

2023 House Bill No. 1052
Testimony before the House IBL Committee
Presented by Anne Jorgenson Green, Workforce Safety and Insurance
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Mr. Chairman and Members of the Committee: My name is Anne Green, Legal Department Director at Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding HB No. 1052. The WSI Board supports this bill.

SECTION 1:

Section 65-01-02(11)(b)(1) establishes the conditions necessary for WSI to pay for preventative treatment when an employee is exposed to bloodborne pathogens. In its current form, the organization will only cover preventative care for what are commonly understood to be first responders. However, WSI does cover all North Dakota employees for preventative care for rabies exposures.

The list of covered employees includes “a health care provider as defined in section 23-07.5-01, firefighter, peace officer, correctional officer, court officer, law enforcement officer, emergency medical technician, or an individual trained and authorized by law or rule to render emergency medical assistance or treatment.” More importantly, it excludes all other North Dakota employees.

Examples of bloodborne pathogens for which reliable preventative treatments exist include HIV and Hepatitis C. Common exposures outside of first responders include janitorial staff and sanitation workers who might be subjected to needle sticks within the course of their employment. In the event the needle stick would cause one of these diseases, the claim would be compensable. This statute just controls preventative treatments.

The changes proposed would remove the restrictions on the classes of employees to whom preventative care may be rendered. In other words, this opens the coverage to all North Dakota employees. While it is impossible to accurately estimate how many exposures might arise, typical reimbursements for the preventative cares are about \$1,000 and, in most cases, must be administered within 72 hours.

SECTION 2:

This subsection is part of the statute that governs injured employee appeals of WSI decisions. The proposed change is in response to recent litigation at the North Dakota Supreme Court in which WSI was a party. The issue was whether an appeal was timely filed with WSI. If an appeal is not timely filed, it cannot be considered by WSI.

WSI’s historical interpretation of this statute requires WSI to be in possession of the appeal document within 45 days to be timely filed. In litigation, the assertion was made the appeal was timely because it had been mailed within 45 days, even though it was received by WSI after the 45 day deadline.

WSI’s interpretation prevailed at the Supreme Court but we agree clarification is prudent. This proposed amendment clarifies the term “file” requires receipt by WSI within 45 days. This same proposed change appears again in Section 6 of this bill for appeals involving employer coverage matters. In summary, if the appeal document, sent electronically, by mail, or personally delivered, is in WSI’s possession within 45 days, it is timely filed.

SECTION 3:

Section 65-04-15 is WSI's confidentiality statute for employer files. It is restrictive by design and intended to protect an employer's account information held by WSI. There are situations, however, where good customer service requires the release of certain types of information. The proposed changes in subsection 4 is just that situation and were suggested by staff who handle these types of requests.

A good example of a situation where the proposed changes would be beneficial is the release of information to a business that is purchasing another business. A prospective buyer has an interest in the claims history, the surcharge or discount to premium attributable to a business, and the experience rating of an entity they are considering purchasing. The proposed changes allow for the release of this information to the prospective buyer.

This proposed language also permits the disclosure of confidential information to another employer assessed general contractor liability under section 65-04-26.2. A general contractor can be required to pay the premium owed by one of its subcontractors who does not secure required coverage or pay the premium owing. If this situation occurs, the proposed change allows WSI to provide the general contractor with account information of the delinquent subcontractor.

The next proposed change provides an exception to this statute for local law enforcement's benefit. Under current law, WSI may provide any state or federal agency with employer file information for the administration of that agency's job duties. Working with other agencies, WSI shares information with OSHA, North Dakota's BCI, Federal Immigration agencies, the North Dakota Tax Department and Job Service North Dakota.

The changes in subsection 6 propose a narrow expansion to sharing data with local law enforcement agencies such as county and city law enforcement. WSI has received inquiries from local law enforcement looking for information which might prove valuable in a local criminal investigation. Under current law, we are unable to provide that information.

Subsection 7 proposes to align the law and WSI practice. As mentioned above, WSI shares information with other state agencies for the administration of the agency's job duties but does not automatically forward its information to other state agencies.

SECTION 4:

Section 4 creates a presumption in favor of WSI to calculate premium based on information gathered through Job Service North Dakota or through WSI's investigative processes in cases where an employer does not provide WSI with the required information to calculate premium. The premium paid by employers is based on the payroll report submitted by the employer. Most employers provide timely, accurate payroll information and premium is calculated without incident.

WSI only calculates premium without the employer supplied payroll report when it is confronted with a nonresponsive, noncompliant employer where WSI's best efforts did not result in a response from the employer. In these limited cases, WSI must have a method to generate reliable payroll information to calculate an employer's premium.

The proposed change is in response to a recent North Dakota Supreme Court decision which called into question the requirements of WSI to calculate premium without the benefit of an

employer supplied payroll report. While the Supreme Court found the information WSI used to calculate premium in that situation to be insufficient, it did not provide WSI guidance on what was sufficient in these types of cases.

As a result, WSI proposes the change before you which allows WSI to calculate premium in these situations with the best information possible. The employer then has an opportunity to rebut that presumption by providing additional information. If the presumption is not rebutted, WSI's premium calculation stands.

SECTION 5:

WSI's cease and desist authority is an infrequently used, but powerful compliance tool. It permits the agency to require a business to stop operating where there is solid evidence that an employer has employees working, but without workers' compensation coverage. The statute also provides penalties for this violation.

The proposed changes expand this tool to another business that engages in commerce with a business precluded from operating by a cease and desist order. The burden on WSI to issue a cease and desist order against a business is high. WSI must prove the entity "knowingly" engaged in commerce with the business ordered to stop operating. This proposal also assigns a penalty of \$5000 to the offending business.

A correction, with no substantive intent, is also included in this section. An employer has 45 days to request reconsideration from a WSI cease and desist order. This is consistent with other appeal timelines within workers' compensation law.

SECTION 6:

This subsection is part of the statute that governs employer appeals of WSI decisions. The purpose of the proposed change is the same as in Section 2. The only difference is Section 2 applies to claim decisions and this section applies to employer coverage decisions.

North Dakota's workers' compensation laws have specific sections which apply to claims benefits and others which apply to employer coverage. Some statutory language is equally applicable to both areas. WSI tries, whenever possible, to align statutory language of the claims benefits and employer coverage sections of the law.

SECTION 7:

This subsection is part of the statute that governs confidentiality of injured employee claim files. An employee's claim file is generally confidential, with few exceptions. The purpose of the proposed change is the same as in Section 3. The only difference is Section 3 applies to employer file information and this section applies to injured employee claim file information.

SECTION 8:

This section provides an application to Section 1 making it applicable on or after August 1, 2023. Sections 2 and 6 of this bill apply to all requests for reconsideration regardless of the date of decision issued by WSI.

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