

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1171

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1171

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-17-05

| Tape Number | Side A | Side B | Meter # |
|-------------|--------|--------|-----------|
| 3 | | xx | 0.0--end |
| 4 | xx | | 0.0--19.5 |
| 4 | | xx | 7.8--26.0 |

Committee Clerk Signature

Sam Klever

Minutes: **Chair Keiser:** Let's open the hearing on HB 1171.

Tim Wahlin, Workforce Safety & Insurance-Staff Counsel:Support bill (SEE ATTACHED)

Rep. Amerman: 11.8 In your new definition of permanent disability, can you tell me what would constitute 25 % of whole body?

Tim: Look at page 9 of the bill. The old definition was nature of injury degree of physical impairment, education and work history and rehab. We have replaced that with more concrete language. We know earlier on whether or not an individual falls into the pool or outside the pool. We use a huge book to evaluate and come up with the 25%. It is above my medical know how. Our experts can come very close to determining this shortly after the injury.

Rep. Amerman: They have only 104 weeks to come off the temporary disability list, they have to go on permanent disabled category under the criteria we have been talking about or are they done if they don't meet their criteria?

Tim: No, that would be inaccurate. At the completion of the 104 weeks of temporary total disability benefits, there are a number of different places where that injured workers could go. They will qualify either for 104 weeks of retraining and the training is paid for; and disability benefits would continue throughout. There is a partial temporary disability status which allows for up to 5 additional years of wage loss to be covered in part. There is another component that allows us to extend partial disability benefits for that 5 years for extreme situations. A decision has to be made within the 104 weeks, which is 2 years, but can be continued for 5 years beyond.

Rep. Ekstrom: 16.6 On page 9, line 14-16; why not leave these things in?

Tim: When we address a person's qualifications for permanent and total disability, we have come to the conclusion that there needs to be clarity. Otherwise, we leave injured workers.

Rep. Ekstrom: 23.1 Will the changes alone effect current injured workers?

Tim: No.

Rep. Amerman: If you are on temp disability for 15 or more years, who is dropping the ball?

Tim: We feel these changes will give us a tool to help the situation you are speaking about.

Rep. Ekstrom: On chart 4, are we following the national average or are we worse?

Tim: I don't have charts specifically about ND. Don't have the technology. (goes on to last Chart)

Rep. Amerman: Page 13, section C in the new language, is it right to say that you need to find clear and convincing medical vocational evidence to the contrary? Does the employee have to come up with this evidence? Is that a higher standard?

Tim: 34.4 In order to put together a partial temp disability package, we must (WSI) to go forth and put the relevant information all together. It is on us to put the information together and reviewed by the injured worker.

Rep. Amerman: On page 17, line 16, you eliminate by administrative order, what is the recourse of the claimant to come back and appeal this process? I understand attorneys wouldn't touch this, because of the administrative order.

Tim: No, we have taken out the requirements of administrative order. It sets this type of decision making parallel to the other decision making that we do. A technical thing..

Rep Keiser: 41.6 What we have is a system that has temporary total disability that becomes permanent, right?

Tim: Yes, for all intents and purposes. Before putting this together, we have surveyed other states across the U.S. and looked at their numbers and laws, to get to 104 weeks.

Rep. Kasper: On page 11, line 25-27; we are stating the rehab situation that you will pay 90% of the employees average weekly earnings or 66 2/3 % of weekly earnings which ever is less. Could that be less then what that employee should be earning?

Tim: No. But the 66 2/3 drives and is fairly typical across the U.S. That number is because that benefit payment of wage replacement is tax free. If we pay 100%, that benefit would be tax free and the injured worker would be making more then if they were working. The cap is around \$30,000 a year.

Dave Kemnitz-AFLCIO, Pres.: 48.0 In opposition to this bill. I got legal advise I would like to share. Currently there is no capping. This bill would dramatically alter the benefits structure by capping. Workers who are currently totally disabled have to prove it can't be declared temp total

disabled if they don't fit the scheduled injuries and don't have the 25% partial impairment. The requirement of a 25 % PTD award violation distinction WSI has always made between disabilities loss of ability to earn wages with impairments. The benefit reduction does not appear to be necessary given the fund improvement. (end of Tape 3) This change is bringing us more in line with other states. I looked for the other states. L.C. has a comparison state by state for benefits for temp total disability provided by WSI. Most do by duration and not a cap. This is not near any other state's duration and is way out of line. The vast majority of states are duration of disability or like.

Chair Keiser: Dave, you and I have had lots of talks. We both concur on a couple of points. ND people are some of the most motivated, best employees in the county. They want to work. There are a few exceptions out there. If we do this right, there should be of some value in this bill. We need to look in the positive way. I feel the claimants could really like this bill.

Sebal Vetter - CARE : Here opposed to HB 1171. We think this bill is a little harsh. Lots of people can't be retrained after their injury. We think you need to go back and look at the medical and doctor's situation in all of this. Some do misuse the system, I'm sure.

Leroy Volk: Opposed to bill. I have had two surgeries. They cut me off. They told me to go serve coffee. I want to work instead of live on \$700 a month. They sit and laugh at me.

Deb Bale, Jamestown, ND: 11.4 Here opposed to bill. (SEE WRITTEN TESTIMONY) My question is who is responsible to give us the century code from the WSI organization? Who is responsible? I have never, ever been given any advise to what the century code is concerning an injured worker and what they comply with. I also question how someone with a high school education can deal with highly technical issues and compete with the legal staff of WSI. I never

asked to stay on disability. This is the lowest point of my life. I have invested thousands of dollars out of pocket to get the care that I need. My injury is progressive. Not all injuries are clear cut. Please remember that ND was founded not by corporations, but hard working family members and manual laborers.

Rep Ekstrom: Thank you for coming to testify.

Cheryl Bergian - ND Human Rights Coalition, Dir.: Here in opposition (SEE ATTACHED)

Chair Keiser: Any more testimony opposed to HB 1171? Hearing none, hearing is closed.
(committee came back later in the afternoon)

Chair Keiser: Any direction for Rep. Kasper on HB 1171? There was an amendment. Tim, can you walk through this.

Tim Wahlen: 7.8 If you look at page 12. This is referred to rehab hierarchy. We have taken out a few of the options and cleaned up the bottom.

Rep. Kasper: Do some not wish to be trained.

Tim: We go through this with them to see where they fit as far as option.

Chair Keiser: If you make the decision that they can't go back to original job, you get down to d., you could go back to modified alternative occupation. If there is no job available, then will you extend the 104 weeks?

Tim: If there is no job available in your area and that injured worker could propose a plan where by reeducation would allow them to go back to an alternative position, that's the person we would look at.

Chair Keiser: Is the retraining extended or the salary replacement or both?

Tim: Both go together.

Rep. Ekstrom: I still think that leaving on the job training as an option, even if it's not used is something I'd like back in there.

Tim: The reason we addressed on the job training is it simply is not available.

