

2013 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2080

2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee
Roosevelt Park Room, State Capitol

SB 2080
January 16, 2013
Job Number 17278

☐ Conference Committee

Committee Clerk Signature

Eva Liebert

Explanation or reason for introduction of bill/resolution:

Relating to premium payments workers' compensation premiums, penalties for failure to secure coverage, assignment claims, and volunteer health

Minutes:

Testimony Attached

Chairman Klein opened the hearing

Anne Jorgenson Green, Staff Attorney, Workforce Safety and Insurance: Written Testimony Attached (1).

Senator Laffen: Asked for Anne to explain section 3 on the noncompliance over some years.

Anne: Said that currently if a North Dakota employer doesn't have workers compensation coverage and we find out that an employer that has employees are uninsured, they are subject to what we call statutorily noncompliance penalties. The penalty for being uninsured gets greater the longer you have been noncompliant. If you made a mistake and you were only noncompliant for a year or six months, your premium is the premium you should have paid but the penalty on that year of noncompliance is 25% of the premium you should have paid. If you were noncompliant for two years you pay 25% in the first year, 30% in the second year, all the way up to six years of noncompliance. The highest noncompliance penalty being 50% of the premium that you should of paid in that sixth year of noncompliance.

Senator Laffen: Asked how a company could be noncompliant for six years.

Anne: Said you'd be surprised.

Chairman Klein: Asked if it was \$2,000 plus 25%.

Anne: Said that is correct.

Senator Andrist: Said the premium for volunteers is a pretty good deal at \$15. He said that coming from a rural community they have a lot of volunteers. He asked if the volunteer organizations are aware of this program.

Anne: Said it is impossible for her to speculate on the level of participation but that there are a substantial number of organizations that take advantage of the volunteer coverage.

Chairman Klein: Said that it is possible some organizations would not know about the coverage availability but once the associations let them know there is an opportunity there, they just have to pay the premium.

Anne: Said that they rely on those associations to let the organizations know.

Senator Murphy: Asked about section 4 and if she was talking about self-employed people only.

Anne: Said No, a self-employed person is not mandated to buy work comp for themselves. If they have employees that they hire as part of that self-employment venture, they have to cover those individuals. What we are talking about is a delinquent premium for a North Dakota business where there were employees and premiums was due and owing and not paid.

Senator Sinner: Asked about section 9 and asked if it was reportable or not reportable.

Anne: Said it is not reportable.

Senator Sinner: Asked if they make any effort to notify these volunteer organizations that they can purchase this optional coverage.

Anne: Said that she didn't have that answer but could get it if they would like to have it.

Senator Sinner: Said he would just like to see that they do it.

Senator Andrist: Asked if they are given a break if they just don't know about having to have this coverage.

Anne: They do have a lot of cases where the business doesn't know but it is the burden of the business owner to make sure they are operating under the law. They do have digression in statutes to waive the noncompliant penalties and interests.

Jon Godfread, Greater North Dakota Chamber of Commerce: Written Testimony Attached (2).

Chairman Klein closed the hearing

Senator Laffen motioned for a do pass

Senate Industry, Business and Labor Committee
SB 2080
January 16, 2013
Page 3

Senator Sinner seconded the motion

Roll Call Vote: Yes - 7 No - 0

Floor Assignment - Senator Laffen

FISCAL NOTE
Requested by Legislative Council
12/21/2012

Bill/Resolution No.: SB 2080

- 1 A. **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.*

	2011-2013 Biennium		2013-2015 Biennium		2015-2017 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
Counties			
Cities			
School Districts			
Townships			

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

see attached

- 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.*


see attached

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

Telephone: 328-6016

Date Prepared: 01/04/2013



WORKFORCE SAFETY & INSURANCE
2013 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2080

BILL DESCRIPTION: WSI Employer Services Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, 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 for the advance collection of premiums from accounts with a higher risk of default; increases penalties for noncomplying employers; provides for the recovery of delinquent premiums, penalties, and interest from compensation payments in the event the injured worker was also the employer in default; clarifies the determination of benefits and premiums for emergency volunteer health practitioners; provides for the assessment of a fee as the basis for determining premium for volunteer organizations; provides for the assessment of a fee as the basis for determining premium for vocational training and work evaluation programs; and clarifies that under the extraterritorial statute wages reported should include wages earned in the state and not just wages paid in the state.

