

2025 Senate Bill No. 2109
Testimony before the Senate Industry and Business Committee
Presented by Tim Wahlin, Workforce Safety and Insurance
Date: January 21, 2025

Mr. Chairman and Members of the Committee: My name is Tim Wahlin, Chief of Injury Services with Workforce Safety & Insurance (WSI). I am here today to provide testimony regarding Senate Bill No. 2109. The WSI Board supports this bill.

SECTION 1 (Amended Definition of Disability):

Workers' compensation systems typically provide an injured employee two basic benefits:

1. medical benefits which pay for the care and treatment costs related to the work injury, and
2. disability benefits which provide wage replacement payments as a result of the injury.

In North Dakota, WSI has historically paid workers' compensation disability benefits to replace wages actually lost as a result of a work injury. This interpretation was altered slightly in a North Dakota Supreme Court decision entitled Houn v. WSI, 2005 ND 115. In the Houn case, the North Dakota Supreme Court ruled the statutes allowed initial applicants to receive disability benefits by simply showing a loss in earnings capacity, and not an actual wage loss. This interpretation has proved problematic in a handful of cases each year and WSI seeks to return to the interpretation in place prior to the Houn case.

Typically, an employee is injured while on the job and earning wages, so there is no issue with providing disability benefits to replace wages if the employee is unable to work. However, cases proving particularly problematic are those in which an injured employee's injury progresses after they have left employment. Some examples include when an employee is terminated for cause or must leave employment due to incarceration. In these instances, should the employee's injury worsen while they are not employed, and disability benefits are sought, under Houn, WSI must begin paying disability benefits, even though there are no actual wages to replace as a result of the work injury.

In these problematic cases, wages would likely be based on the employment which they departed potentially years earlier. These infrequent cases have proved to be costly and very difficult to explain to an employer years after an employee has departed.

Adding the proposed language to the definition of "Disability", which requires actual earnings be lost as a result of the work injury, will rectify these otherwise absurd results. It likewise makes parallel the actual wage loss requirement already present in our reapplication system codified at 65-05-08(1)(b).

SECTION 1 (New Definition of Electronic Means):

WSI is in the process of updating its major business technology applications. This is a large, multi-year initiative with multiple releases. One of the goals of updating WSI's technology is to streamline information processes to and from external stakeholders and partners. As a result, the proposed change in this section adds a definition of the term "Electronic means" to provide WSI with the authority to electronically issue decisions in the dispute resolution process when the technology updates allow us to do so. Currently, only regular mail or service by mail is allowed. In approximately the next year, we expect to have the ability to allow a recipient to opt-in to receive electronic notifications. WSI will electronically track and confirm receipt of the notification.

SECTION 2:

The proposed changes in this section provide WSI with the discretion to issue decisions using either regular mail or electronic means in the claims dispute resolution process.

The last proposed change in subsection 7 is to provide the same clarifying language regarding the filing of an appeal as is found in subsection 4 of this section. In order for an appeal to be considered filed by WSI, it has to be received by WSI. This clarifying language was added in subsection 4 during the 2023 Legislative Assembly. As a matter of consistency, it makes sense to have this same clarification language in this part of the appeal process as well.

SECTION 3:

The proposed amendments in this section allow for the Decision Review Office, a step in the dispute resolution process, to issue a notice to an injured employee by regular mail or electronic means.

SECTION 4:

This statute establishes WSI's system of indemnity benefits payable to the survivors of a deceased injured employee. It sets forth who receives the benefits, the rates of payment, and establishes the caps on these payments.

Currently, this benefit is capped at three hundred thousand dollars. This rate was established in 2009 when it increased from two hundred and fifty thousand dollars.

The proposed change will increase the cap to four hundred thousand dollars. Our research suggests this increase puts this benefit in line with workers' compensation systems in several other states.

The proposed changes also increase the benefit cap by ten thousand dollars every odd-numbered year moving forward. This will eliminate the need to revisit benefit cap increases and provide a more predictable compensation system for these benefits.

SECTION 5:

This statute establishes the parameters of our scholarship system. North Dakota provides scholarships to the spouses and children of those employees who are catastrophically injured or who have died as a result of those injuries; to those injured employees who have completed a retraining program; or to those who show exceptional circumstances and would benefit by further education.

This is truly a unique benefit. This amendment proposes to adjust the yearly maximum amount paid to a recipient from ten thousand dollars to twelve thousand five hundred dollars. Our data demonstrates nearly eighty percent of our present applicants do not use the full ten thousand dollars, however, in an effort to anticipate increasing need, we are proactively requesting this change.

SECTION 6:

The section provides for the application dates for each section of this bill.

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