

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1038

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1038

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1038

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 10, 2007

Recorder Job Number: 869

Committee Clerk Signature

Stephan N. Thomas

Minutes:

Chair Keiser opened the hearing for HB 1038, relating to workers' compensation additional benefits payable; benefits for the catastrophically injured, additional benefits payable, death benefits, supplemental benefits, loans for education.

Rep. Keiser, District 47: I appear before the committee today to present to you one of the bills that was developed, as a result of the work of the interim committee. After lengthy deliberation considerations, it was determined that 100,000 for life of the claim would be adequate at this point in time. The second thing was to provide an alternative additional benefit payable, ABP, calculation for a very select group of permanent total disability recipients who injuries occurred prior to Aug 1, 1995. In 1995, that's a critical date in workers comp. That was the legislative session that revamped, and restructured entirely our workers comp program. Somebody injured before 1995, WSI is going to apply that law that was in affect at the time of the incident. Somebody injured after 1995, they're going to apply the law that is in affect after that. We had a small group of people who were injured before 1995 who did everything that we want them to do. They were injured, received medical treatment, they may have received vocational rehab, and they went through the system. The system sent them back out, they went back to work, then for whatever reason that injury reoccurred, went back to

work. The Calculation of ABP, if you were injured prior 1995 it wasn't going to be quite as good. This bill provides an alternative calculation for this select group, and it allows us to go back and treat the date of the injury as the critical date. They are doing what we asked them to do, get them back to work, but it creates a system whereas the person who's trying to go back to work gets penalized in terms of how much money they're going to be given. Another thing that it does is expands the population to the potentially eligible for death benefits, to include the surviving spouses of the catastrophically injured if the disability has continued until time of death, the death occurring more than 6 years after the date of injury and the death was a direct result of the work history.

Tim Wahlin, Workforce Safety and Insurance: In support of HB 1038. See written testimony.

Rep. Kasper: On page 3, section 3, what is the death benefits going to be under that section?

Tim: The death benefits currently capped at 250,000 dollars.

Rep. Kasper: On the last sentence of that first paragraph you say "this alteration does not change the requirement that the death be a direct result of an injury sustained in the course of the injured employees employment." How do you determine that a death is a direct result of the injury sustained?

Tim: In order to receive benefits, an injured worker must prove their eligibility for them. They will apply, and we will make the determination on the facts of the case. Once we get past 6 years, I would assume that this would basically be a medical determination whether or not the death was a direct result of that injury.

Rep. Kasper: Who determines whether that death is a direct result?

Tim: The determination is going to rest with the organization. We will collect evidence, review evidence, and ultimately we will make a determination.

Rep. Ruby: What has changed? We were told after 6 years it was almost impossible to make a determination. What should we be looking at now?

Tim: I can't understate that it's still going to be an incredibly difficult task. Once you get that far out from an injury, determining that was a direct result of that injury, you can see how problematic that is for you.

Rep. Ruby: To make changes in benefits, it was not figured into those past premiums, and I'd like an explanation to how that has changed.

Tim: That hasn't changed, and remains problematic.

Rep. Keiser: What's changed this time? Why should this committee give full consideration to this issue? If we were to pass this bill as a sound structure, we're looking at a minimum of 3%, and a maximum 5% increase to the premium tax for employees, is that correct?

Tim: If you take a look at the actuarial impact, the rate that we've attached to it, we're looking at reserve level impact. The reserve level existing plain is between 4 ¼, and 6 ¾ million dollars. That is just for existing planes on the books.

Rep. Kasper: In section 3, can you identify the number of catastrophically injured in ND that would qualify for this section?

Tim: Currently, I believe on the books we have 40 plus as catastrophically injured employees.

Rep. Zaiser: Can you tell me approximately in terms of dollars and cents, how much that would be and would impact premium rates here in ND, compared to other states?

John Halverson, WSI: 1% premium which is about 1.2 million.

Rep. Dietrich: What is the number of special vehicles, the cost, and how do you divide that 100,000 dollars per lifetime?

Tim: I do not have the number of vehicles we've purchased. I think it's important to go back and look at the legislation changes. One of the instructions that we had in the legislation as we

altered it was we were prohibited under the old legislation from ever purchasing a vehicle. We were only able to pay for wrecker fitting, or for fitting that vehicle with special adaptations.

Under the new statute, the authority is there to purchase vehicles.

Sebald Vetter, CARE: In support of HB 1038.

David Kemnitz, President of the ND FL-CIO: In support of HB 1038.

Ed Christianson: In support of HB 1038.

Timothy Effertz: In support of HB 1038. See written testimony #2.

Rep. Zaiser: You're not only asking for discretionary process in authorizing a wheelchair your also asking for an appeals process so that WSI's decision isn't automatically, because they may be getting frustrated with some person, or some employee.

Timothy: Yes, that's right.

Sandy Blunt, WSI: What if we have an individual who is in a motorized wheelchair, that's not a vehicle, that's not a chair that you can just put in the back of a car. Somehow is there reasonability within the current law for us to say someone can be designated as the opportunity to buy a vehicle. I made a promise to Mr. Effertz that I would support him in that. The other issue is the definition of catastrophic.

Rep. Zaiser: Did I hear you correctly that there is no possibility for establishing an appeal process.

Sandy: As the law is currently written, you're either designated catastrophic by a certain type of injury and it's automatic, or at the discretion of the agency.

Hearing Closed.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1038

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 15, 2007

Recorder Job Number: 1121

Committee Clerk Signature

Stephanie N. Thomas

Minutes:

Chair Keiser opened the hearing on HB 1038.

Rep. Johnson: I move a do pass.

Rep. Vigesaa: Second.

