

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2389

2007 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2389

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2389**

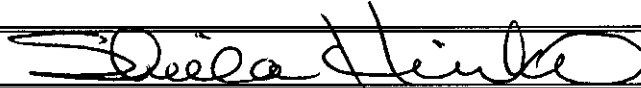
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 6, 2007**

Recorder Job Number: **2903**

Committee Clerk Signature



WSI Impairment Awards - PPI

Dave Kemnitz – Pres. NDAFLCIO - in Favor

TESTIMONY # 1 [went over testimony]

S Klein: Can you tell us what we're doing here, what would the bill do?

D Kemnitz: What's the harm, the wrong and will it fix it. It could go either way. PPI is a "one time" or adjustment. What does it do? Lines 6-8 addressed the situation. Not a periodic payment, it is a one time payment. [Covered conversions, refers to bill, converts to hard dollar amount]

S Klein: If you have a PPI award and get a dollar amount, Social Security has offset that amount. We're addressing the federal issue to have something to stand on if it went to a court case.

D Kemnitz: You got it.

S Hacker: If it is declared a permanent impairment, there used to be a time line, you're re-evaluated and go into rehab, etc. and you find that you don't have that same amount of impairment anymore, it's less, so the amount that's paid out up front, but you're no longer in that classification, what happens then?

D Kemnitz: I would refer to the bureau, if you have an award for an impairment at that time, you have improved then, to get a PPI you have to have examinations and tests and test of impairment is quite right.

S Potter: There's no actual difference in the way it's paid out, right? We're just writing into the law this way, either today we're cutting a check for \$200,000 to somebody or we're not going to be cutting a check for \$200,000 after this. How does that work anyway? Weekly, monthly?

D Kemnitz: It is a one time payment, not periodic. It is for Permanent Partial Impairment and goes by the % when awarded.

S Potter: 85% - \$90,000 is that monthly or just one time?

D Kemnitz: One time, but now Social Security off sets the amount.

S Wanzek: In the scenario, if this passes, has Social Security commented on this? Would they do it differently?

D Kemnitz: this is to stop the offset. Social Security thinks it's timely. Its not over a period of time, it is just one time.

Favor?

Bill Shalhoob – ND Chamber of Commerce - In Favor

TESTIMONY # 2 [covered testimony]

This changes PPI awards.

S Heitkamp: Does the bill really do anything?

B Shalhoob: It will do something, it allows the people to keep their more of their money.

Sebald Vetter – In Favor

[Gave examples of person who got PPI and then found out they lost a lot of money from Social Security. They had to pay income tax on the money.]

NEUTRAL?

Tim Wahlen – Staff of WSI - Neutral

TESTIMONY # 3 [went over testimony]

S Hacker: The information from the schedule needs to be updated, you're saying it could be updated every 2 years.

T Wahlen: It could become problematic with another source.

S Heitkamp: In reference to make sure it is correct, can you draft an amendment?

T Wahlen: Yes

CLOSE

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2389 B**

Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **February 7, 2007**

Recorder Job Number: **3021**

Committee Clerk Signature

Relating to PPIs Permanent Impairment Awards

S Hacker: Concern was the schedule is old.

Stephanie – Intern – has the sheet to update, getting ready to pass out.

S Potter: The statute as I read it, line 22, first page, "they're going to do it," [WSI] to order them to update that schedule annually. The legislature could review it but wouldn't have to as they are supposed to annual adjust it on average weekly rate.

S Hacker: Question is on appropriations.

S Behm: Should this be self funding?

S Klein: Every year the amount is adjusted for inflation and it changes. The issue is you get the settlement, get impairment award and Social Security says, "You got the impairment award, we're not going to send you the amount of money you had coming if you hadn't gotten that award." Are we going to be able to do anything? I think from 2 of the presenters we heard, "Hopefully." It is a Conrad/Dorgan issue as it needs to be addressed with the Social Security system in Washington and that's who we're fighting with. We need to update the chart to get it to the higher standard that would be accepted by everybody.

S Potter: They said, "We already do this," so there is no impact on the funds, we're gaming the Social Security system based on the court case. "Because you do it weekly, it must be a weekly payment." So now we're not basing it on weeks anymore.

S Hacker: Now we listing a lump sum dollar amount.

S Behm: So it goes from "weeks" to "dollars" now?

S Klein: Basically yes.

S Potter: By adjusting it on the currently weekly average, it is still based on those averages.

S Wanzek: When Social Security looks at it with the weak language in there that it's a replacement of lost earnings, VS a lump sum injury award. Can we move to adopt the amendments, I think we all understand them.

Motion to Move Amendments by S Wanzek

Second by S Hacker

Vote for Do Pass Amendments: 5 – 0 – 1 Passed [S Heitkamp not present]

Motion to Do Pass as Amended by S Potter

Second by S Wanzek

Vote for Do Pass As Amended: 6 – 0 – 1 Passed

FISCAL NOTE
Requested by Legislative Council
03/06/2007

Amendment to: Engrossed
 SB 2389

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 engrossed bill with amendments adds intent language relating to PPI awards and re-categorizes the awards within the PPI schedules in terms of a multiplier instead of weeks in an attempt to prohibit any offsets by Social Security on these types of awards.

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: Engrossed SB 2389 w/ House Amendments

BILL DESCRIPTION: Permanent Partial Impairment (PPI) Awards

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 engrossed bill with amendments adds intent language relating to PPI awards and re-categorizes the awards within the PPI schedules in terms of a multiplier instead of weeks in an attempt to prohibit any offsets by Social Security on these types of awards.

FISCAL IMPACT: Based on our understanding, the engrossed bill with amendments is not intended to change the existing PPI award payment structure, but rather express the amount of the awards within the structure in terms of a multiplier versus number of weeks. To the extent our understanding is correct; the proposal should have no impact on statewide reserve and premium rate levels.

DATE: March 6, 2007

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:	03/06/2007

FISCAL NOTE
 Requested by Legislative Council
 02/12/2007

Amendment to: SB 2389

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 engrossed bill adds intent language relating to PPI awards and re-categorizes the awards within the PPI schedules in terms of dollars instead of weeks in an attempt to prohibit any offsets by Social Security on these types of awards.

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: Engrossed SB 2389

BILL DESCRIPTION: Permanent Partial Impairment (PPI) Awards

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 engrossed bill adds intent language relating to PPI awards and re-categorizes the awards within the PPI schedules in terms of dollars instead of weeks in an attempt to prohibit any offsets by Social Security on these types of awards.

FISCAL IMPACT: Based on our understanding, the engrossed bill is not intended to change the existing PPI award payment structure, but rather express the amount of the awards within the structure in terms of dollars versus number of weeks. To the extent our understanding is correct, the proposal should have no impact on statewide reserve and premium rate levels.

DATE: February 12, 2007

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:	02/12/2007

FISCAL NOTE
 Requested by Legislative Council
 01/23/2007

Bill/Resolution No.: SB 2389

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 proposed legislation adds intent language relating to PPI awards and re-categorizes the awards within the PPI schedules in terms of dollars instead of weeks in an attempt to prohibit any offsets by Social Security on these types of awards.

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: SB 2389

BILL DESCRIPTION: Permanent Partial Impairment (PPI) Awards

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 adds intent language relating to PPI awards and re-categorizes the awards within the PPI schedules in terms of dollars instead of weeks in an attempt to prohibit any offsets by Social Security on these types of awards.

FISCAL IMPACT: Based on our understanding, the proposed legislation is not intended to change the existing PPI award payment structure, but rather express the amount of the awards within the structure in terms of dollars versus number of weeks. The conversion of the PPI weeks to dollars within the PPI schedule portion of the legislation appears to have used last year's PPI benefit rate and thus, PPI award amounts may have been inadvertently understated. Assuming the conversions are corrected to reflect existing PPI benefit levels, the proposal should have no impact on statewide reserve and premium rate levels.

DATE: February 2, 2007

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:	02/02/2007

Date: 2-7-07

Roll Call Vote: 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2389

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amme

Motion Made By Wanzek Seconded By Hauber

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Art	✓	
Senator Hacker, Nick, VC	NP		Senator Heitkamp, Joel	NP	
Senator Andrist, John	NP		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 5 No 0

Absent 2

Floor Assignment _____

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

Date: 2-7-07

Roll Call Vote: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2389

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken 2389 DO PAA.

