

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/20/2016**

Amendment to: SB 2048

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 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.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 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:** 12/28/2016

**WORKFORCE SAFETY & INSURANCE  
2017 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: SB 2048**

**BILL DESCRIPTION: Injured Worker Attorney Fees**

**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 payment of an injured worker's attorney fees and costs at the level in which they prevailed regardless of whether the organization ultimately prevails.

**FISCAL IMPACT:** The proposed bill will serve to increase injured employee attorney fees in limited instances. The proposed bill may also serve to increase the number of cases proceeding to an administrative hearing. Although increases in attorney fees are anticipated in limited instances, we don't see the proposed change having a significant impact to statewide premium rate levels.

**DATE: December 28, 2016**

**FISCAL NOTE**  
**Requested by Legislative Council**  
**12/20/2016**

Bill/Resolution No.: SB 2048

- 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.*

	2015-2017 Biennium		2017-2019 Biennium		2019-2021 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
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- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2015-2017 Biennium	2017-2019 Biennium	2019-2021 Biennium
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- 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

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- 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:** 12/28/2016

**WORKFORCE SAFETY & INSURANCE  
2017 LEGISLATION  
SUMMARY OF ACTUARIAL INFORMATION**

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**DATE: December 28, 2016**

**2017 SENATE INDUSTRY, BUSINESS AND LABOR**

**SB 2048**

# 2017 SENATE STANDING COMMITTEE MINUTES

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

SB 2048  
1/4/2017  
Job Number 26510

- Subcommittee  
 Conference Committee

Committee Clerk Signature

*Era Liebelt*

## Explanation or reason for introduction of bill/resolution:

Workers compensation attorney's fees and costs

## Minutes:

Attachment 1 and 2

**Chairman Klein:** Opened the hearing.

**Jennifer Clark, Legislative Council:** Introduces the bill. She stated that they did some housekeeping. (:50-4:41)

**Chairman Klein:** At the second level if WSI moves on to the district level and if they would win, then injured worker wouldn't get the attorney fees at the second level?

**Jennifer Clark:** That is correct.

**Senator Campbell:** In essence the loser pays then.

**Jennifer Clark:** Loser pays for their own. They would never be faced with paying for WSI's attorney fees.

**Jodi Bjornson, General Counsel Workforce Safety and Insurance:** Written Testimony, see attachments 1 and 2. (10:52-16:20)

**Chairman Klein:** Asked about the fiscal affect and if they envisioned a hard dollar amount.

**Jodi Bjornson:** Said their fiscal impact would be nominal. She said that most of these fees would occur when WSI loses on the administrative hearing and appeals to the district court. They have done that nine times in the last two years. It isn't a significant amount.

**Senator Roers:** Asked if people were able to hire an attorney for \$150 dollars an hour.

**Jodi Bjornson:** Said that they are and that is the rate that is paid to their contract counsel and they agree by contract to that fee.



**Senator Campbell:** Asked how many cases would go to this level.

**Jodi Bjornson:** Said that they have three hundred pending cases at the administrative hearing level and that the last fiscal year there were three hundred and fifty-seven hearings requested. There were 209 hearings held last year.

**Chairman Klein:** Asked for anyone else in favor or opposition.

**William Hedegaard, North Dakota AFL-CIO:** (24:00-25:25) Stated that he was in opposition because they feel it puts more of the onus on the individual worker who was injured and regardless of whose responsibility it was, it wasn't the workers.

**Chairman Klein:** Said he thinks this was an attempt by an injured worker to be compensated if they won.

**Senator Poolman:** Asked for him to clarify his opposition because the point of the bill was to avoid the fact that you have injured workers who won at one level and their attorneys didn't get paid and they eventually lose, and that it makes it very difficult to get an attorney who will take their case. The whole purpose of this bill was to make it easier for injured workers to find a lawyer.