Chair Keiser: Thanks, Tim. We can carry the hearing over if committee wants more information as long as both sides agree to have input again. I prefer not to do that. Do we want to leave the system in it's current form, which is unlimited temporary, or do we want to have a cut off.

Rep. Dosch: I think we need to move forward with the changes. No one wants to go back to the days when it was bad for both employer and injured worker. We don't want it to get out of hand like many years ago before the overhaul. We need reforms.

Rep. Amerman: I'm not sure I want to take it forward. Too many reforms; too much to chew.

Rep. Ruby: I feel the intent of the bill is to give the younger injured worker more options.

Rep. Ekstrom: Rep. Ruby brought up a good point about younger workers has more option. But the trend line in ND is that our population in ND is aging rapidly. More and more are effected with fewer options down the road.

Tim: They have the same options. They do have another option of appealing the next five years and finish their retirement.

Chair Keiser: A complicated bill. I need to study this a lot more. We want a healthy fund. We are now closed.

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-31-05

Tape Number
4

Side A
x

Side B

Meter #
13-25.4

Committee Clerk Signature



Minutes:

Chairman Keiser: Reconvened on HB 1171. 13-committee members were present 1-absent (Rep. Ekstrom).

Representative Ruby: MOVE to ADOPT AMENDMENTS.

Representative Dosch: SECOND the ADOPTION of AMENDMENTS.

Representative Thorpe: I MOVE a DO NOT PASS as AMENDED.

Representative Amerman: SECOND the motion.

Motion failed.

Representative Ruby: I move a DO PASS as AMENDED.

Representative Clark: SECOND the DO PASS as AMENDED.

Motion carried. VOTE: 11-YES 2-NO 1-Absent.

Motion carried.

Representative Kasper will carry the bill on the floor. Meeting adjourned.

FISCAL NOTE
Requested by Legislative Council
01/03/2005

Bill/Resolution No.: HB 1171

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.*

| | 2003-2005 Biennium | | 2005-2007 Biennium | | 2007-2009 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.*

| 2003-2005 Biennium | | | 2005-2007 Biennium | | | 2007-2009 Biennium | | |
|--------------------|--------|------------------|--------------------|--------|------------------|--------------------|--------|------------------|
| Counties | Cities | School Districts | Counties | Cities | School Districts | Counties | Cities | School Districts |
| | | | | | | | | |

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

WORKFORCE SAFETY & INSURANCE
2005 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL DESCRIPTION: Disability and Vocational Rehabilitation

BILL NO: HB 1171

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 caps temporary total disability benefits at 104 cumulative weeks or when maximum medical improvement is reached; redefines permanent total disability; allows an injured worker to decide whether to accept retraining as a vocational rehabilitation option; expands coverage of temporary partial disability benefits; and makes the appeal process relating to noncompliance with vocational rehabilitation consistent with the appeal process for other claims decisions.

Rate Level Impact: The proposed legislation will serve to reduce long term benefit costs for claims arising out of subsequent years, particularly future disability benefit payments that would otherwise extend out beyond 5 to 7 years. With this prospective change, it is estimated that offsets to future premium levels could range from approximately 2% to 3% (or \$2.5 million to \$3.3 million per year based on current premium levels).

Reserve Level Impact: We anticipate no reserve level impact as the legislation is designed to be applied prospectively meaning claims incurred prior to the effective date of this legislation are not impacted.

DATE: January 5, 2004

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, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: John Halvorson
Phone Number: 328-3760

Agency: WSI
Date Prepared: 01/11/2005

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1171

Page 12, line 16, insert "h. Where the employee's first appropriate option is c, d, e, or f, the organization may, at its discretion, pursue retraining of one hundred four weeks or less."

January 31, 2005

House Amendments to HB 1171 - Industry, Business and Labor Committee 02/01/2005

Page 12, line 17, after "5." insert "If the employee's first appropriate option is an option listed in subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one hundred four weeks or less."

Renumber accordingly

Roll Call Vote #: Date: 1-31-05
1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. #131171

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Adopt amendments

Motion Made By

Rep. Ruby

Seconded By

Rep. Nottestad

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|-----------------|-----|----|
| G. Keiser-Chairman | X | | Rep. B. Amerman | X | |
| N. Johnson-Vice Chairman | X | | Rep. T. Boe | X | |
| Rep. D. Clark | X | | Rep. M. Ekstrom | A | A |
| Rep. D. Dietrich | X | | Rep. E. Thorpe | X | |
| Rep. M. Dosch | X | | | | |
| Rep. G. Froseth | X | | | | |
| Rep. J. Kasper | X | | | | |
| Rep. D. Nottestad | X | | | | |
| Rep. D. Ruby | X | | | | |
| Rep. D. Vigesaa | X | | | | |

Total (Yes)

13

No

0

Absent

(1) Rep. EKstrom

Floor Assignment

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

Roll Call Vote #: 2 Date: 1-31-05

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1171

House

INDUSTRY, BUSINESS AND LABOR

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Do Not Pass As Amended

Motion Made By

Seconded By

Representatives
G. Keiser-Chairman
N. Johnson-Vice Chairman
Rep. D. Clark
Rep. D. Dietrich
Rep. M. Dosch
Rep. G. Froseth
Rep. J. Kasper
Rep. D. Nottestad
Rep. D. Ruby
Rep. D. Vigesaa

Yes

No

Representatives

Yes

No

Rep. B. Amerman
Rep. T. Boe
Rep. M. Ekstrom
Rep. E. Thorpe

Y

~~Y~~

A

V

N

A

fails

Total (Yes)

2

No

11

Absent

(1) Rep. EKstrom

Floor Assignment

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

Date: 1-31-05
Roll Call Vote #: 3

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1171

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 58128.0101 .0200

Action Taken Do Pass As Amended

Motion Made By Rep. Ruby Seconded By Rep. Clark

| Representatives | Yes | No | Representatives | Yes | No |
|--------------------------|-----|----|-----------------|-----|----|
| G. Keiser-Chairman | X | | Rep. B. Amerman | | X |
| N. Johnson-Vice Chairman | X | | Rep. T. Boe | X | |
| Rep. D. Clark | X | | Rep. M. Ekstrom | A | A |
| Rep. D. Dietrich | X | | Rep. E. Thorpe | | X |
| Rep. M. Dosch | X | | | | |
| Rep. G. Froseth | X | | | | |
| Rep. J. Kasper | X | | | | |
| Rep. D. Nottestad | X | | | | |
| Rep. D. Ruby | X | | | | |
| Rep. D. Vigesaa | X | | | | |

Total (Yes) 11 No 2

Absent (1) Rep. EKstrom

Floor Assignment Rep. Kasper

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

REPORT OF STANDING COMMITTEE

HB 1171: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (11 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). HB 1171 was placed
on the Sixth order on the calendar.

Page 12, line 17, after "5." insert "If the employee's first appropriate option is an option listed in
subdivision c, d, e, or f of subsection 4, the organization may pursue retraining of one
hundred four weeks or less."