Roll call vote was taken. 12 Yeas, 1 Nay, 1 Absent, Carrier: Rep. Keiser

FISCAL NOTE
Requested by Legislative Council
12/26/2006

Bill/Resolution No.: HB 1038

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.*

| | 2005-2007 Biennium | | 2007-2009 Biennium | | 2009-2011 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.*

| 2005-2007 Biennium | | | 2007-2009 Biennium | | | 2009-2011 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2A. Bill and fiscal impact summary: *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The legislation provides funds for the purchase or adaptation of vehicles; provides an alternative additional benefit calculation; expands the population eligible for death benefits; expands the eligibility pool for WSI's loan fund; and shortens the supplementary benefit eligibility period.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2007 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1038

BILL DESCRIPTION: Legislative Workers Compensation Review Committee Benefit Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, 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 provides funds for the purchase or adaptation of specially equipped motor vehicles for the catastrophically injured, not to exceed \$100,000 for the life of the claim; provides an alternative additional benefit payable (ABP) calculation for a select group of permanent total disability recipients whose injuries occurred prior to August 1, 1995; expands the population that is potentially eligible for death benefits to include the surviving spouses of the catastrophically injured if the disability has continued until time of death, the death occurs more than six years after the date of injury and resulted from the injury; expands the eligibility pool for WSI's revolving loan fund to include surviving spouses and dependent children of an injured employee whose death resulted from a compensable injury and sets a maximum interest rate of 1% below the Bank of North Dakota's prime interest rate; and shortens the period for supplementary benefit eligibility from seven years to three years for Permanent Total Disability claims subject to 2005 HB 1171 (Claims filed after December 31, 2005).

Reserve Level Impact: It is anticipated the proposed legislation in its entirety will increase discounted reserve levels in the range of \$4.25 to \$6.75 million.

Rate Level Impact: It is anticipated that the proposed legislation in its entirety will serve to increase future premium rate

levels between 1.5% and 2.0%.

Actuarial Reserve and Rate Level Impact detail by bill section is contained within the attached table.

DATE: January 8, 2007

Actuarial Impact Statement for 2007 HB 1038: Legislative Workers Compensation Review Committee Benefit Proposal

| Section # | Description | Reserve Level Impact (Existing Claims) | Rate Level Impact (Future Claims) |
|-----------|---|---|--|
| 1 | Provides an allowance to fund for specially equipped motor vehicles or vehicle adaptations for the catastrophically injured. The allowance may not exceed \$100,000 for the life of the claim. | Although difficult to quantify, it is estimated that approximately half of the 44 known open catastrophic cases within the system may be in a position to utilize this type of allowance. Based on this estimate, it is anticipated the proposal would increase required discounted reserve levels by approximately \$1 million. Should other existing claims emerge to a catastrophic status, the estimate would increase accordingly. | Historically, WSI incurs approximately 3 to 5 claims per year that result in a catastrophic designation. Based on this assumption, the anticipated premium rate level impact would be less than 0.5% increase in statewide premium levels. |
| 2 | Provides an alternative additional benefit payable (abp) calculation upon abp eligibility for designated permanent total disability recipients that were injured prior to August 1, 1995 and had a recurrent disability after July 31, 1995. | The proposal would provide an alternative additional benefit payable (abp) calculation at time of abp eligibility for 41 known claims. The proposal would increase discounted reserve liabilities by approximately \$750,000. | Will result in no rate level impact as this proposal does not apply to future claims. |
| 3 | Expands the population that is potentially eligible for death benefits (lifetime maximum of \$250,000) to include the surviving spouses of the catastrophically injured as defined in statute if the disability has continued until time of death; the death occurs more than six years after the date of injury; and the death was a direct result of the work injury. | The number of known catastrophics that are active within our system is 44. Based on our known catastrophic database, approximately 60% are married and have the potential of having a surviving spouse. Based on these assumptions, we would anticipate an increase in discounted reserve levels of up to \$3.0 million dependent upon whether or not the death was a result of the work injury. The booked discounted reserve increase would be somewhere within this range. | Historically, WSI incurs approximately 3 to 5 claims per year that result in a catastrophic designation. Based on our known catastrophic database, approximately 60% are married and have the potential of having a surviving spouse. Based on these assumptions, the overall rate level impact would be less than 0.5% increase in overall premium rate levels. |
| 4 | Broadens the criteria for those potentially eligible for the educational revolving loan fund to include a surviving spouse or dependent child of an injured employee whose death resulted from a compensable injury. The proposal also sets a maximum interest rate of 1% below the Bank of North Dakota's prime interest rate. | No material impact on reserve levels is anticipated. | No material impact on premium rate levels is anticipated. |
| 5 | Shortens the period for supplementary benefit eligibility from 7 consecutive years to 3 years for Permanent Total Disability (PTD) claims subject to 2005 HB 1171 (applies to claims filed after December 31, 2005). HB 1171 provided for a more clear and concise definition of PTD which will allow for more expedient PTD determinations. | The proposal would apply to claims filed after December 31, 2005. The anticipated reserve level impact as of the anticipated effective date of this legislation (August 1, 2007) would be an increase in discounted reserve levels of approximately \$1.5 to \$2.0 million. | Currently, it is estimated that 40 Permanent Total Disability claims arise out of each injury year. Based on this assumption, the proposal will serve to increase overall premium rate levels between 1.0% and 1.5%. |
| | Overall Impact of Proposal | \$4.25 to \$6.75 million increase in discounted reserve levels. | 1.5% to 2.0% increase in overall premium rate levels. |

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

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, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

| | | | |
|----------------------|----------------|-----------------------|------------|
| Name: | John Halvorson | Agency: | WSI |
| Phone Number: | 328-3760 | Date Prepared: | 01/08/2007 |

Date: 1-15-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1038

House Industry Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do pass

Motion Made By Rep. Johnson Seconded By Rep. Vigesaa

| Representatives | Yes | No | Representatives | Yes | No |
|-----------------------|-----|----|-----------------|-----|----|
| Chairman Keiser | X | | Rep. Amerman | X | |
| Vice Chairman Johnson | X | | Rep. Boe | X | |
| Rep. Clark | X | | Rep. Gruchalla | X | |
| Rep. Dietrich | X | | Rep. Thorpe | X | |
| Rep. Dosch | X | | Rep. Zaiser | | |
| Rep. Kasper | X | | | | |
| Rep. Nottestad | X | | | | |
| Rep. Ruby | | X | | | |
| Rep. Vigesaa | X | | | | |
| | | | | | |
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| | | | | | |
| | | | | | |

Total Yes 12 No 1

Absent 1

Floor Assignment Rep Keiser

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

REPORT OF STANDING COMMITTEE

HB 1038: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **DO PASS** (12 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1038
was placed on the Eleventh order on the calendar.

