

# Bill as Introduced

HB 1385-FN - AS INTRODUCED

2010 SESSION

10-2503

01/09

HOUSE BILL

***1385-FN***

AN ACT

relative to appeals under the workers' compensation law.

SPONSORS:

Rep. L. Perkins, Rock 14

COMMITTEE:

Labor, Industrial and Rehabilitative Services

---

ANALYSIS

This bill allows a claimant to proceed to the supreme court on an issue of fact in a workers' compensation case.

-----  
Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~(in brackets and struck through.)~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Ten*

AN ACT                   relative to appeals under the workers' compensation law.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

- 1           1 Workers' Compensation; Hearings and Awards. Amend RSA 281-A:43, I(c) to read as follows:
- 2                   (c) Any party in interest aggrieved by any order or decision of the board may appeal to
- 3 the supreme court pursuant to RSA 541. ***Notwithstanding any provision of law to the***
- 4 ***contrary, such appeal may be on an issue of fact.***
- 5           2 Effective Date. This act shall take effect January 1, 2011.

LBAO  
10-2503  
11/19/09

**HB 1385-FN - FISCAL NOTE**

AN ACT           relative to appeals under the workers' compensation law.

**FISCAL IMPACT:**

The Judicial Branch states this bill may increase state expenditures by an indeterminable amount in FY 2011 and each year thereafter. There is no fiscal impact on county and local expenditures or state, county and local revenue.

**METHODOLOGY:**

The Judicial Branch states this bill allows a claimant to proceed to Supreme Court on an issue of fact in a workers' compensation case. The Branch states it has no information on how many appeals might result from this bill or if the Supreme Court would accept such an appeal for full appellate review, accept for a limited appellate review, or decline the appeal. The Branch is not able to determine the fiscal impact of this bill. However, one appeal accepted for full appellate consideration could result in a fiscal impact to the Branch in excess of \$10,000.

The Department of Labor states this bill has no fiscal impact on the Department.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 1385-FN

**BILL TITLE:** relative to appeals under the workers' compensation law.

**DATE:** January 28, 2010

**LOB ROOM:** 307      **Time Public Hearing Called to Order:** 10:00 a.m.

**Time Adjourned:** 10:54 a.m.

(please circle if present)

**Committee Members:** Reps. Goley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky.

**Bill Sponsors:** Rep. L. Perkins, Rock 14

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Lawrence Perkins** - Prime sponsor of the bill. Supports the bill. Argues that the Worker's Compensation law is only a shadow of what it was intended to be, and needs a better grievance procedure. You have an attorney who represents too many entities, and reduces it to an "old boys club." There is no other choice but to go to the Supreme Court in order to do away with the problems, although he has had other suggestions, such as arbitration.

Q: So if a person has a Workers Compensation complaint and it's denied, he has no appeal process?  
ANS: It goes back to the same board. The chance to overturn is very slim.

Q: What motivated this legislation? ANS: I was in front of the board on a case of my own, and was appalled by some things I saw. I saw two attorneys come out of the room and "high five" themselves, and quote someone who said "I told him if he cursed, I'd throw out the case."

Q: So there isn't equal representation in appeal? ANS: Well, the law has been revised 11 times, so I think there have been issues and continue to be.

Q: All this does is that when you appeal to the Supreme Court, you can only appeal process. You can't appeal facts. This bill would change that? ANS: Yes.

Q: Can you cite a case like that? ANS: One case, there seemed to be discrepancy between two doctors, the cardiologist said it was due to natural causes. The word of the general practitioner was taken over his.



Q: But in the case of the appeal board, the panel doesn't include the first person who heard the case?  
ANS: That's true, but if you appeal the ruling of the panel, the same panel hears the next appeal.

Q: Is the first appeal based on fact or process? ANS: I believe it's based on both.

**Rep. Amy Perkins** - Supports the bill. She was present in the waiting room and witnessed the case where the claimant was denied because of cursing. She also clarified the situation with the cardiologist and the general practitioner. She stated that the general practitioner was "ordered" to make the report. She believes that there is language in statute that says the testimony of a specialist should have more weight.

Q: That doesn't seem like a question of fact, but of interpretation. A question of fact would be whether or not the heart attack happened on the job. ANS: There is no process now to appeal that the specialist's report should have more weight. There's nowhere to go.

Q: Does the bill specify who pays for the claimant's lawyer if it goes to the Supreme Court? ANS: I don't believe so.

Q: Why couldn't there be a suit against the state? ANS: You can't just dismiss the responsibility under Worker's Compensation.

**\* Peter Sheffer, NH Automobile Dealer's Association** - Opposes the bill. This bill will increase the cost of Worker's Compensation, and for the state – there would be \$10,000 per appeal to go to the Supreme Court. The Supreme Court is not a trial court – it hears issues regarding the law, not factual issues.

