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10/2/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1060

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Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1060

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1/21/03

Tape Number	Side A	Side B	Meter #
1	x		0.00-54.8
4	x		50.3-end
4		x	0.00-20.0
Committee Clerk Signature <i>Edith Hammer</i>			

Minutes: Chair Keiser opened the hearing on HB 1060.

Rep. Wald introduced HB 1060.

Dave Ystebo, Chairman of the North Dakota Workers Compensation Board of Directors, took the podium and on behalf of his board, requested favorable consideration of all four bills prepared for the IBL Committee's consideration.

Brent Edison, Executive Director and CEO of ND WCB appeared in support of HB 1060 and presented detailed information regarding this proposed legislation. (See attached)

Chairman Keiser stated that he understands the intent of Section 2 is to make the process easier for employees as it removes the arbitrary 45 day time limit.

Rep. Ekstrom asked for clarification about the "date of death within 6 years of injury". Edison said that this has been the statute of limitations since 1919.

Chairman Keiser asked if the client has an option for a lump sum if they so prefer. Edison replied that there is option for flexibility within this new legislation.

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House Industry, Business and Labor Committee
Bill/Resolution Number HB 1060
Hearing Date 1/21/03

Rep. Ekstrom asked if that means a client can receive a partial lump sum plus a payment to which Edison answered that this new legislation provides for such an attempt.

Edison said Section 11 "tweaks" the bill passed during the last legislative session and that he would get statistics as to how many workers have utilized the option after the hearing in reply to Rep. Ekstrom's inquiry.

Dawn Lambert appeared in support of HB 1060. (see attached)

Timothy Effertz appeared in support of HB 1060. (see attached) Included in his testimony is a suggested amendment.

Dave Kemnitz, President of ND AFL-CIO, appeared in support of HB 1060 and offered oral testimony.

Sebold Vetter, representing CARE (Concerned Advocates for Retired Employees) appeared in support of HB 1060 and offered oral testimony.

Edison then reviewed the fiscal note attached to HB 1060. A rate level increase to .5% would have no effect on existing reserve levels. This has been analyzed by the WCB actuary who determined that there would not be an impact on rate and reserve levels.

In reply to Rep. Froseth's questions about the ½ % rate increase and whether that would be added to an employers contribution rate or would come from the reserve fund, Edison replied that the rates are reviewed annually during the month of May with their actuary.

Rep. Klein asked if the fiscal note is a guesstimate to which Edison replied that his information was prepared by the actuary.

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House Industry, Business and Labor Committee

Bill/Resolution Number HB 1060

Hearing Date 1/21/03

There being no one present to appear in opposition to HB 1060, Chairman Keiser closed the hearing. Following the afternoon hearings, Chairman Keiser called for committee work on HB 1060.

Rep. Ruby reported that he had reviewed provisions of this proposed legislation and that another bill introduced (HB 1455) that contains those "tweaks" that Mr. Effertz has proposed within this amendments to HB 1060. WCB will be providing information regarding qualifications for benefit increases and death benefits. Rep. Ruby suggested that rather than hold HB 1060, the committee pass this bill out and work on other issues within HB 1455.

Rep. Ruby moved a do pass.

Rep. Ekstrom seconded the motion.

The roll call vote was 14-0-0.

Rep. Ruby will carry this bill on the floor.

FISCAL NOTE
Requested by Legislative Council
12/24/2002

Bill/Resolution No.: HB 1060

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.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 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.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

**NORTH DAKOTA WORKERS COMPENSATION
2003 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION**

BILL DESCRIPTION: Claims

BILL NO: HB 1060

SUMMARY OF ACTUARIAL INFORMATION: North Dakota Workers Compensation, 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 proposed legislation simplifies formula for average weekly wage calculation of a self-employed employer; simplifies definition of seasonal employment; clarifies the mechanism available to enforce subpoenas issued by NDWC; increases the remodeling and adaptation allowance for the catastrophically injured from \$20,000 to \$50,000; clarifies that combined partial disability benefits, dependency allowance, and post-injury earnings cannot exceed an injured worker's pre-injury net wage; increases the death benefit cap from \$197,000 to \$250,000 for deaths occurring after August 1, 2003; eliminates the remarriage penalty for death benefit recipients; provides for lump sum settlement payments in death claims and for NDWC to utilize structured settlements; provides a civil action for damages and provides a civil cause of action and a criminal offense for willful retaliation by employers against employees for filing a workers' compensation claim; and repeals binding arbitration.

FISCAL IMPACT: The provision increasing the death benefit cap from \$197,000 to \$250,000 will result in a rate level increase of approximately 0.5%. Since this provision will be applied prospectively, it will result in no change to existing reserve levels. It is anticipated that remaining provisions of this proposed bill will not have a material impact on statewide rate and reserve levels.

DATE: January 6, 2003

3. State fiscal effect detail: For information shown under state fiscal effect in 1A, please:

Yolanda Rickford
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10/2/03
Date

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	John Halvorson	Agency:	NDWC
Phone Number:	328-3760	Date Prepared:	01/08/2003

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10/2/03
Date

Date: 1/21/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1060

House Industry, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Ruby Seconded By Ekstrom

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	/		Rep.Boe	/	
Rep.Severson, Vice-Chair	/		Rep.Ekstrom	/	
Rep.Dosch	/		Rep.Thorpe	/	
Rep. Froseth	/		Rep. Zaiser	/	
Rep. Johnson	/				
Rep.Kasper	/				
Rep. Klein	/				
Rep. Nottlestad	/				
Rep. Ruby	/				
Rep.Tieman	/				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Ruby

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

REPORT OF STANDING COMMITTEE (410)
January 22, 2003 7:24 a.m.