FISCAL IMPACT: No significant impact to premium rate levels is anticipated.

DATE: December 26, 2012

Date: 1/16/13
Roll Call Vote #: 1

2013 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2080

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Senator Laffen Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chairman Klein	✓		Senator Murphy	✓	
V. Chair. Laffen	✓		Senator Sinner	✓	
Senator Andrist	✓				
Senator Unruh	✓				
Senator Sorvaag	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Laffen

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

REPORT OF STANDING COMMITTEE

SB 2080: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2080 was placed on the Eleventh order on the calendar.

2013 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2080

2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee
Peace Garden Room, State Capitol

SB 2080
March 20, 2013
Job 20213

☐ Conference Committee

Committee Clerk Signature

Explanation or reason for introduction of bill/resolution:

Relating to premium payments

Minutes:

Written testimony, attachments 1 and 2

Meeting called to order. Roll taken.

Hearing opened on SB 2080.

Anne Jorgenson Green, staff counsel for Workforce Safety and Insurance:
Introduced bill, section by section. Refer to written testimony, attachment 1.

6:08 **Representative M. Nelson:** Question regarding Section 9, page 5, line 15, wages earned in the state. Gave examples for clarification.

6:48 **Anne Jorgenson Green:** Contrasted the current statutory language with the proposed language. We are attempting to capture any wages earned inside the borders of North Dakota and reported to WSI for purposes of calculating premium.

7:49 **Representative M. Nelson:** Gave example of salesman in North Dakota for only a few days. How would you determine which wages he earned in North Dakota?

8:07 **Anne Jorgenson Green:** If that commission was generated under a business transaction based in North Dakota, those would be wages earned in North Dakota and potentially reportable to WSI for purposes of premium.

8:35 **Chairman Keiser:** How much work can someone in a company in North Dakota do outside of the state before they have to have coverage in another state versus North Dakota?

8:55 **Anne Jorgenson Green:** Are you speaking of an employer based in North Dakota who leaves the state?

Chairman Keiser: Or employee who goes from Fargo over to Moorhead to work occasionally.

9:06 **Anne Jorgenson Green:** Under North Dakota law, an employee can leave North Dakota for incidental and temporary exposure outside the state. That temporary and incidental exposure is a bit of a moving target. If he comes back here and files a claim for benefits in North Dakota, as long as that exposure outside the state is less than thirty consecutive days, a claim for benefits is likely coverable by Workforce Safety and Insurance.

9:49 **Representative M. Nelson:** Question on Section 8 regarding a reasonable wage or fee for employees in the same class of industry. Is that also how any payments would be calculated?

10:09 **Anne Jorgenson Green:** In a situation in which someone engaged in a work evaluation program were hurt while on that program, they would be entitled to benefits the same as any other injured worker would be entitled.

Representative M. Nelson: You are paying based on average pay for the profession. Are you paying his benefits on average pay for the profession even though he was not earning near that?

10:43 **Anne Jorgenson Green:** The calculation of the average weekly wage of a vocational....I'm not sure I know the answer. That work evaluation program could be paid, in which case the wage replacement would be based on whatever wages they were earning for that vocational program.

Representative M. Nelson: Then why are we charging premium based not on what they're earning but on employees in the same class?

11:25 **Anne Jorgenson Green:** We are charging premium based on the risk of the class, not based on the earnings of the worker. Gave examples.

12:05 **Representative Kreun:** Two questions regarding corrections to written testimony regarding section numbers.

Anne Jorgenson Green: Acknowledged the corrected section numbers for written testimony.

