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ROLL NUMBER

DESCRIPTION

1493

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1493

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1493

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: 01-29-2007

Recorder Job Number: 2219

Committee Clerk Signature

Shirley M Thomas

Minutes: **Chairman Keiser** opened the hearing on HB 1493. HB 1493 relates to worker's compensation incentives for employers to have pre-employment, post-accident, and random testing for alcohol and controlled substances. Rep. Dosch was absent.

Tim Wahlin, Staff Council for Workforce Safety and Insurance, introduced the bill. See written testimony.

Rep. Amerman: These are national statistics you are using here?

Wahlin: Yes.

Rep. Amerman: Do you have any North Dakota statistics?

Wahlin: No.

Rep. Keiser: If we have an employee that is injured in the workplace and they are under the influence of drugs or alcohol they are not covered under worker's compensation, correct?

Wahlin: That is correct.

Rep. Keiser: What this applies to are other people with the injured worker that is also involved in the accident, if they are under the influence of drugs or alcohol?

Wahlin: They are presumed not to be covered, unless that injured worker can rebut the presumption. For example, if I am sitting at my desk and I'm drunk and a bus comes through the wall and injures me, I would probably be able to rebut the presumption because my

intoxication didn't cause that work related injury. That case would probably be compensable, even though I was under the influence.

Rep. Keiser: Does this apply to other people, other than me sitting at my desk?

Wahlin: The other injured person that would be injured through your intoxication or for being under the influence, you caused that injury, that person does not ever face this test unless they too were under the influence.

Rep. Keiser: If they were under the influence then what?

Wahlin: Then the presumption would apply; they would have to rebut the presumption show that their use of a controlled substance or alcohol did not cause that injury. If they can rebut it, it will be fully compensable.

Rep. Keiser: So if I'm driving the car and I'm under the influence and my passenger who is an employee is under the influence and we get into an accident, what will happen?

Wahlin: In that scenario, the driver of the vehicle, I would say would be fairly certain that they would be unable to rebut because they were driving the vehicle and crashed, it would be presumed to have taken place as a result of their intoxication. I doubt that they would be able to rebut that. The passenger on the other hand, if they were simply riding there, probably would be able to rebut the presumption, that their alcohol or drug use caused the injury. If there was a tie that they were passing drugs back and forth, again, they may not be able to rebut that presumption.

Rep. Keiser: Well, one hundred percent of the driver is not covered, where does the fifty percent come in?

Wahlin: With respect to the payment of compensation benefits to the injured workers, the fifty percent never comes in. The fifty percent will only apply when we experience rate that employer for future cycles. Now if that employer had adequate testing, free host, and random

testing on site, and their worker was able to rebut the presumption, the organization will only tax those fifty percent of the cost of that claim.

Rep. Amerman: If a injured worker was to rebut this presumption, how long of a process that would be to try to get it overturned and does he need legal council and all this?

Wahlin: When the organization reviews a claim, we gather as many facts as we possibly can then we switch hats and become then, the adjudicator of that claim. We will review that claim and the facts of intoxication and what and why this happened and hopefully in most cases, the correct adjudication will take place within the first fourteen to eighteen days. Hopefully the organizations first review is correct. In the event that anybody does not agree with that, employer, employee, they can appeal. They can give us new facts and we will review them and then we are in the litigation process and the further we go naturally, the longer it takes.

Rep. Zaiser: Using Chairman Keiser's example of two intoxicated employees driving, if the rider is also injured, what impact would the fact that the employer did pre, post and random drug testing have on his appeal ability have on that situation?

Wahlin: Nothing. The bill is targeted towards the employer, hopefully, with pre, post and random drug testing, that employer has been encouraged to get a handle on that workforce so that we have a sober workforce. We know that the chances of that situation happening in a workforce that is confirmed to be sober go far lower.

Rep. Amerman: If a claimant rebuts this and it goes through quite a lengthy process and he wins, so even if he wins, the employer still has only fifty percent charged to his experience rate? So if the workers hire an attorney to go through this, does that get paid, or how does that work or is he compensated that way?

Wahlin: We have authority under those statutes to pay attorney's fees in the event that the injured worker retains one and is ultimately successful at some level. They are set by a

number of conditions. One of them is how far up the chain they had to go in order to be successful, so we have ascertained some levels and some caps and have tried to make them equal with our council's caps so that everybody is getting paid the same amount. If they go to district court and are successful, the organization will pay injured worker's attorney's fees to the level set by caps.