2007 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1038

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1038**

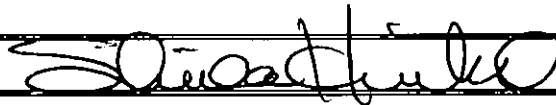
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **March 7, 2007**

Recorder Job Number: **4563**

Committee Clerk Signature



WSI bill:

Jennifer Clark - Legislative Council - Neutral

This is the 3rd of three bills that come out of the WSI committee. This is the largest and most comprehensive of the three bills. The bill addresses the allowance to insured workers. The bill separates A – real estate adaptation B – vehicles adaptation This will provide higher allowance and comprehensive use of funds. Features an emergency measure. Sect 2-6505 Claims and compensation, 1995 retirement presumption. There were nuances before the 1995 went into effect. After you're 65, there is a presumption of retirement. This increases the benefits payments and doesn't take away the presumption. It applies to a limited group of people. Section 3 relates to how death benefits are handled. The length of time on catastrophic injury addressed in page 3, lines 1-4.

Section 4 of the bill, WSI educational, revolving loan fund. Being expanded who may receive a loan under this program. Surviving spouse or child under the program. Has a lower interest rate.

Section 5 – relates to supplementary benefits and cost of living adjustment. Such as cost-of-living (COL) adjustment. Depends on the time of the injury..

From 2006 forward, granting the group of people who under that modified case management system in HB 1117, keep identified injured workers in one class.

Tim Wahlen – SWI Staff Council - In Support

TESTIMONY # 1 *Reads testimony 8:00-11:36m*

ABP – Additional Benefits Payable

COLA – Cost of living adjustments

S Potter: On page 3, it shows 1 ½%, the text says ½ of 1%, which text is correct?

Tim W: The written text.

S Heitkamp: In section 1, if the proposal goes forward, where's the reserve at today?

Tim W: Total reserves, I don't have before me. Total organization seems like 1.1/4 billion.

S Klein: That reserve is...in the event that you would go out of business today, you would need that to cover claims?

Tim W: Yes, reserve is set aside for future claims.

S Heitkamp: The reserves – was it last session or before that we ended up with a delayed bill that gave surplus dollars back to employers, right Tim?

Tim W: The bill you're talking about set the target levels, 120-140% target.

S Heitkamp: So money went back out to employers.

Tim W: I don't think so.

S Heitkamp: Did money go out?

Tim W: yes in the form of rebates.

Wade Mann – ND Chamber of Commerce – In Favor

Expressed his approval on the bill.

David Kemnitz – President NDAFLCIO - In Favor

TESTIMONY # 2 We approve of this bill and support it.

S Potter: I support every section of this bill, but I want to vote against it because there are 6 different bills here, Why do you do that? Why is that done?

David K: This is drafted by a committee where S Klein & Heitkamp were on...

S Klein: I think it was just a culmination of all the things we've done rather than having 6 hearings on 6 bills, it does pretty much encompass everything and S Heitkamp will agree we've spent a lot of time in listening to these issues. This is the result of interim committee work.

S Heitkamp: I sense a new volunteer for that committee.

S Klein: I think they are appointed, not volunteer.

Dave K: It goes deeper than we would like to have legislation go.

Sebald Vetter – CARE Org - Have 400 members, 11,200 supporters

In Support

This legislation is long overdue.

Florence Haux – Injured worker - In Support

Affected patient on the second portion.

Tim Effertz - Minot, In a motorized chair - In Favor

I've been pushing for a bill similar to this for 15 or more years. So pleased that WSI and various other parties all agree that this is a good bill. I haven't heard anyone say anything nasty about it. It does good for everybody. I hope everyone in WSI is getting treated as fairly as I am under the law. I'm concerned some of the language and submitted written testimony, on the phrase "catastrophic injury" which is a category of people which is clearly defined but the problem is that the language is that the decision of whether you're catastrophically injured or not, is a decision is made solely by the WSI people without an appeal at all. I'm concerned,

and have voiced it in the House, sometime they may not be as effective if they do not designate someone as catastrophically injured when they should be.

S Klein: You like the way it is, if down the road another WSI leadership would not read it the way we have and possibly the Legislative intent, we'll make sure that the clerk will note that and that we'll have it on record, that the intent of the 60th Legislature and WSI, and have WSI come up and repeat that and have on file.

Sandy Blunt: Executive Director of WSI Asked to come to podium

Mr. Effertz and I had the opportunity to talk about this before the last year and we agreed with him that this reference as well as Rep. Johnson and you will see 1411 which is a fix to that because the intent was NOT to keep someone who is significantly injured from this, the ability to receive this kind of benefit. I promised Mr. Effertz I would stand up and it is the agency and the intent of this legislation as well as 1411 to fix the issue that is not just catastrophic, but the agency may designate who is significantly injured that may not qualify for catastrophic benefits. You will see that in 1411.

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1038 B

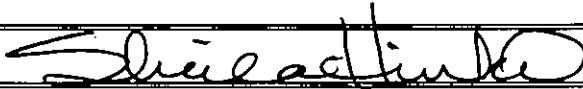
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **March 7, 2007**

Recorder Job Number: **4568 @ 7:50m**

Committee Clerk Signature



WSI bill – additional benefits payable:

Motion for a DO PASS from S Potter

Second from S Wanzek

Roll Vote for DO PASS HB 1038 – 7-0-0 Passed

Carrier: Klein

REPORT OF STANDING COMMITTEE (410)
March 9, 2007 2:27 p.m.

Module No: SR-45-4892
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1038: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1038 was rereferred to the Appropriations Committee.

2007 SENATE APPROPRIATIONS

HB 1038

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1038

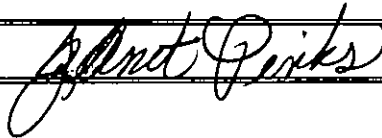
Senate Appropriations Committee

☐ Check here for Conference Committee

Hearing Date: March 19, 2007

Recorder Job Number: 5238

Committee Clerk Signature



Minutes:

Senator Holmberg opened the hearing on HB 1038.

Tim Wahlin, staff accountant for WSI, testified in favor of the bill. The bill is a five part benefit increase bill. The bill originated with the Workers Compensation Legislative Review

Committee. Over an 18 month period the committee took testimony. The bill represents the work compiled into 5 subsections. Overall the bill will affect both reserves at WSI as well as statewide premium increases and future rates to the extent it is between \$4.25 million to \$6.75 million reserve impact, and a 1.5 – 2% increase in statewide premium levels.

Senator Bowman asked if they have the support behind their industry that pays the bills for this so everyone is up front on this, if they are going to get an increase in premium, they support the concept.

Mr. Wahlin said that is correct. This came through unanimously.

Senator Christmann said he sees 5 different areas where benefits are being increased. Can he break the increase into categories?

Mr. Wahlin said he has the actuarial impact statement (attached). It is broken into the five subsections. Each subsection has a description of the bill increase followed by the reserve level impact, followed by the future rate level impact.