Motion Made By Potter Seconded By Wanzek

Senators	Yes	No	Senators	Yes	No
Chairman Klein, Jerry	✓		Senator Behm, Art	✓	
Senator Hacker, Nick, VC	✓		Senator Heitkamp, Joel	✓	(LATE VOTE)
Senator Andrist, John	NP		Senator Potter, Tracy	✓	
Senator Wanzek, Terry	✓				

Total Yes 5 No 0

Absent _____

Floor Assignment Wanzek

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

REPORT OF STANDING COMMITTEE

SB 2389: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2389 was placed on the Sixth order on the calendar.

Page 4, line 7, replace "\$1,830" with "\$1,890"

Page 4, line 8, replace "\$1,830" with "\$1,890"

Page 4, line 9, replace "\$2,745" with "\$2,835"

Page 4, line 10, replace "\$2,745" with "\$2,835"

Page 4, line 11, replace "\$3,660" with "\$3,780"

Page 4, line 12, replace "\$3,660" with "\$3,780"

Page 4, line 13, replace "\$4,575" with "\$4,725"

Page 4, line 14, replace "\$4,575" with "\$4,725"

Page 4, line 15, replace "\$5,490" with "\$5,670"

Page 4, line 16, replace "\$5,490" with "\$5,670"

Page 4, line 17, replace "\$6,405" with "\$6,615"

Page 4, line 18, replace "\$6,405" with "\$6,615"

Page 4, line 19, replace "\$7,320" with "\$7,560"

Page 4, line 20, replace "\$8,235" with "\$8,505"

Page 4, line 21, replace "\$9,150" with "\$9,450"

Page 4, line 22, replace "\$10,980" with "\$11,340"

Page 4, line 23, replace "\$12,810" with "\$13,230"

Page 4, line 24, replace "\$14,640" with "\$15,120"

Page 4, line 25, replace "\$16,470" with "\$17,010"

Page 4, line 26, replace "\$18,300" with "\$18,900"

Page 4, line 27, replace "\$20,130" with "\$20,790"

Page 4, line 28, replace "\$21,960" with "\$22,680"

Page 4, line 29, replace "\$23,790" with "\$24,570"

Page 4, line 30, replace "\$25,620" with "\$26,460"

Page 4, line 31, replace "\$27,450" with "\$28,350"

Page 5, line 1, replace "\$29,280" with "\$30,240"

Page 5, line 2, replace "\$31,110" with "\$32,130"
Page 5, line 3, replace "\$32,940" with "\$34,020"
Page 5, line 4, replace "\$34,770" with "\$35,910"
Page 5, line 5, replace "\$36,600" with "\$37,800"
Page 5, line 6, replace "\$38,430" with "\$39,690"
Page 5, line 7, replace "\$40,260" with "\$41,580"
Page 5, line 8, replace "\$42,090" with "\$43,470"
Page 5, line 9, replace "\$43,920" with "\$45,360"
Page 5, line 10, replace "\$47,580" with "\$49,140"
Page 5, line 11, replace "\$51,240" with "\$52,920"
Page 5, line 12, replace "\$54,900" with "\$56,700"
Page 5, line 13, replace "\$58,560" with "\$60,480"
Page 5, line 14, replace "\$62,220" with "\$64,260"
Page 5, line 15, replace "\$65,880" with "\$68,040"
Page 5, line 16, replace "\$69,540" with "\$71,820"
Page 5, line 17, replace "\$73,200" with "\$75,600"
Page 5, line 18, replace "\$76,860" with "\$79,380"
Page 5, line 19, replace "\$80,520" with "\$83,160"
Page 5, line 20, replace "\$85,095" with "\$87,885"
Page 5, line 21, replace "\$89,670" with "\$92,610"
Page 5, line 22, replace "\$94,245" with "\$97,335"
Page 5, line 23, replace "\$98,820" with "\$102,060"
Page 5, line 24, replace "\$103,389" with "\$106,785"
Page 5, line 25, replace "\$107,970" with "\$111,510"
Page 5, line 26, replace "\$112,545" with "\$116,235"
Page 5, line 27, replace "\$117,120" with "\$120,960"
Page 5, line 28, replace "\$121,695" with "\$125,685"
Page 5, line 29, replace "\$126,270" with "\$130,410"

Page 5, line 30, replace "\$130,845" with "\$135,135"
Page 5, line 31, replace "\$135,420" with "\$139,860"
Page 6, line 1, replace "\$139,995" with "\$144,585"
Page 6, line 2, replace "\$144,570" with "\$149,310"
Page 6, line 3, replace "\$149,145" with "\$154,035"
Page 6, line 4, replace "\$153,720" with "\$158,760"
Page 6, line 5, replace "\$158,295" with "\$163,485"
Page 6, line 6, replace "\$162,870" with "\$168,210"
Page 6, line 7, replace "\$167,445" with "\$172,935"
Page 6, line 8, replace "\$172,020" with "\$177,660"
Page 6, line 9, replace "\$176,595" with "\$182,385"
Page 6, line 10, replace "\$181,170" with "\$187,110"
Page 6, line 11, replace "\$185,745" with "\$191,835"
Page 6, line 12, replace "\$190,320" with "\$196,560"
Page 6, line 13, replace "\$194,895" with "\$201,285"
Page 6, line 14, replace "\$199,470" with "\$206,010"
Page 6, line 15, replace "\$204,045" with "\$210,735"
Page 6, line 16, replace "\$208,620" with "\$215,460"
Page 6, line 17, replace "\$213,195" with "\$220,185"
Page 6, line 18, replace "\$217,970" with "\$224,910"
Page 6, line 19, replace "\$222,345" with "\$229,635"
Page 6, line 20, replace "\$226,920" with "\$234,360"
Page 6, line 21, replace "\$231,495" with "\$239,085"
Page 6, line 22, replace "\$236,070" with "\$243,810"
Page 6, line 23, replace "\$241,560" with "\$249,480"
Page 6, line 24, replace "\$247,050" with "\$255,150"
Page 6, line 25, replace "\$252,540" with "\$260,820"
Page 6, line 26, replace "\$258,030" with "\$266,490"
Page 6, line 27, replace "\$263,520" with "\$272,160"

Page 6, line 28, replace "\$269,010" with "\$277,830"

Page 6, line 29, replace "\$274,500" with "\$283,500"

Page 7, line 7, replace "\$11,895" with "\$12,285"

Page 7, line 8, replace "\$5,124" with "\$5,292"

Page 7, line 9, replace "\$7,320" with "\$7,560"

Page 7, line 10, replace "\$5,124" with "\$5,292"

Page 7, line 11, replace "\$4,026" with "\$4,159"

Page 7, line 12, replace "\$5,490" with "\$5,670"

Page 7, line 13, replace "\$4,026" with "\$4,159"

Page 7, line 15, replace "\$2,562" with "\$2,646"

Page 7, line 16, replace "\$3,660" with "\$3,780"

Page 7, line 17, replace "\$2,928" with "\$3,024"

Page 7, line 18, replace "\$2,928" with "\$3,024"

Page 7, line 19, replace "\$2,196" with "\$2,268"

Page 7, line 21, replace "\$42,822" with "\$44,226"

Page 7, line 22, replace "\$35,685" with "\$36,855"

Page 7, line 23, replace "\$27,450" with "\$28,350"

Page 7, line 24, replace "\$5,490" with "\$5,670"

Page 7, line 25, replace "\$3,294" with "\$3,402"

Page 7, line 26, replace "\$2,196" with "\$2,268"

Page 7, line 27, replace "27,450" with "\$28,350"

Renumber accordingly

2007 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2389

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. SB 2389

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: 02-28-2007

Recorder Job Number: 4063

Committee Clerk Signature

Shawn M Thomas

Minutes:

Chairman Keiser opened the hearing on SB 2389.

Sen. Nething introduced the bill.

Sen. Nething: I introduced SB 2389 at request with the understanding that there is a better way to deal with the awards for permanent impairment and I want to try to help that process. I can tell you I had to use one of my bills that you use at the end because we couldn't get it prepared in time because of the complicated nature of the subject and I am guessing for those of you who have had a chance to glance through it, you would agree with that. The Senate did come up with some amendments to it that in their opinion were improvements and my opinion as well. I am going to let people that know a lot more about the details handle it.

Rep. Keiser: What this does is instead of taking it to a basing it on the average weekly wage and having a schedule based on that, you still have a schedule based on the time, but it is starting at a specific point and putting a dollar with kind of a colon?

Sen. Nething: Yes, that's right.

David Kemnitz, ND AFL-CIO, spoke in support of the bill.

Kemnitz: I looked in the latest book that gives the various support and jurisdictions within states and under jurisdictions in which worker's compensation laws apply to domestic service?