Module No: HR-12-0876
Carrier: Ruby
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1060: Industry, Business and Labor Committee (Rep. Kelsor, Chairman)
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
HB 1060 was placed on the Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-12-0876

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10/2/03
Date

2003 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1060

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10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1060

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-03-03

Tape Number	Side A	Side B	Meter #
1	xxx		0-3944
Committee Clerk Signature <i>Lisa Van Berkum</i>			

Minutes: Chairman Mutch opened the hearing on HB 1060. All Senators were present.

HB 1060 relates to binding arbitration in workers' compensation disputes and workers' compensation death benefits.

Testimony in support of HB 1060

David Ystebo, Chairman of North Dakota Workers Compensation Board of Directors, introduced the bill. See written testimony.

Brent Edison, Executive Director and CEO North Dakota Workers Compensation, also spoke in support of the bill. See written testimony.

Senator Krebsbach: Will there be fiscal impact?

Brent: We can provide the fiscal note.

Senator Klein: Is there a lot of claims for death accidents in this state?

Brent: I can get the numbers for you, however it is a limited number.

Representative Margaret Sitte introduced a constituent, **Marian Emter**.

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10/2/03
Date

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Senate Industry, Business and Labor Committee

Bill/Resolution Number 1060

Hearing Date 03-03-03

Marian Emter is the widow of Anton Emter who was killed in a fuel truck accident.

See attached testimony. She wishes to have this bill be retroactive as her benefits have run out and she has had to change her life style drastically in the past few years.

Dawn Lambert, Casselton, ND, spoke in support of the bill. See attached testimony.

Dave Kambeltz, AFL-CIO, stated for the record, that the organization supports the bill, however would like to see amendments to the language. No specifics given.

Fern Pokorny, North Dakota Education Association, supported section 12 of the bill. See attached testimony.

Senator Krebsbach: Is there information regarding an employer intimidating an employee into not filing their claim?

Fern: There is nothing in writing, but I have received phone calls.

Brent Edison: The retroactive amendment would cost money that is not in the reserve fund and cost an average of \$53,000 per claim.

Senator Every: Is there a lot of people that would have a retroactive claim?

Brent: About one claim per month since 1983, and \$50,000 per claim.

There was no opposing testimony

Hearing was closed. No action taken at this time.

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10/2/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1060

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 03-24-03

Tape Number	Side A	Side B	Meter #
1	xxx		326-410
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Mutch opened the discussion on IIB 1060. All Senators were present.

HB 1060 relates to binding arbitration in workers' compensation disputes and workers' compensation death benefits.

There was no discussion from the committee. They individually reviewed the bill.

Senator Heitkamp moved a DO PASS. Senator Klein seconded.

Roll Call Vote: 7 Yes. 0 No. 0 Absent.

Carrier: Senator Heitkamp

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10/2/03
Date

Date: 3-24-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

Senate 1060 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Heitkamp Seconded By Klein

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Klein	X				
Senator Krebsbach	X				
Senator Nething	X				
Senator Heitkamp	X				
Senator Every	X				
Senator Espegard	X				

Total (Yes) Click here to type Yes Vote 7 No Click here to type No Vote 0

Absent 0

Floor Assignment Click here to type Floor Assignment Heitkamp

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

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10/2/03
Date

REPORT OF STANDING COMMITTEE (410)
March 24, 2003 1:04 p.m.

Module No: SR-45-5549
Carrier: Heltkamp
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HB 1060: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1060 was placed
on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-45-5549

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10/2/03
Date

2003 TESTIMONY

HB 1060

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10/2/03
Date

**Fifty-eighth Legislative Assembly
Before the House Industry, Business, and Labor Committee
David Ystebo, Chairman
North Dakota Workers Compensation Board of Directors
January 21, 2003**

Mr. Chairman, Members of the Committee:

My name is Dave Ystebo, and I am Chairman of the North Dakota Workers Compensation Board of Directors. I have had the opportunity to serve as a board member since 1998. As you may well remember, legislation passed in 1997 created a workers compensation board of directors whose members represent employers, employees, and the medical community.

The current board structure has worked well to provide appropriate oversight to ensure NDWC operates efficiently and effectively. We take our obligation to maintain cost-effective operations and a high level of service very seriously.

The board is actively involved in all aspects of Workers Compensation functions, including the planning, preparation and ultimate approval of proposed legislation. The proposed legislation before you received the unanimous approval of the board. On behalf of the board, I request your favorable consideration of House Bill No. 1060, 1065, 1149, and 1150. Brent Edison will follow with a more detailed explanation of each bill.

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10/2/03
Date

2003 House Bill No. 1060
Testimony before the House Industry, Business, And Labor Committee
Presented by: Brent J. Edison
Executive Director and CEO
North Dakota Workers Compensation
January 21, 2003

Mr. Chairman, Members of the Committee:

My name is Brent Edison and I am the Executive Director and CEO of North Dakota Workers Compensation. I am here to testify in support of 2003 House Bill No. 1060. This bill proposes changes primarily affecting claims processing and adjudication. The North Dakota Workers Compensation Board of Directors unanimously supports this bill.

(Section 1). This section simplifies the formula for computing the "average weekly wage" of a self-employed employer. The purpose of this proposed change is to allow for ease of application as well as an average weekly wage that coincides with what is reported to the IRS. The current formula requires a claims analyst to determine "net profits" and to add depreciation, meal, and travel expenses to the net profits. Eliminating this computation, and instead referring simply to net earnings reported to the IRS, will provide a more accurate reflection of the actual pre-injury wages earned by a self-employed worker.

