

2025 House Bill No. 1060
Testimony before the House Industry, Business, and Labor Committee
Presented by Tim Wahlin, Workforce Safety and Insurance
January 15, 2025

Mr. Chairman and Members of the Committee: My name is Tim Wahlin with Workforce Safety & Insurance (WSI). I am here today to provide testimony and a proposed amendment regarding House Bill No. 1060. WSI's Board's position is neutral on this bill.

2025 House Bill 1060 proposes to expand those eligible for North Dakota's presumption coverage. In the North Dakota workers' compensation system an injured employee bears the burden of proving entitlement to benefits with the exception of one category. Full-time paid law enforcement and fulltime paid firefighters suffering from lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen are presumed to have suffered the condition as a result of their employment. Additionally full-time paid firefighters are entitled to the presumption of compensability for occupational cancers.

Presumption coverages for law enforcement and full-time paid firefighters are not unique to North Dakota as they exist in varying degrees in approximately 35-40 jurisdictions. We are aware of four jurisdictions that also extend some type of presumptive coverage to correctional officers.

Because entitlement to these benefits is routine and the costs of the benefits for the described conditions are long-term and relatively expensive, this category of compensable injuries is among the costliest WSI pays.

This bill enlarges the pool of employees within the presumption coverage to include approximately 450 correctional officers employed by the North Dakota Department of Corrections and Rehabilitation. Please note, the bill does not include correctional officers that fall under county jurisdiction.

SECTION 1:

This section adds the term "correctional officer" to NDCC 65-01-15. This statute denies presumption coverage to tobacco users. In order to regain eligibility, a correctional officer would need to provide documentation from a healthcare provider that they have been tobacco free for the preceding two years.

SECTION 2:

This section adds the term "correctional officer" to NDCC 65-01-15.1 including a definition of the term "correctional officer" to include an individual who completed the department of corrections and rehabilitation's basic correctional officer course and is employed full-time to provide supervision and security at a correctional facility by the department of corrections and rehabilitation.

Within this section specifically at page 2, beginning at line 10, is the language which conditions entitlement to the presumption benefits to those correction officers who have "successfully passed a medical examination which fails to reveal any evidence of such a condition." This predicates

passing a medical exam which does not reveal any of the compensable conditions covered by this act. This examination must be provided at no expense to the employee, so this is an additional employer cost that passage of the bill will require.

SECTION 3:

This section adds the term “correctional officer” to NDCC 65-01-15.2. This statute provides a different type of presumptive coverage to full-time paid law enforcement officers and full-time paid firefighters with less than five years of continuous service. This presumptive coverage includes heart attack, stroke, vascular rupture, or other similar cardiac events occurring within forty-eight hours of fire suppression activity, or emergency response activity, or a training exercise involving strenuous physical activity.

This also includes a similar definition of “correctional officer.”

Fiscal Note:

The proposed legislation will act to increase costs for rate class 7720, which is used in establishing premiums for coverage provided to law enforcement and correctional officers. Currently, for those classified under rate class 7720, about half meet the statutory definition for presumptive coverage and half do not. Adding the correctional officers employed by North Dakota Department of Corrections increases the ratio of presumption employees versus non-presumption employees in this rate class.

Assuming the exposure to presumptive claims for correctional officers employed by ND Department of Corrections is similar to that of the current presumptive law enforcement officer, we would estimate rates for the 7720 class to increase between 3.5% and 5.0% resulting in higher workers compensation premiums for the cities, counties, and other entities that fall within this class.

Proposed Amendments:

This bill as drafted does not contain an application. We would offer an amendment for your consideration which clarifies this act would apply to correctional officers with injuries or conditions initially occurring after the effective date. If the bill were to pass, this would help clarify that the bill looks only prospectively towards those emerging conditions after the bill has become effective.

This concludes my testimony. I am happy to answer any questions you may have.

Sixty-ninth
Legislative Assembly
of North Dakota

**PROPOSED AMENDMENT TO
HOUSE BILL NO. 1060**

Introduced by

Industry, Business and Labor Committee

(At the request of the Department of Corrections and Rehabilitation)

1 A BILL for an Act to amend and reenact sections 65-01-15, 65-01-15.1, and 65-01-15.2 of the
2 North Dakota Century Code, relating to the presumption of compensability for correctional
3 officers; and to provide for application.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 65-01-15 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **65-01-15. Yearly documentation required for firefighter, correctional officer, and law**
8 **enforcement officer.**

9 Except for benefits for an exposure to a bloodborne pathogen as defined by section
10 23-07.5-01 occurring in the course of employment, a full-time paid firefighter, correctional officer,
11 or law enforcement officer who uses tobacco is not eligible for the benefits provided under
12 sections 65-01-15.1 and 65-01-15.2, unless the full-time paid firefighter, correctional officer, or
13 law enforcement officer provides yearly documentation from a health care provider which
14 indicates the full-time paid firefighter, correctional officer, or law enforcement officer has not
15 used tobacco for the preceding two years.