Senator Krebsbach asked if these are new benefits or are they benefits that were reduced or taken away in the past.

Mr. Wahlin said each benefit is an augmentation or a change in an existing benefit. The augmentation increased the benefit levels. Section 1 increases an existing benefit by \$50,000 which is currently in place for catastrophically injured, changes for real estate to accommodate them. Likewise it is also for the purchase of adaptations for motor vehicles which has been increased by \$100,000 just for the lifetime of the catastrophically injured worker. That \$100,000 could be for the purchase and maintenance of a specially equipped motor vehicle. They have changed in subsection 2 an additional benefit payable rate. This is designed to go back and address some of the injured workers who were negatively impacted by some of the 1995 changes. That will increase a calculation, giving them an additional benefit. Subsection 3 has extended the death benefit to the catastrophically injured worker. Currently North Dakota Workers Compensation law states that unless there is a death that is a direct result of an injury within 6 years, it is not payable. For the catastrophically injured worker, it extends the time period indefinitely. Subsection 4 broadens and addresses an area implemented last session which allows WSI to give educational loans to injured workers across the state. As it was set up, it was tied to the Bank of North Dakota's prime. As time went by, they realized the prime of the Bank of North Dakota does not track the federal loan rate and as a result their loan rate was slightly higher than the federal loan rate, making it a less desirable loan package and that was not the intent. Subsection 5 shortens the waiting period for supplementary benefits for claimants who have claims after January 1, 2006.

Jennifer Clark, Legislative Council, legal staff on the interim workers compensation review committee, appeared to answer questions.

Senator Holmberg asked if they had hearings around the state.

Ms. Clark said yes.

Senator Holmberg asked if this has support of the various players.

Ms. Clark said the committee was made up of 6 legislators and they worked closely with Workers Compensation, individuals from the Office of Independent Review who worked directly with the injured workers who could only come to the committee if their case was final if they did not have a pending appeal, Mr. Kokler (?) from the Office of Independent Review. It took a half day for each of the injured workers to present their case. They did not hear that many injured workers although they heard most of the people who applied. It was a lengthy review of each of their circumstances.

Senator Holmberg asked if the purpose of the committee was to see if there were parts of the process that needed to be changed or quirks in the law that were hard to explain.

Ms. Clark said the committee did not change the outcome of the injured worker who presented. The intent was to see if the law was being applied as the legislators had assumed it would be. If it was being applied correctly, did it have the desired outcome? Was it desirable to change the law?

Senator Holmberg asked if that is what we have here today.

Ms. Clark said that's right.

Senator Christmann said at the bottom of the sheet is says \$4.25 - \$6.75 million increase in discounted reserve levels. How does that correlate to the additional benefits paid out in the biennium?

Ms. Clark said that is a fantastic question but she is not the one to answer it. Mr. Wahlin would be the one to answer. The committee did receive testimony on fiscal impact of the changes.

One of the things that was very important to the committee was whether there was approval from the board. These are items the committee and the WSI board supported.

Tim Wahlin, Workforce Safety Insurance, appeared to answer Senator Christmann's question. Last year, the organization had earned premiums of \$121.6 million; they were very closely tied to benefits paid out. North Dakota Workers Compensation pays not only wage replacement benefits but also medical benefits as well as the appliances associated with those medical benefits. In any given year, they are over \$120 million. The reported \$4.25 - \$6.75 million increase in the discounted reserve level, they will discount the reserve currently at 5.25% per annum. That discount is projected over time because they don't expect those reserves to be paid out. The actual dollar impact, ignoring the discount, is more in the area of \$13 million. Senator Christmann asked over what period of time?

Mr. Wahlin said they can't say with any specificity, because most claims would be over 12 months, some would go on for 30 – 40 years. It depends on each specific injury how long the reserves are projected.

Senator Christmann asked if he has some idea of how much additional costs we will incur on an annual basis if we pass the bill.

Mr. Wahlin said he apologize, he was not following the question. The additional dollars per year would be reflected in the 1.5 – 2% premium increase. That is the increase in future premiums. Because we are changing the benefit schedule which has already been reserved and is already on the books, that is where the reserve impact comes in. He explained the numbers associated with the premium increases (meter 15:20). If his math is correct, they are looking at \$2.4 million per year.

Senator Bowman asked if the business people are in support of this, he wants to be sure they are aware the premiums are going to go up. If they are in favor of it, it is a good bill.

Mr. Wahlin said from testimony from all of the business community, he can think of no one who testified against it.

Senator Holmberg asked if he was involved in the interim study.

Mr. Wahlin said yes.

Senator Holmberg said the comments about testimony on the bill reflected what happened in the legislature since January but also what happened during the interim.

Mr. Wahlin said that is correct.

Senator Krebsbach asked if these changes will be sustained or if we will have to go in and reduce the benefits again. She also said regarding the reconstruction for an injured worker, this bill says not to exceed \$50,000 and we had another bill where they were allowed up to \$100,000. She asked for an explanation.

Mr. Wahlin said the note of \$50,000 in the bill is what the allocation was for all of the real estate improvement and vehicle modifications over the claim. They have gone back and left the \$50,000 in but assigned that only to real estate modifications. On top of that, they have included the \$100,000 over the life of the claim just for motor vehicle purchase, repair and retrofitting. So now there are two stand alone categories where there used to be one. The committee heard testimony on 1411 two days ago that looked similar to this. The only difference in this and 1411 is 1411 gives the organization further breadth in awarding the benefit package not just to the catastrophically injured but also gives the organization some flexibility in determining whether there are other extenuating circumstances for the non catastrophically injured which would cause this benefit award.

Senator Holmberg said we passed that bill out the other day.

Mr. Wahlin said yes.

Senator Robinson asked if this bill could be characterized as a rebalancing. Part of this goes back to 1995 and over the past few years there has been some reduction in premiums because of overall costs.

Mr. Wahlin said that is the case. To be very candid, they are in a position because of management and investments, things have come together to put them on much firmer financial footing. It is a balancing and these are benefits that they are addressing because they believe they are sustainable. In regards to Senator Krebsbach's question, it is the organization's belief that these changes are absolutely sustainable.

Senator Kilzer asked if the last one in section 5 is the big one in fiscal terms, changing the period for supplemental benefits from 7 years to 3 years. They have had that for 1 ½ years. How is it going, are there more numbers than anticipated? Are there people attempting to qualify for this? What is the status?