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1171

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 2-28-05

| Tape Number | Side A | Side B | Meter # |
|-------------|--------|--------|---------|
| 2 | xxx | | 550-end |
| 2 | | xxxx | 0-2011 |

Committee Clerk Signature 

Minutes: **Chairman Mutch** opened the hearing on HB 1171. All Senators were present.

HB 1171 relates to the definition of permanent total disability and temporary total disability.

Tim Wahlin, Workforce Safety and Insurance, introduced the bill. See written testimony.

Senator Klein: Why the effective date of January 1, 2006?

Tim: The reason for that date is if there is a change of this magnitude with in the payment structure of our agency, we have a significant amount of in-house retooling that needs to be done. We would need some headway in order to handle these changes.

Senator Klein: We as a state, fall well above the guidelines that other states have?

Tim: That is exactly right. Two and a half times higher in permanent total disability cases than the national average. Even with the restructuring of the definition of permanent, total disability, we are still expecting to be double what the national average is.

Chairman Mutch: What accounts for that?

Tim: The current definition of total disability is somewhat ambiguous. We are trying to clarify it. Make it more injury related so that we have the most seriously injured workers, eligible for the most expensive and long term benefit available.

Senator Krebsbach: How do we compare on the temporary disability factors? Do other states now extend their temporary benefits for more years, as we do?

Tim: In the process of studying our system and comparing it to the national averages, I believe at least half of the other jurisdictions in the United States have their temporary benefits in one form or the other. I can't come up with the exact number. Currently we are looking at being dramatically higher with in the temporary benefit structure.

Senator Heitkamp: You talk about minimum wage being the partial benefit. Why?

Tim: That's the bottom end cap. There is a wage beyond that. Every time you come into the system, we set your average weekly wage, off of your earnings, that you have right now. When we start talking about partial disability benefits, what this law seeks to do is it seeks to take your earning capacity, the ability of time that you can work, we are going to take the higher. The lowest we will go is minimum wage. In order to deem you able to work.

Senator Heitkamp: This is a bill that in the mid 1990's I wouldn't have been surprised to see, but the fund is doing pretty well, isn't it Tim. Are we afraid we are going to run out of cash, or what is the problem?

Tim: No, the fund is doing well. Based upon the changes that were made, based upon some management inside, but we don't have the luxury of looking at our present condition. We are looking down the road.

Senator Heitkamp: The cost that you showed in the first graph, doesn't that have a lot to do with external things besides where the employee has any control over, cost of living, medical costs, etc. As the trend goes up, isn't that the cost of life years down the road?

Tim: Numerous things go into that.

Senator Klein: Did I hear you say that whoever is currently getting these benefits, nothing changes?

Tim: Yes. They are grandfathered in.

Chairman Mutch: So it will affect no one that is involved in the system now?

Senator Krebsach: On page 3 you list some of the expectations, and so on to address the new criteria. Could you furnish the committee with what the existing criteria is?

Tim: Referred to testimony. See attached.

Sandy Blunt, CEO of WSI, spoke in support of the bill.

Sandy: I would like to answer the question that was asked about, why now?. Costs are going up.

Heitkamp: There are certain things that you can't control, pharmacy and medical, for example, I don't know how you would control it. It has gotten away on a federal level that nobody wanted to listen to people years ago when they tried to get their arms around the hole. How would you control that?

Sandy: Control, is arbitrary. We are trying to limit the growth. Right now it's on a steep curve, we are just trying to flatten that out. We will never see it dip back down to where it was, but as far as pharmaceuticals, PBM's do that. There are a lot of things we can do medically. Increasing guidelines on a specific injury, we can have what is typically diagnose, don't come back and beg

for permission to provide treatment there. They are experts. You care for the worker and we set up a plan. Let's get you back to work, and off the system, which is what you want.

Chairman Mutch allowed opposition to be heard at this time.

Dave Kemnitz, AFL-CIO, spoke in opposition.

Dave: We are on the proactive side of opposition. It is a drastic change. Proactive for the claimant and wondering what the bureau is trying to do. I asked a friend of ours to give me a legal perspective. See written.

Deb Bale, Jamestown resident, spoke in opposition.

Bale: I am an injured nurse. I was diagnosed with RSD, Reflex Sympathetic Dystrophy, by a retired North Dakota Surgeon in his living room. At that time he also gave me some very important advise. He advised me that the corporation that I work for and WSI had the same goal-to save money, and both have the benefit of legal council. He advised me that in order to compete with the two corporations, I needed a supported doctor and lawyer. In Jamestown, I was diagnosed with RSD by an internal medicine physician. Next a physician in Jamestown was a family practice physician who diagnosed me with RSD as well. Next I saw three North Dakotan doctors. There was nothing wrong with me. One informed me I had been depressed all of my life, patted me on my cheek, told me to smile and suggested I buy a farm. I worked as a nurse with a wrapped left hand, the biggest disappointment was when my former employer declined to make job accommodations that were necessary for me to continue working as a ward clerk. When an injured worker loses their job, as I did, my daughter and I lost our insurance coverage and couldn't afford the cobra. Since that time, I have also lost the ability to contribute to my social security and IRA. I was no longer even able to file income tax and receive an EIC. I have seen

the reports and it is very unnerving for a single woman to have such indication as "called house, no answer, car parked in usual spot, south curtain open, snow cleared by large blade, white fence, garland on railing." Mayo declined to allow me vocational rehab. The only rehab I have received is a free computer course at the adult learning center. My primary care physician did not agree with the job description. None were willing. Job Service states that there is no jobs for a case worker with an RN degree in North Dakota. I do not have the experience or the educational background to be an eligibility worker. All three jobs require computer knowledge, expertise, and the ability to type. I have never used a computer, not in my home. I type with my right index finger. I requested a more in depth typing course and I was denied. Luckily I was able to obtain an independent capacity evaluation, here in Bismarck. This proved, both hands now swell and turn purple. Both hands and arms have lost their strength. End Tape. Go To SIDE B.

WSI has sent several injured workers to a computer course in Jamestown which offers the same program. I am deeply disappointed that I was not given the same opportunity as others. Driving is very difficult. In order to drive, I use my forearms, I will now be putting on 3000 miles on my 1993 Century, which has 130,000 miles, not to mention the cost of gas. The hardest part is being portrayed as a total malingerer. I am currently receiving \$93 per week. I qualify for emergency food stamps and I cannot afford heat. My thermostat sits at 52 degrees. I lived for 16 years in Idaho and Washington. Never once did I hear a negative comment about North Dakota workers. The last three and a half years has been very hard on my entire family.

Cheryl Bergian, North Dakota Human Rights Coalition, spoke in opposition to the bill.

See attached testimony.

Cebald Vetter, C.A.R.E, spoke in opposition.

Vetter: This bill is just like the social security bill. I don't think it's in trouble. Cost is going up, we know that. There's more people working now days, so there has got to be more injured workers. But they tell you, it's costing so much. Has WSI got the right to refuse a doctors orders that say you are disabled? Are they doctors?

Leroy Volk, spoke in opposition.