See handouts A & B from Kemnitz.

Rep. Keiser: On page two of the bill, as I read through this, we have kind of a colon built in to increase it each year, but as sure as the average weekly wage goes down, the benefits have to stay the same. That seems to be kind of unidirectional.

Kemnitz: I would have to say yes, that is how I read it also. I am not sure that it would be enough to make a substantial difference to the bureau if they did move down slightly.

Bill Shalhoob, ND Chamber of Commerce spoke in support of the bill. See written testimony. There were no questions from the committee.

Tim Wahlin, Staff Counsel for WSI spoke neutrally on the bill. See written testimony and attached proposed amendment.

Rep. Ruby: I am trying to understand why this would be affected federally. According to your testimony, the reason that it affected the federal person is because it is assumed to be a weekly award and it really wasn't that was just a calculation. Is that correct?

Wahlin: At first I agreed that is what was contemplated in the initial decisions. The 1999 decision by the court of appeals quite frankly I am impressed with because they dug into what are statute was and got it right and whenever somebody gets that right, it impresses me. So I think I am concerned that even with the changes as proposed is not going to affect the ultimate determination in the federal court system because in the 1999 statute they actually recognized that while it is calculated weekly, it is not really a weekly benefit, in fact it is a one time lump sum benefit. Then they went further and said because some of the states have so many conflicting or different systems because the federal commissioner says offset, we are offsetting and we don't want dates to be moving language around in avoidance of the offset.

Rep. Ruby: So your position is you are in favor of the concept of the bill and your amendments to correctly achieve that?

Wahlin: We are strongly in favor of the amendments. Our amendments are simply there to get rid of any unintended consequences which will do damage. Ultimately whether or not the intent to avoid that federal offset is affective, I can't tell you.

Rep. Amerman: So I understand your amendments. The first one it says eight hundred and ninety dollars and then you say replace that with a multiplier of ten, is that ten weeks times one third of the average weekly wage or what is it?

Wahlin: In the old statute, it was multiplied by weeks. In an effort to get rid of the weekly language which was what the promoters of the bill wanted to do, we wanted to keep the calculation method but get rid of the reference to weeks so instead we changed that to a permanent impairment multiplier so that the formulas stay the same and we can still compare with all the awards and hopefully make that system fit with what the proponents of the bill want.

Rep. Amerman: Instead of having the solid amount of eighteen hundred and ninety dollars, you are using yours, is that comparable?

Wahlin: It is going to be exactly the same, you are correct.

Rep. Keiser: It is so complicated, so I am going to try to tell you what I do understand and then have you help me understand how this multiplier works. What we did with the formulas that both used the average weekly wage and then we said if we have this much injury and then we have ten weeks worth of dollars and if we have this injury you only get twenty weeks and fifty weeks and that worked because the average weekly wage went up in general so that provided the inflationary compo that was working and that was simple. The bill as presented to us, it said we're going to stop that and start now with putting dollar amounts in or level of injury and so it doesn't change much but you are getting a dollar amount instead of this calculation.

But for the future we are going to use the average weekly wage increase to adjust those dollar

amounts in the schedule. Now you guys have come forward with a multiplier times that. What am I multiplying?

Wahlin: You are multiplying that multiplier of ten which used to be ten weeks but now we are referring to it as a permanent kind of multiplier and multiplying that times one third of the states average weekly wage. The formula underlying the award has not changed. The awards under this amended system will be exactly the amount of the awards under the old system where simply moving language.

Rep. Keiser: By what?

Wahlin: You will multiply that multiplier, for example, times the, you are talking about the engrossed bill?

Rep. Keiser: I am talking about your amendments.

Wahlin: My amendments have a permanent impairment multiplier for example, let's go back to Rep. Amerman's eighteen hundred and ninety dollars is replaced with a permanent impairment multiplier of ten and that will be multiplied times one third of the state's average weekly wage which is currently at one hundred and eighty-nine dollars equals eighteen hundred and ninety dollars.

Rep. Keiser: So I just have to take that multiplier and multiply times the one third of the average weekly wage?

Wahlin: One third the average weekly wage. If you flip back to page four on line six and line twenty-nine, permanent impairment multiplier of fifteen hundred currently equates to two hundred and eighty-three thousand five hundred dollars, that is a one time lump sum award.

Rep. Keiser: So you are just substituting this multiplier? Now help me with why is that better?

Wahlin: The reason that is better is that we will have people who have received a permanent partial impairment rating. If their condition gets worse four or five years later we will re-rate

them and they may be entitled to a subsequent award. If they were this bad before now they are this bad, now they are entitled to the amount of weeks between those two levels. The problem occurs if we strip weeks and reference to weeks out of the statute, we are just using a dollar sum, now under a new system you mentioned average weekly wage is climbing, so the awards will be higher if we compare dollars to the previous dollars awarded. Everybody is going to get re-awarded their old awards the difference in increase. We are concerned that will happen. That's an unintended consequence which will increase all subsequent awards when we compare the old times the new. That is why we are proposing the new language. Let's keep it close to the old system so that we still have that comparison.

Rep. Keiser: I understand what the multipliers are and how it's going to work, but in the engrosses bill, the award is one hundred thousand today, five years from now, it's going to go up based on the average weekly wage. But so is the hiring, so if you are coming back and say you are now eligible for that difference, I get the difference, right?

Wahlin: The way our supreme court has interpreted our current TPI system, and what they have instructed us to do in comparing an old award with a new award puts us in an area where I am not just going to pay you the difference between what you did get and the increase to now. If we follow their logic through and this is an if, we are concerned that we are not going to give them the difference between the increase which is this, we are going to give them the increase plus whatever change there has been, that they have already received, so for example if they were awarded at one hundred and sixty-two dollars a week and now we are at one hundred and eighty-nine dollars a week, the way the system is right now is we are going to award them at one hundred and eighty-nine for these many weeks. If we compare dollars to dollars, I am awarding them this over here, plus I am awarding them twenty-six dollars per

week on their old award which is what we are instructed not to do when we are comparing weeks to weeks.

Rep. Dosch: Are these benefits paid out as a lump sum? Or are they paid out as a weekly benefit?

Wahlin: They are paid out as a lump sum. For example, if I have a ninety-percent impairment I am looking at a check coming to me in the mail of over two hundred thousand dollars in addition to my wage loss benefits which I am currently receiving if I am eligible, and medical benefits which are ongoing, yes.

Rep. Dosch: When we are talking about the weekly, just in the formula for determining what this award amount is going to be.

Wahlin: Exactly.

Rep. Johnson: What we are doing here is trying to say it in a different way so that we, social security office won't consider that a weekly benefit?

Wahlin: Yes.

There were no further questions from the committee and no further testimony on the bill. The hearing was closed.

Rep. Ruby moved to adopt the amendments.

Rep. Thorpe seconded.

Voice vote: Amendment passes and the motion is carried.

Rep. Kasper moved a DO PASS AS AMENDED. Rep. Johnson seconded.

Roll Call Vote: 14 yes 0 no. 0 absent.

Carrier: Rep. Vigesaa

Date: 2-28-07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2389

House Industry Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS, AS Amended

Motion Made By Rep. Kasper Seconded By Rep. Johnson

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	X	
Rep. Kasper	X				
Rep. Nottestad	X				
Rep. Ruby	X				
Rep. Vigesaa	X				

Total Yes 14 No 0

Absent 0

Floor Assignment Rep. Vigesaa

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

REPORT OF STANDING COMMITTEE

SB 2389, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2389 was placed on the Sixth order on the calendar.

