

2023 Engrossed House Bill No. 1279
Testimony before the Senate Workforce Development Committee
Presented by Art Thompson, Executive Director
Workforce Safety and Insurance
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Mr. Chairman and Members of the Committee:

My name is Art Thompson, Executive Director of Workforce Safety & Insurance (WSI). I am here today to provide testimony on Engrossed House Bill No. 1279. Governor Burgum has identified this legislation as a high priority, as noted in his State of the State address at the beginning of the 68th Legislative Assembly and requests your do-pass recommendation on the engrossed version of this bill.

By way of background, presumption claims found in Section 65-01-15.1 differ significantly from other claims within the North Dakota workers' compensation system. Generally, an injured employee bears the burden of proving entitlement to benefits. In presumption claims, the claim is presumed compensable, and the burden of proof is upon WSI to show an employee is not entitled to benefits. WSI must do so by clear and convincing evidence.

The employee classes covered by the presumption law include full-time paid firefighters and full-time paid law enforcement officers. The types of claims for which the presumption law is available include "lung or respiratory disease, hypertension, heart disease, or an exposure to a bloodborne pathogen as defined by section 23-07.5-01 occurring in the course of employment, or occupational cancer in a full-time paid firefighter." These conditions are presumed to have been suffered in the line of duty.

For the presumption law to apply, the firefighter or law enforcement officer must have five years of continuous service in North Dakota. The continuous service requirement has been part of this statute since 1995. The statute also requires the firefighters and law enforcement officers to undergo periodic medical examinations based upon the employee's years of service. These examinations currently require laboratory and diagnostic procedures including "a nonfasting total blood cholesterol" test. Employers of the firefighters and law enforcement officers are generally the State of North Dakota and its political subdivisions.

WSI averages approximately 10 presumption claims a year. The highest cost presumption claim was \$11.5 million. Excluding this large claim from the averages, the average cost for presumption claims has been \$227,340 for time-loss presumption claims and \$29,670 for medical only presumption claims. For the law enforcement and paid firefighter classes, the average costs for presumption claims are significantly higher than non-presumption claims, 6.8 times higher for time-loss claims and 18.8 times higher for medical only claims. The average costs for presumption claims are significantly higher than claims from all other rate classes, 3.8x higher for time-loss claims and 21.5x higher for medical only claims.

In its original form, HB 1279 proposed the following primary changes:

1. Removed the five-year continuous service requirement,
2. Designated the costs of required medical examinations be borne by employers, and
3. Removed the requirement for "a nonfasting total blood cholesterol test", leaving the medical professional to decide which tests are best conducted.

The elimination of the continuous service requirement was intended to assist in the recruitment and retention of employees in these critical professions. The employer required payment of periodic medical examinations was to ensure these examinations took place and at no cost to law enforcement officers and firefighters. Removal of the cholesterol test and the additional language was to allow medical professionals the discretion to perform tests deemed necessary to evaluate an employee's cardiovascular health. WSI's fiscal note indicated the elimination of the 5-year minimum service requirement was expected to increase the number of presumption related claims. To what extent was unclear, as WSI does not have reliable data to make that determination.

The House passed Engrossed HB 1279 (93-0-1). The amendments take into consideration the uncertainty in the increase costs to the state and political subdivisions, as well as provides for payment of the law enforcement officer's claim giving rise to this legislation. As a result, Engrossed HB 1279 makes the following additional changes:

1. Reinstates the five-year continuous service requirement but allows for full-time paid service outside of North Dakota to be included,
2. Extends presumption coverage to full-time paid fire fighters and law enforcement officers serving less than five continuous years to cardiac-related events that occur within 48 hours of an event involving strenuous activity, and
3. Includes a retroactive application of the bill's provisions to claims filed after October 1, 2021.

The cardiac-related events outlined in Section 3 of this bill will be adjudicated in the same manner as the traditional presumption claims found in Section 65-05-15.1. The presumption may be rebutted by clear and convincing evidence, is available to the same pool of firefighters and law enforcement officers as the traditional presumption law, and applies only after the successful completion of a medical examination indicating no evidence of a cardiovascular condition.

The fiscal note was priced under the assumption that coverage extends to injuries occurring and claims filed after October 1, 2021. With that assumption, WSI can identify three known claims that appear to meet these parameters; however, the reserve level impact remains unknown because the claim costs are unknown. To the extent additional claims emerge, we anticipate rates will be adjusted accordingly. Due to this uncertainty, the WSI Board maintains a neutral position on this bill.

The Governor is in full support of Engrossed HB 1279, and, on behalf of the Governor, I ask for a do pass recommendation. This concludes my testimony and I would be happy to answer any questions you may have.