Mr. Wahlin said the last session passed HB 1171 which recharacterized and took a look at how benefits were paid. They are in a two year time frame to give an injured worker a final determination of where they fit into the system, it speeds everything up. It is working very well. They will know the details in a year or so. They are trying to front end decision making on these claims. They are trying to front end information getting out to the injured worker so the workers can make their decisions accordingly.

Senator Holmberg closed the hearing on HB 1038.

Date: 5/16Roll Call Vote #: 1**2007 SENATE STANDING COMMITTEE ROLL CALL VOTES**
BILL/RESOLUTION NO. 1038Senate Appropriations

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do PassMotion Made By ChristmanSeconded By Krebsbach

| Senators | Yes | No | Senators | Yes | No |
|--------------------------------|-----|----|---------------------------|-----|----|
| Senator Ray Holmberg, Chrm | ✓ | | Senator Aaron Krauter | ✓ | |
| Senator Bill Bowman, V Chrm | ✓ | | Senator Elroy N. Lindaas | ✓ | |
| Senator Tony Grindberg, V Chrm | | | Senator Tim Mathern | | |
| Senator Randel Christmann | ✓ | | Senator Larry J. Robinson | ✓ | |
| Senator Tom Fischer | ✓ | | Senator Tom Seymour | ✓ | |
| Senator Ralph L. Kilzer | ✓ | | Senator Harvey Tallackson | ✓ | |
| Senator Karen K. Krebsbach | ✓ | | | | |
| Senator Rich Wardner | ✓ | | | | |
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Total (Yes) 12No 0Absent 2Floor Assignment 1BL

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

Klein

REPORT OF STANDING COMMITTEE (410)
March 16, 2007 1:58 p.m.

Module No: SR-50-5590
Carrier: Klein
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1038: Appropriations Committee (Sen. Holmberg, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1038 was placed on the
Fourteenth order on the calendar.

2007 TESTIMONY

HB 1038

2007 House Bill No. 1038
Testimony before the House Industry, Business and Labor Committee
Presented by: Tim Wahlin, Staff Counsel
Workforce Safety and Insurance
January 10, 2007

same testimony given to Senate

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety and Insurance (WSI). On behalf of WSI and its Board of Directors, I am here to testify in support of HB 1038. This bill represents a portion of the work done by the interim Legislative Workers' Compensation Review Committee over a series of seven hearings. During these hearings, individual workers' compensation claimants were allowed to present a topic of concern with the current law(s) to the Committee. As a result, Committee members (in cooperation with WSI and its Board of Directors) propose HB 1038 for the legislature's consideration. The WSI Board of Directors supports this bill.

The Bill before you is divided into five subsections. Each of these five subsections addresses a different area of workers' compensation law. I will address each in order.

Section 1. This section expands benefits available for catastrophically injured employees. The changes allow the Organization to make available up to \$100,000 to provide cost effective, specially equipped motor vehicles and/or motor vehicle adaptations to catastrophically injured employees. The \$100,000 limit is for the life of the injured employee and represents a total allowed expenditure, irrespective of any subsequent claims. Prior to this amendment, the Organization had authority to pay no more than \$50,000 for any remodeling or adaptations to real estate as well as alterations to motor vehicles for the catastrophically injured. The \$50,000 remodeling payment stays in effect; however, it is only applicable to real estate. This Bill represents the first time an amount has been assigned specifically for the purchase and/or modification of a vehicle.

It is anticipated that the fiscal impact of Section 1 of this proposal would increase discounted reserve levels by approximately one million dollars. The anticipated premium rate increase to cover the costs of future claims would be less than one-half of one-percent of statewide premium levels.

Section 2. This amendment establishes an alternative benefit calculation for those individuals who incurred a compensable injury prior to August 1, 1995, yet realized a date of disability after August 1, 1995.

This change seeks to address inequities which arose in this population as compared to those individuals who received a continuous stream of benefits beginning prior to August 1, 1995. The effect of this amendment is to provide an alternative Additional Benefit Payable (ABP) calculation upon eligibility for designated permanent total disability recipients. This amendment would allow the recipient to receive an ABP calculation based on the date of injury rather than the date of disability.

The individuals who are eligible to receive this alternative calculation are injured employees incurring a compensable injury prior to August 1, 1995, yet have a date of disability or a successful reapplication for disability after July 31, 1995. The injured employee must also be determined permanently and totally disabled prior to August 1, 2007. The beginning date for calculation of their ABP will be presumed to be the date of injury.

Briefly, let me illustrate a situation showing the effect of the amendment and the reasons the Organization supports it. In 1995 and 1997 the Legislature instituted a retirement presumption and corresponding eligibility for ABP (Attachment A). This legislation was intended to terminate wage replacement benefits when an injured employee retired, yet still provide a transitional benefit called "Additional Benefits Payable" based on the length of time and amount of wage replacement benefits received.

The North Dakota Supreme Court subsequently determined the retirement presumption could not terminate benefits of an injured employee who was already receiving ongoing benefits prior to July 31, 1995. As a result, an injured employee on uninterrupted wage replacement benefits as of July 31, 1995, would receive the same level of benefits for life and not be affected by the ABP law.

Alternatively, an injured employee who experienced a break in benefits after July 31, 1995, would -at their time of retirement-- convert to an ABP. In other words, the ABP retirement presumption would apply to anyone with a date of injury before July 31, 1995, but who then subsequently had a break in benefits after that date because they attempted to return to work.

The fiscal impact of Section 2 of this proposal would apply to 41 known claims and increase the discounted reserve levels by approximately \$750,000. The proposal will have no premium rate level impact as it does not apply to future claims.

Section 3. This amendment expands eligibility for death benefits to survivors of catastrophically injured employees. This change specifically allows death benefits to be paid outside the six-year statute of limitations for injured employees who have been designated as catastrophically injured. The catastrophically injured employees were chosen in an effort to compensate the survivors of those employees who have sustained the most severe injuries, and who, many times provided extensive care to the catastrophically injured employee during his or her life. This alteration does not change the requirement that the death be a direct result of an injury sustained in the course of the injured employee's employment.

Based on the known, married catastrophic claims, the fiscal impact of Section 3 on discounted reserve levels would be up to three million dollars. The anticipated premium rate increase to cover the costs of future claims would be less than one-half-of-one-percent of statewide premium levels.

