

FISCAL NOTE
Requested by Legislative Council
01/19/2015

Amendment to: HB 1103

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 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.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 attachment

- 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 attachment

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 01/19/2015

WORKFORCE SAFETY & INSURANCE
2015 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1103

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 permits WSI to obtain security deposits and/or other instruments to secure payments of premiums by employers; increases penalties WSI may assess from \$2,000 to \$5,000 for each premium period the employer was uninsured; and clarifies when employment has significant contacts with this state to include when an employer hires employees in this state for work in this state.

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

DATE: January 18, 2015

FISCAL NOTE
Requested by Legislative Council
12/19/2014

Bill/Resolution No.: HB 1103

- 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.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 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.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 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 attachment

- 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 attachment

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 or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 12/30/2014

WORKFORCE SAFETY & INSURANCE
2015 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1103

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 permits WSI to obtain security deposits and/or other instruments to secure payments of premiums by employers; increases penalties WSI may assess from \$2,000 to \$5,000 for each premium period the employer was uninsured; and clarifies when employment has significant contacts with this state to include when an employer hires employees in this state for work in this state.

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

DATE: December 30, 2014

2015 HOUSE INDUSTRY, BUSINESS AND LABOR


HB 1103

2015 HOUSE STANDING COMMITTEE MINUTES

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

HB 1103
1/13/2015
21872

- ☐ Subcommittee
☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to payment of Workers' compensation premiums and penalties for failure to secure coverage; and to provide for application.

Minutes:

Attachment 1

Chairman Keiser: Opens the hearing on HB 1103.

Anne Green~Staff Counsel-WSI: (Attachment 1).

3:52

Representative Ruby: In subsection 4, the above says \$2,000.

Green: The reference to above is a reference to subsection 3 of the statute.

Chairman Keiser: Page 1, line 12, any other instrument, I have a concern that we are giving the agency authority that employers may not agree with. It's broad and opens a big door.

Green: The intent for including the board language was to provide options to the employer the best instrument for them.

Chairman Keiser: I would be comfortable that if we had language agreeable to employer and the agency. In section 3, page 3; we aren't creating any problems hiring employee outside of the state for work in this state?

Green: No.

7:20

Representative Becker: Clarification, one employee is going to work for three months in ND and they are out of state, they are required to get coverage because that have an employee that works 25% in ND?

Geen: That's correct.

Representative Becker: The coverage that they are required to pay is the cost only that employee?

Green: There is an additional subsection in 65-08-01, which requires the responsibility of the employer who has come from out of state to conduct work in ND to ensure that all of their ND risk with WSI.

Chairman Keiser: That one person.

Green: That employer, required that employee to WSI, if they have pierce that significant contact's threshold.

Vice Chairman Sukut: Section 3, if we have employees that aren't earning less than 25% and they are injured. Does their injury claim go back to the state where they come from?

Green: You have hit upon the issue we have been experiencing. An employer who comes into the state and they don't have significant contact with the state, yet the injury happen here. Texas employer can't bring their coverage here because it's written in the private market place.

Vice Chairman Sukut: Are they left out in the ozone?

Green: Yes.

Vice Chairman Sukut: We have not found any way to address that particular issue?

Green: We feel that they should be properly covered in ND, which is why we've added that language.

Vice Chairman Sukut: Going back to the increase from \$2,000 to \$5,000, what kind & number of cases that are involved in this particular issue?

Green: I can tell you that five years ago, outstanding collectable premium was somewhere around 3 million dollars. That number has climbed upwards to 9-10 million dollars and hangs within that realm. We have seen a rise in open collection cases and the number is around 800 or 900 right now.

Vice Chairman Sukut: How are these people getting identified?

Green: There are a number of ways, an audit function, hot line tip, underwriting, but the best way is when someone gets hurt.

13:40

Chairman Keiser: The state of ND has an exclusive remedy clause. If someone is injured, we own it, what you're asking us to do is to make sure the premiums are properly paid for the exposure we have under the exclusive remedy.

Green: That's exactly right.

Representative Lefor: How do you go about enforcing the penalty?

Green: We have a whole series of contacts with employers. Once they are identified, we send a letter, they fill out application. If that doesn't work, we have other methods by which we will pursue an employer. We will issue a subpoena to find information.