**William Hedegaard:** Correct me if I am wrong but if they have an administrative hearing but they lose at the next level then they don't get paid throughout the whole thing.

**Senator Poolman:** They get paid when they win at the administrative level.

**William Hedegaard:** If they lose at the next level up they still get paid at the administrative level?

**Senator Poolman:** Correct.

**William Hedegaard:** Then I withdraw my opposition.

**Chairman Klein:** This is certainly a benefit to the injured workers and would certainly help them get the attorney. We will close the hearing. Asked for a motion.

**Senator Casper moved the proposed amendments to SB 2048.**

**Senator Burckhard seconded the motion.**

**Roll call vote: Yes-7 No-0 Absent-0**

**Senator Casper moved for a do pass as amended.**

**Senator Poolman seconded the motion.**

**Roll Call Vote: Yes-7 No-0 Absent-0 Senator Poolman will carry the bill.**

17.0298.01001  
Title.03000

Adopted by the Industry, Business and Labor  
Committee

January 4, 2017

CM  
1/5/17

PROPOSED AMENDMENTS TO SENATE BILL NO. 2048

Page 2, line 8, after the underscored period insert "The total amount of attorney fees paid by the organization may not exceed the fee cap established for the highest appellate level at which the injured employee prevails."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2048**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 17.0298.01001

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 Casper    Seconded By Senator Burckhard

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total    (Yes) 7    No 0

Absent 0

Floor Assignment \_\_\_\_\_

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

**2017 SENATE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2048**

Senate Industry, Business and Labor Committee

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Motion Made By Senator Casper    Seconded By Senator Poolman

Senators	Yes	No	Senators	Yes	No
Chairman Klein	x		Senator Marcellais	x	
Vice Chairman Campbell	x				
Senator Roers	x				
Senator Burckhard	x				
Senator Casper	x				
Senator Poolman	x				

Total    (Yes) 7    No 0

Absent 0

Floor Assignment Senator Poolman

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

**REPORT OF STANDING COMMITTEE**

**SB 2048: Industry, Business and Labor Committee (Sen. Klein, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2048 was placed on the Sixth order on the calendar.

Page 2, line 8, after the underscored period insert "The total amount of attorney fees paid by the organization may not exceed the fee cap established for the highest appellate level at which the injured employee prevails."

Renumber accordingly

**2017 HOUSE INDUSTRY, BUSINESS AND LABOR**

**SB 2048**



# 2017 HOUSE STANDING COMMITTEE MINUTES

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

SB 2048  
2/14/2017  
28326

- Subcommittee  
 Conference Committee

*Ellen Letang*

## Explanation or reason for introduction of bill/resolution:

Workers' compensation attorney's fees and costs.

## Minutes:

Attachment 1

**Vice Chairman Sukut:** Opens the hearing of SB 2048.

**Chairman Keiser~District 47-Bismarck:** WSI has to issues a notices of decision of incidence to the worker. There are instances where the injured worker doesn't agree with the notice of decision & files an appeal. They can go to DROL, a decision review office & work with them & have them review the case.

However, having gone through DROL & we still have a dissatisfied claimant, the claimant then has the opportunity to choose a lawyer of their choice & we will pay up to the first \$500 for the lawyer's fee for them to review.

Then we go to the administrative law judge & most claimants that get to that level of the court, really probably have contacted an attorney who is on hand. If it goes through the administrative law judge & then go to district court. Again the attorney would proceed with them.

Whatever the ruling is, either side appeals it to the supreme court, then the supreme court then makes the final occasion. On occasion, after the supreme court has made a decision based on the law, we have made it conform to what the intent of the law.

In another section, we will pay for the injured worker's attorney if you win. The interpretation & application today is that if you win at the final level, in talking with LC, if we get to the administrative law judge, then district, finally the supreme court. Currently, we are only paying, if you win & what the definition of win is the highest court. That has led to a disadvantage to the claimant.