Section 4. This is an amendment to the fifteen million dollar WSI Educational and Revolving Loan Fund established in the 59th Legislative Assembly. The amendment is intended to expand the class of individuals eligible for these low-interest student loans as well as allow WSI the flexibility to reduce the loan level from its current rate.

Under this amendment, the class is expanded to include surviving spouses and dependent children of injured employees whose death has resulted from a compensable injury. Currently, only individuals with a work related injury may qualify. Additionally, the amendment gives the Organization flexibility in setting interest rates for these loans. As the statute is currently written, rates are set based on the Bank of North Dakota's prime interest rate. Consequently, our rates are higher than those available under other loan programs. As a result, we have not achieved the participation levels anticipated. It is expected these amendments will allow the Organization flexibility in establishing competitive rates thereby increasing participation in this program.

Section 4 of this proposal will have no material impact on reserve or premium rate levels.

Section 5. This section is an amendment to supplementary benefits. Supplementary benefits are payable to an individual who has been deemed permanently and totally disabled and has been receiving disability benefits for seven consecutive years; and to a survivor who has been receiving death benefits for a period of seven consecutive years. These benefits are essentially cost of living adjustments.

This amendment adjusts the waiting period for eligible recipients filing claims after December 31, 2005. For this group, the eligibility period has been shortened to at least three consecutive years. The shortening of the eligibility period is a change which creates a compliment to amendments made under HB 1171 during the 59th Legislative Assembly.

House Bill 1171 (2005) instituted comprehensive reforms in WSI's benefit structure. In relevant part, this legislation established a two-year target in which to identify an injured employee's course through the workers' compensation system. This target applies to the determination of permanent and total disability. Likewise, HB 1171 (2005) established a more concrete test for permanent and total disability designation. This amendment will accelerate cost of living adjustments (COLA) to this class of permanently and totally disabled workers to three years. Alteration of the timeframe in HB 1171 (2005) has logically led to the alteration of the timeframe for supplemental benefit eligibility.

Section 5 of this proposal would apply to claims filed after December 31, 2005 and the fiscal impact would increase discounted reserve levels by approximately one-and-a-half to two million dollars. The anticipated premium rate level impact to cover the costs of future claims would be a one to one-and-a-half percent increase in statewide premium levels.

Section 7. The bill is drafted with an emergency clause to provide for immediate application upon approval.

For the above stated reasons, WSI requests your favorable consideration of HB 1038. I will be glad to answer any questions you may have at this time.

ATTACHMENT A – ABP LAW AND CALCULATION CHART

65-05-09.4. Additional benefit payable. If an injured employee's benefits cease under subsection 2 of section 65-05-09.3, the organization shall pay to that employee every twenty-eight days a benefit based on the length of time the injured employee received disability benefits during the term of that claim. The organization shall pay the injured employee's additional benefits until the employee's death or for a period of time not to exceed the total length of time the employee received disability benefits under sections 65-05-08, 65-05-08.1, 65-05-09, and 65-05-10, and a vocational rehabilitation allowance under chapter 65-05.1, for that claim, whichever occurs first. The benefit is based on the injured employee's compensation rate before any applicable social security offset. The percentage of that final payment payable as the additional benefit is:

- At least 1 year and less than 3 years of disability 5 percent of weekly benefit.
- At least 3 years and less than 5 years of disability 10 percent of weekly benefit.
- At least 5 years and less than 7 years of disability 15 percent of weekly benefit.
- At least 7 years and less than 9 years of disability 20 percent of weekly benefit.
- At least 9 years and less than 11 years of disability 25 percent of weekly benefit.
- At least 11 years and less than 13 years of disability 30 percent of weekly benefit.
- At least 13 years and less than 15 years of disability 35 percent of weekly benefit.
- At least 15 years and less than 17 years of disability 40 percent of weekly benefit.
- At least 17 years and less than 20 years of disability 45 percent of weekly benefit.
- Twenty or more years of disability 50 percent of weekly benefit.

However, the organization shall pay to an injured employee who has been determined to be catastrophically injured as defined by subdivision c of subsection 2 of section 65-05.1-06.1 an additional benefit, until the death of the employee, equal to one hundred percent of the final payment of the disability benefit that was discontinued under subsection 2 or 3 of section 65-05-09.3.

Timothy Effertz
11600 20 Ave. SE
Minot, ND 58701

Industry Business and Labor Committee

January 10, 2007

Mr. Chairman, and members of the Committee:

We have worked for about 15 years to get a bill to cure some social injustices in workers compensation. Each session, I have been here to plead our cause. Each session this Committee requested further study and recommended a do not pass. There has been too much time used for study, and it is time to act. This year I come to support the effort by WSI and Legislative committees to find a solution. It is not a perfect bill, but it is much better than no help and more study. This bill would protect my personal interests, but it would leave other injured persons and employers unprotected. Please recommend a "do pass".

There is a problem with certain words used in this bill. Those words appear on the face to be without negative consequence. Let me supply some background then my suggestions.

All benefits under Title 65 must by NDCC 65-01-01 be "sure and certain. Those benefits are required to be so because they are in exchange for the State having abolished the constitution's Article 1, Section 9 rights of injured workers and their families to have access to the courts for collection for damage caused by work injuries. Our courts call it a fair trade.

The relief guaranteed by NDCC 65-05-01, such as disability benefits, medical benefits, impairment benefits, and death benefits were included in the law in 1919 at the time of enactment. Each and every benefit must be "sure and certain" to protect employers and injured employees. A benefit is not "sure" if it is not clearly set out in law, and it is not "certain" if it relies on the sole discretion of the organization wherein no appeal is granted.

The term "Catastrophic injury" was created with the inception of rehabilitation benefits. Rehabilitation benefits were always discretionary benefits in order to avoid abuse by injured workers to get a free education on demand. If it would make economic sense, the Organization has a right in its sole discretion to exchange further training of an injured worker in order to get the worker back to work. No worker can demand a 4-year college education by use of the court. Further no employer can appeal a wrong decision to educate an employee at her expense. Rehabilitation benefits are not "sure and certain" relief, but they are instead an exchange for "sure and certain" relief through a compromise that is better for everyone involved.