Page 1, line 23, remove the overstrike over "~~The~~" and remove "Except as otherwise provided under this subsection, before July first of each"

Page 1, line 24, remove "year, the", remove "and adjust", remove "dollar", remove the overstrike over "~~the~~", and remove "each"

Page 2, line 1, remove "in subsections 10 and 11 and implement the adjusted amounts on July first"

Page 2, remove line 2

Page 2, line 3, remove "organization shall calculate the adjusted amount of each award" and remove the overstrike over "multiplying"

Page 2, line 4, remove the overstrike over "~~thirty-three and one-third percent of~~" and remove "increasing the current award amount by the"

Page 2, line 5, remove "same percentage as the increase in" and remove "current"

Page 2, line 6, remove the overstrike over "~~on the date of the impairment evaluation~~" and remove "from the preceding year"

Page 2, line 7, remove the overstrike over "~~by the~~", after "weeks" insert "permanent impairment multiplier", remove the overstrike over "~~specified in subsection 10~~", and remove "If the"

Page 2, remove lines 8 through 14

Page 4, line 6, replace "\$0" with "permanent impairment multiplier of 0"

Page 4, line 7, replace "\$1,890" with "permanent impairment multiplier of 10"

Page 4, line 8, replace "\$1,890" with "permanent impairment multiplier of 10"

Page 4, line 9, replace "\$2,835" with "permanent impairment multiplier of 15"

Page 4, line 10, replace "\$2,835" with "permanent impairment multiplier of 15"

Page 4, line 11, replace "\$3,780" with "permanent impairment multiplier of 20"

Page 4, line 12, replace "\$3,780" with "permanent impairment multiplier of 20"

Page 4, line 13, replace "\$4,725" with "permanent impairment multiplier of 25"

Page 4, line 14, replace "\$4,725" with "permanent impairment multiplier of 25"

Page 4, line 15, replace "\$5,670" with "permanent impairment multiplier of 30"

Page 4, line 16, replace "\$5,670" with "permanent impairment multiplier of 30"

Page 4, line 17, replace "\$6,615" with "permanent impairment multiplier of 35"

Page 4, line 18, replace "\$6,615" with "permanent impairment multiplier of 35"
Page 4, line 19, replace "\$7,560" with "permanent impairment multiplier of 40"
Page 4, line 20, replace "\$8,505" with "permanent impairment multiplier of 45"
Page 4, line 21, replace "\$9,450" with "permanent impairment multiplier of 50"
Page 4, line 22, replace "\$11,340" with "permanent impairment multiplier of 60"
Page 4, line 23, replace "\$13,230" with "permanent impairment multiplier of 70"
Page 4, line 24, replace "\$15,120" with "permanent impairment multiplier of 80"
Page 4, line 25, replace "\$17,010" with "permanent impairment multiplier of 90"
Page 4, line 26, replace "\$18,900" with "permanent impairment multiplier of 100"
Page 4, line 27, replace "\$20,790" with "permanent impairment multiplier of 110"
Page 4, line 28, replace "\$22,680" with "permanent impairment multiplier of 120"
Page 4, line 29, replace "\$24,570" with "permanent impairment multiplier of 130"
Page 4, line 30, replace "\$26,460" with "permanent impairment multiplier of 140"
Page 4, line 31, replace "\$28,350" with "permanent impairment multiplier of 150"
Page 5, line 1, replace "\$30,240" with "permanent impairment multiplier of 160"
Page 5, line 2, replace "\$32,130" with "permanent impairment multiplier of 170"
Page 5, line 3, replace "\$34,020" with "permanent impairment multiplier of 180"
Page 5, line 4, replace "\$35,910" with "permanent impairment multiplier of 190"
Page 5, line 5, replace "\$37,800" with "permanent impairment multiplier of 200"
Page 5, line 6, replace "\$39,690" with "permanent impairment multiplier of 210"
Page 5, line 7, replace "\$41,580" with "permanent impairment multiplier of 220"
Page 5, line 8, replace "\$43,470" with "permanent impairment multiplier of 230"
Page 5, line 9, replace "\$45,360" with "permanent impairment multiplier of 240"
Page 5, line 10, replace "\$49,140" with "permanent impairment multiplier of 260"
Page 5, line 11, replace "\$52,920" with "permanent impairment multiplier of 280"
Page 5, line 12, replace "\$56,700" with "permanent impairment multiplier of 300"
Page 5, line 13, replace "\$60,480" with "permanent impairment multiplier of 320"
Page 5, line 14, replace "\$64,260" with "permanent impairment multiplier of 340"

Page 5, line 15, replace "\$68,040" with "permanent impairment multiplier of 360"
Page 5, line 16, replace "\$71,820" with "permanent impairment multiplier of 380"
Page 5, line 17, replace "\$75,600" with "permanent impairment multiplier of 400"
Page 5, line 18, replace "\$79,380" with "permanent impairment multiplier of 420"
Page 5, line 19, replace "\$83,160" with "permanent impairment multiplier of 440"
Page 5, line 20, replace "\$87,885" with "permanent impairment multiplier of 465"
Page 5, line 21, replace "\$92,610" with "permanent impairment multiplier of 490"
Page 5, line 22, replace "\$97,335" with "permanent impairment multiplier of 515"
Page 5, line 23, replace "\$102,060" with "permanent impairment multiplier of 540"
Page 5, line 24, replace "\$106,785" with "permanent impairment multiplier of 565"
Page 5, line 25, replace "\$111,510" with "permanent impairment multiplier of 590"
Page 5, line 26, replace "\$116,235" with "permanent impairment multiplier of 615"
Page 5, line 27, replace "\$120,960" with "permanent impairment multiplier of 640"
Page 5, line 28, replace "\$125,685" with "permanent impairment multiplier of 665"
Page 5, line 29, replace "\$130,410" with "permanent impairment multiplier of 690"
Page 5, line 30, replace "\$135,135" with "permanent impairment multiplier of 715"
Page 5, line 31, replace "\$139,860" with "permanent impairment multiplier of 740"
Page 6, line 1, replace "\$144,585" with "permanent impairment multiplier of 765"
Page 6, line 2, replace "\$149,310" with "permanent impairment multiplier of 790"
Page 6, line 3, replace "\$154,035" with "permanent impairment multiplier of 815"
Page 6, line 4, replace "\$158,760" with "permanent impairment multiplier of 840"
Page 6, line 5, replace "\$163,485" with "permanent impairment multiplier of 865"
Page 6, line 6, replace "\$168,210" with "permanent impairment multiplier of 890"
Page 6, line 7, replace "\$172,935" with "permanent impairment multiplier of 915"
Page 6, line 8, replace "\$177,660" with "permanent impairment multiplier of 940"
Page 6, line 9, replace "\$182,385" with "permanent impairment multiplier of 965"
Page 6, line 10, replace "\$187,110" with "permanent impairment multiplier of 990"
Page 6, line 11, replace "\$191,835" with "permanent impairment multiplier of 1015"
Page 6, line 12, replace "\$196,560" with "permanent impairment multiplier of 1040"

Page 6, line 13, replace "\$201,285" with "permanent impairment multiplier of 1065"
Page 6, line 14, replace "\$206,010" with "permanent impairment multiplier of 1090"
Page 6, line 15, replace "\$210,735" with "permanent impairment multiplier of 1115"
Page 6, line 16, replace "\$215,460" with "permanent impairment multiplier of 1140"
Page 6, line 17, replace "\$220,185" with "permanent impairment multiplier of 1165"
Page 6, line 18, replace "\$224,910" with "permanent impairment multiplier of 1190"
Page 6, line 19, replace "\$229,635" with "permanent impairment multiplier of 1215"
Page 6, line 20, replace "\$234,360" with "permanent impairment multiplier of 1240"
Page 6, line 21, replace "\$239,085" with "permanent impairment multiplier of 1265"
Page 6, line 22, replace "\$243,810" with "permanent impairment multiplier of 1290"
Page 6, line 23, replace "\$249,480" with "permanent impairment multiplier of 1320"
Page 6, line 24, replace "\$255,150" with "permanent impairment multiplier of 1350"
Page 6, line 25, replace "\$260,820" with "permanent impairment multiplier of 1380"
Page 6, line 26, replace "\$266,490" with "permanent impairment multiplier of 1410"
Page 6, line 27, replace "\$272,160" with "permanent impairment multiplier of 1440"
Page 6, line 28, replace "\$277,830" with "permanent impairment multiplier of 1470"
Page 6, line 29, replace "\$283,500" with "permanent impairment multiplier of 1500"
Page 7, line 5, replace "amount" with "permanent impairment multiplier"
Page 7, line 6, replace "amount" with "permanent impairment multiplier"
Page 7, line 7, replace "\$12,285" with "permanent impairment multiplier of 65"
Page 7, line 8, replace "\$5,292" with "permanent impairment multiplier of 28"
Page 7, line 9, replace "\$7,560" with "permanent impairment multiplier of 40"
Page 7, line 10, replace "\$5,292" with "permanent impairment multiplier of 28"
Page 7, line 11, replace "\$4,159" with "permanent impairment multiplier of 22"
Page 7, line 12, replace "\$5,670" with "permanent impairment multiplier of 30"
Page 7, line 13, replace "\$4,159" with "permanent impairment multiplier of 22"
Page 7, line 15, replace "\$2,646" with "permanent impairment multiplier of 14"
Page 7, line 16, replace "\$3,780" with "permanent impairment multiplier of 20"

Page 7, line 17, replace "\$3,024" with "permanent impairment multiplier of 16"
Page 7, line 18, replace "\$3,024" with "permanent impairment multiplier of 16"
Page 7, line 19, replace "\$2,268" with "permanent impairment multiplier of 12"
Page 7, line 21, replace "\$44,226" with "permanent impairment multiplier of 234"
Page 7, line 22, replace "\$36,855" with "permanent impairment multiplier of 195"
Page 7, line 23, replace "\$28,350" with "permanent impairment multiplier of 150"
Page 7, line 24, replace "\$5,670" with "permanent impairment multiplier of 30"
Page 7, line 25, replace "\$3,402" with "permanent impairment multiplier of 18"
Page 7, line 26, replace "\$2,268" with "permanent impairment multiplier of 12"
Page 7, line 27, replace "\$28,350" with "permanent impairment multiplier of 150"
Page 8, line 2, replace "amount" with "permanent impairment multiplier"
Page 8, line 5, replace "amount" with "permanent impairment multiplier"
Page 9, after line 3, insert:

"15. If an injured employee qualifies for an additional award and the prior award was based upon the number of weeks, the impairment multiplier must be used to compare against the prior award of weeks in determining any additional award."