Rep. Ruby: On the criteria for her post accident, random and pre testing, is the post accident the one for any accident even if there is no injury or only when there is an injury?

Wahlin: In putting this together, we recognized that there will be a number of different policies that have to be hammered out by the organization should this pass, which is, what are we going to require in those testing programs? How often are we requiring testing to take place and those are going to be issues that we will have to face and I we haven't entered into those debates yet about where the right level is?

Rep. Ruby: Looking at the programs that are out there, and the cost that some of us have with pre-employment and random, every accident that doesn't result in injury could get kind of expensive and purposes other than the vehicle insurance would require it, would be unnecessary for this purpose. It seems like under this one that it probably should spell out more when it results in and injury.

Rep. Keiser: Let's say we have a big case, six million. The bureau says we are not going to cover it and go to court, challenge it, and they win in court, so the employers account is going to be held to three million. Who is going to pay the other three?

Wahlin: That would be a cost to the fund.

Rep. Keiser: The reserve fund?

Wahlin: Correct.

Rep. Amerman: Is the bookkeeping at WSI changing back to worker's comp under this?

Wahlin: I believe that you will note under sub one; we refer back to worker's compensation, which is the program of insurance that we provide. During the name place it was search and replace all with WSI, so I believe that was a clean up.

Tom Baulzer, ND Motor Carriers Association spoke in support of the bill.

Baulzer: We support HB 1493. We believe it is a bill that is directed specifically toward employers to give them a benefit to make sure that they are doing random drug and alcohol screening for their employees. We do not feel that this is a policing action toward injured employees, or in any way an infringement upon their rights. We as an industry take alcohol and drug use in the workplace very seriously and are required by federal law that if we cross state lines, to test all of our drivers. This would give all employers a little bit of incentive there to do screening on their employees.

Rep. Thorpe: I was under the impression that there are a lot of prescription drugs that show up in testing, how do you know for sure that is in an illicit drug vs. prescribed drug?

Baulzer: I'm not an expert on the testing. I know that the tests have been through tests that the prescription drugs should be screened out. There are options that if an employee tests positive that there is the option to take a secondary test with those medicines as well as if they have or are taking those medicines, they report those upfront to the screener.

Dave Currier, President of Dakota Fence spoke in support of the bill.

Currier: The bill is very dear to our heart. This legislation is imperative that it passes. Dakota Fence has been in business since 1972. We have three offices in Fargo, Bismarck and Minot. We employ one hundred and fifty to one hundred and eighty people average. We do fence, signs, guardrail, traffic control and playground equipment. We were one of the first employers to participate in the risk management program started in 1994 and we have annually come out of that audit with flying colors. We are please with that. We are a volunteer participant in the

SOP program with WSI. We have been one of the leaders in the industry to bring new items and essential things to the job place to make sure that the employees are safe and that work is done in an efficient manner. Dakota Fence complies with all the federal DOT regulations concerning drug and alcohol testing. This is very important. We follow strict guidelines on all of our employees. In a nut shell, we work very hard at Dakota Fence to try to be a good safe, drug free workplace. The drug free workplace pays dividends to the employers.

Rep. Amerman: If you have all of the safety criteria, what in this bill is going to better what you are doing?

Currier: This program is going to do is enhance the desire of business like ours to have a drug free work place and embark in the same programs I have laid out. Yes, the employer will get some dollars back, but if you look at what they are doing and the investment they have put to get those dollars.

Rep. Ruby: You mentioned you had a post accident, was that an accident with injury or just an accident?

Doug Baker, Safety manager with Dakota Fence, spoke to tell a story about their business.