(Section 2). This section simplifies the definition of "seasonal employment" to provide consistency and ease of application. If an injured worker's employment is considered seasonal, a specific formula is used to calculate the pre-injury average weekly wage. This amendment simplifies the current definition by eliminating the reference to the requirement of 45 consecutive days without wages. The new definition simply states that those employees whose occupations are not permanent or do not customarily operate the entire year are considered seasonal. Seasonal employment will be determined by what is customary to the employer for the particular position at the time of injury.

UP

(Section 3). This proposed change clarifies the procedure available to enforce administrative subpoenas issued by Workers Compensation. Currently, Workers Compensation has the authority to issue subpoenas to properly adjudicate matters or investigate issues. There have, however, been disagreements as to the proper procedure for enforcing a subpoena. This language will clearly outline the procedure to enforce a subpoena in those limited instances where information requested by subpoena is not produced voluntarily.

(Section 4). This section provides no substantive change. It is simply the elimination of a reference to 65-02-15, which is repealed in Section 13 of this bill.

(Section 5). This proposed change increases the current real estate adaptation allowance for a catastrophically injured worker from \$20,000 to \$50,000 over his or her lifetime. Workers Compensation has worked closely with catastrophically injured workers to provide assistance that in many instances involves consultation with national experts in catastrophic claims management. This past year, catastrophic claims management experts advised \$20,000 would likely be insufficient in most instances to provide adequate adaptations. While the proposed increase to \$50,000 will not have a significant impact on the Fund, it should make it easier for an injured worker to remain in his or her home following a catastrophic injury.

(Section 6). This amendment clarifies that partial disability benefits, like total disability benefits, are subject to a maximum benefit rate. It further clarifies the combined partial disability benefits, dependency allowance, and post-injury wage earning capacity of an injured worker can never exceed the pre-injury net wage of the worker. This change will apply only to partial disability benefits that begin after the effective date of this legislation (see Section 14).

(Section 7). This section increases the death benefit cap from \$197,000 to \$250,000 for those deaths that occur after the effective date of this legislation (see Section 15). The current maximum of \$197,000 has been in effect since 1987. The increase to

\$250,000 is a reasonable adjustment for inflation and consistent with recent increases in permanent impairment awards for those most severely injured.

(Section 8). This section eliminates the "remarriage penalty" that applies when a surviving spouse remarries. The "remarriage penalty" requires a surviving spouse who subsequently remarries to forfeit all additional benefits, except for a lump sum payment equal to two years of benefits. This amendment will eliminate the situation where couples may be forced to forego marriage to avoid forfeiture of benefits and financial hardship. The amendment eliminates the remarriage penalty for those remarriages that occur after the effective date of this legislation.

(Section 9). Because of the proposed elimination of the remarriage penalty in Section 9, the language in the last sentence of 65-05-22, as it relates to remarriage, is no longer warranted.

(Section 10). Subsection 3 will allow Workers Compensation the discretion to award a lump sum settlement to the recipients of death benefits. This proposed change is intended to meet immediate financial needs of death benefit recipients. Subsection 4 allows Workers Compensation to use structured settlements to resolve claims or provide ongoing future benefits. It further authorizes contracting with third-party vendors to provide structured settlement payments. This is a common practice in the insurance industry that can provide greater long-term financial security for the injured worker as well as eliminate administrative costs for the Fund.

(Section 11). Legislation creating the preferred worker program was passed in 2001 to assist qualified injured workers in obtaining employment. Under current law, only the employer is eligible for direct assistance. The proposed changes clarify assistance can be provided to both the preferred worker and the employer of the preferred worker. In addition, this section makes the same rules applicable to preferred workers and their employers in that neither can appeal a decision by Workers Compensation not to provide assistance.

(Section 12). This section creates a new provision to chapter 65-05 that will allow an employee to sue an employer in civil court for damages if the employee is discharged or threatened with discharge for seeking, or making known the intention to seek, workers' compensation benefits. It also creates a Class-A Misdemeanor offense for a willful violation of this section. Current civil case law allows an employee to sue an employer for wrongful discharge in retaliation for seeking workers' compensation benefits. (Krein v. Marian Manor Nursing Home, 415 N.W.2d 793 (N.D. 1987)). This proposed legislation codifies this civil case law, while further defining its parameters. Workers have a legal right to file workers' compensation claims in North Dakota and employers need to be clearly aware of the consequences for impeding a worker's rights. Again, this is only for the willful acts of an employer.

(Section 13). This section repeals sections 65-02-15 and 65-05-24 of the North Dakota Century Code. Section 65-02-15 mandates binding arbitration to resolve disputes of a certain value. Binding arbitration has rarely, if ever, been used since 1997 as the current administrative hearing process, with the assistance of the Office of Independent Review, has been of great success in resolving disputes and reducing litigation.

The repeal of 65-05-24 eliminates the criminal penalty for the failure of a death benefit recipient to notify Workers Compensation of a remarriage. Not only is this section obsolete, it is made unnecessary by the proposed elimination of the "remarriage penalty", in Section 8.

Thank you for your consideration. I will be glad to answer any questions you may have about this bill.

January 21, 2003

Regarding: House Bill No. 1060
In favor of the bill.