Now----- the point I hope to have made is **that any benefit that requires being designated as "catastrophically injured" is not a sure and certain benefit.** Death benefits and medical benefits have always been "sure and certain" benefits. There is a trend towards letting WSI have more discretion in administration of workers compensation. This is most evident in the change from a State Administrative Agency to an insurance company. It is reflected in settlement options. I must admit that there is some benefit to those of us who have learned to not kill the messenger bringing bad news. There was a time in my 45-year career of disability when I was totally frustrated with quarreling over a \$.25 roll of tape or bandages. At that time we could wait for a year for a simple decision like those decisions made in minutes now by telephone or email. There was a time when none of the claims adjusters could type, and every payment was the result of an order signed by an executive and typed by hand by a secretary whenever the request got to the top of her huge pile. There were extreme delays and extreme frustration. When I look back 40 years, life is good today by comparison. Still, I cannot trust that the Organization will not be commandeered again by some over-zealous group who hate the injured workers or employers. I fear that we might return to the "scorched-earth policies" of the late 1980s, where failure to perform was normal, and when failure to pay benefits was commended.

The point is: somehow it must be made possible to appeal a decision or lack of decision of whether someone is "catastrophically injured. Without that appeal, sometime in the future the zealots will simply decide to never, or always, find anyone to be "catastrophically injured". There appear to be two ways to accomplish my suggestion.

The Committee might place notice in the minutes indicating that use of the term "catastrophically injured" was to make every seriously injured employee eligible, including those that the Organization in its sole discretion determined were technically not eligible but who deserve the benefits. A good example is failure to designate a worker to be catastrophically injured before he suddenly died. Another is the case where an injured worker has received temporary total benefits for many years, but they should have been made permanent.

I want my wife to know that when I die, she will receive death benefits. Anything less than "sure and certain" death benefits is a social injustice. Her rights to take my employer to court were abolished like mine. She is guaranteed "sure and certain" benefits in exchange. She has never received any benefits to date, but she worked 40 years to help me anyway. In order for this legislation to pass constitutional muster, a provision must be included to make designation of me, or any other worker, as "catastrophically injured" disappear as a roadblock, but instead serve as a method of including any disabled employee the Organization chooses to include.

Mr. Chairman: I propose that you ask the author of this bill to stipulate for the record whether the use of the words "catastrophically injured" is intended to exclude any worker simply because the Organization failed to designate that employee to be included. The question might be: "Is it the intent of HB 1038 to allow WSI to simply fail to designate an employee as "catastrophically injured", and thereby fail to pay death benefits, and not

allow an appeal by the intended beneficiaries?" It might also be useful to ask if the fiscal note contemplated inclusion or exclusion of benefit candidates through use of the term "catastrophic injury". We must know for the record that the intent of this legislation having included the term "catastrophic injury" is to be inclusive of all those who might deserve benefits, and to never exclude those who are permanently and totally disabled but not designated as "catastrophically injured".

Mr. Chairman: If you please, it might be better to simply eliminate the words "catastrophically injured" by amendment. To do so you could strike the words on page 3 at Section 7 d. after the word "injury" to after the word "65-05.1-06". The effect would be to include all classes of persons receiving death benefits into a single class. Further; you could also at page 1, Section 1 at 5, strike the words including "a" to the end of the sentence then replace those words with "an injury requiring specially equipped homes, work areas, or automobiles." This would allow a dispute by either an employer or an employee to be resolved by appeal. (The last page shows how these would read.)

Mr. Chairman: I think those changes would cause this legislation to avoid lots of expensive litigation as well as lots of uncertainty on the part of the injured workers and employers.

Mr. Chairman: These benefits need to be made "sure and certain" by whatever means you choose. No employer or injured employee should be forced to fear the very organization created to protect us. In the event that this bill was a political compromise that must either pass or fail exactly as written: at the very least, some record of the legislative intent must be recorded for use by the court in interpreting this law when it is tested. If you amend out the words "catastrophically injured", I doubt that it will ever see a test in court.

Mr. Chairman: I think that the intent of this legislation was to be inclusive, but that the literal reading of this law, as required by a recent amendment to NDCC 65-01-01, must be interpreted to be exclusive. I wish to never address this committee again on this subject. Please help make it protect all the employers and injured employees by allowing an appeal if there is a dispute.

Thank you

Timothy Effertz

ILLUSTRATION OF THE SUGGESTED CHANGES

SECTION 1. AMENDMENT. Subsection 5 of section 65-05-07 of the North Dakota Century Code is amended and reenacted as follows:

5. If the injured employee sustained *an injury requiring specially equipped homes, work areas, or automobiles*:

- a. The organization may not pay more than an amount not to exceed fifty thousand dollars to provide permanent additions, remodeling, or adaptations to real estate it determines necessary for a worker who sustains a catastrophic injury as defined in chapter 65-05.1. The fifty thousand dollar limit is for the life of the injured employee, regardless of any subsequent claim. This subsection subdivision does not allow the organization to purchase any real estate or motor vehicles.
 - b. The organization may pay an amount not to exceed one hundred thousand dollars to provide the most cost-effective, specially equipped motor vehicle or vehicle adaptations it determines medically necessary. The organization may establish factors to be used in determining whether a specially equipped motor vehicle or adaptation is necessary. Under this subdivision, the organization may not pay for insurance of or maintenance of the motor
- Page No. 1 70198.0200

SECTION 3. AMENDMENT. Section 65-05-16 of the North Dakota Century Code is amended and reenacted as follows:

65-05-16. Death benefits payable.

1. The organization may pay benefits under this chapter in the case of the death of an injured employee as the direct result of an injury sustained in the course of the injured 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 that has continued to the time of death, the death occurs within six years after the date of injury; or

d. If there has been disability that has continued to the time of death, the death occurs more than six years after the date of injury.

Red portion deleted

, and the injured employee
has been designated catastrophically injured as defined under section
65-05.1-06.1

2. The organization 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 a claim was not submitted by the deceased, the claim for death benefits is submitted within two years of the injury.



TESTIMONY OF WADE MANN
North Dakota Chamber of Commerce
HB 1038
March 7, 2007

Chairman Klein and members of the Senate Industry, Business and Labor Committee, I am Wade Mann, V.P. of Governmental Affairs of the North Dakota Chamber of Commerce.

During this legislative session, 16 local chambers of commerce in North Dakota are part of a coalition representing 7,236 business members that support the Legislative Policy Statements of the North Dakota Chamber. As a group we support HB 1038 and request a do pass vote from the committee.

The North Dakota Chamber supports fair and adequate protection for injured employees in the state within a stable, predictable and equitable system. The changes in this bill are important to our injured employees and allow for appropriate benefits to protect not only the injured employee but also a surviving spouse or dependent child. These additional benefits are fair and appropriate as part of a comprehensive workforce safety and insurance program.