Baker: July 27, 2005, we had an accident with two employees that were returning from Carpio. There was a driver and a passenger in a one ton truck pulling a trailer. The driver lost control of the vehicle, went into the ditch, rolled the vehicle and both employees were taken by ambulance to the hospital in Minot. One stayed there and one was flown to Minneapolis. They both received serious head injuries, back injuries, etc. They have both recovered from their injuries and are working through the situations that they are at. What happened after the accident was both of them were tested as per our policy. Both employees were found to be on methamphetamines at the time of the accident, which we believe was the cause of the accident, which we believe was the cause and the police report after that felt that there was

impairment. The driver was proven to be high on meth and denied worker's compensation. The passenger tested positive as well but we lost in district court and his benefits were paid. We disagreed with that and lost at all levels. Our thought was, in this situation, was that the passenger at the time, had drove to the job site, worked at the job site and then on the way home was the passenger, so at one time he did operate the motor vehicle. We felt that he was then responsible and should have been denied the benefits, so from my personal standpoint, I guess that if anyone is positive or tests positive on an injury, they should be denied whether they are presumed innocent or not, but that is another topic.

Rep. Zaiser: Do you feel that this might be requiring the employee to undergo these tests and if he doesn't there are consequences. Do you think that violates his civil rights?

Baker: I don't believe so. It is giving the employer the option, whether he wants to have a drug testing program. If he chooses not to have the program then he is not eligible for the fifty percent discount.

Rep. Zaiser: I understand the employers' rights there and I understand their option, but what about the option for employee? Under this legislation, he is mandated to comply.

Baker: The consequences to mandate the drug testing program would be to his employment.

Rep. Zaiser: He wouldn't be able to access worker's compensation coverage if he refused to take part in the testing.

Baker: I think that what you are saying is true from the standpoint that he would be admitting that he was impaired at the time of the accident, but you still go back to the first part of that bill that talks about the presumption of whether his impairment caused the accident or not, so from what I understand, that wouldn't have anything to do with whether he would be eligible for the claim or not.

Rep. Keiser: In reviewing your case, the driver was not covered, so that did not result in any charges to your account, it was the second person, who was also under the influence of meth that was injured and this bill wouldn't affect that person?

Baker: No, this bill would not affect this person in the way that the law is written is right now, whether he is eligible for benefits or not. It does help us for the next two or three years on our experience modification rating, it is. If our program that we have in place meets what WSI, we could get the fifty percent benefit off of that claim.

Rep. Zaiser: I am reading on page two lines eight through fourteen, it does talk about the fact that the employee is not eligible for worker's compensation coverage if he refuses to take part in the drug testing.

Baker: I guess that's the law today, the way it says.

Rep. Amerman: In your tests in your facility, is it all controlled in house by nurses and that type of stuff, or what kind of control do you use when you test?

Baker: We have a third party drug testing company that we have hired that does all of the testing. All of the testing is following the federal DOT drug testing regulations.

Rep. Amerman: Does this run into quite a bit of money for a business if we want to do this for say a third party, is this going to be available to any business out there?

Baker: I think there are two things that you have to weigh. No, I don't think it's too pricy to do the program, but the other thing to look at is by having one of these programs, what it does to the safety of the workforce and the safety of the rest of the people on the streets and coworkers.

Rep. Keiser: You make an assumption that having this drug-testing program in place is going to prevent all of this stuff. You had it in place. It didn't prevent it. Now this guy gets injured and this bill wouldn't cover the second passenger that you actually made a payment on the claim

for. But let's say it was the driver and it would have been covered. You had a program that was expensive to you didn't work and now all the rest of the employers are to pick up the difference, how is that right?

Baker: It's not right. I think what you have to look at is what have we prevented by having that program. Because we did have one person slip through the cracks, how many have been prevented?

Rep. Zaiser: How much would a drug test cost?

Baker: The average drug test to cost to test a person is about fifty dollars.

Russ Hanson, Association General Contractors, spoke in support of the bill.

Hanson: The two previous speakers did an excellent job of explaining why we are supportive of this legislation and we are hopeful that will be an investment for a safer workplace that will bring the overall cost down.

Rep. Keiser: Speaking of your members, if I'm going to pay one hundred percent of the tab, am I more likely to have a drug program than if I am paying fifty percent or maybe a forth of it.

Hanson: Candidly, yes.

Bill Shalhoob, ND Chamber of Commerce, stated support for the bill, for the record. See written testimony.

Opposition to the bill was heard at this time.

LeRoy Volk, spoke in opposition to the bill.

Volk: Certain portions of this bill I am opposed to. They say the want to do random drug testing on alcohol. I put in sixty hours let's say on a week. I went home and start drank one or two beers, my phone rings and your supervisor calls me and tells me I have to go take a load some place. I got my hours in already and I tell them I can't find somebody else. He says no your responsibility is to get in here and take that load or you are fired, so what do you do?

