shouldn't have to get worse

- in order to remain on disability benefits. If the injury was severe enough for the worker to receive benefits and that injury is still affecting their earning capacity, they should still receive benefits.



#2

## 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%)

#3

**2009 Senate Bill No. 2434**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Anne Jorgenson Green, Staff Counsel**  
**Workforce Safety & Insurance**  
**February 4, 2009**

Mr. Chairman, Members of the Committee:

My name is Anne Green, staff counsel for WSI. I am here on behalf of WSI to testify in opposition to SB 2434 and to provide information to the Committee to assist in making its determination. WSI's Board of Directors voted unanimously to oppose this bill.

The bill amends a provision of law that has been in effect since 1991. This bill seeks to remove North Dakota's test for reinstatement of disability benefits. Under current law, to reinstate disability benefits, an injured employee must show a significant change in their compensable condition that in turn caused an actual wage loss.

This test has a logical basis. In order to re-apply, an injured employee must have received disability benefits and they must have ended. In order to end any benefit, WSI must issue an appealable order with the reason for discontinuation. With respect to wage loss benefits, WSI must have concluded entitlement to those benefits ended as a result of a narrow set of circumstances—reemployment (the injured worker got another job), eligibility to re-enter the labor market (WSI issued a vocational plan with specific job goals), or noncompliance (the injured worker has done something or not done something that has compromised his eligibility to receive wage loss benefits). If the requirement in the statute were not present, an injured employee who was determined employable and off the system would need only reapply to potentially become eligible for disability again—without ever actually entering the workforce.

The reason this test was put into place was to remedy this revolving door. It has been affirmed by the North Dakota Supreme Court in a number of decisions. The 1991 statute made reinstatement of disability dependent upon actually returning to work, not a particularly onerous requirement. Effectively, this is the identical requirement an injured employee must meet to become entitled to benefits originally.

WSI respectfully urges this committee to vote "do not pass" on SB 2434.

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



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
SB 2434  
February 4, 2009

# 4

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 2434 and urge a do not pass from the committee on this bill.

By changing the requirements of a significant change in compensable medical condition and sustaining an actual wage loss caused by the compensable medical condition to a standard of 10% of pre-injury wages for five consecutive days, we significantly lower the return to work incentive that is a basic principle of workers comp insurance. This is a reapplication on a claim that was previously adjudicated and settled. Again, it effectively allows a do over when not satisfied with a result and lead to continuous hearings on the same claim. Our current standards for a reapplication like this should be maintained as is.

Thank you for the opportunity to appear before you today in opposition to SB 2434. I would be happy to answer any questions.

*THE VOICE OF NORTH DAKOTA BUSINESS*