HB 1038, Mann, Page 1

#2

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Thank you for the opportunity to appear before you. I would be happy to answer any questions.

Timothy Effertz
11600 20 Ave. SE
Minot, ND 58701

Industry Business and Labor Committee

March 7, 2007

Mr. Chairman, and members of the Committee:

We have worked for about 15 years to get a bill to cure some social injustices in workers compensation. This year I come to support the effort by WSI and Legislative committees to find a solution. HB 1038 is not a perfect bill, but it is much better than no help and more study. This bill would protect my personal interests. Please recommend a "do pass".

There is a problem with certain words used in this bill. Those words appear on the face to be without negative consequence. Let me supply some background.

All benefits under Title 65 must by NDCC 65-01-01 be "sure and certain. Those benefits are required to be so because they are in exchange for the State having abolished the constitution's Article 1, Section 9 rights of injured workers and their families to have access to the courts for collection for damage caused by work injuries. Our courts call it a fair trade.

The relief guaranteed by NDCC 65-05-01, such as disability benefits, medical benefits, impairment benefits, and death benefits were included in the law in 1919 at the time of enactment. Each and every benefit must be "sure and certain" to protect employers and injured employees. A benefit is not "sure" if it is not clearly set out in law, and it is not "certain" if it relies on the sole discretion of the organization wherein no appeal is granted.

The term "Catastrophic injury" was created with the inception of rehabilitation benefits. Rehabilitation benefits were always discretionary benefits in order to avoid abuse by injured workers to get a free education on demand. If it would make economic sense, the Organization has a right in its sole discretion to exchange further training of an injured worker in order to get the employee back to work. No employee can demand a 4-year college education by use of the court. Further no employer can appeal a wrong

decision to educate an employee at her expense. Rehabilitation benefits are not "sure and certain" relief, but they are instead an exchange for "sure and certain" relief through a compromise that is better for everyone involved.

The point is: WSI would use declaration of "catastrophically injured" as the sole measure of whether an employee is eligible. Somehow it must be made possible to appeal a decision or lack of decision of whether someone is "catastrophically injured" and therefore eligible for WSI benefits. Without that appeal, sometime in the future, the zealots will simply decide to never, always, or at least inconsistently, find workers to be "catastrophically injured".

At hearing in the House IB&L Committee, WSI assured us that it is not the intention of WSI to ever deny a disabled employee a benefit simply because WSI has failed to designate the employee to be classified as catastrophically injured. I think it would be appropriate that WSI also voice that intention before this committee. It is reasonable to measure the need for benefits based upon the definition of catastrophically injured, but it is unreasonable to base receipt of benefits within the sole discretion of WSI. If benefits are provided solely at the discretion of WSI with no appeal, those benefits are neither sure nor certain, as required by section 65-01-01.

Please recommend a "do pass" for HB 1038 as well as a sister bill HB 1411 to be heard later. This is the first session when I have not apposed any legislation proposed by workers compensation. There has been some serious cooperation and work done to provide good bills.

Thank you

Tim

Actuarial Statement for 2007 HB 1038: Legislative Workers Compensation Review Committee Benefit Proposal

| Section # | Description | Reserve Level Impact (Existing Claims) | Rate Level Impact (Future Claims) |
|-----------|---|---|--|
| 1 | Provides an allowance to fund for specially equipped motor vehicles or vehicle adaptations for the catastrophically injured. The allowance may not exceed \$100,000 for the life of the claim. | Although difficult to quantify, it is estimated that approximately half of the 44 known open catastrophic cases within the system may be in a position to utilize this type of allowance. Based on this estimate, it is anticipated the proposal would increase required discounted reserve levels by approximately \$1 million. Should other existing claims emerge to a catastrophic status, the estimate would increase accordingly. | Historically, WSI incurs approximately 3 to 5 claims per year that result in a catastrophic designation. Based on this assumption, the anticipated premium rate level impact would be less than 0.5% increase in statewide premium levels. |
| 2 | Provides an alternative additional benefit payable (abp) calculation upon abp eligibility for designated permanent total disability recipients that were injured prior to August 1, 1995 and had a recurrent disability after July 31, 1995. | The proposal would provide an alternative additional benefit payable (abp) calculation at time of abp eligibility for 41 known claims. The proposal would increase discounted reserve liabilities by approximately \$750,000. | Will result in no rate level impact as this proposal does not apply to future claims. |
| 3 | Expands the population that is potentially eligible for death benefits (lifetime maximum of \$250,000) to include the surviving spouses of the catastrophically injured as defined in statute if the disability has continued until time of death; the death occurs more than six years after the date of injury; and the death was a direct result of the work injury. | The number of known catastrophics that are active within our system is 44. Based on our known catastrophic database, approximately 60% are married and have the potential of having a surviving spouse. Based on these assumptions, we would anticipate an increase in discounted reserve levels of up to \$3.0 million dependent upon whether or not the death was a result of the work injury. The booked discounted reserve increase would be somewhere within this range. | Historically, WSI incurs approximately 3 to 5 claims per year that result in a catastrophic designation. Based on our known catastrophic database, approximately 60% are married and have the potential of having a surviving spouse. Based on these assumptions, the overall rate level impact would be less than 0.5% increase in overall premium rate levels. |
| 4 | Broadens the criteria for those potentially eligible for the educational revolving loan fund to include a surviving spouse or dependent child of an injured employee whose death resulted from a compensable injury. The proposal also sets a maximum interest rate of 1% below the Bank of North Dakota's prime interest rate. | No material impact on reserve levels is anticipated. | No material impact on premium rate levels is anticipated. |
| 5 | Shortens the period for supplementary benefit eligibility from 7 consecutive years to 3 years for Permanent Total Disability (PTD) claims subject to 2005 HB 1171 (applies to claims filed after December 31, 2005). HB 1171 provided for a more clear and concise definition of PTD which will allow for more expedient PTD determinations. | The proposal would apply to claims filed after December 31, 2005. The anticipated reserve level impact as of the anticipated effective date of this legislation (August 1, 2007) would be an increase in discounted reserve levels of approximately \$1.5 to \$2.0 million. | Currently, it is estimated that 40 Permanent Total Disability claims arise out of each injury year. Based on this assumption, the proposal will serve to increase overall premium rate levels between 1.0% and 1.5%. |
| | Overall Impact of Proposal | \$4.25 to \$6.75 million increase in discounted reserve levels. | 1.5% to 2.0% increase in overall premium rate levels. |