Committee Members and Chairperson:

My name is **Dawn Lambert** from Casselton, ND. I'm in favor of **Bill No. 1060**. I have strong opinions particularly regarding Section 7 ~~and~~ 10. ^{through}

These sections will create changes in the existing law in the ways of:

- *increasing the death benefit financial settlement from \$197,000 to \$250,000,*
- *allow a lump sum settlement versus a monthly settlement,*
- *allow the deceased's spouse to remarry and not lose the financial settlement.*

Now, I'll tell you why these amendments would have affected me personally, and I say would have, because it's my understanding this bill will not go into affect for past Workers Compensation Claims; my husband, William (Bill) Lambert was killed in a grain elevator accident February 7, 2002.

His 40-year life was taken through careless decisions and routine practices of his employer, Chaffee Lynchburg Elevator and by Bill, himself. I will spare you the details of Bill's death, but please have no question of how this has changed my life, our young three children's lives, our families, friends and small community. Bill and I were married for 17 years, I have no near future plans to remarry, but I have a real problem of the government's bureaucracy penalizing me and my family for looking into the future with a renewed hope of brighter days.

Regarding the increase in the dollar amount – I'll tell you what – no dollar amount will really make life better without Bill; but it does help to know that our children have a safe, warm place to call home; food to eat; clothing to wear and hopefully a start of a college fund. So increasing the settlement for other's future needs – is doing a good thing. The ability to allow the deceased's spouse to receive the settlement in a lump sum would allow them to use it as they see fit, after all it's their life and they know better than anyone else what their needs are, not a government agency.

Even though Bill's and my children and myself will not benefit from this **House Bill No. 1060** my hopes, would be that the next person that would need this financial security could count on it at all junctures in their lives. I prayer that there will be few and far between needing such "benefits".

Thank you for your time and God Bless.

Before the House Industry, Business, and Labor Committee

Mr. Chairman

Members of the Committee

My name is Timothy Effertz

I live at 11600 20 Ave SE, Minot 58701

I can be reached by telephone at 701 8383261 or 701 7208014

My email address is teffertz@srt.com

I come as both an employer and a disabled employee to speak in opposition to HB 1060 in its present form.

Mr. Chairman, Members of the Committee, I need you to rectify a gross injustice created by the Legislature many years ago. I bring a suggested amendment to HB 1060 because its subject matter is directly connected to the Amendment I offer.

HB 1060 Section 7 contains additional expenditures for removing some of the restrictions on who may receive death benefits under workers compensation, and increases the maximum amount that can be paid to one spouse.

I have asked the workers compensation bureau last session and again this session to help to get this injustice fixed. To quote the Executive Director, I have caused a thorough debate on the issue. The bureau listened politely each time, then played an old tune and did an old dance indicating lack of interest in even getting a fiscal note drawn so we could know the cost of my suggestion. The intent I believe is to study the issue to death. I am not complaining about the performance of the new and improved Bureau. It took many years until I now tell others that I am receiving 100% of the benefits provided in law. This is not a Bureau problem, but it is a Legislative problem.

I authorized the bureau to share my file with the Legislators. I have written each Legislator a personal letter on December 24, 2002, asking you for your help. I have testified before the workers compensation Board of Directors a few days ago, asking them to support my change.

Here is an illustration of the problem if you do not remember the situation:

Suppose you are a North Dakota employee, I assume Legislators are employees of the State and covered by Workers Compensation. If not, please put yourself in your regular job in a similar situation. Suppose as you descend the stair steps at work today, the stair step is defective and you take a fall causing neck injuries that leave you unable to ever work again.

1

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Yalosta Rickford

Date

10/2/03

If you are not extremely wealthy, and you live long enough to file, you will likely become dependent on workers compensation benefits. You might get \$1,000 per month in disability benefits.

Suppose you live for 5 years and 11 months, when you die from your injury; your spouse and children will continue to receive death benefits in the same amount as your disability benefits. Even if your spouse could see that life was hopeless and inconvenient living with you, and moved on to start over in life; your spouse, as guardian, would be paid your benefits, and your kids would at least live at a lifestyle somewhere below the poverty level. They will still do ok in spite of your injury and in spite of their poverty, however College education is out of the question.

Now suppose you were unlucky enough to instead live until 6 years and one month from your injury date, with all other conditions the same: Now your disability benefits stop when you die, and your family is not entitled to any death benefits simply because you lived past the 6 years allotted by NDCC 65-05-16 subsection 1 c as the right time to die. You could not even help yourself die on time because death must be as a direct result of your injury, not at your own hand. I believe you would certainly feel that this is a very unfair law. It seems peculiar to set a time during which you have a duty to die or else you will leave your family destitute, then leave compliance all up to chance.

The "Exclusive Remedy Provision" of workers compensation law at 65-01-01 abolished the rights of your spouse and children to sue the owner of the building who is your boss because the stair step was known to them to be defective. In return for the loss of civil rights, the Exclusive Remedy promises "sure and certain relief" to not only workers but expressly for their families; but surprisingly, the Act provides **no relief**. No benefits, does not replace the loss of their Article 1 Section 9, of the Constitution, access the court that was "abolished" to protect your employer from your spouse and children bringing suit for their losses of a Husband and Father or Wife and Mother.

You could be sitting in my wheelchair in my position in very much the same condition. My wife did not bail out when I got hurt. She has kept me as she promised in 1960, for worse, not better, and for poorer not richer, until one of us dies. She has helped me for 40+ years, and kept me out of the nursing home. It is depressing to know that I lived past the 6 years allotted time to die, costing her most of life's opportunities to make a life on her own, and now I am likely to leave her with little more than half of my social Security check to live on when I die. She is as old as I am, and too old to build any retirement.