12:45 **Representative Kreun:** In section 9, what you indicated is it clarifies the calculation. It's basically the same thing we've been doing with other states. The wages earned rather than paid are the ones in the calculation for the premium. It's still the same breakdown. The employer would have to keep track of the wages earned in North Dakota and the wages earned in Minnesota.

13:18 **Anne Jorgenson Green:** That is right. There is no change in application.

13:27 **Representative Ruby:** I am trying to see what the change is in Section 1. I believe there has already been an ability for there to be installments on a premium. What is changing there?

13:48 **Anne Jorgenson Green:** Indicated added language pertaining to the delinquency statute. Requested time to get back to Representative Ruby on his question.

15:18 **Chairman Keiser:** The real change is in Section 2 that instead of doing it one time or in installments, you can get an advance payment for a future period.

Anne Jorgenson Green: That is correct.

15:55 **Representative Becker:** In Section 3, is a premium period always one year?

Anne Jorgenson Green: A premium period is always one year.

16:12 **Representative Becker:** If an employer is uninsured and they are caught, they have to pay the entirety of the premium that they did not pay, plus interest on that, plus a percentage depending on how many years.

Anne Jorgenson Green: That is correct.

Representative Becker: This proposes another \$2000. It does not seem very clean that first it is percentages and now it is dollars. I'm guessing that the variance in a premium is huge for a small employer of people at desks versus a big oil industry or construction industry. Therefore, a \$2000 fine would be onerous for the small office employer but not so much for the big manual labor employer.

17:20 **Anne Jorgenson Green:** That is correct. In addition, that 25% will be far more substantial to the employer with a significant payroll. That is a way of equalizing the sting of the penalty and making it as significant in the first year of non-compliance as it is in the sixth year of non-compliance.

17:43 **Representative Becker:** What would be a typical small premium?

Anne Jorgenson Green: It depends on the risk. The minimum is \$250 a year. Gave examples of an average premium and a large premium.

18:39 **Chairman Keiser:** Relative to that line of questioning, in that section should we change or modify that by saying *up to 2000*? The way it reads, the only option you have is \$2000.

18:55 **Anne Jorgenson Green:** I understand that that is a possibility. The recommendation internally was if we get to this place, there is discretionary language that permits us to waive or to reduce any penalty, so I think that already exists.

19:21 **Representative Boschee:** Question regarding Section 7 and unpaid internships.

19:55 **Anne Jorgenson Green:** Yes. Those individuals can be covered under work comp. The question is whether those employees or work student folks belong under a

volunteer or under a work evaluation program, and how the disability benefits--if any--would be paid.

20:32 **Representative Boschee:** This might be a way we could work with Operation Intern and the Department of Commerce to make sure those students get covered.

20:47 **Chairman Keiser:** We do have a primary clause called exclusive remedy. Elaborated.

21:55 **Chairman Keiser:** Comment regarding exclusive remedy. There are places throughout where it says we can rescind or not provide coverage if you don't make the premium payment. That can apply to the owner. Can that apply to the employee?

22:23 **Anne Jorgenson Green:** Regardless of the status of the employer, an employee who files a compensative claim is entitled to benefits.

22:54 **Chairman Keiser:** Page 2, lines 9-10. It is the employer who is not covered there, not the employee?

Anne Jorgenson Green: That is correct.

23:20 **Representative Becker:** In Section 3, it says the employer will be liable for premiums plus penalties and interest due, plus a penalty of 25% plus the \$2000. The first *plus penalties* does not define the penalties. What are those penalties?

Anne Jorgenson Green: Those penalties are the graduated series of penalties that begin with 25% of the premium owed for the first year of non-compliance, and so on.

24:08 **Representative Becker:** The way it reads, I want clarification. It is saying that the 25% is in addition to the penalties and interest due. Are there any other penalties beside the 25%?

24:24 **Anne Jorgenson Green:** Please direct me to the specific line.

Representative Becker: Page 2, line 13.

24:43 **Anne Jorgenson Green:** There are some additional penalties which are action specific. Gave examples.

25:39 **Representative Ruby:** Asked for clarification on language in that section regarding employer or company.