16 **SECTION 2. AMENDMENT.** Section 65-01-15.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **65-01-15.1. Presumption of compensability for certain conditions of full-time paid**
19 **firefighters, correctional officers, and law enforcement officers.**

20 1. Any condition or impairment of health of a full-time paid firefighter, correctional officer,
21 or law enforcement officer caused by lung or respiratory disease, hypertension, heart
22 disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01
23 occurring in the course of employment, or occupational cancer in a full-time paid
24 firefighter, is presumed to have been suffered in the line of duty. The presumption may

1 be rebutted by clear and convincing evidence the condition or impairment is not
2 work-related.

3 2. As used in this section, an occupational cancer is one which arises out of employment
4 as a full-time paid firefighter and is due to injury due to exposure to smoke, fumes, or
5 carcinogenic, poisonous, toxic, or chemical substances while in the performance of
6 active duty as a full-time paid firefighter.

7 3. A full-time paid firefighter, correctional officer, or law enforcement officer is not eligible
8 for the benefit provided under this section unless that full-time paid firefighter, correctional officer, or law enforcement officer has completed five years of continuous
9 service and has successfully passed a medical examination which fails to reveal any
10 evidence of such a condition. The five years of continuous service requirement may
11 include full-time paid service outside the state. An employer shall provide at no
12 expense a medical examination upon employment, for any employee subject to this
13 section.
14

15 a. After the initial medical examination, an employer shall provide at no expense at
16 least a periodic medical examination as follows: for one to ten years of service,
17 every five years; for eleven to twenty years of service, every three years; and for
18 twenty-one or more years of service, every year. The periodic medical
19 examination, at a minimum, must consist of a general medical history of the
20 individual and the individual's family; an occupational history including contact
21 with and an exposure to hazardous materials, toxic products, contagious and
22 infectious diseases, and to physical hazards; a physical examination including
23 measurement of height, weight, and blood pressure; and laboratory and
24 diagnostic procedures indicating cardiovascular health to a reasonable degree of
25 medical certainty.

26 b. If the medical examination reveals that an employee falls into a recognized risk
27 group, the employee must be referred to a qualified health professional for future
28 medical examination.

29 c. If a medical examination produces a false positive result for a condition covered
30 under this section, the organization shall consider the condition to be a
31 compensable injury. In the case of a false positive result, neither the coverage of

the condition nor the period of disability may exceed fifty-six days. This section does not affect an employee's responsibility to document that the employee has not used tobacco as required under section 65-01-15. Results of the examination must be used in rebuttal to a presumption afforded under this section.

4. For purposes of this section, ~~"law enforcement officer":~~

a. "Correctional officer" means an individual who completed the department of corrections and rehabilitation's basic correctional officer course and is employed full-time to provide supervision and security at a correctional facility by the department of corrections and rehabilitation; and

b. "Law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, the Bismarck state college police department, a county sheriff's department, a city police department, or the parks and recreation department pursuant to section 55-08-04.

5. The presumption does not include a condition or impairment of health of a full-time paid firefighter, correctional officer, or law enforcement officer, who has been employed for ten years or less, if the condition or impairment is diagnosed more than two years after the employment as a full-time paid firefighter, correctional officer, or law enforcement officer ends. The presumption also does not include a condition or impairment of health of a full-time paid firefighter, correctional officer, or law enforcement officer, who has been employed more than ten years, if the condition or impairment is diagnosed more than five years after the employment as a full-time paid firefighter, correctional officer, or law enforcement officer ends.

SECTION 3. AMENDMENT. Section 65-01-15.2 of the North Dakota Century Code is amended and reenacted as follows:

**65-01-15.2. Presumption of compensability for cardiac events of full-time paid
firefighters, correctional officers, and law enforcement officers.**

1. A heart attack, stroke, vascular rupture, or other similar cardiac event, is presumed to be a compensable injury when a full-time paid firefighter, correctional officer, or law enforcement officer:
 - a. Engages in a situation involving strenuous physical law enforcement or correctional officer activity, fire suppression activity, or emergency response activity, or participates in a training exercise involving strenuous physical activity; and
 - b. The heart attack, stroke, vascular rupture, or other similar cardiac event occurs no later than forty-eight hours after the full-time paid firefighter, correctional officer, or law enforcement officer engaged or participated in the activity listed under subdivision a.
2. The presumption under subsection 1 may be rebutted by clear and convincing evidence the condition or impairment was not work related.
3. This section applies to any full-time paid firefighter, correctional officer, or law enforcement officer who has less than five years of continuous service.
4. A full-time paid firefighter, correctional officer, or law enforcement officer is not eligible for the benefit provided under this section unless the full-time paid firefighter, correctional officer, or law enforcement officer has successfully passed a medical examination that failed to reveal any evidence of a cardiovascular condition.
5. For purposes of this section, "~~law enforcement officer~~":
 - a. "Correctional officer" means an individual who is employed as a correctional officer by the department of corrections and rehabilitation; and
 - b. "Law enforcement officer" means an individual who is licensed to perform peace officer law enforcement duties under chapter 12-63 and is employed full time by the bureau of criminal investigation, the game and fish department, the state highway patrol, the parole and probation division, the North Dakota state university police department, the North Dakota state college of science police department, the university of North Dakota police department, the Bismarck state college police department, a county sheriff's department, a city police

1 department, or the parks and recreation department pursuant to section
2 55-08-04.

3 **SECTION 4. APPLICATION.** This Act applies to correctional officers with injuries or
4 conditions initially occurring on or after the effective date of this Act and to expenses related
5 to those injuries and conditions.