Mr. Chairman, Members of the Committee, This is a purely matter of equity and unfulfilled justice. The Legislature promised "sure and certain relief", but has delivered "no relief" to my wife. Yes, she shared my disability benefits, but they came along with great and permanent poverty and extreme personal inconvenience. Now the 1919 Legislature would still throw her away as soon as I die, because no Legislature has had the courage to fulfill this promise made by the State of North Dakota. Mr. Chairman and Members of the Committee, I submit that 84 years of delay is more than enough, and I have been disabled half of that time and deserve to die in peace.

I submit that this situation is much the same as when Representative Roy Rude explained at hearing that Supplementary benefits were required to fulfill the promise of "sure and certain relief". The Workers Compensation Bureau was unwilling to help, but the Legislators instituted Supplementary Benefits in defiance of their recommendations. Like Representative Rude said: \$40 per week in disability benefits would not feed a dog.

Mr. Chairman, Members of the Committee, You have a civil obligation arising out of operation of law under NDCC 65-01-01 to provide the "sure and certain relief" promised in 1919 by your predecessors. The easiest and cheapest way, is to simply delete the phrase "~~the death occurs within six years after the date of injury~~" from NDCC 65-05-16 subsection 1c. I have attached a copy of that section, and drawn a line through the offending language.

I have no formal independent fiscal note to provide. I was unable to get the Workers Compensation Bureau to do the math. But I have a bachelor's degree in teaching Math, and considerable life experience, and I estimate the cost as follows:

I made the following assumptions:

- 1, All eligible disabled workers must have a disability that continued until death.
- 2, All eligible disabled workers must die from the injury.
- 3, All eligible disabled workers must have a spouse that applies for death benefits before two years after death. (There are no balloon payments to those who died earlier)
- 4, Most minority groups live a shorter life due to poverty and the resulting environment.
- 5, The usual age to start full-time working is about age 21.
- 6, The usual age to die is about age 75, but this minority group will die at 70.
- 7, There are about 700 seriously disabled persons whose spouse might qualify to draw any form of death benefits.
- 8, 50% of the sample is not married for all reasons.
- 9, About 25% of eligible spouses will fail to apply for death benefits timely, within 2 years, and they will be excluded by law.
- 10, About 50% of the disabled workers will not die from their injury.
- 11, About 50% of the workers will recover enough in the interim, and work, so that they are no longer continuously disabled by definition.
- 12, If the Bureau forces most spouses to go through the complex and harrowing hearing process under the Administrative Practices Act, at their own initiative and expense, more than 50% will not prevail for lack of representation or personal ability.
- 13, Assume that spouses are the same age as the disabled.
- 14, Assume that the average disability benefit is \$1,000 per month.
- 15, assume that all functions are linear for simplicity, as this work is only an estimate.

What is the size of the group of spouses who might be paid death benefits over and above those who would receive them already under present law? What is the percentage of increase in premium for the employers?

DOING THE MATH:

We start with 700 disabled persons (7) who start work at age 21, and we add 6 years that are already covered in law. So they come into the group at age 27 and leave at death age

70 (6). Then the average age is 48.5 years assuming attrition is linear. The average age of death of this class of disabled persons is also 48.5 years. The average length of benefits paid is then $70 - 48.5$ or 21.5 years.

Now of the 700 disabled, half will not die from the injuries, and we have 350 left (10). Of the 350, half will not be eligible because they were not continuously disabled until death, and 175 are left. Half of the 175 will not have spouses who could collect, and we have 85 potential spouses to pay. Only about 75% of the spouses will file before 2 years pass to be eligible, and we have 64 left. Of the 64 left, 50% will not prevail when the Bureau forces a hearing, and we have 32 spouses left to pay death benefits.

There are about 32 spouses who we expect to pay, and we have calculated the expected length of payments as 21.5 years, and we assumed the average monthly benefit is \$1000. Now \$1000 per month provides \$12,000 per year, and the maximum amount that can be paid is \$190,000, then 16 years is about the maximum time to pay, rather than 21.5.

The annual payout is about 32 spouses times \$12,000 or \$276,000 per year. Now about half of the ND population is covered by Workers Compensation, or about 300,000 workers, so The Bureau is going to have to assess the employers one dollar per employee per year in addition to the expected premium to finance giving these 32 spouses the "sure and certain relief" promised 84 years ago.

Now suppose my estimates are off by one zero or one 50% discount for any cause, It still looks easy me to pay at 2 dollars per year. My personal employee would cost me about .3% more in Workers Compensation Premium to generate one dollar. Then the total cost of this proposal is less than removing the marriage penalty as provided in HB 1060 at the suggestion of the Bureau, which is set at a cost of .5% by the fiscal note. The cost to benefit ratio is extremely more favorable if you consider the additional opportunities of life made available to each group to whom you could give the benefits.

Mr. Chairman, Members of the Committee, additional benefits for the disabled workers and their families under Workers Compensation is always needed and easily justified. It is tough to live in poverty when it is not because you were lazy, but strictly because you are disabled because you worked. But we have to strike a balance to protect the assets of the employers, even if these neglected spouses end up on other welfare programs.

You are about to decide in Amendment 7 of HB 1060 whether to make increases in amounts paid for death benefits. I submit to you that justice requires you first shift some of those available death benefit dollars in the Fund towards fulfilling the promise made by the 1919 Legislature to my wife and others in like situation. Equity and justice require your priorities to provide the relief promised in 65-01-01, and that the promised relief needs to precede other increases in death benefits to those spouses already getting some relief under the same law, even if their relief is inadequate in your eyes. Under the rules regulating extinguishing of obligations in Title 9 of the Century Code, the oldest obligations are always extinguished first.