Instead of losing your job and your pension and everything else, you go and do as what your employer says. That is why I am against this bill because it can be looked two ways. They put too many hours on you, you figured you can go home and all of the sudden they call you back to work. Besides, if I have somebody against me and I had them two beers and went back to work which is not legally drunk and let's say the one person was against me and he knew I had two beers and pushed me off the scaffolding, so I'm not covered now? It's my fault?

Rep. Keiser (referring back to Tim Wahlin): We are concerned about this carrot. What do we do for company's that do have good quality drug testing programs in place, how does that serve as a carrot for them?

Wahlin: I do not believe, I cannot come up with a program in place right now in which we are giving a benefit to an employer for having a program in place. I believe that prior programs have had that as a target, but as we have been revising those programs, I still think we are looking for footing to get something established.

Rep. Amerman: There was a collective bargaining that already had drug testing in it and then this passed and then you went back and put rules that businesses would have to follow, and the collective bargaining wasn't quite up to yours and that contract isn't up for a number of years, how would you work that?

Wahlin: To the extent that the collective bargaining is an agreement between employer and employee. We are just saying employer, if you want this discount you need to follow these rules. If they are prevented by something else, the short answer is, they are unable to follow the rules, and they don't get the reduction.

Rep. Ruby moved a DO PASS. Rep. Gruchalla seconded.

Roll Call Vote: 6 yes. 7 no. 1 absent.

Motion failed.

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House Industry, Business and Labor Committee

Bill/Resolution No. HB 1493

Hearing Date: 01-29-2007

Rep. Thorpe moved a DO NOT PASS. Rep. Zaiser seconded.

Roll Call Vote: 7 yes. 6 no. 1 absent.

Motion Carried.

Carrier: Rep. Kasper

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1493

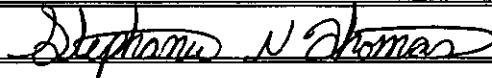
House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 7, 2007

Recorder Job Number: 3030

Committee Clerk Signature



Minutes:

Chair Keiser opened the hearing on HB 1493. This bill we have back before us. We need a motion to reconsider our actions to return the bill before the committee. This is that drug bill where if you have a major claim, and if it's for let's say \$1 million, your liability as an employer is only the first \$250,000 of any claim. Anything over that goes to the general fund, WSI fund, and all employers pay that. It's like reinsurance, kind of, on anything over \$250,000. The bill that was brought before us said that if you had in place drug testing when you hired, random drug testing, and post accident drug testing, or if you implement those programs in the future, then your liability would be reduced by 50%. Dakota Fence had an accident where both the driver and the occupant tested positive for methamphetamines, but our current law says that if you are in a work related accident, and under the influence of alcohol or drugs, and it was contributory to the accident, then there is no coverage. The problem is what happens if you're under the influence, but it's not contributory. This amendment does nothing other than to say the bill is as it is, but it mandates that before July 1, 2009, the organization shall create an operating drug free workplace safety, and loss prevention discount program. My argument with them was this is a safety issue, not a premium issue; put it in your safety code then. WSI's problem is they cannot implement it, so my argument to them was go implement it, and

they said we will, but it will take us between 1 ½ years to 2 years to implement it. They have to hire somebody to manage the program, set up the rules and regulations, take it before administrative rules, and publish it. What we're proposing is bring the bill back, give them some relief if they have those drug programs in place. We're going to create an artificial safety discount for a 2 year period, at which time the discount goes off unless WSI implements a safety program. This is directly an analysis to the negative balance employers, it's just on the WSI arena. You have the general fund paid by all employers paying for anything over \$250,000, or over \$125,000, but it is a real issue. WSI wants the firms that had the drug program to be encouraged to do it, they want other companies to implement the program, and they want the incentive to do it, because they think it would be beneficial.

Rep. Amerman: WSI wants July 1, 2009 to implement this in their safety. If I think about this right, it's not a very good thing for Bobcat at this time, because you just ratify the contract that's good for 4 years, it's going to go well past this. The Bobcat company, unless they negotiate with the union, because of the language in the contract, won't be able to initiate a drug policy.