Renumber accordingly

2007 SENATE INDUSTRY, BUSINESS AND LABOR

CONFERENCE COMMITTEE

SB 2389

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. **SB 2389 Conference Committee**

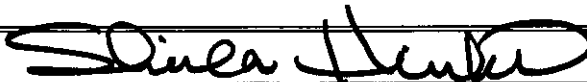
Senate Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: **March 29, 2007**

Recorder Job Number: **5619**

Committee Clerk Signature



2389

All members present. Chairman Wanzek, S Hacker R, S Behm D

Rep. Vigesaa R, Rep Nottestad R, Rep Boe D

Chairman Wanzek:

Here to address the changes in 2389. The senate wanted the understanding of what the amendments did and what the impact was on Social Security (SS) benefits, and being reduced, in that it was not a impairment award.

Rep Vigesaa: I asked Tim Wahlen WFS on issues they saw. Tim, walk us through the amendments. *Came forth to clarify issues they saw.*

S Wanzek: Tim please explain it, what the heck they did.

Tim Wahlen: **WSI** 2389 the intention was to alter the bill by taking out the references to "weeks" on SS disability offset benefits, a lump sum. In the Senate, we expressed concerns and said the changes may have created unintended consequences. As it settled out, we thought of ways to amend it to get rid of concerns, and still carry through with the sponsor's intent. We proposed amendments at the House. Explain changes: original version out of the Senate, put in a dollar figure, striking out the reference of "weeks." There were possible complications with the Supreme Court, went back, removed the dollar figures, kept the original

calculations in place, rather than weeks, "permanent impairment multipliers," you'll see it was under the same scheduled awards. Those are set award levels for types of amputations, there are a lot of changes, and that is the summary of changes made. We clarified language, and to get rid of concerns and the language will do that.

S Wanzek: Is it still wishful thinking that they won't look at this as payments, we have no guarantee?

Tim W: Federal law is what they define it to be. If they define as an off-settable amount, I'm not sure it will get to sponsor intent. If there is not collateral damage, why not?

S Behm: What version is this? Is this the amended version we're looking at?

Rep. Vigessa: The Senate version took at the weeks, and replaced it with dollar amounts, and why the House amendments which changes the straight dollar amount to a multiplier is a change for the better. Even in the Senate version, the referral to "weeks" is gone.

Tim W: We had 3 concerns with Senate version, by inserting a dollar figure, those figures need to be adjusted every year. We were going to amend the statute on the organization. The other concern is prior case loss, the Supreme Court (SC), when you have a multiple impairment injury, you get another rating and we pay you the difference, The SC said you're comparing weeks to weeks, if you strip out one, you have weeks compared to dollars. If changed, will they will award the difference, or change the amount of awards, which was not the sponsor's intent. We want to get multipliers back in and give the direction on the SC on how to handle it. Page 12, Sub section 15 in comparing old with new.

Rep. Vigessaa: As the average weekly rate fluctuates, using the multiplier, it will make adjustment.

S Hacker: Is that constitutional, what we set out was an amount. If you have a floating number, are you allowed to adjust to that?

Tim W: We were able to do that, we shouldn't have a constitutional problem, it addresses how the number is derived, we have direction on state's average weekly wage, we have a fixed determination for that figure. In the original senate version, dollar figures in there, we had no derivation.

S Hacker: Because we enacted that set dollar amount, not the formula. Are people getting more benefits or less benefits?

Tim W: Same

S Wanzek: We will have the same laws, it is a different way of describing it, as the SS.

Tim: Yes

OK with S Hacker, S Behm, also agree.

S Wanzek: We just wanted more information.

S Nottestad: We got a pack of amendments, and it is good for us to hear it again. Don't let the amendments intimidate you.

S Behm: I looked at the amendments, and said, "Wow."

Senate acceded to the House.

Motion by S. Hacker,

Second by Representative Nottestad.

Date: Thurs. March 29, 2007
11:00 AM

Roll Call Vote : 1

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. SB 2389

Senate INDUSTRY BUSINESS & LABOR Committee

Check here for Conference Committee

Legislative Council Amendment Number 2389

Action Taken Senate agreed to House

Motion Made By Hacker Seconded By Rep Nottestad.

Senate Senators IBL	Yes	No	House Senators IBL	Yes	No
Chairman Wanzek, Terry R	✓		Rep. Vigasaa, Don R	✓	
Senator Hacker, Nick R	✓		Rep. Nottestad, Darrell R,	✓	
Senator Behm, art D	✓		Rep. Boe, Tracy D	✓	

Total Yes 6 No 0

Absent _____

Floor Assignment _____

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

REPORT OF CONFERENCE COMMITTEE

SB 2389, as engrossed: Your conference committee (Sens. Wanzek, Hacker, Behm and Reps. Vigesaa, Nottestad, Boe) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 756-759 and place SB 2389 on the Seventh order.

Engrossed SB 2389 was placed on the Seventh order of business on the calendar.

2007 TESTIMONY

SB 2389

PPI awards offset
by Social Security

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

See page '7'

No. 98-2014

Donna Olson, for the estate of
Gordon E. Olson, deceased,

Plaintiff - Appellee,

v.

Kenneth S. Apfel, Commissioner of
Social Security,

Defendant - Appellant.

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* Appeal from the United States
* District Court for the
* District of North Dakota.
*
*
*

Submitted: November 17, 1998

Filed: March 11, 1999

Before LOKEN, JOHN R. GIBSON, and MORRIS SHEPPARD ARNOLD, Circuit
Judges.

LOKEN, Circuit Judge.

Gordon Olson injured his back working as a school custodian. He received North Dakota worker's compensation benefits, including a lump-sum permanent partial impairment award for loss of bodily function under N.D. Cent. Code §§ 65-05-12 to -14 (Supp. 1998). The Commissioner of Social Security determined that Olson

#1
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was eligible for social security disability benefits but reduced those benefits under the federal statute that offsets social security and worker's compensation disability benefits. See 42 U.S.C. § 424a. Olson's widow sued, challenging the Commissioner's decision to include Olson's permanent partial impairment award in the worker's compensation benefits subject to offset. Relying on Frost v. Chater, 952 F. Supp. 659 (D.N.D. 1996), the district court granted summary judgment for Mrs. Olson, concluding that North Dakota worker's compensation impairment awards are not subject to the § 424a offset because they are payments for loss of bodily function, not loss of earning capacity. The Commissioner appeals. Reviewing this issue of law de novo, we reverse.

The offset statute reflects Congress's concern that recovery of overlapping worker's compensation and social security disability benefits decreases an injured worker's incentive to seek rehabilitation and further employment. See Richardson v. Belcher, 404 U.S. 78, 82-83 (1971). The statute reduces federal benefits if an injured worker's combined social security and worker's compensation benefits exceed eighty percent of the worker's pre-disability earnings. Worker's compensation benefits subject to this offset are "periodic benefits [paid] on account of his or her total or partial disability (whether or not permanent) under a workmen's compensation law." 42 U.S.C. § 424a(a)(2)(A). "Periodic benefits" include lump-sum awards received as a substitute for periodic payments. 42 U.S.C. § 424a(b). Thus, whether Olson's lump-sum North Dakota impairment award is subject to offset turns on two questions: (1) whether the award was paid "on account of [Olson's] total or partial disability," and (2) whether it was a substitute for periodic benefits.¹

¹The offset statute eliminates the risk of "double offset" by granting an exception to the federal offset if applicable state law contains an offset provision. See § 424a(d). The parties agree the exception does not apply in this case.