Q: Would you look at other alternatives to the current appeal process, so it could go somewhere other than back to the same board? ANS: I wouldn't have a problem if you could come up with one. There are nine different panels, and maybe you could choose someone from one of the other panels.

Q: What do you think of the case that was cited? Does the Supreme Court have the ability to decide whose report should take the most weight? ANS: I believe that there has been a Supreme Court ruling that the board can decide which report carries the most weight.

Respectfully submitted,



Rep. Mary Ann Knowles  
Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 1385-FN

BILL TITLE: relative to appeals under the workers' compensation law.

DATE: 1-28-10

LOB ROOM: 307 Time Public Hearing Called to Order: 10:06

Time Adjourned: 10:54

(please circle if present)

Committee Members: Reps. Coley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky

Bill Sponsors: Rep. L. Perkins, Rock 14

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

① Rep. Lawrence Perkins - Sponsor - supports  
Argues that the worker's Compensation law is only a shadow of what it was intended to be, and needs a better grievance procedure. You have an attorney who represents too many entities, and reduces it to an "old boys club." There is no other choice but to go to the supreme court in order to do away with the problems, although he has had other suggestions, such as arbitration. He apologizes, but he is not an attorney.

Q: So if a person has a workers Comp complaint and it's denied, he has no appeal process?

R: It goes back to the same board. The chance to overturn is very slim.

Q: What motivated this legislation?

R: I was in front of the board on a case of my own, and was appalled by some things I saw. I saw two attorneys come out of the room and "high five" themselves, and quote someone who said "I told

P. 2  
him if he cursed, I'd throw out the case."

Q: So there isn't equal representation in appeal?

R: well, the law has been revised 11 times, so I think there have been issues and continue to be.

Q: All this does is that when you appeal to the Supreme Court, you can ~~also~~ <sup>only</sup> appeal process. you can't appeal facts. This bill would change that.

R: yes.

Q: can you cite a case like that?

R: one case, there seemed to be a discrepancy between two doctors, the cardiologist said it was due to natural causes. The word of the general practitioner was taken over his.

Q: But in the case of the appeal board, the panel doesn't include the first person who heard the case.

R: That's true, but if you appeal the ruling of the panel, the same panel hears the next appeal.

Q: Is the first appeal based on fact or process?

R: I believe it's based on both.

② Rep. Amy Perkins - supports

She was present in the waiting room and witnessed the case where the claimant was denied because of cursing. She also clarified the situation with the cardiologist and the general practitioner. She stated that the general practitioner was "ordered" to make the report. She believes that there is language in statute that says the testimony of a specialist should have more weight.

Q: That doesn't seem like a question of fact, but of interpretation. A question of fact would be whether or not the heart attack happened on the job.

R: There is no process now to appeal that the specialist's report should have more weight. There's nowhere to go.

Q: Does the bill specify who pays for the claimant's lawyer if it goes to the Supreme Court?

R: I don't believe so.

Q: Why couldn't there be a suit against the state?

R: You can't just dismiss the responsibility under worker's comp.

③ \* Peter Sheffer - NH Automobile Dealer's Assoc<sup>-opposed</sup>

This bill will increase the cost of workers Comp, and for the state - there would be \$10,000 per appeal to go to the Supreme Court. The Supreme Court is not a trial court - it hears issues regarding the law, not factual issues.

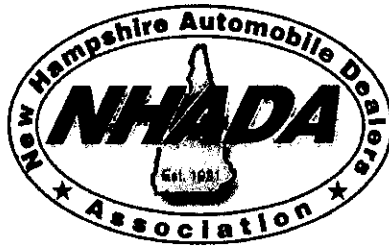
Q: Would you look at other alternatives to the current appeal process, so it could go somewhere other than back to the same board?

R: I wouldn't have a problem if you could come up with one. There are nine different panels, and maybe you could choose someone from one of the other panels.

Q: What do you think of the case that was cited - Does the Supreme Court have the ability to decide whose report should take the most weight?

R: I believe that there has been a Supreme Court ruling that the board can decide which report carries the most weight.

# Testimony



## HB 1385-FN

Mr. Chairman and Members of the Labor, Industrial & Rehabilitative Services Committee:

NHADA is a statewide trade association, established in 1921, representing the interests of the motor vehicle industry. Membership consists of all of the new-car and new-truck dealers in the state, along with motorcycle, recreational vehicle, farm equipment, used-car, snowmobile and OHRV dealers, and construction equipment dealers, as well as motor vehicle service, auto-body repair, and motor vehicle parts sales facilities.

Our members are close to 550 small businesses in all corners of the state that employ over 13,000 citizens and make up 25% of the states retail sales.