Volk: I heard a few rumors around, and I believe it's true. I was an injured worker and I just got my settlement. If North Dakota were wanting to start a school on fraud, and how to lie to people, just send them to WSI. They already got everything in place. That's what they are. They are the biggest fraud company in the state of North Dakota, but you can't prove it to 'em. You pass this bill, there will be more of us laying around here. We will have a whole bunch up here at the capitol saying "We can't work now?". A whole list of us.

Toby Boles, injured worker, spoke in opposition.

Toby: I have a lot of problems with what is going on here. The problem that I have with this is the people that are still lingering out here. Page 13, section C, where it talks about the presumption is only upon "clear and convincing evidence". So they can deny you your claim. I was injured back in 1984 with a strained back muscle with no injury do to lumbar spine, and/or my disks. I came back up here to North Dakota, and I swore to God I would never come back up here cuz I was on the Winter Show Building when it collapsed in 1996, and from where I come from, ten foot of snow is a lot of snow. What brought me back to North Dakota was the integrity of the people and the hard working ethic. I came up here putting in a pipeline. I was injured on the pipeline. My safety director to me to the emergency room, where I was diagnosed with an injury. At that time, I was put in contact with WSI, who put me on the road to more indebtedness.

They kept on approving all of these things for the doctors to do, MRI's, epidurals. Then they went back to a claim from 1984 for a strained back muscle, and there was no evidence available. They again, denied me this, because they say I have strained back muscle in 1984 and I am already predisposed to have a lumbar disc release. There is no medical evidence supporting a strained back muscle leading to degenerative disc disease. My family suffered for seven needless months. Have you ever had to look at you kid and tell him you can't buy him a Christmas present? I am a forty-seven year old man, I have worked since I've been eight years old. I wanted to go back to work. At the time that they canceled everything that was going on with my progress, it put me into a tailspin. I lost my home, I pretneer lost the love of my life. The expense at which some people are suffering needlessly by the unmerciful treatment of an insurance company that governs itself. What better scam in the whole wide world than to collect premiums and not have to pay any body anything. I have to have surgery to return to the work field. I have been denied this. If we are going to allow insurance companies to write their own laws to increase their profits we might as well let Mike Tyson rewrite the book of boxing. It's just plain and simple. I have talked to people at WSI that have told me literally that they don't give a damn.

Chairman Mutch: Did you ever have an operation?

Toby: No sir. I was denied it. I have literally stood at Wal-Mart and urinated on myself at the checkout line. I'm a proud man. I want to work. A doctor deemed I had a drug problem.

Jeff Miller, spoke in opposition to the bill.

Miller: I got injured and she told me that she would give me a thousand dollars, you can never bring this injury up again. We are not going to accept the claim. We are going to say it's not our fault and take a thousand dollars and head down the road. I said no. I found out I have a bulging

disc in my lumbar spine cervical and I don't know what is wrong with my muscles. My boss tried to get me to go to work for eight dollars and hour. He told me that if I didn't take it, they would deny workman's comp for not taking a transitional job. I cannot drive that far for that. Brenda Fix comes up and says "We know you got hurt on the job, we don't care. Take an eight thousand dollar settlement"..... Then Keith negotiated a settlement. I could never bring it up again and WSI would not take the blame. They will say it's not their responsibility. I told my attorney. He told me I wouldn't win my claim. So I went to the office of independent review. Six months later my family was starving, my three kids and I felt like I was going to kill myself three different times. The doctors forced me to go back to work. That's when I broke discs in my back. I wanted to commit suicide.

Glen Baltrousch spoke in opposition to the bill.

Glen: I will have satisfaction before I am done. I want my wage loss and I will get it, and I will have my satisfaction. This stuff is coming to a halt. The way you guys are operating in the state of North Dakota, my question is "How long is it gonna take before someone gets killed?" And it's not going to be on this side (gestures to group on injured workers), it's gonna be on this end (Glen then gestured to the WSI employees in the room). This may seem kinda radical, but this is point blunt.....

Senator Heitkamp interjects.

Senator Heitkamp: I have supported injured workers. I have worked hard on the cases, and I am just telling you that there is no place for what you just said. I mean that and I mean that for everybody in the room. That stuff's gotta end. That kind of talk has got to end. I have just been preached to, so I am going to preach back. I respect what is going on here and I respect this

Page 9

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1171

Hearing Date 2-28-05

process, but what you just said is too serious to let pass. Let's not go there. I want to continue to represent injured workers, but I don't want to go there.

Dan Finneman, injured worker from Dickinson, spoke in opposition.

There were no questions from the committee.

The hearing was closed. No action was taken.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1171

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 3-23-05

Tape Number

1

Side A

xxx

Side B

Meter #

1570-2886

Committee Clerk Signature



Minutes: **Chairman Mutch** allowed committee discussion on HB 1171. All Senators were present. HB 1171 relates to the definition of permanent total disability and temporary total disability of an injured worker.

Senator Heitkamp: Just to get the debate sparked, this doesn't hurt anyone that is on benefits now. That's obvious. It hurts them because it takes away certain levels that they need to get to. And I struggle with that when the fund is healthy.

Senator Klein: The issue is about the health of the fund. We don't think it's as healthy as we..., because if you look at the graph and as prescription cost, lost wages and doctors costs continue to raise and that spread is starting out and this is dipping into the fund. The few things that we've attached this session, the social security offset, the dependency benefits and some of those other things. That spread is increasing and I guess is this going to change that much, I don't know.

Senator Heitkamp: With two-hundred and some thousand people actually the ones paying it, the fund could get to a point where it could just pay everybody and we could quit. 1.3 billion is

healthy. We've had that argument in this committee before and I respect the other side's opinion, I just think that you are going to fall down in line of where you think the fund is, on this bill. I'm not going to vote for it.

Senator Nothing: My question is, what does this really do to help an injured worker in the future? I know what it does to help the bureau, but what does it do to help the worker.

Senator Klein: It sets more of a direction for the worker, knowing that after seven years, a decision is made whether he is retrained, on permanent total, or he is back to work.

Senator Nothing: When the worker is ready, the worker is ready.

Senator Klein: The concern is that some of these temporary things are going twenty years.

Senator Nothing: I'm not so sure that I see why we need this. I'm not so sure I see an abuse. If there were, I don't think the testimony that I have indicates it. That's where I am puzzled by all of this.

Senator Nothing: We had no testimony that said there was a problem. We had testimony saying the bureau wanted to make changes.

Chairman Mutch: They probably couldn't sight names of people who were problems.

Senator Nothing: I know that, just examples without names.

Senator Klein: The issue started with the octagon report that suggested that North Dakota has two and a half times the national average of people who are on temporary benefits. And the Bureau said, maybe there is a way to address this and move forward. But that octagon risk group that they hire to come in and make those assessments determined that. I think that is where that discussion started. It was an independent audit.

Chairman Mutch: They like the system and still work. And they draw.

Senator Nething: I don't think the system replaces working.