I. Total or Partial Disability.

On appeal, Mrs. Olson concedes that her husband's permanent partial impairment award was made "under [the North Dakota] workmen's compensation law" for purposes of § 424a(a)(2)(A). But she argues it was not paid "on account of [his] total or partial disability" because North Dakota distinguishes disability benefits, which are paid on account of reduced earning capacity, from impairment awards, which are paid on account of loss of bodily function. See Kroeplin v. North Dakota Workmen's Comp. Bureau, 415 N.W.2d 807, 809 (N.D. 1987); Buechler v. North Dakota Workmen's Comp. Bureau, 222 N.W.2d 858, 861-62 (N.D. 1974). The Commissioner on the other hand argues that North Dakota law is not controlling; as a matter of federal law, the term "disability" in § 424a(a)(2)(A) should be broadly construed to include worker's compensation impairment awards, whether or not those awards are measured by or otherwise related to the claimant's wage loss under state law.

At the outset, we agree with the Commissioner that this is an issue of statutory construction governed by federal law. See Munsinger v. Schweiker, 709 F.2d 1212, 1217 (8th Cir. 1983). But that does not tell us what Congress meant by the phrase "on account of . . . total or partial disability." In analyzing that statutory language, we begin by looking at the language of its predecessor. In 1956, when the social security laws were first amended to establish the disability insurance program, the statute provided for the total offset of state worker's compensation payments. That initial offset provision reduced an individual's social security disability benefits -

(B) [if] it is determined that a periodic benefit is payable . . . under a workmen's compensation law . . . *on account of a physical or mental impairment of such individual.*

42 U.S.C. § 424(a)(2)(B) (1956), 70 Stat. 816 (emphasis added). Under the plain language of that provision, Olson's permanent partial *impairment* award would clearly be subject to offset. But that provision was repealed in 1958, and the current § 424a was not enacted until 1965, when renewed criticism of overlapping benefits persuaded Congress to enact the current offset. See Richardson, 404 U.S. at 82.

We find nothing in the legislative history of § 424a explaining why Congress used the term "disability" in § 424a(a)(2)(A), instead of the word "impairment" that was used in the prior offset statute.² There is an extensive definition of "disability" in the disability insurance statutes that include § 424a. See 42 U.S.C. §§ 416(i), 423(d). Though ignored by the parties, the definition contained in these sections requires a close look, because it is reasonable to assume that Congress used the term "disability" in § 424a consistent with its definition of that term in § 423(d), which appears just one provision earlier in the chapter, particularly when that definition was repeated in § 416(i), a section that seems to expressly say it applies to § 424a. However, this ready answer to the inquiry proves unsatisfactory on close inspection. Though nominally a definitional provision, § 423(d) is in reality the provision that delineates eligibility for social security disability benefits. See 42 U.S.C. § 423(a)(1)(D). Therefore, its definition of "disability," which is repeated in § 416(i), is necessarily narrow, to wit:

inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

²Nor do we find any clues in the few cases construing the prior offset statute. See Knapczyk v. Ribicoff, 201 F. Supp. 283 (N.D. Ill. 1962); Walters v. Flemming, 185 F. Supp. 288 (D. Mass. 1960).

42 U.S.C. § 423(d)(1)(A). The offset provision in § 424a cannot be limited to worker's compensation benefits paid "on account of . . . disability" in this narrow sense, because § 424a(a)(2)(A) expressly refers to "total or partial disability (whether or not permanent)," thereby expressly including some disabling conditions, such as partial disabilities, that do not entitle a claimant to social security disability benefits under § 423. Thus, Congress must have intended the term "disability" in § 424a(a)(2)(A) to incorporate a broader, worker's compensation-related meaning of that term.³

Therefore, we turn to the broader worker's compensation environment to discern the meaning of "total or partial disability" in § 424a. Worker's compensation statutes create a no-fault regime under which employers pay statutorily defined benefits for work-related injuries to their employees. A worker's compensation regime typically pays both the costs related to treating a workplace injury, such as medical and rehabilitative expenses, and periodic benefits to compensate the injured employee for wage loss and reduced earning capacity. Though many regimes now include scheduled impairment awards for specific injuries, most such awards do not depart from the theoretical wage-loss underpinning of worker's compensation. Rather, they reflect statutory presumptions that the scheduled injuries adversely affect earning capacity. See Davidson v. Sullivan, 942 F.2d 90, 94-95 (1st Cir. 1991). For example, the federal statutes providing worker's compensation benefits to federal employees expressly tie both scheduled and unscheduled disability benefits to the

³Although it is rather easy to demonstrate why the definition of "disability" in § 416(i) and § 423(d) does not fit the use of that word in § 424a, it is hard to explain away the fact that § 416(i) begins, "Except for purposes of sections 402(d), 402(e), 402(f), 423, and 425 of this title, the term 'disability' means . . ." The apparent answer is that the original offset provision, enacted at the same time as § 416(i), did not use the word "disability," and Congress forgot when it later added § 424a to the statute to include § 424a in the list of provisions excepted from the reach of § 416(i). What seems clear is that it would nullify the offset in many situations to adopt the § 416(i) definition in applying § 424a(a)(2)(A), and we decline to do so.

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injured employee's prior monthly pay. See 5 U.S.C. §§ 8105(a), 8106(a), 8107(a).

Of course, nothing prevents a State from providing worker's compensation benefits that are unrelated to wage loss. See New York Cent. R.R. v. Bianc, 250 U.S. 596, 602-03 (1919). North Dakota is in fact an exception to the general rule that scheduled impairment awards compensate for presumed loss of earning capacity. Under the North Dakota statutes as construed by the North Dakota Supreme Court, permanent impairment awards do not compensate for wage loss, but rather for the adverse "personal and social" effects of a workplace injury. Kroepelin, 415 N.W.2d at 809.⁴ That concept provides the basis for Olson's contention on appeal -- because "disability" benefits are traditionally based upon wage loss and the § 424a offset only applies to periodic benefits on account of "disability," North Dakota permanent impairment awards are not subject to the offset. This also brings the Commissioner's contrary contention into clearer focus -- "disability" in § 424a(a)(2)(A) simply means a condition resulting from a workplace injury that entitles the claimant to periodic worker's compensation benefits, like the word "impairment" in the original offset

⁴The Commissioner argues North Dakota permanent impairment awards in fact compensate for presumed wage loss. Like the district court, we disagree. North Dakota impairment awards are identical for every worker with the same impairment, regardless of pre-disability income. Permanent impairment awards are payable even if the worker suffers no lost wages because he or she continues to work or receives disability payments that compensate for reduced earning capacity. See Bucchler, 222 N.W.2d at 862. North Dakota's "reverse offset" applies to worker's compensation disability payments but not impairment awards. See N.D. Cent. Code § 65-05-09.1. These features distinguish North Dakota permanent impairment awards from the impairment benefits held to be wage loss payments subject to the § 424a offset in Kryzstoforski v. Chater, 55 F.3d 857, 859-60 (3d Cir. 1995) (Pennsylvania law); Hodge v. Shalala, 27 F.3d 430, 433 (9th Cir. 1994) (Oregon law); and Davidson, 942 F.2d at 95 (New Hampshire law). See also 4 LARSON, WORKMEN'S COMPENSATION LAW §§ 57.14(d) & (f) (1989), which cites North Dakota impairment awards as an exception to the general rule.

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provision; thus, all periodic worker's compensation benefits are subject to the offset if they are paid on account of a workplace injury.

After considering the statutory language from as many perspectives as our foresight permits, we conclude that the phrase "his or her total or partial disability (whether or not permanent)" in § 424a(a)(2) is ambiguous in this regard, and that the conflicting interpretations put forth by the Commissioner and by Olson are each plausible and permissible. Thus, the Commissioner's interpretation must prevail. See Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-45 (1984); Crane v. Sullivan, 993 F.2d 1335, 1336 (8th Cir. 1993); cf. Bowen v. Yuckert, 482 U.S. 137, 145-46 (1987). The Commissioner's interpretation is consistent with the still prevalent understanding -- which apparently was universal in 1965 -- that all periodic worker's compensation benefits are for disabling conditions caused by workplace injuries. The Commissioner's interpretation is simpler to administer than an interpretation that requires analysis of the compensation theory underlying particular state law benefits in order to apply the § 424a offset. In addition, the Commissioner's interpretation eliminates any incentive for States to evade the social security offset by characterizing their periodic benefits as something other than wage-loss disability benefits. Finally, it is relevant (though hardly persuasive) that Senator Edward Kennedy in the debates preceding passage of § 424a objected that the offset would even apply to scheduled permanent impairment benefits that are not tied to wage loss. See 111 Cong. Rec. 16151 (1965), quoted in Davidson, 942 F.2d at 96. Therefore, the Commissioner's interpretation must be upheld. Permanent impairment awards, no matter how characterized under state law, are "on account of . . . total or partial disability." Accord Black v. Schweiker, 670 F.2d 108 (9th Cir. 1982); Grant v. Weinberger, 482 F.2d 1290 (6th Cir. 1973).