I sit before you today on behalf of our Workers Compensation Trust that has been in existence since 1982 and managed claims in-house since 1998. Our not for profit trust has 355 members and covers 12,000 employees. We are overseen by a board of trustees made up of NHADA members and since 1990 we have returned 36% of premium to our trust members.

We are opposed to HB 1385 for the reasons that are stated below, our opposition is as follows:

- Currently the Supreme Court hears workers compensation cases only when the NH Department of Labor Compensation Appeals Board makes an error in judgment on interpreting the law, not facts.
- HB 1385 will now force the Supreme Court to be deciders of issues of fact, something beyond their tasked scope.
- NHADA feels that this piece of legislation will hamper the current workings of what is a very effective and efficient workers compensation system.
- It is our belief that a great number of denied workers compensation cases at the NH Department of Labor Compensation Appeals Board will now attempt to appeal to the Supreme Court which will slow down the process of resolving cases and significantly raising workers compensation costs as well as court costs.
- This increased cost will unfortunately fall on to all NH businesses; large and small as well as increased costs to the state of New Hampshire.

Thank you for listening and your consideration of our recommendation of ITL on HB 1385.

I will gladly answer any questions and we would welcome and offer any assistance that we may provide.

Dan Bennett, V.P. Government Relations & Environmental Affairs  
Pete Sheffer, Director of Workers Compensation, NHADA Workers Comp. Trust  
New Hampshire Automobile Dealers Association  
P.O. Box 2337  
Concord, NH 03302  
(603) 224-2369

January 28, 2010

William L. Chapman  
George W. Roussos  
Howard M. Moffett  
James E. Morris  
John A. Malmberg  
Martha Van Oot  
Douglas L. Patch  
James P. Bassett  
Emily Gray Rice  
Steven L. Winer  
Peter F. Burger  
Lisa Snow Wade  
Susan S. Geiger  
Richard Y. Uchida  
Jennifer A. Eber  
Michael D. Ramsdell  
Jeffrey C. Spear  
Connie Boyles Lane  
Judith A. Fairclough  
Todd C. Fahey  
Vera B. Buck  
James F. Laboe  
Robert S. Carey  
John M. Zaremba  
Courtney Curran Vore  
Justin M. Boothby  
Heidi S. Cole  
Jeremy D. Eggleton  
Rachel A. Goldwasser  
Joshua M. Pantesco  
John L. Arnold  
Michael T. Cretella

**HAND DELIVERED**

The Honorable Jeffrey Goley, Chairman  
House Labor, Industrial and Rehabilitative Services  
Legislative Office Building, Room 307  
Concord, New Hampshire 03301

**Re: HB 1385-FN**

Dear Representative Goley:

On behalf of my clients, the New Hampshire Association of Domestic Insurance Companies ("NHADIC") and the American Insurance Association ("AIA"), I am writing to express concern with HB 1385-FN, which would require the supreme court to rule on issues of fact in workers' compensation appeals. As your committee is aware, the current system calls for two opportunities to present disputed facts for a decision, first in hearings before the hearings officer and second in an appeal to the appeals board. The role of the supreme court in most cases is focused upon whether the correct law was applied.

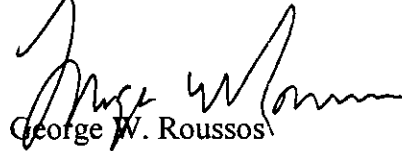
We believe this bill would contradict two basic goals of workers' compensation, the speedy resolution of cases and resolution of cases as economically as possible. As we have testified on bills such as HB 1370, HB 1371 and HB 1315, we believe the workers' compensation system currently does a good job in balancing costs and benefits, and we hope your committee will not recommend changes other than for compelling reasons and unless the committee is confident that changes would not bring unintended negative consequences.

Maureen D. Smith  
(Of Counsel)

The Honorable Jeffrey Goley, Chairman  
January 28, 2010  
Page 2

Thank you for the opportunity to provide this testimony, and I would be pleased to speak further with you or members of your committee at any time.

Very truly yours,



George W. Roussos

GWR/dlc

cc: Hon. Sally Kelly, Vice Chair  
Hon. Mary Gorman  
Hon. Roland Hofemann  
Hon. John Knowles  
Hon. Mary Ann Knowles  
Hon. William Brennan  
Hon. James Craig  
Hon. Charles Weed  
Hon. Chip Rice  
Hon. Lucy Mears  
Hon. William Infantine  
Hon. Gary Daniels  
Hon. Franklin Bishop  
Hon. Russell Bridle  
Hon. John Gleason  
Hon. Dudley Dumaine  
Hon. Herbert Richardson  
Hon. Tony Pellegrino  
Hon. John Sedensky

628348\_1



# Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 1385-FN

**BILL TITLE:** relative to appeals under the workers' compensation law.

**DATE:** February 9, 2010

**LOB ROOM:** 307

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Kelly

Seconded by Rep. J. Knowles

Vote: 15-2 (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

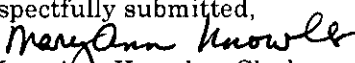
Seconded by Rep.