Rep Keiser: So, they won't be able to get the discount.

Rep. Ruby: The way I'm reading this is that the proposed bill would go into affect at the time that it would be signed, and normally go into affect as other bills do, which is August 1. So, Bobcat would benefit from that by not having to pull them up, be applied to their experience rate, under the current bill. After 2 years, that goes away, and then the provisions that any discounts could be implemented under the WSI new program, if they develop it, then it would be possible to add this.

Rep. Keiser: Bobcat has a standing right now in position, a 4 year contract, and contracts are negotiated, all the terms. If that contract has not contained the requirements for 3 hiring testing for random testing on what's hired, and proposed accident testing, if that contract

doesn't have it Bobcat can't do, and they can't gain access to this discount. In the future, they may want to negotiate that.

Rep. Boe: Would the fiscal note still be on?

Rep. Keiser: Yes.

Rep. Ruby: I would move that we reconsider our actions.

Rep. Johnson: Second.

Voice vote taken, the bill is back before the committee.

Rep. Kasper: Looking at how the vote went, it was across the board. I'm wondering what were people's concerns with the bill?

Rep. Keiser: My concern was that we are just transferring more liability to the regular rate payers, \$125,000, which isn't significant historically, but hypothetically it could be huge.

Rep. Kasper: The amendment doesn't take out the rest of the bill, so it doesn't address your concerns at all.

Rep. Keiser: It does not. All this amendment does really is puts a sunset on it.

Rep. Kasper: This bill before us does not have a sunset on it, so this bill would continue on regardless of what the amendment does.

Rep. Ruby: If we move the amendment, now it sunsets it.

Rep. Keiser: We're still going to create an increase in negative balance transfers.

Rep. Kasper: Why don't we consider amending the whole bill with your amendments, and forget about the controversial part, until they have a drug safety program in affect.

Rep. Keiser: That was my position, and the argument is they can't do it quickly enough, so they want the 2 year window to get the program designed properly, and get it through the administrative rules process, and then launch the program, and have this fall out.

Rep. Ruby: I move the amendment.

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House Industry, Business and Labor Committee

Bill/Resolution No. HB 1493

Hearing Date: February 7, 2007

Rep. Thorpe: Second.

Roll call vote was taken, amendment adopted.

Rep. Kasper: I move a do not pass, as amended.

Rep. Thorpe: Second.

Roll call vote was taken. 8 Yeas, 5 Nays, 1 Absent, Carrier: Rep. Kasper

Hearing closed.

FISCAL NOTE
Requested by Legislative Council
02/09/2007

Amendment to: HB 1493

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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 engrossed bill creates workers' compensation incentives for employers that have pre-employment, post-accident, and random testing for alcohol and controlled substances.

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
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1493

BILL DESCRIPTION: Incentive for Employers with Drug/Alcohol Testing Programs

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 engrossed bill creates workers' compensation incentives for employers that have pre-employment, post-accident, and random testing for alcohol and controlled substances.

FISCAL IMPACT: Not quantifiable. Employer implementation of drug and alcohol testing programs is an effective way to create a safer overall work environment as well as reduce the number of injuries and the associated claims costs. To the extent this proposal encourages employers to implement drug/alcohol testing programs and they are successful; the reduced costs will be reflected in future premium levels.

DATE: February 9, 2007

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:	328-3760	Date Prepared:	02/09/2007

FISCAL NOTE
Requested by Legislative Council
01/16/2007

Bill/Resolution No.: HB 1493

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.*

	2005-2007 Biennium		2007-2009 Biennium		2009-2011 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.*

2005-2007 Biennium			2007-2009 Biennium			2009-2011 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 creates workers' compensation incentives for employers that have pre-employment, post-accident, and random testing for alcohol and controlled substances.

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
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1493

BILL DESCRIPTION: Incentive for Employers with Drug/Alcohol Testing Programs

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FISCAL IMPACT: Not quantifiable. Employer implementation of drug and alcohol testing programs is an effective way to create a safer overall work environment as well as reduce the number of injuries and the associated claims costs. To the extent this proposal encourages employers to implement drug/alcohol testing programs and they are successful; the reduced costs will be reflected in future premium levels.