26:09 **Anne Jorgenson Green:** Uninsured is one of those terms within the statute that is defined. You as the owner are not uninsured; you have the ability to opt for coverage...

Representative Ruby: As long as the company has coverage.

Support:

26:46 **Jon Godfread, Greater North Dakota Chamber of Commerce:** Distributed written testimony, attachment 2. Voiced support of the bill.

Opposed:

Neutral:

Hearing closed.

Motion for a Do Pass recommendation made by Representative Ruby and seconded by Representative Vigesaa.

Chairman Keiser: There are a lot of technical parts to workers compensation law. Every session, we make changes to try to make it more specific and clear.

Roll call vote on motion for a Do Pass on SB 2080. Motion carries.

Yes = 12

No = 3

Absent = 0

Carrier: Representative Kreun

FISCAL NOTE
Requested by Legislative Council
12/21/2012

Bill/Resolution No.: SB 2080

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Revenues						
Expenditures						
Appropriations						

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	2011-2013 Biennium	2013-2015 Biennium	2015-2017 Biennium
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Cities			
School Districts			
Townships			

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

see attached

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see attached

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Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 01/04/2013

WORKFORCE SAFETY & INSURANCE
2013 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2080

BILL DESCRIPTION: WSI Employer Services Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, 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 for the advance collection of premiums from accounts with a higher risk of default; increases penalties for noncomplying employers; provides for the recovery of delinquent premiums, penalties, and interest from compensation payments in the event the injured worker was also the employer in default; clarifies the determination of benefits and premiums for emergency volunteer health practitioners; provides for the assessment of a fee as the basis for determining premium for volunteer organizations; provides for the assessment of a fee as the basis for determining premium for vocational training and work evaluation programs; and clarifies that under the extraterritorial statute wages reported should include wages earned in the state and not just wages paid in the state.

FISCAL IMPACT: No significant impact to premium rate levels is anticipated.

DATE: December 26, 2012

Date: 3-20-2013Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2080

House Industry, Business, and Labor Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment☐ Rerefer to Appropriations ☐ Reconsider ☐ Consent Calendar

Motion Made By

Ruby

Seconded By

Vigesaa

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker		✓	Rep. Marvin Nelson		✓
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper		✓			
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigasaa	✓				

Total Yes 12 No 3Absent 0

Floor Assignment

Kreun

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

REPORT OF STANDING COMMITTEE

SB 2080: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (12 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING).
SB 2080 was placed on the Fourteenth order on the calendar.

2013 TESTIMONY

SB 2080

2013 Senate Bill 2080
Testimony before the Senate Industry, Business and Labor Committee
Anne Jorgenson Green, Staff Attorney
Workforce Safety and Insurance
January 16, 2013

Mr. Chairman, Members of the Committee:

My name is Anne Jorgenson Green. I am staff counsel for Workforce Safety and Insurance (WSI). I am here to testify in support of SB 2080.

Sections 1 and 2. Section one permits employers to make payments of their workers compensation premium in installments. That option remains unless WSI determines that the timely payment of premium is uncertain. Section two permits WSI to collect 100% of an advance premium from an employer. The increase in new business and out of state operations in the state necessitates a tool to ensure premiums owing are paid. A similar process was implemented during the flooding and recovery efforts surrounding the Minot flood and proved quite successful. Codifying this approach ensures that transient risk in the state is covered and the fund protected.

Section 3. Section three increases the penalty for employers who have failed to secure coverage. Under our current penalty structure, noncompliance penalties increase incrementally from 25% of the premium owed during the first year of noncompliance to 50% of the premium owed for the sixth year of noncompliance. Our experience shows that a 25% penalty is simply an insufficient financial disincentive to comply with North Dakota workers compensation law. Section 2 provides for an additional \$2000 penalty for each year of hiring workers without WSI coverage in North Dakota.

Section 4. WSI currently has the statutory ability to offset an injured worker's benefit payment for a variety of reasons including clerical error, an unpaid child support obligation and disability paid by WSI based on an injured worker's fraudulent representation. Section 3 permits WSI to recoup from an injured worker's disability payment, the delinquent premium, penalty and interest incurred while that injured worker had a business and defaulted to WSI.