What this bill does, we are going to change that rule & say at any level that the claimant wins, & we will pay the attorney's fee. It's a leveling of the playing field for claimants. This will slightly increase on the fund for the fiscal note.

**6:07**

**Rep Laning:** WSI pays the first \$500 for a lawyer regardless for a defending to go them. What's being proposed is incrementally, if the defendant wins any step, that legal fee is paid. If he loses the next step, that increment is defendant's cost.

**Chairman Keiser:** The additional increment is the claimant, that's correct.

**Rep Ruby:** Subsection B, 2<sup>nd</sup> page, where is the fee cap?

**Chairman Keiser:** I believe it's developed through administrative rule at WSI, but they can answer that question.

**Rep Becker:** In the same section, line 7, attorney's fees are attorney's fees, what is that referring to?

**Chairman Keiser:** I prefer WSI to answer that question. I believe they rate a schedule for attorney's fee that they will pay & then the attorneys can decide.

**Jodi Bjornson~General Counsel WSI:** Attachment 1.

**14:55**

**Rep Bosch:** When I look at the fee schedule, for example, you prevail at the administrative hearing & then it goes to district court, is the \$86,000 additional or is it the part you are going to pay if you don't prevail, the difference between the two?

**Bjornson:** That is the intent that we will pay the difference between the two, so the total you can get at the district court is \$86,000, we don't stack them.

**Rep Becker:** Are these low ball figures & it will make it harder for someone to get counsel?

**Bjornson:** It's intended to be supplemental benefit to an injured worker.

**Rep Ruby:** This wouldn't bind the attorney, for instances, at the administrative hearing level, if they prevail, then you pay them this but if they don't prevail, he could charge that person any amount he wants?

**Bjornson:** That's correct.

**Brent Bogart~Greater ND Chamber:** We are in support of this bill. It's helping to allow the injured worker to recover those fee & that's a fair process.



**Rep Becker:** The cap, what was the concern for stacking & how did the amendment included now take care of that?

**Bjornson:** The intent of the amendment was to clarify that everyone is treated the same. The cap is the cap. We haven't had this situation before, we could see an issue with outside counsel saying, this should be stacked, we prevailed here & we get this amount. We prevailed at the supreme court & we get this amount. We just want that clarified so everybody knows before going into it.

**Rep Becker:** The numbers we are seeing here, the total cap, or which is ever highest level, those would be included in the original language on lines 7 & 8 rather than the actual numbers are not included in your added recommended language on lines 9 & 10? My understanding on the added amendment on 9 & 10, refers to the idea that you can't stack. But the actual caps are dealt with lines 7 & 8 on page 2, is that correct?

**Bjornson:** I really don't know how to answer that. All I can say is that WSI ultimately sets the attorney's fees, a court doesn't them & we go by rule because we are responsible for promulgating those attorney's fees.

**Rep Becker:** So you are allowing a total of 38 ½ hours of total attorney for an administrative hearing. If we are trying to make it workable for the client, 38 hours is not a really a long time. I'm expressing my concern on how we try to balance between not over limiting on a complex case versus a protecting the state from being gouged.

**Bjornson:** There is a potential safety net in place for the unusual & complex situations. I don't have an additional answer for you.

**Chairman Keiser:** These fees caps are applied to your attorney as well as the claimant. There seems to be a balance.

**Chairman Keiser:** Anyone else here to testify in support, opposition, neutral position? Closes the hearing on HB 2048, what are the wishes of the committee?

**Rep Ruby:** Moves a Do Pass.

**Rep Boschee:** Second.

**Chairman Keiser:** Further discussion?

**Rep Becker:** In regards to the even playing field, the possibility here, if they have firms that do high cases.

**Chairman Keiser:** I suspect; those firms would have to have a knowledge of worker's comp law.

**Rep Ruby:** The way it way currently done, there wasn't much relief. This was intended to help them through the steps. This is nothing but a benefit to the employee.