Chairman Mutch: But it's better than nothing.

Senator Espegard: The temporary disability, you are allowed to get some temporary funds and allowed to work to some degree? So what benefit is it to the employee to be temporary or partially, instead of fully?

Senator Krebsbach: There is a seven year time line. The idea is to get them back to work.

Senator Nething: Nobody still has told me how it benefits the worker.

Senator Klein: As employers, we are all concerned about what our premiums are and when premiums go up, we are all in an uproar, we don't micro manage the department, making sure that, we don't understand how they pay workers, we just know that we have certain responsibilities to make sure that we inform the bureau when someone is injured and follow the rules and try to get them back to work.

Senator Krebsbach: I see them with this, trying to prevent a serious situation 5-15 years ago and they did say that they were starting to dip into the reserves now, rather than on the premium itself, and we need to prevent that from happening again.

Senator Nething: The fiscal note shows no reserve level impact. I am not convinced that we are doing anything that is good for the worker. I think we are doing something that the administrators want.

Senator Klein: Generally, when we have these research groups come in, these independent auditors, they blame the agency when they don't take that information and use it. This case, we are saying that we've spent the money, but let's not use that information. They have noted in the January meeting, that we are way beyond the claims amount in comparison to other states.

Page 4

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1171

Hearing Date 3-23-05

Senator Nething: Second to the drug testing bill, this one probably bothers me the most because I don't see.

Senator Heitkamp: The only thing I would add is that there is representation from workers by the board.

Senator Klein moved a DO PASS. Senator Krebsbach seconded.

Roll Call Vote: 4 yes. 3 no. 0 absent.

Carrier: Chairman Mutch

Date: 3-23-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1171

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken Do Pass

Motion Made By Klein

Seconded By Krebsbach

| Senators | Yes | No | Senators | Yes | No |
|-------------------|-----|----|-------------------|-----|----|
| Chairman Mutch | X | | Senator Fairfield | | X |
| Senator Klein | X | | Senator Heitkamp | | X |
| Senator Krebsbach | X | | | | |
| Senator Espgaard | X | | | | |
| Senator Nething | | X | | | |

Total (Yes) 4 No 3

Absent

Floor Assignment Mutch

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

REPORT OF STANDING COMMITTEE (410)
March 23, 2005 1:34 p.m.

Module No: SR-53-5882
Carrier: Mutch
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1171, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (4 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1171 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1171

Testimony on Bill #1171
Industry, Business and Labor
January 17th, 2005

Hr. Chairman and Members of the committee. My name is Deb Bale. I live in Jamestown. In October 2001, I developed a deep infection in my left hand which rapidly spread to my entire left arm. I returned to nursing with a purple, swollen and painful left hand. I also wore a compression glove.

By July 2002 I could no longer tolerate the pain. Due to the infection I developed "reflex sympathetic dystrophy." Both hands swell, turn purple, and ache when dependent (lower than heart). Pain is triggered by wind, vibration, and temperature changes. I continue to wear compression gloves and now use heat packs, too.

With the new proposals I would not qualify for permanent partial impairment. Reducing temporary partial disability to two years would not allow enough time for rehabilitation. After 3 years - 3 months I am still seeking rehabilitation. I receive \$93 per week. In December I qualified for emergency food stamps. My thermostat sits at 55°. My next option is to auction off my house and belongings. — Thank you.

Deb Bale
1102 3rd Ave NE
Jamestown, North Dakota 58401

North Dakota Human Rights Coalition

P.O. Box 1961, Fargo, ND 58107-1961 (701) 239-9323 Fax (701) 478-4452 www.ndhrc.org



Testimony
House Bill 1171
House Industry, Business & Labor Committee
January 17, 2005

Chairman Keiser and members of the Committee, I am Cheryl Bergian, Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights.

We oppose the changes in HB 1171 that would weaken the protections for workers in capping temporary total disability benefits at 104 weeks or when maximum medical recovery is achieved. It is our understanding that Workforce Safety & Insurance believes that this has eroded the focus of return to work programs. Surely WSI could formulate ways to work with disabled workers on returning to work without draconian cuts in benefits. There is also a question on why the concept of maximum medical improvement is linked to the question of disability/wage replacement: the question of medical improvement does not equate to the question of whether a worker is disabled.

We also oppose the change to the definition of permanent total disability. This change further reduces the disabled worker's entitlement to "sure and certain" relief when injured on the job. If a disabled worker does not fit the scheduled injuries and does not have a 25% permanent partial impairment, he or she will not be found to have a permanent total disability. Surely there will be disabled workers who will not fit that criteria but who deserve the "sure and certain" relief provided by the workers' compensation framework of our state.

We ask for a do not pass recommendation on House Bill 1171. I appreciate this opportunity to testify on behalf of the North Dakota Human Rights Coalition.

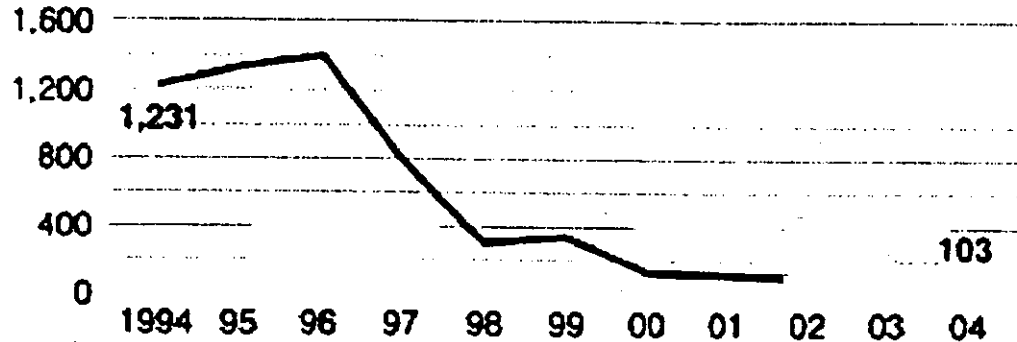
Dave Kemnitz

AFL-CIO

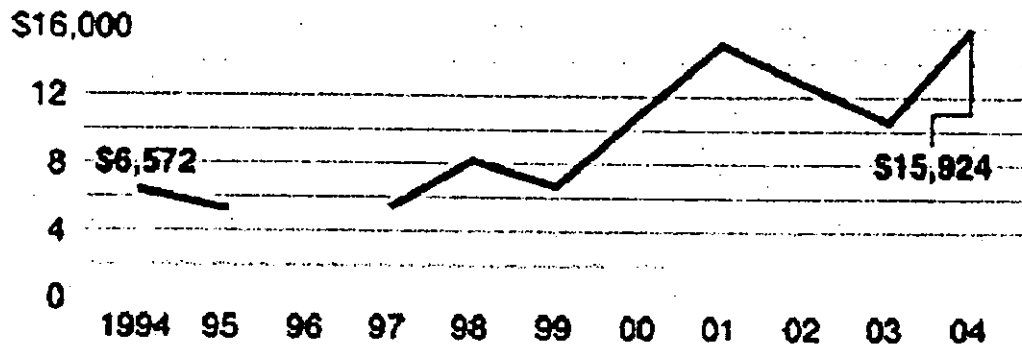
~~X~~ Paying more to fewer people

The number of workers' compensation impairment awards has decreased in the past decade. However, the amount awarded has increased during the same period of time.