Mr. Chairman, members of the Committee, I urge you to adopt my proposed Amendment. I also urge you to adjust Amendment 7 of the first engrossment to pay whatever additional benefits the Fund can support, because the increases are justified by the needs, but may possibly be outside of the budget if we look at what employers are willing to pay, and the extreme political pressures we employers can bring on the Members of the Committee. As an employer I can afford \$2.50 per year to do both increases. Please help us if you can.

I encourage you to recommend a do-pass after you attach the amendment.

Thank you for your time and patience

Amendment to HB 1060

Please remove the phrase ", the death occurs within six years after the date of injury"

65-05-16. Death benefits payable.

Statute text

1. The bureau may pay benefits under this chapter in the case of the death of an employee as the direct result of an injury sustained in the course of the employee's employment when:
 - a. If there has been no disability preceding death, the death occurs within one year after the date of the injury;
 - b. If there has been disability preceding death, the death occurs within one year after the cessation of disability resulting from the injury; or
 - c. If there has been disability which has continued to the time of death, ~~the death occurs within six years after the date of injury.~~
2. The bureau may not pay death benefits unless a claim is submitted within two years of the death and:
 - a. The death is a direct result of an accepted compensable injury; or
 - b. If no claim was submitted by the deceased, the claim for death benefits is submitted within two years of the injury.

Jobbers Moving & Storage Co.

Bismarck: 1200 Industrial Drive, Bismarck, N.D. 58501 • Tel: (701) 222-1111 (800) 891-1184 • Fax: (701) 255-3176
Fargo: 6109 53rd Avenue S.W., Fargo, N.D. 58104 • Tel: (701) 356-8080 (800) 523-6203 • Fax: (701) 356-8082
Minot: 4400 N. Broadway, Minot, N.D. 58703 • Tel: (701) 837-1111 • Fax: (701) 837-7086
Aberdeen: 13304 392nd Ave., Aberdeen, S.D. 57401 • Tel: (605) 225-4650 • Fax: (605) 225-4651

January 21, 2003

House Industry, Business and Labor Committee

Testimony on House Bill No. 1060

House Bill No. 1065

House Bill No. 1149

House Bill No. 1150

Charles Peterson, Board Chairman, Jobbers Moving & Storage

Mr. Chairman and Member of the Committee:

My name is Chuck Peterson and I am Chairman of Jobbers Moving & Storage Co., Bismarck, ND. I am here today to testify in favor of House Bill No. 1060, House Bill No. 1065, House Bill No. 1149 and House Bill No. 1150. As former Chairman of the Workers Compensation Board of Directors, I can speak firsthand to the tremendous amount of planning, preparation, and analysis put forth in devising proposed legislation for your consideration.

The four bills before you strike a balance between maintaining premium levels and modestly increasing benefit levels. Any businessperson can attest to the difficulties created for employers by the current insurance market. Across the country, many workers compensation insurers are dramatically raising rates and are forced to contemplate benefit decreases. Maintaining premium rates and proposing benefit increases, while at the same time providing a high level of service to its constituency groups, is an accomplishment of which North Dakota Workers Compensation should be proud.

The effectiveness of the current system is the result of the hard work on the part of many, not the least of which is the Legislative Assembly. I urge your continued support and request your approval of House Bill No. 1060, House Bill No. 1065, House Bill No. 1149 and House Bill No. 1150 so that North Dakota Workers Compensation may continue its advancements.

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Yalosta Rickford
Operator's Signature

10/2/03
Date

January 21, 2003

House Industry, Business and Labor Committee

Testimony on House Bill No. 1060

House Bill No. 1065

House Bill No. 1149

House Bill No. 1150

Charles Peterson, Board Chairman, Jobbers Moving & Storage

The following businesses/organizations support House Bills 1060, 1065, 1149 and 1150:

Associated General Contractors
Association of Builders
Automobile Dealers Association
Bankers Association
Bismarck-Mandan Chamber of Commerce
Greater North Dakota Association
Healthcare Association
Hospitality Association
Implement Dealers Association
National Federation of Independent Business
Otter Tail Power Co.
Petroleum Council
Qwest Corporation
Retail/Petroleum Marketers Association
Xcel Energy

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Yalosta Rickford

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10/2/03

2003 House Bill No. 1060
Testimony before the Senate Industry, Business, And Labor Committee
Presented by: Brent J. Edison
Executive Director and CEO
North Dakota Workers Compensation
March 3, 2003

Mr. Chairman, Members of the Committee:

My name is Brent Edison and I am the Executive Director and CEO of North Dakota Workers Compensation. I am here to testify in support of 2003 House Bill No. 1060. This bill proposes changes primarily affecting claims processing and adjudication. The North Dakota Workers Compensation Board of Directors unanimously supports this bill. House Bill No. 1060 also received unanimous support by the House of Representatives (92-0).

(Section 1). This section simplifies the formula for computing the "average weekly wage" of a self-employed employer. The purpose of this proposed change is to allow for ease of application as well as an average weekly wage that coincides with what is reported to the IRS. The current formula requires a claims analyst to determine "net profits" and to add depreciation, meal, and travel expenses to the net profits. Eliminating this computation, and instead referring simply to net earnings reported to the IRS, will provide a more accurate reflection of the actual pre-injury wages earned by a self-employed worker.

(Section 2). This section simplifies the definition of "seasonal employment" to provide consistency and ease of application. If an injured worker's employment is considered seasonal, a specific formula is used to calculate the pre-injury average weekly wage. This amendment simplifies the current definition by eliminating the reference to the requirement of 45 consecutive days without wages. The new definition simply states that those employees whose occupations are not permanent or do not customarily operate the entire year are considered seasonal. Seasonal employment will be

determined by what is customary to the employer for the particular position at the time of injury.