DATE: January 26, 2007

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:	328-3760	Date Prepared:	01/26/2007

Date: 1-29-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1493

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS

Motion Made By Rep. Ruby Seconded By Rep. Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman		X
Vice Chairman Johnson	X		Rep. Boe		X
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe		X
Rep. Dosch			Rep. Zaiser		X
Rep. Kasper		X			
Rep. Nottestad		X			
Rep. Ruby	X				
Rep. Vigasaa	X				

Total Yes 60 No 7

Absent 1

Floor Assignment Rep Kasper Motion failed

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

Date: 1-29-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1493

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Rep Thorpe Seconded By Rep Zaiser

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	☒	☐	Rep. Amerman	☒	☐
Vice Chairman Johnson	☐	☒	Rep. Boe	☒	☐
Rep. Clark	☐	☒	Rep. Gruchalla	☐	☒
Rep. Dietrich	☐	☒	Rep. Thorpe	☒	☐
Rep. Dosch	☐	☐	Rep. Zaiser	☒	☐
Rep. Kasper	☒	☐		☐	☐
Rep. Nottestad	☒	☐		☐	☐
Rep. Ruby	☐	☒		☐	☐
Rep. Vigesaa	☐	☒		☐	☐

Total Yes 7 No 6

Absent 1

Floor Assignment Rep. Kasper

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

REPORT OF STANDING COMMITTEE

HB 1493: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **DO NOT PASS** (7 YEAS, 6 NAYS, 1 ABSENT AND NOT VOTING).
HB 1493 was placed on the Eleventh order on the calendar.

Date: 2-7-07
Roll Call Vote #: 1

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1493

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Adopt Amendment

Motion Made By Rep Ruby Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep. Amerman	X	
Vice Chairman Johnson	X		Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch	X		Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 13 No 0

Absent 1

Floor Assignment Rep. Kasper

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

Date: 2-7-07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1493

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do NOT Pass, AS Amended

Motion Made By Rep Kasper Seconded By Rep Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		X	Rep. Amerman	X	
Vice Chairman Johnson	X	X	Rep. Boe	X	
Rep. Clark	X		Rep. Gruchalla	X	
Rep. Dietrich	X		Rep. Thorpe	X	
Rep. Dosch		X	Rep. Zaiser		
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby		X			
Rep. Vigesaa		X			

Total Yes 8 No 5

Absent 1

Floor Assignment Rep. Kasper

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

REPORT OF STANDING COMMITTEE

HB 1493: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (8 YEAS, 5 NAYS, 1 ABSENT AND NOT VOTING). HB 1493 was placed on the Sixth order on the calendar.

Page 1, line 1, after "to" insert "create and enact a new section to chapter 65-03 of the North Dakota Century Code, relating to a workforce safety and insurance drug-free workplace safety program; to"

Page 1, line 3, remove the third "and"

Page 1, line 4, after "application" insert "; and to provide an expiration date"

Page 2, after line 28, insert:

"SECTION 2. A new section to chapter 65-03 of the North Dakota Century Code is created and enacted as follows:

Drug-free workplace safety program. Before July 1, 2009, the organization shall create and operate a drug-free workplace safety and loss prevention discount program to protect the health of covered employees and the financial integrity of the fund by addressing the use of alcohol and the illegal use of controlled substances in the workplace."

Page 2, after line 30, insert:

"SECTION 4. EXPIRATION DATE. Section 1 of this Act is effective through June 30, 2009, and after that date is ineffective."

Renumber accordingly

2007 TESTIMONY

HB 1493

2007 House Bill No. 1493
Testimony before the House Industry, Business and Labor Committee
Presented by: Tim Wahlin, Staff Counsel
Workforce Safety and Insurance
January 29, 2007

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI's Board of Directors, I am here to testify in support of HB 1493. WSI's Board of Directors supports this bill.

This bill alters N.D.C.C. §65-01-11 entitled "Burden of Proof in Compensation Matters." Specifically, this bill addresses the provision of this statute that creates a rebuttable presumption of non-compensability when an injury results while an employee is under the influence of alcohol or an illegal controlled substance.

Under current law, injuries occurring while an employee is under the influence of alcohol or illegal drugs are presumed to be caused by the alcohol or drug use and are presumed to be non-compensable. However, if an injured employee can provide evidence to "rebut" or disprove this presumption, demonstrating that the injury was not caused by the alcohol or drug use, the claim will be allowed if it was work related.