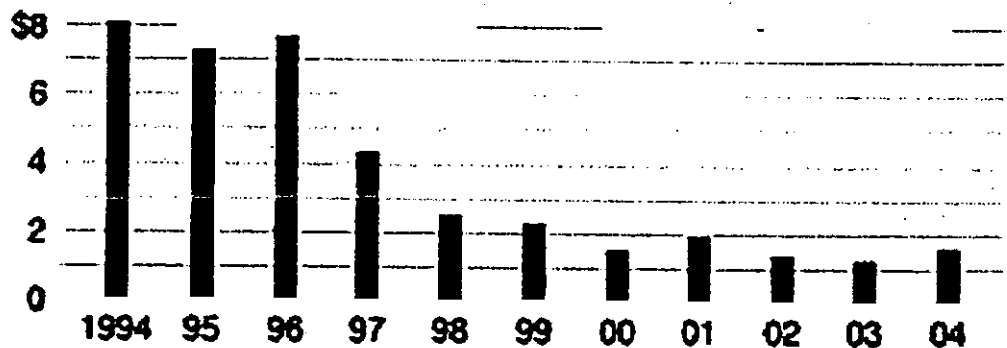
NUMBER OF AWARDS TO INDIVIDUAL WORKERS



AVERAGE AMOUNT OF AWARDS TO INDIVIDUAL WORKERS



TOTAL AWARDS IN MILLIONS



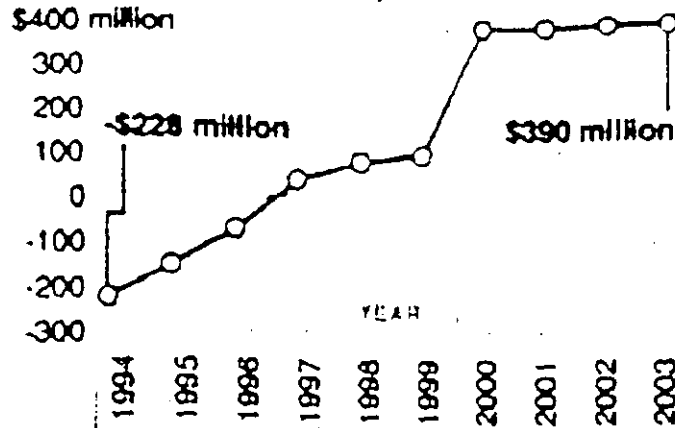
Source: Workforce Safety and Insurance

The Forum

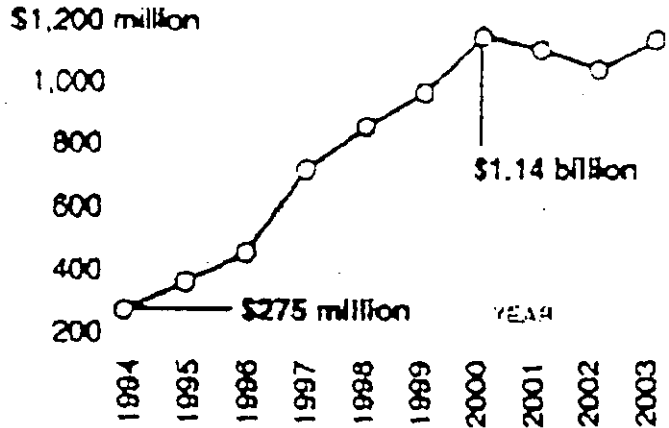
N.D. workers' comp's financial assets show steady growth

Despite a decrease in premiums from 1996 to 2003, the assets of Workforce Safety and Insurance have grown steadily over the past decade. The fund's dramatic financial turnaround followed the passage of new laws, including a 28-bill package in 1995, aimed at reining in costs for medical bills and disability payments.

Fund balance (net assets)



Assets



Fiscal year is June 30 to July 1

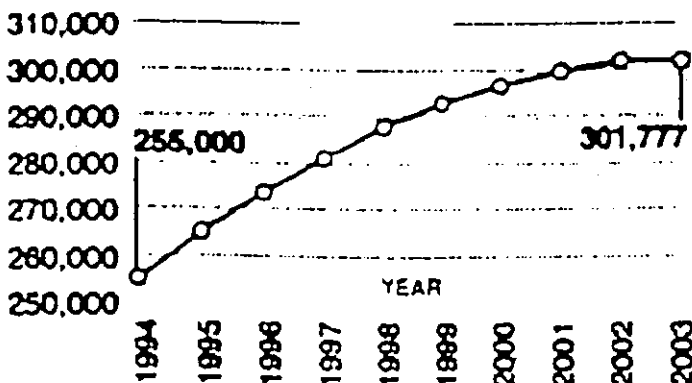
Source: Workforce Safety and Insurance

The Forum

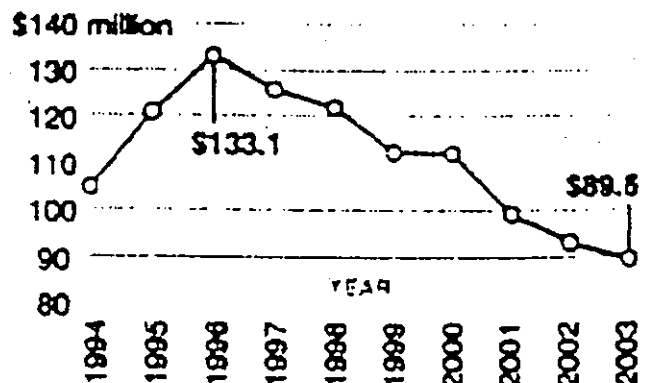
Workers' comp, by the numbers

The premiums North Dakota employers pay to cover injured workers dropped by one-third since peaking in 1996, but went up by an average of 8 percent this year. The huge drop in premiums came despite a 9 percent increase in the number of covered workers.