(Section 3). This proposed change clarifies the procedure available to enforce administrative subpoenas issued by Workers Compensation. Currently, Workers Compensation has the authority to issue subpoenas to properly adjudicate matters or investigate issues. There have, however, been disagreements as to the proper procedure for enforcing a subpoena. This language will clearly outline the procedure to enforce a subpoena in those limited instances where information requested by subpoena is not produced voluntarily.

(Section 4). This section provides no substantive change. It is simply the elimination of a reference to 65-02-15, which is repealed in Section 13 of this bill.

(Section 5). This proposed change increases the current real estate adaptation allowance for a catastrophically injured worker from \$20,000 to \$50,000 over his or her lifetime. Workers Compensation has worked closely with catastrophically injured workers to provide assistance that in many instances involves consultation with national experts in catastrophic claims management. This past year, catastrophic claims management experts advised \$20,000 would likely be insufficient in most instances to provide adequate adaptations. While the proposed increase to \$50,000 will not have a significant impact on the Fund, it should make it easier for an injured worker to remain in his or her home following a catastrophic injury.

(Section 6). This amendment clarifies that partial disability benefits, like total disability benefits, are subject to a maximum benefit rate. It further clarifies the combined partial disability benefits, dependency allowance, and post-injury wage earning capacity of an injured worker can never exceed the pre-injury net wage of the worker. This change will apply only to partial disability benefits that begin after the effective date of this legislation (see Section 14).

(Section 7). This section increases the death benefit cap from \$197,000 to \$250,000 for those deaths that occur after the effective date of this legislation (see Section 15). The current maximum of \$197,000 has been in effect since 1987. The increase to \$250,000 is a reasonable adjustment for inflation and consistent with recent increases in permanent impairment awards for those most severely injured.

(Section 8). This section eliminates the "remarriage penalty" that applies when a surviving spouse remarries. The "remarriage penalty" requires a surviving spouse who subsequently remarries to forfeit all additional benefits, except for a lump sum payment equal to two years of benefits. This amendment will eliminate the situation where couples may be forced to forego marriage to avoid forfeiture of benefits and financial hardship. The amendment eliminates the remarriage penalty for those remarriages that occur after the effective date of this legislation.

(Section 9). Because of the proposed elimination of the remarriage penalty in Section 9, the language in the last sentence of 65-05-22, as it relates to remarriage, is no longer warranted.

(Section 10). Subsection 3 will allow Workers Compensation the discretion to award a lump sum settlement to the recipients of death benefits. This proposed change is intended to meet immediate financial needs of death benefit recipients. Subsection 4 allows Workers Compensation to use structured settlements to resolve claims or provide ongoing future benefits. It further authorizes contracting with third-party vendors to provide structured settlement payments. This is a common practice in the insurance industry that can provide greater long-term financial security for the injured worker as well as eliminate administrative costs for the Fund.

(Section 11). Legislation creating the preferred worker program was passed in 2001 to assist qualified injured workers in obtaining employment. Under current law, only the employer is eligible for direct assistance. The proposed changes clarify assistance can be provided to both the preferred worker and the employer of the preferred worker. In

addition, this section makes the same rules applicable to preferred workers and their employers in that neither can appeal a decision by Workers Compensation not to provide assistance.

(Section 12). This section creates a new provision to chapter 65-05 that will allow an employee to sue an employer in civil court for damages if the employee is discharged or threatened with discharge for seeking, or making known the intention to seek, workers' compensation benefits. It also creates a Class-A Misdemeanor offense for a willful violation of this section. Current civil case law allows an employee to sue an employer for wrongful discharge in retaliation for seeking workers' compensation benefits. (Krein v. Marian Manor Nursing Home, 415 N.W.2d 793 (N.D. 1987)). This proposed legislation codifies this civil case law, while further defining its parameters. Workers have a legal right to file workers' compensation claims in North Dakota and employers need to be clearly aware of the consequences for impeding a worker's rights. Again, this is only for the willful acts of an employer.

(Section 13). This section repeals sections 65-02-15 and 65-05-24 of the North Dakota Century Code. Section 65-02-15 mandates binding arbitration to resolve disputes of a certain value. Binding arbitration has rarely, if ever, been used since 1997 as the current administrative hearing process, with the assistance of the Office of Independent Review, has been of great success in resolving disputes and reducing litigation.

The repeal of 65-05-24 eliminates the criminal penalty for the failure of a death benefit recipient to notify Workers Compensation of a remarriage. Not only is this section obsolete, it is made unnecessary by the proposed elimination of the "remarriage penalty", in Section 8.

Thank you for your consideration. I will be glad to answer any questions you may have about this bill.

**Fifty-eighth Legislative Assembly
Before the Senate Industry, Business, and Labor Committee
David Ystebo, Chairman
North Dakota Workers Compensation Board of Directors
March 3, 2003**

Mr. Chairman, Members of the Committee:

My name is Dave Ystebo, and I am Chairman of the North Dakota Workers Compensation Board of Directors. I have had the opportunity to serve as a board member since 1998. As you may well remember, legislation passed in 1997 created a workers compensation board of directors whose members represent employers, employees, and the medical community.

The current board structure has worked well to provide appropriate oversight to ensure NDWC operates efficiently and effectively. We take our obligation to maintain cost-effective operations and a high level of service very seriously.

The board is actively involved in all aspects of Workers Compensation functions, including the planning, preparation and ultimate approval of proposed legislation. The proposed legislation before you received the unanimous approval of the board. On behalf of the board, I request your favorable consideration of House Bill No's. 1060 and 1065, and Engrossed House Bill No's. 1149 and 1150. Brent Edison will follow with a more detailed explanation of each bill.