**Rep Boschee:** There is only a hand full of attorneys in this state that are taking these cases & I think it's a benefit to the employees.

**Roll call was taken for a Do Pass on HB 2048 with 14 yes, 0 no, 0 absent & Rep Bosch is the carrier.**

Date: Feb 14, 2017

Roll Call Vote #: 1

2017 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 2048

House \_\_\_\_\_ 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 Rep Ruby

Seconded By Rep Boschee

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	X		Rep Laning	X	
Vice Chairman Sukut	X		Rep Lefor	X	
Rep Beadle	X		Rep Louser	X	
Rep R Becker	X		Rep O'Brien	X	
Rep Bosch	X		Rep Ruby	X	
Rep C Johnson	X		Rep Boschee	X	
Rep Kasper	X		Rep Dobervich	X	

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep Bosch

**REPORT OF STANDING COMMITTEE**

**SB 2048, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed SB 2048 was placed on the Fourteenth order on the calendar.

**2017 TESTIMONY**

**SB 2048**



**2017 Senate Bill 2048**  
**Testimony before the Senate Industry, Business and Labor Committee**  
**Presented by Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance (WSI)**  
**January 4, 2017**

My name is Jodi Bjornson, General Counsel with WSI. I am here today to testify on Senate Bill 2048. The WSI Board of Directors supports this bill, with a clarifying amendment.

This bill directs WSI to pay an injured employee's attorney fees on appeal when the employee prevails, regardless of whether WSI ultimately prevails on further appeal. The bill limits WSI's payment of attorney fees to the level of appeal at which the injured employee prevailed.

There are three potential levels of appeal in the workers' compensation administrative appeal process: Administrative hearing, district court, and supreme court. Most cases are not appealed beyond the administrative hearing level.

Currently, an injured employee is awarded attorney fees when the employee ultimately prevails at the last appellate level to which the case is appealed. In other words, if the injured employee prevails at a lower appellate level, but does not ultimately prevail at the last level of appeal, the employee's attorney fees will not be paid.

The proposed legislation will change this structure and require WSI to pay attorney fees at a level of appeal where the injured employee is successful, even if the employee does not ultimately prevail at the last level of appeal.

For example, under the proposed law, if an injured employee prevails at the administrative hearing level, and WSI appeals that decision to the district court, WSI will pay attorney fees to the injured employee's attorney for prevailing at the administrative hearing level. If WSI goes on to prevail at the district and supreme court levels, the injured employee's attorney keeps the attorney fees received for prevailing at the administrative hearing level, even though WSI ultimately prevailed at the supreme court.

Payment of an injured employee's attorney fees is governed by NDCC Sections 65-02-08, 65-10-03, and NDAC Section 92-01-02-11.1. In general, WSI will pay twenty percent of the additional amount awarded to the injured employee, except for cases that determine initial compensability. The fee caps for attorney fees are found in NDAC Section 92-01-02-11.1 The following are the main fee caps for each appellate level:

Administrative Hearing	\$ 5,775
District Court	\$ 8,600
Supreme Court	\$11,300.

In addition, under NDCC Section 65-10-03, in the case of a judicial appeal with issues that are unusually complex, an injured employee's attorney may request attorney fees in excess of the maximum fee.

WSI calculates the fee cap based on the average attorney fees per appeal. These same fee caps apply to WSI's contract counsel who provide legal services to WSI in the administrative appeal process.

The administrative rule also directs WSI to pay injured employee's counsel at a rate of \$150 per hour. About every 2 years, WSI updates this hourly rate based on changes in the cost for WSI to contract with its outside counsel.

The main amendments in this bill can be found on page 2, lines 12-17; and lines 22-26. Most of the other changes are to provide clarity and better organization in the attorney fee statutes. Finally, the removal of the language on page 2, lines 28-30, is due to a supreme court ruling in which it was determined an injured employee could enter a fee agreement with an attorney and also seek payment of attorney fees from WSI. This statute only prohibited an attorney from receiving double fees from an injured employee and WSI for the same work.