Employees covered



Premiums*



* Reflects earned premiums before reinsurance and dividends

Source: Workforce Safety and Insurance

The Forum

Dave Kemnitz- AFL-CIO

Table 2. Workers' compensation premium rate ranking

| 2004 Ranking | 2002 Ranking | State | Index Rate | Effective Date |
|--------------|--------------|----------------------|------------|-----------------------------------|
| 1 | 1 | California | 6.08 | January 1, 2004 |
| 2 | 15 | Alaska | 4.39 | January 1, 2004 |
| 3 | 2 | Florida | 4.20 | October 1, 2003 |
| 4 | 3 | Hawaii | 3.73 | January 1, 2004 |
| 5 | 14 | Ohio | 3.59 | July 1, 2003 |
| 6 | 16 | Kentucky | 3.48 | September 1, 2003 |
| 7 | 4 | Delaware | 3.44 | December 1, 2003 |
| 8 | 10 | Montana | 3.41 | July 1, 2003 |
| 9 | 7 | Louisiana | 3.37 | January 1, 2004 |
| 10 | 17 | District of Columbia | 3.26 | November 1, 2003 |
| 11 | 13 | Connecticut | 3.23 | January 1, 2004 |
| 12 | 18 | New Hampshire | 3.19 | January 1, 2004 |
| 13 | 8 | Maine | 3.08 | January 1, 2004 |
| 14 | 5 | Texas | 3.08 | January 1, 2003 |
| 15 | 19 | Oklahoma | 3.07 | 2/1/02 State Fund, 1/1/04 private |
| 16 | 6 | Rhode Island | 3.01 | November 1, 1998 |
| 17 | 25 | Vermont | 2.99 | April 1, 2003 |
| 18 | 9 | New York | 2.97 | December 1, 2003 |
| 19 | 12 | Alabama | 2.88 | March 1, 2004 |
| 20 | 23 | Pennsylvania | 2.82 | April 1, 2003 |
| 21 | 22 | Minnesota | 2.74 | January 1, 2004 |
| 22 | 26 | Missouri | 2.67 | January 1, 2004 |
| 23 | 20 | Illinois | 2.65 | January 1, 2004 |
| 24 | 24 | West Virginia | 2.64 | July 1, 2003 |
| 25 | 29 | Tennessee | 2.62 | March 1, 2003 |
| 26 | 11 | Nevada | 2.58 | January 1, 2004 |
| 27 | 36 | New Mexico | 2.56 | January 1, 2004 |
| 28 | 38 | Wyoming | 2.43 | January 1, 2004 |
| 29 | 31 | New Jersey | 2.38 | January 1, 2004 |
| 30 | 30 | Michigan | 2.34 | January 1, 2004 |
| 31 | 21 | Colorado | 2.33 | January 1, 2004 |
| 32 | 34 | North Carolina | 2.32 | August 29, 2003 |
| 33 | 32 | Wisconsin | 2.27 | October 1, 2003 |
| 34 | 27 | Idaho | 2.25 | January 1, 2004 |
| 35 | 45 | Washington | 2.20 | January 1, 2004 |
| 36 | 33 | Mississippi | 2.19 | March 1, 2003 |
| 37 | 28 | Georgia | 2.14 | November 1, 2001 |
| 38 | 39 | Nebraska | 2.10 | February 1, 2003 |
| 39 | 42 | South Carolina | 2.08 | January 1, 2004 |
| 40 | 40 | Maryland | 2.06 | January 1, 2004 |
| 41 | 48 | South Dakota | 2.05 | July 1, 2003 |
| 42 | 35 | OREGON | 2.05 | January 1, 2004 |
| 43 | 43 | Iowa | 1.91 | January 1, 2004 |
| 44 | 41 | Kansas | 1.81 | January 1, 2004 |
| 45 | 37 | Massachusetts | 1.70 | September 1, 2003 |
| 46 | 44 | Utah | 1.63 | December 1, 2003 |
| 47 | 49 | Virginia | 1.57 | April 1, 2003 |
| 48 | 47 | Arkansas | 1.57 | July 1, 2001 |
| 49 | 46 | Arizona | 1.49 | October 1, 2003 |
| 50 | 50 | Indiana | 1.24 | January 1, 2004 |
| 51 | 51 | North Dakota | 1.06 | July 1, 2003 |

Per hundred
dollars of
pay roll

Based on updated information, the 2002 ranking has been revised since it was originally published.

Although some states may appear to have the same index rate, the ranking is based on calculations prior to rounding to two decimal places. The index rates reflect appropriate adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends.

Employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work.

In compliance with the Americans with Disabilities Act (ADA), this publication is available in alternative formats. Please call (503) 378-4100 (V/TTY).

The information in this report is in the public domain and may be reprinted without permission. Visit the DCBS Web site, <http://www.cbs.state.or.us>.

To receive electronic notification of new publications, see the Information Management WebBoard, <http://www.cbs.state.or.us/ind/notify.html>.



440-2082 (12/04/COM)

Information Management Division
350 Winter St. NE, Room 300
P.O. Box 14480
Salem, OR 97309-0405
(503) 378-8254

Capping of Temporary Total Disability Benefits – N.D.C.C. §

65-01-02(29).

Opposed-

WSI's explanation and rationale:

HB 1171
North Dakota AFL-CIO
1323 E. Front Ave.
Bismarck, ND 58504

DAVE Kemnitz

- Caps temporary total disability benefits at 104 weeks or when Maximum Medical Improvement (MMI) is reached. Currently no cap exists.

WHY – Currently, entitlement to temporary total disability can extend without limit. This has created expectations of ongoing benefits and has eroded the focus of return to work programs. This will focus attention on return to work options and the pressing need to rehabilitate injured workers.

Analysis: WSI has previously touted the fact that its benefit structure is in the top third of states nationally. In state by state comparisons, WSI has also been quick to point out that North Dakota does not cap disability benefits. This bill would dramatically alter the benefit structure by capping temporary total disability (temporary wage replacement) benefits at 104 weeks of when maximum medical improvement (MMI) is reached.

Concerns:

- This is a fundamental and drastic change to the benefit structure in North Dakota. There are currently workers receiving so-called temporary total disability benefits 8 or 10 years after an injury. This unprecedented change would cap such benefits at 104 weeks.
- 1995 reforms/reductions were prompted by a dire financial situation for the fund. Now that the fund status has improved over half a billion dollars since 1995, why is it necessary to impose such a drastic benefit reduction, with no corresponding increase on the benefit side?
- Would such a drastic benefit reduction cause the North Dakota Supreme Court to reconsider its previously stated concerns as to whether this system is providing "sure and certain relief" as it is obligated to do?
- Why is the concept of maximum medical improvement (MMI) linked to the question of disability (wage replacement)? Just because no more can be done medically does not mean there is no disability. The MMI-end-point could result in disabled workers having benefits cut off well before the 104 week cap.
- What is the fiscal note on this? How much does WSI plan to save? Why no corresponding benefit increases?

Definition of Permanent Total Disability – N.D.C.C. § 65-01-02(26).

WSI's explanation and rationale:

- **Redefines permanent total disability in workers' compensation law. (PTD).**

WHY – Clarifies language that leads to inconsistent application. Establishes more concrete guidance to determine whether an injured worker qualifies for permanent total disability benefits.

Analysis: This and the cap of temporary total disability benefits at 104 weeks are both components of WSI's apparent attempt to drastically reduce the number of injured workers who are receiving disability benefits. Instead of relying on factors (nature of injury, degree of impairment, education, work history and vocational rehabilitation potential), this bill would limit permanent total disability (PTD) benefits to the limited and defined circumstances set out in the bill. If a type of injury, such as loss of vision or paralysis, does not appear on the schedule of injuries, there must be impairment of at least 25% before an injured worker is entitled to a declaration of permanent total disability.