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Yalosta Rickford
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10/2/03
Date

Testimony
House Bill No. 1060-Section 12
March 3, 2003
Senate Industry, Business and Labor Committee

Chairman Mutch and members of the Senate Industry, Business and Labor Committee,
my name is Fern Pokorny with the North Dakota Education Association.

I am here today to support the addition of Section 12 of House Bill Number 1060.

This is obviously the right thing to do. We know employers feel pressure to keep claim numbers down and because of the deductible cost, employers try to shift costs to other insurance companies; therefore the employer may intimidate injured worker's not to file appropriate claims with the Bureau. This section helps to remove possible intimidation by the employer and the fear of reprisal to the injured worker for filing the right report.

Section 12 is good legislation for our workers. Thank you.

Valista Rickford
Operator's signature

10/2/03
Date

Re: Amendment to Senate Bill 1060

Mr Chairman and Committee Members,

My name is Marian Emter, and I am the widow of Anton (Tony) Emter who was killed on January 28, 1986, in a fuel truck driven by him. It had rained and the rain turned to black ice, as he was exiting I 94 to travel north to Beulah on Highway 49 with a load of fuel. He was nearly at a dead stop, but because of the slope of the road, the trailer pulled the truck into the ditch, the weight of the trailer shifted and the truck tipped over. Because the tanker was so round and just single axle, the tanker rolled, causing the cab to jackknife, the cab became airborne and slammed down right where Tony was sitting, killing him instantly though the accident as it was in progress did cause his hair to turn grey at his temples, so there must have been a great deal of terror.

This happened on the same day that the space shuttle blew up. NBC news got a hold of our story, came out to interview us, and told us the date that it was to be aired on "Dateline".

A day or two before it was to be aired, they called back and told us that they were stopped from going on air. The purpose of their interview was to question why one worker's life was valued so much more highly than another? The people from the space shuttle receiving millions...

On September 11th, 2001, another national disaster, with loads of benefits going to the families of these victims. So my question is also, what makes one life more valuable than another?

Workers Comp is this year introducing a bill requesting more benefits for those killed in 2003, stating that they were introducing the legislation to "ease the burden on families who lose a loved one to an on-the-job death". So what would make their life more valuable than those killed between 1983 and 2003? Originally, there was no "cap" on the amount of benefits drawn. Legislation changed the law in 1983. Anton was killed in 1986. The cap that was

available for me was \$197,000, drawn out over seventeen years. Legislation is now looking at raising that to \$250,000 and then also to "eliminate the remarriage penalties", and to accelerate the time period over which to pay out these benefits. So the state can look at paying out \$250,000 to every on the job worker that is killed, unless the spouse should also die. That to me would seem ridiculous, as if the spouse remarried, there would still be two incomes or at least another means of support coming in. So Workers Comp apparently has plenty of money available to introduce such legislation..

We had four children, three of them still being at home, at the time of Tony's death, one (a son) being 21, two daughters, one being 14 and the other 7. For two of them I was able to get Social Security benefits for a short period of time. The proceeds from Workers Comp & SS did not recompensate me for Tony's salary, so it was my sole responsibility to then raise the children still at home.

I've had people from Workers Comp tell me when my benefits ran out this past May, that Legislation in 1983 put a cap on the amount drawn because it was felt that it would help the employers' premiums paid. According to personnel at Workers Comp, it didn't make one bit of difference, as no employers received reductions in their premiums, and to contact the Legislators and present a new bill to re-instate the benefits retro-active back to the time when I lost my benefits. Originally when I had signed up for Workers Comp, they told me that new bills were being introduced all the time, and perhaps the amount would increase again. ... In addition, might I add, the Legislation that is being introduced this year supposedly would not raise the premiums.

In my instant case, now when it is time for retirement, benefits are lost. Either these benefits should be a lump sum benefit OR a life time benefit. We used to live up

Yolanda Rickford
Operator's Signature

10/2/03
Date

on Overlook Drive, in a 4 bedroom/4 level home...I had to sell and now live in a mobile home.

I would respectfully request that Senate Bill 1060 be amended to include prior claims and to pay us as well the difference between \$197,000 and \$250,000.. Those lives lost in 1986 and before and after, are valued just as highly as those that will be lost in 2003, the financial burden is just as great because of the economy, cost of living, etc. and yet we are expected to live in today's society as well.

I wish to thank you for your time and attention you've given to me.

Marian Emter

Yolanda Rickford
Operator's Signature

10/2/03
Date

March 3, 2003

Senate Industry, Business and Labor Committee

Testimony on House Bill No. 1060
House Bill No. 1065
House Bill No. 1149
House Bill No. 1150

Charles Peterson, President, Jobbers Moving & Storage

The following businesses/organizations support House Bills 1060, 1065, 1149 and 1150:

Associated General Contractors – Curt Peterson
Association of Builders – Doreen Mehlhoff
Automobile Dealers Association – Bob Lamp
Bankers Association – Jim Schlosser
Bismarck-Mandan Chamber of Commerce – Dave MacIver
Greater North Dakota Association – Dale O. Anderson
Healthcare Association – Chip Thomas
Hospitality Association – Patti Lewis
Implement Dealers Association – Bob Lamp
National Federation of Independent Business – Bill Butcher
Otter Tail Power Co. – Steve Schultz
Petroleum Council – Ron Ness
Qwest Corporation – Mel Kambeitz
Retail/Petroleum Marketers Association – Russ Hanson
Xcel Energy – Kathy Aas

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