II. A Substitute for Periodic Benefits.

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Having decided that North Dakota's permanent impairment awards are payments on account of disability for purposes of § 424a(a)(2)(A), we must address an issue the district court did not reach, whether Olson's lump sum award was "a substitute for" periodic benefits for purposes of § 424a(b). This, too, is a question of federal law. See Munsinger, 709 F.2d at 1217. Congress has not expressly defined the term, "a substitute for" periodic benefits. The Commissioner interprets the term to mean lump sum payments that are *not* intended to reimburse specific expenses related to a workplace injury or a worker's compensation claim, such as medical, legal, rehabilitative, and retraining expenses. Under this interpretation, periodic benefits include unrestricted lump sum payments that are available to replace the injured worker's wages.

We conclude this is a reasonable construction of the statutory language, consistent with the purpose of the worker's compensation offset and explicitly supported by the legislative history of § 424a(b).⁵ Therefore, we must defer to the Commissioner's interpretation under Chevron. Olson argues that Chevron deference is inappropriate because the Commissioner's interpretation is not embodied in a rule or regulation. However, we expressly rejected this contention in Emerson v. Steffen, 959 F.2d 119, 122 (8th Cir. 1992). See generally Midtec Paper Corp. v. United States, 857 F.2d 1487, 1496-97 (D.C. Cir. 1988). Accordingly, the Commissioner's decision that Olson's permanent partial impairment award was a substitute for periodic

⁵"Since in some workmen's compensation cases, workers incur medical, legal, or related expenses in connection with their workmen's compensation claims, or in connection with the injuries they have suffered, and since the workmen's compensation awards are generally understood to include compensation for these expenses . . . for purposes of [§ 424a(b)] the [Commissioner] would not, in computing the amount of the periodic benefit payable to an individual under a workmen's compensation program, include any part of the workmen's compensation lump sum or benefit which he finds is equal to the amount of such expenses paid or incurred by the worker." S. Rep. No. 404, 89th Cong., 1st Sess., reprinted in 1965 U.S.C.C.A.N. 1943, 2200-2201.

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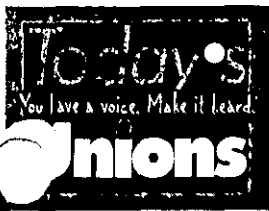
benefits within the meaning of § 424a(b) must be affirmed. Accord Munsinger, 709 F.2d at 1216-17.

The judgment of the district court is reversed and the case is remanded to the district court with instructions to enter judgment in favor of the Commissioner.

A true copy.

Attest:

CLERK, U. S. COURT OF APPEALS, EIGHTH CIRCUIT.



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Michel

NEBRASKA VALLEY LC

Emke

WESTERN NORTHWEST LC

Mark Hager

ND Workers Compensation

Changes Needed in North Dakota's Worker's Compensation as recommended by ND AFL-CIO Convention August 26, 2006

- WHEREAS:** The North Dakota Workers Compensation system now known as Workforce Safety and Insurance or WSI has been changed significantly
- WHEREAS:** The control of WC/WSI has been removed from the executive branch and placed in the hands of a board of directors, and
- WHEREAS:** The system's ability to provide sure and certain relief to injured workers has come under question, now, therefore, be it
- RESOLVED:** That the following ' be provided to the 2007 legislative session.

- 1) Require that WC/WSI use hearing officers and that the hearing officers' finding be final.
- 2) Fraud. Require that the bureau use the same standard for fraud that is used in all other fraud cases. Equal standards would apply, no harm-no foul.
- 3) Permanent Partial Impairment (PPI). A PPI award is a one-time payment for job related injuries that result in permanent loss of use of bodily functions(s). Because of the use of weeks, rather than a dollar amount within the formula, Social Security unfairly offsets about 80% of that award. Change the formula for calculating PPI from a "weeks" calculation to a "dollar amount" calculation.
- 4) Executive Director. The Governor should have sole power to appoint the executive director of the bureau/WSI.
- 5) Office of Independent Review. Place the control of the OIR with the Governor.
- 6) Independent Medical Exam (IME). Require that independent medical examinations be conducted in state unless the specific specialty is not available. The IME should be conducted with a physician picked from a panel of all physicians licensed in and practicing in North Dakota.
- 7) Independent Medical Review (IMR). Give greater weight to the opinion of the claimant's treating physician when the claimant undergoes an independent medical review.
- 8) Physician. Eliminate the requirement that an employee choose his/her own doctor at the time of hire or 30 days prior to an injury. The injured claimant should be allowed to pick the treating physician.
- 9) Permanent Partial Impairment (PPI) awards. Presently, an individual must have 16 % whole body impairment to obtain a PPI award. If a person has 16%, in effect, they are getting 1 percent in an award. Although the Bureau/WSI does pay for the more catastrophic impairments, this still does not justify the denial of an award for 5% to 15% impairment. Exclusions for pain, disfigurement, loss of range of motion etc. need to be addressed.

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10) Liberal Construction. The loss of the "liberal construction" of the Worker's Compensation Act has made it very difficult for the employee to establish an otherwise legitimate claim.

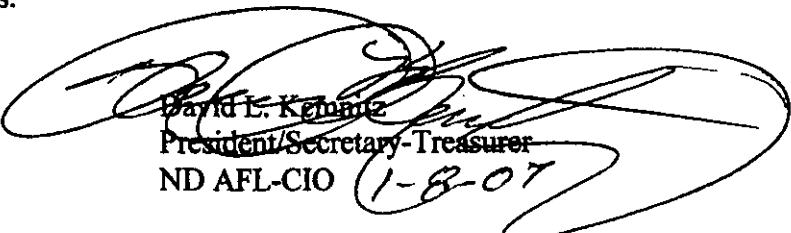
11) Definition of Compensable Injury. There is no specific definition of what is "objective medical evidence." Before 1995, the doctor's notations that the person has sustained an injury and has subjective complaints of pain sufficed. The argument is that the doctor's notations no longer meet the requirements of "objective medical evidence". Injury should be any need for treatment arising out of and as a result of any incident, event or cumulative trauma arising from work.

12) Pre-existing condition. The Bureau now denies claims because the claimant has a pre-existing condition. The language should be changed back to what it was before 1997, thereby requiring that if there is a pre-existing condition that it must be "active" at the time of the injury to allow an offset. Burden of proof should be on the employer to prove that the pre-existing condition would have caused the disability absent the work event.

13) Disability benefits. Changes made to 65-05-08.1, NDCC (1995), make it more difficult for employees to receive disability benefits and demands more from the doctor as to what the doctor is required to do in order for the employee to obtain disability benefits. Presently, the doctor is required not only to say that the person is disabled but also to exclude other types of employment, for example, light or sedentary. The doctor is also to list specifically what the restrictions are. If these are not all included in the doctor's letter, the person is not eligible for disability benefits. Expert vocational evidence by those experienced in job ergonomics is preferable.

14) Closed Claim Presumption. Once again, the 1995 legislature made it much more difficult for an individual to receive benefits that they were clearly entitled to. 65-05-35, NDCC (1995) states that an individual's claim is "presumed closed" if there has not been a payment of any benefit for four years on the claim. The Bureau/WSI maintains that this can be rebutted, however, the only way to rebut this is to establish that the employee proves by "clear and convincing evidence" the work injury is the sole cause of the later symptoms. Virtually throughout the Workers Compensation Act the employee is required to show "more likely than not" or by a preponderance that the claim is compensable. This standard of "clear and convincing evidence" and "sole cause" makes it virtually impossible for a claimant to have their case reopened or any medical bill paid if it has been more than four years since any activity on that claim. It should go back to the old standard of simply preponderance of the evidence rather than clear and convincing evidence.

15) Vocational Rehabilitation Services. Over the past 10 years, vocational rehabilitation services have been virtually eliminated. There are very few people being retrained and/or offered assistance back to work. Vocational Rehabilitation Services reform must address the needs of the claimant and the employers willing to hire people with special needs.