Vote: (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE: NO**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,  
  
Rep. Mary Ann Knowles, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 1385-FN

**BILL TITLE:** relative to appeals under the workers' compensation law.

**DATE:** 2/9/10

**LOB ROOM:** 307

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL Interim Study (Please circle one.)

Moved by Rep. Kelly

Seconded by Rep. John Knowles

Vote: (Please attach record of roll call vote.) 15-2

**Motions:** OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 1385-FN Title: relative to appeals under the workers' compensation law

PH Date: 1 / 28 / 10

Exec Session Date: 2 / 9 / 10

Motion: ITL

Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman	✓	
Kelly, Sally H, V Chairman	✓	
Gorman, Mary J	✓	
Hofemann, Roland P	✓	
Knowles, John	✓	
Knowles, Mary Ann, Clerk	✓	
Brennan, William P	✓	
Craig, James W		
Weed, Charles F	✓	
Rice, Chip L	✓	
Mears, Lucy E	✓	
Infantine, William J	✓	
Daniels, Gary L	✓	
Bishop, Franklin C	✓	
Bridle, Russell D		✓
Gleason, John P		
Dumaine, Dudley D		
Richardson, Herbert D		✓
Pellegrino, Tony J	✓	
Sedensky, John B	✓	
	15	2
TOTAL VOTE:		

# Committee Report

**REGULAR CALENDAR**

**February 10, 2010**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on LABOR, INDUSTRIAL AND  
REHABILITATIVE SERVICES to which was referred  
HB1385-FN,**

**AN ACT relative to appeals under the workers'  
compensation law. Having considered the same, report  
the same with the following Resolution: RESOLVED,  
That it is INEXPEDIENT TO LEGISLATE.**

**Rep. Sally H Kelly**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES</b>
Bill Number:	<b>HB1385-FN</b>
Title:	<b>relative to appeals under the workers' compensation law.</b>
Date:	<b>February 10, 2010</b>
Consent Calendar:	<b>NO</b>
Recommendation:	<b>INEXPEDIENT TO LEGISLATE</b>

### STATEMENT OF INTENT

This bill relates to the appeal process for workers' compensation claims. Appeals to the Supreme Court must be based on either process or question of law, rather than fact. This bill seeks to change that for the benefit of workers' compensation claims. The current appeal process, must be fact based and begins with a hearing before one person at the department of labor. It can be further appealed to the appellate board which is made up of three individuals. If at that point there is a question of either due process or law it can be appealed to the Supreme Court. The majority of the committee believes the current appeals process works.

Vote 15-2.

Rep. Sally H Kelly  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

**HB1385-FN**, relative to appeals under the workers' compensation law. **INEXPEDIENT TO LEGISLATE.**

Rep. Sally H Kelly for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. This bill relates to the appeal process for workers' compensation claims. Appeals to the Supreme Court must be based on either process or question of law, rather than fact. This bill seeks to change that for the benefit of workers' compensation claims. The current appeal process, must be fact based and begins with a hearing before one person at the department of labor. It can be further appealed to the appellate board which is made up of three individuals. If at that point there is a question of either due process or law it can be appealed to the Supreme Court. The majority of the committee believes the current appeals process works. **Vote 15-2.**

Original: House Clerk  
Cc: Committee Bill File



HB 1385-FN

ITL

This bill relates to the appeal process for workers' compensation claims. Appeals to the Supreme Court must be based on either process or question of law, rather than fact. This bill seeks to change that for the benefit of workers' compensation claims. The current appeal process, must be fact based and begins with a hearing before one person at the department of labor. It can be further appealed to the appellate board which is made up of three individuals. If at that point there is a question of either due process or law it can be appealed to the Supreme Court. The majority of the committee believes the current appeals process works.

Sally Kelly

A handwritten signature in black ink, appearing to be the initials 'JK' or similar, located to the right of the typed name 'Sally Kelly'.

# COMMITTEE REPORT

COMMITTEE: Labor

BILL NUMBER: 1385 FN

TITLE: relative to appeals under the worker compensation law

DATE: 2/9/10

CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- RE-REFER
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.

**STATEMENT OF INTENT:**

This bill relates to the appeal process for workers' compensation claims. Appeals to the Supreme Court must be based on either process or question of law, rather than fact. This bill seeks to change that for the benefit of workers' comp. claims.

The current appeal process, must be fact based and begins with a hearing before one person at the Department of Labor. It can be further appealed to the appellate board which is made up of three individuals. If at that point there is a question of either due process or law it can be appealed to the Supreme Court.

COMMITTEE VOTE: The majority of the committee believes the current appeals process works 15-2

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Sally Kelly  
For the Committee