Representative Lefor: It appears to me that there are a lot of businesses for a short period of time? Is there any thought about making a criminal provision out of this?

Green: At this point, criminal penalties are confined to our willful and intentional fraud statute.

Representative Frantsvog: If an employer comes to ND from out of state, if there is an injury, it's not a claim against the other state?

Jorgenson: The ability of the out of state insurer and continue to provide worker's compensation coverage is very limited, we are talking about apples and oranges.

Representative Frantsvog: Isn't there a period where a contractor has the ability to make that transition?

Green: Absolutely.

Representative Frantsvog: How long is that?

Green: Until that employer is going to expend 25% of their gross annual payroll in this state or any employee is going to earning 25% of their gross annual wages in this state.

Representative Frantsvog: So how much time is that?

Green: It depends.

Representative Kasper: Legally, that employer is required to get involved with WSI the day he is here?

Green: If that employer knows he is here for the long haul, yes.

Representative Kasper: Whether they are here for the long haul or not, if they meet the tests in the statute of 25%, legally from the first day the worker starts, they should be covered.

Green: Yes.

Representative M Nelson: What happens if a worker is injured in that window?

Green: We built an infrastructure that handles those kinds of cases.

Representative M Nelson: That employer pays nothing in, but his workers are still covered.

Green: That is correct.

Chairman Keiser: In many cases, that employer has coverage that is called "multi-state coverage" and that would cover their employees for short term in any state. Bottom line is, if we have an injury in our state and there is no coverage, we cover it. That is what we are trying to do with this is to make sure that we collect premiums when we have risks that we are covering.

Representative Louser: Is there an incident where an injury is not covered?

Green: Conceivably, yes, if the circumstances were such that the exposure in the state was brand new and we couldn't establish that the employer or worker was going to be here for a period of time. We have dismissed a claim for lack of discretion.

Representative Louser: If that veil hasn't been yet and they have been here 6 months.

Green: In 6 months they would have pierced veil.

Representative Kasper: Are you able to deny that worker benefit's if the employer says that my intent was to be here and I was going to buy?

Green: In all likelihood, no.

Vice Chairman Sukut: In section 3, the new addition c, that employee, under any circumstance, no matter what his earning is, is it covered then?

Green: Yes.

Vice Chairman Sukut: We are picking that up under this exclusive remedy?

Green: Yes.

Arik Spencer~Executive Vice President of the North Dakota Motor Carrier Association and the Trade Association for the Trucking industry in North Dakota: We are here in support of this bill. We are open to the suggestions that Chairman Keiser brought up.

Russ Hanson~Associated General Contractors of North Dakota: WSI, did reached out to the business community. We also in agreement.

Representative M Nelson: How do they figure the premium for contractors?

Hanson: WSI could answer that.

Green: There are circumstances when an employer buys private market coverage and then buys WSI where there is some duplication of coverage. The employers who buys multi-state policy, is responsible for reporting wages earned in each jurisdiction where those wages are earned.

Representative M Nelson: Is it favorable when you buying multi-state coverage to be in private coverage? If you are paying the same coverage twice, it's a disadvantage but he does ends up paying twice.

Green: Yes.

28:01

Faith Kjelstrup~WSI~Undergrad of Public Policy & Intern legal assistant at WSI: I'm here to support the bill.

29:29

Laney Heroff~Government Regulatory Affairs Specialist for the Greater North Dakota Chamber: I'm here to testify in support of HB 1103.

Chairman Keiser: Is there anyone else here to testify in **support, opposition, neutral?**

LeRoy Volk: Waiting for WSI, took them 3 months, they should fine themselves for not getting anything done.

Chairman Keiser: Closes the hearing HB 1103. Committee, what are your wishes?

Representative Kasper: You indicated a concern on page one. Is that something you want to pursue?

Laning: We could put "any other mutually acceptable instrument".

Chairman Keiser: Yes.

Representative Laning: Motions to amend HB 1103.

Representative Kasper: Second.

Chairman Keiser: We have a motion to amend HB 1301 on page 1, line 1, from any other instrument to any other mutually acceptable instrument.

Voice roll call was taken and amendment passes.