What HB 1493 does is propose a relief of no more than fifty percent of the chargeable cost of the claim on the employer's account should an injured employee successfully rebut the presumption. This relief is provided if the employer had a registered pre-employment, post-accident, and random testing program prior to the work-related accident; pre-employment testing for the use of controlled substances, post-accident testing for alcohol and the illegal use of a controlled substance, as well as a random testing program for alcohol and the illegal use of controlled substances with WSI.

Statistics show that:

- 47% of serious workplace accidents and 40% of workplace accidents resulting in fatalities have drug and/or alcohol involvement. (Occupational Medicine)
- 38% to 50% of all workers' compensation claims are related to the use of alcohol or drugs in the workplace. (National Council on Compensation Insurance)
- More than 90% of alcoholics and 74% of drug addicts (up 7% since 1992) are employed. (National Institute on Drug Abuse, Department of Health & Human Services (DHHS))
- 15% to 17% of employees in the average U.S. company affect their workplaces through substance use. (Bureau of Labor Statistics)
- Substance users are 3.6 times more likely to have an accident on the job and five times more likely to file a workers' compensation claim. (National Institute on Drug Abuse)
- Substance users file 300% to 400% more costly medical claims. (Ohio Bureau of Workers' Compensation)

At the heart of this bill is the promotion of a safer workplace. This bill uses a "carrot" to reward those employers who are committed to doing everything they can do to assure the safety of their workforce. North Dakota workplaces can be made safer through the use of pre-employment and random drug tests of current employees. These programs coupled with post-accident testing form acceptable deterrents to this unwanted workplace behavior.

Subsection 5 of section 65-01-11, found in Section 1 of this bill, sets forth a method by which WSI will review claims which have occurred prior to the bill's effective date. If an employer had in place and maintains sufficient documentation of the testing programs outlined in the bill at the time of the injury, no more than 50% of the chargeable costs of that claim may be assessed against the employer for purposes of experience rating. As provided in Section 2, this applies to account renewal periods after July 1, 2007. In other words, for those claims already incurred, any adjustment may be only on future policy renewals. No retrospective adjustments will be made.

WSI requests a "Do Pass" of HB 1493. I would be glad to answer any questions that you may have at this time.

#2



**Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1493
January 29, 2007**

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic 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 specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. Lists of the specific members and associations are attached to my testimony. As a group we stand in support of HB 1493 and urge a do pass vote from the committee on this bill.

It is laudable that WSI is trying to encourage employers to initiate alcohol and controlled substance testing programs. The implementation method follows the highly successful model they used in getting employers to start a safety program, the carrot of an incentive rather than the stick of a penalty. It allows each employer the freedom to make a decision as to the value of the testing in their specific circumstance and a dollar benefit should the decision seem to have marginal benefit.

Thank you for the opportunity to appear before you today in support of HB 1493.

I would be happy to answer any questions.



**The following chambers are members of a coalition that support our 2007
Legislative Policy Statements:**

Beulah Chamber of Commerce - 107

Bismarck - Mandan Chamber of Commerce - 1080

Cando Area Chamber of Commerce - 51

Chamber of Commerce Fargo Moorhead - 1800

Crosby Area Chamber of Commerce - 50

Devils Lake Area Chamber of Commerce - 276

Dickinson Chamber of Commerce - 527

Greater Bottineau Area Chamber of Commerce - 153

Hettinger Area Chamber of Commerce - 144

Langdon Chamber of Commerce - 112

Minot Chamber of Commerce - 700

North Dakota Chamber of Commerce - 1058

Wahpeton Breckenridge Area Chamber of Commerce - 293

Watford City Area Chamber of Commerce - 84

Williston Chamber of Commerce - 401

West Fargo Chamber of Commerce - 400

Total Businesses Represented = 7236 members

Associated General Contractors of North Dakota

Independent Community Banks of ND

Johnsen Trailer Sales Inc.

North American Coal

North Dakota Auto/Implement Dealers Association

North Dakota Bankers Association

North Dakota Healthcare Association

North Dakota Motor Carriers Association

North Dakota Petroleum Council

North Dakota Retail/Petroleum Marketers Association

Utility Shareholders of North Dakota

North Dakota Hospitality Association