David L. Kenan
President/Secretary-Treasurer
ND AFL-CIO 1-8-07

*Same
given to
House*



**Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
SB 2389
February 6, 2007**

Mr. Chairman and members of the committee, my name is Bill Shalhoob and I am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographic cross section of North Dakota's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also specifically representing sixteen local chambers with a total membership of 7,236 and eleven employer associations. Lists of the specific members and associations are attached to my testimony. As a group we stand in support of SB 2389 and urge a do pass vote from the committee on this bill.

The changes in this bill clarifying the definition of PPI awards to prohibit the social security offset, calculation of awards on dollars rather than weeks and the annual adjustment with the state's average weekly wage are reasonable and we hope will move forward.

Thank you for the opportunity to appear before you today in support of SB 2389. I would be happy to answer any questions.

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**The following chambers are members of a coalition that support our 2007
Legislative Policy Statements:**

- Beulah Chamber of Commerce - 107**
- Bismarck - Mandan Chamber of Commerce - 1080**
- Cando Area Chamber of Commerce - 51**
- Chamber of Commerce Fargo Moorhead - 1800**
- Crosby Area Chamber of Commerce - 50**
- Devils Lake Area Chamber of Commerce - 276**
- Dickinson Chamber of Commerce - 527**
- Greater Bottineau Area Chamber of Commerce - 153**
- Hettinger Area Chamber of Commerce - 144**
- Langdon Chamber of Commerce - 112**
- Minot Chamber of Commerce - 700**
- North Dakota Chamber of Commerce - 1058**
- Wahpeton Breckenridge Area Chamber of Commerce - 293**
- Watford City Area Chamber of Commerce - 84**
- Williston Chamber of Commerce - 401**
- West Fargo Chamber of Commerce - 400**

Total Businesses Represented = 7236 members

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Associated General Contractors of North Dakota

Independent Community Banks of ND

Johnsen Trailer Sales Inc.

North American Coal

North Dakota Auto/Implement Dealers Association

North Dakota Bankers Association

North Dakota Healthcare Association

North Dakota Motor Carriers Association

North Dakota Petroleum Council

North Dakota Retail/Petroleum Marketers Association

Utility Shareholders of North Dakota

North Dakota Hospitality Association

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2007 Senate Bill No. 2389
Testimony before the Senate Industry, Business and Labor Committee
Presented by: Tim Wahlin, Staff Counsel
Workforce Safety and Insurance
February 6, 2007

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel for Workforce Safety and Insurance (WSI). On behalf of the Board of Directors, I am here to testify on SB 2389 which amends the permanent partial impairment (PPI) benefit statute. While WSI's Board of Directors is fully supportive of the spirit and intent of the bill, it has taken a neutral rather than supportive position on this bill because of concerns with respect to both the intended and unintended consequences.

PPI benefits are additional one-time, lump-sum awards that compensate workers who suffer permanent physical loss of a body part or function because of a compensable work-related injury. The amount of PPI benefit is based on the worker's impairment rating in relation to the whole body and has no ties to the amount of wages lost. The injured worker can receive both a wage-replacement benefit and a PPI award assuming they meet the criteria used to determine eligibility.

In March of 1999, the United States Court of Appeals for the Eighth Circuit issued an opinion reversing the Honorable Patrick A. Comny's determination that PPI benefits paid under the state statute are not available for the federal offset as a lump sum distribution. The Eighth Circuit carefully reviewed North Dakota's workers' compensation benefit schedules and determined PPI benefits were available for exercise under the federal offset.

SB 2389 seeks to amend the existing PPI statute (NDCC 65-05-12.2) in an attempt to prohibit the federal offset exercised by the Social Security Administration on lump-sum workers' compensation PPI disbursements. Conceptually, the Organization supports allowing an injured employee to retain as much of their benefits as possible and believes that SB 2389 has a laudable objective. Unfortunately, the Organization has concerns with respect to the viability of this approach and its possible unintended consequences. The most appropriate venue to affect federal law is within the federal arena.

The current statute computes a PPI award based on a formula of an established number of weeks multiplied by one-third of the state's average weekly wage. SB 2389 simply exchanges the formula with a dollar amount. Based upon the North Dakota Supreme Court's interpretations as expressed in Shiek v. NDWC, 2002 ND 85, WSI is concerned that this approach may create an unintended increase in the benefit.

In Shiek, the Supreme Court instructed that when reviewing permanent partial impairment ratings, the Organization shall, in matters of subsequent awards, compare the weeks awarded in the prior award against the weeks awarded in the subsequent award. That difference is then multiplied by one-third of the state's average weekly wage at the time of the subsequent rating. When the statute is stripped of its references to a weekly formulation, the Court may advance a dollar-to-dollar comparison system which could increase subsequent awards.

Another concern is that SB 2389 requires the organization to publish annually updated PPI award schedules to reflect increases in the state's average weekly wage, yet at the same time has a fixed dollar amount in statute. Based on this interpretation, the bill would require amending to remove the fixed dollar amount and reference only the published schedule.

As a final note, the awards reflected in Subsection 10 and 11 appear to be inadvertently based upon the July 1, 2005 award level of \$183.00 per week instead of the July 1, 2006, level of \$189.00 per week.

This concludes my testimony. I would be glad to answer any questions you may have at this time.

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**2007 Engrossed Senate Bill No. 2389
Testimony before the House Industry, Business and Labor Committee
Presented by: Tim Wahlin, Staff Counsel
Workforce Safety and Insurance
February 28, 2007**

Mr. Chairman and Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel for Workforce Safety and Insurance (WSI). On behalf of the Board of Directors, I am here to testify on Engrossed SB 2389 which amends the permanent partial impairment (PPI) benefit statute. While WSI's Board of Directors is fully supportive of the spirit and intent of the bill, it has taken a neutral rather than supportive position on this bill because of concerns with respect to unintended consequences. In an effort avoid the unintended consequences; WSI has proposed the attached amendments. Likewise, the Board of Directors has taken this position based on concerns the changes will ultimately be ineffective. It is the Board's position that the most appropriate venue to affect federal law is within the federal arena.

PPI benefits are additional one-time, lump-sum awards that compensate workers who suffer permanent physical loss of a body part or function because of a compensable work-related injury. The amount of PPI benefits is based on the worker's impairment rating in relation to the whole body and has no ties to the amount of wages lost. The injured worker can receive both a wage-replacement benefit and a PPI award assuming they meet the criteria used to determine eligibility.

In March of 1999, the United States Court of Appeals for the Eighth Circuit issued an opinion reversing the Honorable Patrick A. Comny's determination that PPI benefits paid under the state statute are not available for the federal offset as a lump sum distribution. The Eighth Circuit carefully reviewed North Dakota's workers' compensation benefit schedules and determined PPI benefits were available for exercise under the federal offset.

Engrossed SB 2389 seeks to amend the existing PPI statute (NDCC 65-05-12.2) to prohibit the federal offset exercised by the Social Security Administration on workers' compensation disbursements. Conceptually, the Organization supports allowing an injured employee to retain as much of their benefits as possible and believes that Engrossed SB 2389 has a laudable objective. The Organization has concerns with respect to the viability of this approach and its possible unintended consequences.

The current statute computes a PPI award based on a formula of an established number of weeks multiplied by one-third of the state's average weekly wage. Engrossed SB 2389 simply exchanges the formula with a dollar amount. Based upon the North Dakota Supreme Court's interpretations as expressed in Shiek v. NDWC, 2002 ND 85, WSI is concerned that this approach may create an unintended increase in the benefit.

In Shiek, the Supreme Court instructed that when reviewing permanent partial impairment ratings, the Organization shall, in matters of subsequent awards, compare the weeks awarded in the prior award against the weeks awarded in the subsequent award. That difference is then multiplied by one-third of the state's average weekly wage at the time of the subsequent rating. When the statute is stripped of its references to a weekly formulation, the Court may advance a dollar-to-dollar comparison system which could increase subsequent awards. In an attempt to clarify the intent of the legislation, WSI proposes the attached amendments. You will note that within those amendments, the Organization seeks to restore the original calculation method while making it clear, the basis for the award is not a weekly award, but rather a sum derived from a calculation based on the significance of the permanent impairment as rated within the guidelines.

Another concern is that SB 2389 requires the Organization to publish annually updated PPI award schedules to reflect increases in the state's average weekly wage, yet at the same time has a fixed dollar amount in statute. The attached amendments will also remedy this concern.

This concludes my testimony. I would be glad to answer any questions you may have at this time.