Vice Chairman Sukut: Motions a Do Pass as Amended on HB 1103.

Representative Laning: Second.

Roll call was taken on HB 1101 with 14 yes, 0 no, 1 absent and Vice Chairman Sukut is the carrier.

January 13, 2015

1315

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1103

Page 1, line 12, after "instrument" insert "that is mutually acceptable to the organization and the employer"

Renumber accordingly

Date: Jan 13, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1103

House Industry, Business & Labor Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Laning Seconded By Rep Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Lefor		
Vice Chairman Sukut			Representative Louser		
Representative Beadle			Representative Ruby		
Representative Becker			Representative Amerman		
Representative Devlin			Representative Boschee		
Representative Frantsvog			Representative Hanson		
Representative Kasper			Representative M Nelson		
Representative Laning					

Total (Yes) 15 No 0

Absent 0

Floor Assignment _____

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

pl. , Line 12

Voice Roll Call - Motion Passes

Date: Jan 13, 2015Roll Call Vote: 2

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1103**

House Industry, Business & Labor Committee☐ Subcommittee☐ Conference Committee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation☒ As Amended ☐ Rerefer to AppropriationsOther Actions: ☐ Reconsider☐ _____Motion Made By Rep Sukut Seconded By Rep Laning

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Representative Lefor	X	
Vice Chairman Sukut	X		Representative Louser	X	
Representative Beadle	X		Representative Ruby	X	
Representative Becker	AB		Representative Amerman	X	
Representative Devlin	X		Representative Boschee	X	
Representative Frantsvog	X		Representative Hanson	X	
Representative Kasper	X		Representative M Nelson	X	
Representative Laning	X				

Total (Yes) 14 No 0Absent 1Floor Assignment Rep Sukut

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

REPORT OF STANDING COMMITTEE

HB 1103: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1103 was placed
on the Sixth order on the calendar.

Page 1, line 12, after "instrument" insert "that is mutually acceptable to the organization and
the employer"

Renumber accordingly

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1103

2015 SENATE STANDING COMMITTEE MINUTES

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

Engrossed HB 1103
3/9/2015
Job Number 24464

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation extraterritorial coverage

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Tim Wahlin, Workforce Safety and Insurance: In support of the bill. Written Testimony Attached (1). (:40-2:04)

Chairman Klein: Asked if they are looking at assessing a five thousand dollar penalty and also the cost of what that claim may have been to the employer who doesn't have workers' comp.

Tim Wahlin: Yes that's correct. He continues with his testimony. (2:40-4:18)

Chairman Klein: What you are suggesting then is, if they hire additional workers and they are going to work at the facility they established in the State this goes under the North Dakota WSI and not Texas?

Tim Wahlin: That's correct.

Senator Sinner: Said that this just doesn't cover employers with injured workers but all employers who are delinquent in their payment.

Tim Wahlin: That's correct.

Senator Sinner: So how do you find out who these people are, do they have to register with the Secretary of State that they are going to be working here?

Tim Wahlin: There are those requirements and we have a number of different plans.

Chairman Klein: One of the articles in the paper was on all of the employers who are skirting the WSI law and you are out trying to find the employers who are not paying?

Tim Wahlin: That's correct, we have a number of different areas where we are taking hotline calls, out auditing and looking and also when an injury occurs.

Senator Campbell: In the east a lot of the businesses on the line of North Dakota and Minnesota go back and forth at different times. What do you do in those cases?

Tim Wahlin: I'd invite our chief of employer services, Barry Schumacher to explain how they will be handling those different sets of premiums in and out of State.

Barry Schumacher, Chief of Employer Services for WSI: We do have limited reciprocity with the State of Minnesota which allows the North Dakota based employee to go into the State up to 240 hours over the course of a year. Once they pass that they would be required to have coverage through a Minnesota carrier or a Minnesota State fund. (6:41-7:06)

Russ Hanson, Associated General Contractors of North Dakota: In support of the bill. This was an issue that WSI worked with us and the Motor Carriers and I assume others in the interim to address this problem. This gives them some added resources. (7:10-8:14)

Arik Spencer, North Dakota Motor Carriers Association: Also in support of the bill.