Sections 5 and 6. Sections 5 and 6 clarify that the calculation of a volunteer health practitioner's disability benefits and the assessment of their premiums will be calculated in the same manner as volunteer firefighters, emergency volunteers and community emergency response team members. This proposed amendment cures omissions in the statutory language.

Section 7. Volunteer coverage with WSI is optional. Section 7 codifies current practice in the assessment of premium for a volunteer account. The current rate for a volunteer account is a fixed \$15 annually, rather than calculated on wages paid.

Section 8. Vocational training and work evaluation programs are joint efforts between educational institutions and private business to provide real world experience for students. Because these programs carry the risk of potential injury, section 8 permits WSI to calculate a premium for a vocational training or work evaluation program based on either a flat fee or a reasonable wage similar to the risk in which the trainee is working.

Section 9. Section 9 clarifies that the calculation of premium for an out of state employer is based on wages earned in this state, rather than paid in this state. This neutralizes the argument that wages paid from an out of state corporate location to workers in North Dakota are not reportable to WSI for purposes of calculation of premium.

Section 10. Section 10 provides for the application of sections 3 and 4. Section 3 applies to all employer accounts on or after the effective date of the Act. Section 4 applies to all claims for reimbursement on or after the effective date of the Act.

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



Testimony of Jon Godfread
Greater North Dakota Chamber of Commerce
SB 2080
January 17, 2013

Mr. Chairman and members of the committee, my name is Jon Godfread and I am here today representing the Greater North Dakota Chamber of Commerce, the champions for business in North Dakota. GNDC is working on behalf of our more than 1,100 members, to build the strongest business environment in North Dakota. GNDC also represents the National Association of Manufacturers and works closely with the U.S. Chamber of Commerce. As group we stand in support of SB 2080.

This bill was introduced on behalf of Workforce Safety and Insurance (WSI), and stems from the increase in new and out-of-state business in the state as a result of western North Dakota's oil boom. This bill would give WSI the ability to collect advance premiums from accounts with a higher risk for default.

It also increases the penalties for noncomplying employers. If an employer isn't paying their premiums, WSI can recover premiums from benefits or payments that employers may be receiving from WSI. The bill also adds volunteer health practitioners, which were missed last session.

In addition the bill provides a means of using a volunteer fee for work as a basis for determining premiums for volunteer organizations. Calculating an hourly compensation for volunteers is very difficult and the bill addresses this issue.

The bill also allows the use of a flat fee or a wage in creating premiums for vocational training and work evaluation programs. It also clarifies that wages reported have to include wages earned in North Dakota and not just wages paid in North Dakota. For example, a paycheck may come from Denver, but the money was earned in North Dakota and the premium would go to North Dakota.

The Greater North Dakota Chamber led the efforts to reorganize WSI in 1995 and 1996. The GNDC has been working with the North Dakota Legislature ever since to create one of the finest systems in the nation and a benefit package above those offered in most states, properly serving North Dakota employers and employees and keeping WSI premiums some of the lowest in the nation. This bill is consistent with our efforts and we see no significant impact to premiums rates.

Thank you for the opportunity to appear before you today in support of SB 2080. I would be happy to answer any questions.

Champions  Business

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Bismarck, ND 58502 F: 701-222-1611

www.ndchamber.com

① 3-20-2013
SB 2080

2013 Senate Bill 2080
Testimony before the House Industry, Business and Labor Committee
Anne Jorgenson Green, Staff Counsel
Workforce Safety and Insurance
March 20, 2013

Mr. Chairman, Members of the Committee:

My name is Anne Jorgenson Green. I am staff counsel for Workforce Safety and Insurance (WSI). I am here to testify in support of SB 2080. The WSI Board of Directors supports this bill.

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② 3-20-2013
SB 2080



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Greater North Dakota Chamber of Commerce
SB 2080
March 20, 2013

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