WSI is proposing the attached amendment to clarify that attorney fees awarded to an injured employee at each appellate level cannot be stacked. The amendment is intended to ensure the total amount WSI will pay is the fee cap in place for the highest level of appeal at which the injured employee prevails.

This Act will apply to administrative and judicial appeal decisions issued on or after the effective date of this Act.

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

Proposed Amendments to SB 2048

Page 2, line 8, after the period, insert "The total amount of attorney fees paid by the organization may not exceed the fee cap established for the highest appellate level at which the injured employee prevails."

Renumber accordingly



**2017 Engrossed Senate Bill 2048**  
**Testimony before the House Industry, Business and Labor Committee**  
**Presented by Jodi Bjornson, General Counsel**  
**Workforce Safety and Insurance (WSI)**  
**February 14, 2017**

My name is Jodi Bjornson, General Counsel with WSI. I am here today to testify on Engrossed Senate Bill 2048. The WSI Board of Directors supports this bill.

This bill directs WSI to pay an injured employee's attorney fees on appeal when the employee prevails, regardless of whether WSI ultimately prevails on further appeal. The bill limits WSI's payment of attorney fees to the level of appeal at which the injured employee prevailed.

There are three potential levels of appeal in the workers' compensation administrative appeal process: Administrative hearing, district court, and supreme court. Most cases are not appealed beyond the administrative hearing level.

Currently, an injured employee is awarded attorney fees when the employee ultimately prevails at the last appellate level to which the case is appealed. In other words, if the injured employee prevails at a lower appellate level, but does not ultimately prevail at the last level of appeal, the employee's attorney fees will not be paid.

The proposed legislation will change this structure and require WSI to pay attorney fees at a level of appeal where the injured employee is successful, even if the employee does not ultimately prevail at the last level of appeal.

For example, under the proposed law, if an injured employee prevails at the administrative hearing level, and WSI appeals that decision to the district court, WSI will pay attorney fees to the injured employee's attorney for prevailing at the administrative hearing level. If WSI goes on to prevail at the district and supreme court levels, the injured employee's attorney keeps the attorney fees received for prevailing at the administrative hearing level, even though WSI ultimately prevailed at the supreme court.

Payment of an injured employee's attorney fees is governed by NDCC Sections 65-02-08, 65-10-03, and NDAC Section 92-01-02-11.1. In general, WSI will pay twenty percent of the additional amount awarded to the injured employee, except for cases that determine initial compensability. The fee caps for attorney fees are found in NDAC Section 92-01-02-11.1 The following are the main fee caps for each appellate level:

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WSI calculates the fee cap based on the average attorney fees per appeal. These same fee caps apply to WSI's contract counsel who provide legal services to WSI in the administrative appeal process.

The administrative rule also directs WSI to pay injured employee's counsel at a rate of \$150 per hour. About every 2 years, WSI updates this hourly rate based on changes in the cost for WSI to contract with its outside counsel.

The main amendments in this bill can be found on page 2, lines 14-19; and lines 24-28. Most of the other changes are to provide clarity and better organization in the attorney fee statutes. Finally, the removal of the language on page 2, line 30 through page 3, line 2, is due to a supreme court ruling in which it was determined an injured employee could enter a fee agreement with an attorney and also seek payment of attorney fees from WSI. This statute only prohibited an attorney from receiving double fees from an injured employee and WSI for the same work.

WSI proposed an amendment in the Senate found on page 2; lines 8-10, to clarify attorney fees awarded to an injured employee at each appellate level cannot be stacked. The amendment was intended to ensure the total amount WSI will pay is the fee cap in place for the highest level of appeal at which the injured employee prevails.

This Act will apply to administrative and judicial appeal decisions issued on or after the effective date of this Act.

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