Chairman Klein: Closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

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

Engrossed HB 1103

3/9/2015

Job Number 24476

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation extraterritorial coverage

Minutes:

Chairman Klein: Does anybody need any additional time to look at this? This is where we are going to raise the penalty up to five thousand dollars.

Senator Poolman: Moved a do pass.

Senator Burckhard: Seconded the motion.

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

Senator Burckhard will carry the bill.

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
HB 1103 Engrossed**

Senate Industry, Business and Labor Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Senator Poolman Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Murphy	x	
Vice Chairman Campbell	x		Senator Sinner	x	
Senator Burckhard	x				
Senator Miller	x				
Senator Poolman	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Burckhard

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

REPORT OF STANDING COMMITTEE

HB 1103, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1103 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

HB 1103

2015 House Bill 1103
Testimony before the House Industry, Business and Labor Committee
Presented by Anne Jorgenson Green, Staff Counsel
Workforce Safety and Insurance
Date: January 13, 2015

Mr. Chairman, Members of the Committee:

My name is Anne Green with Workforce Safety and Insurance (WSI). I am here today to testify in support of House Bill No. 1103.

Section 1. The proposed changes to N.D.C.C. Section 65-04-22 provide another tool for WSI to secure premium payments from employers. These instruments also give employers more options in providing payments to WSI.

Section 2. The proposed changes to subsection 3 of N.D.C.C. Section 65-04-33 increase the penalty that WSI can assess an uninsured employer for each noncompliance period from \$2,000 to \$5,000. WSI finds the current \$2,000 penalty ineffective providing only minimal financial incentive for an uninsured employer to become fully compliant. A stronger penalty to compel uninsured employers to pay their premiums may provide additional incentive for uninsured employers to come into compliance.

The proposed changes to subsection 3 also provide language to clarify the intent of this statute. In addition to recovering unpaid premiums from an employer, WSI may seek the recovery of actual claims costs and reserves from an employer who is uninsured at the time of a claim.

The changes in Section 2 apply to all employers in noncompliance after the effective date of this Act.

Section 3. This proposed amendment to Section 65-08-01 provides clarity to the definition of significant contacts with North Dakota and requires coverage with WSI when an employer who hires employees in this state for work in this state. This amendment addresses the changing employment landscape in North Dakota where out of state employers routinely hire both in state and out of state residents for work in North Dakota. For example, a Texas based company recently begins conducting operations in North Dakota. They are properly insured in Texas. They have not yet met the significant contacts test under the statute which requires WSI coverage if 25% of their gross annual payroll is payable in this state or any employee is expected to earn 25% of their gross annual wages in this state. They find themselves in need of additional employees which they hire in North Dakota. Our experience tells us that those employees will likely be from all over the country. A workplace injury in North Dakota under these circumstances is properly covered by WSI, not the Texas coverage, nor any coverage from the home state of the injured worker. A claim of injury which

occurs in North Dakota involving a worker hired in North Dakota for work in North Dakota by an employer intending to conduct business in North Dakota is appropriately covered under WSI workers' compensation coverage.

This concludes my testimony and I would be happy to answer any questions you may have.

2015 Engrossed House Bill 1103
Testimony before the Senate, Business and Labor Committee
Presented by Tim Wahlin, Chief of Injury Services
Workforce Safety and Insurance
March 9, 2015

Mr. Chairman, Members of the Committee:

My name is ~~Tim Wahlin~~ with Workforce Safety and Insurance (WSI), I am here today to testify in support of Engrossed House Bill No. 1103.

Section 1. The proposed changes to N.D.C.C. Section 65-04-22 provide another tool for WSI to secure premium payments from employers. These instruments also give employers more options in providing payments to WSI.

Section 2. The proposed changes to subsection 3 of N.D.C.C. Section 65-04-33 increase the penalty that WSI can assess an uninsured employer for each noncompliance period from \$2,000 to \$5,000. WSI finds the current \$2,000 penalty ineffective providing only minimal financial incentive for an uninsured employer to become fully compliant. A stronger penalty to compel uninsured employers to pay their premiums may provide additional incentive for uninsured employers to come into compliance.

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Dakota involving a worker hired in North Dakota for work in North Dakota by an employer intending to conduct business in North Dakota is appropriately covered under WSI workers' compensation coverage.

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