Concerns:

- **Workers who are permanently and totally *disabled* (i.e. unable to work as a result of a work injury) cannot be declared TTD if they don't fit the scheduled injuries and don't have 25% permanent partial impairment.**
- **The requirement of at least 25% permanent partial impairment for a PTD award violates the distinction WSI has always made between disability (loss of ability to earn wages) with impairment (loss or loss of use of body part or organ system).**
- **This benefit reduction does not appear to be necessary, given fund improvement of a half billion dollars since 1995.**
- **Is this another change that would cause the North Dakota Supreme Court to question whether injured workers are receiving "sure and certain relief"?**
- **What is the fiscal note for this change?**

2005 House Bill No. 1171
Testimony before the House Industry, Business, and Labor Committee
Presented by: Timothy J. Wahlin, Staff Counsel
Workforce Safety & Insurance
January 17, 2005

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety & Insurance (WSI). I am here to testify in support of 2005 House Bill 1171. The WSI Board of Directors supports this bill. This bill was designed after months of research and analysis. It is intended to specifically address areas of ongoing concern, recognized not only by WSI, but by our latest external audit as well.

First, I would like to present some background. Last September WSI received its biennial external audit report produced by a team from Octagon Risk Services, Incorporated. In their review, the auditors expressed concern with the percentage of injured workers declared permanently and totally disabled or what we term reaching "permanent total disability" status. North Dakota's percentage of injured workers on permanent total disability is 2.5 times the national average. Permanent total disability benefits are long-term wage replacement benefits. Only the most severely injured workers, who can never return to any work, are expected to receive permanent total disability benefits.

Prior to the independent audit, WSI detected this increasing trend and began researching its root cause(s) by: a) focusing on the legal definition of permanent total disability and its impact; b) focusing on the duration of temporary benefits prior to the awarding of permanent and total disability benefits; c) reviewing the rehabilitation tools available to our organization to assist a severely injured worker in finding meaningful employment; and, d) researching what other workers' compensation systems were doing in these areas. Taking all this information into consideration, we then trended out the historic patterns to get a sense of what the picture of our future would look like if we did not address this important issue. The recommendations presented in HB 1171 represent our reasonable solutions to this developing trend.

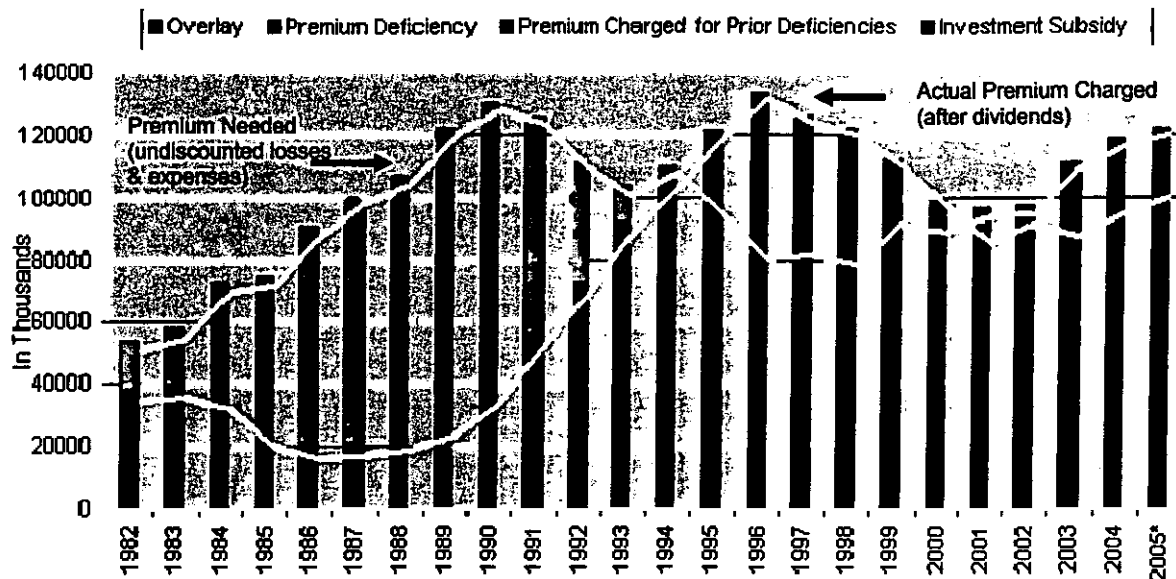


CHART 1

Average Cost per Time Loss Claim

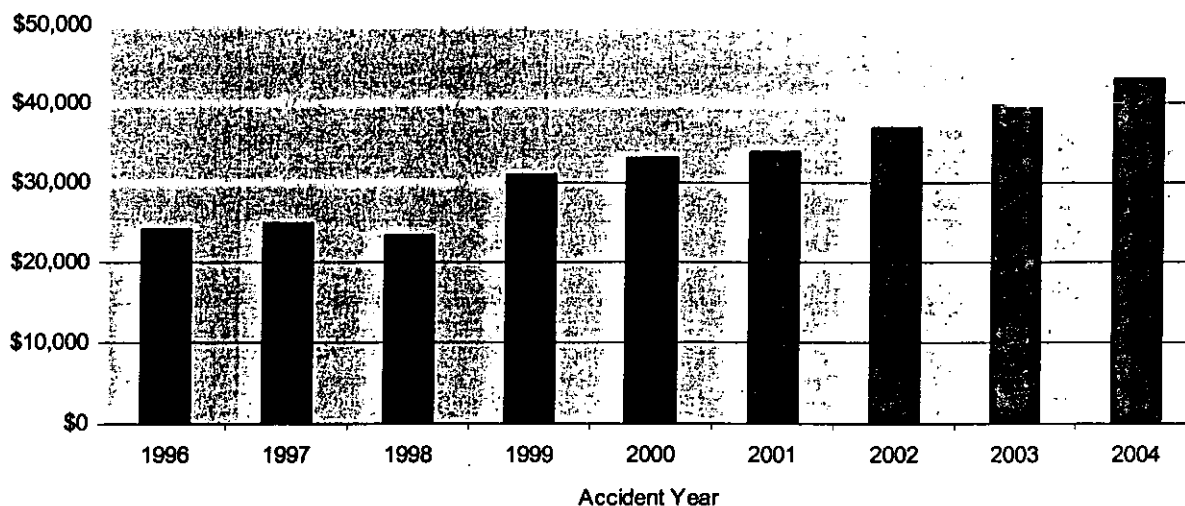


CHART 2

We must also focus on the purpose of the "Fund" as proscribed by the North Dakota Constitution. The Fund has been constitutionally appropriated for "the payment of compensation to injured employees or death claims, duly approved, [and] payable." N.D. Const. Art. X section 12. Consistent with this, since 1919, the legislature has provided WSI with the law for our organization to manage a workers' compensation program for North Dakota's injured workers.

Consistent with our constitutional charge, WSI has identified three specific areas of injured worker benefits that this bill addresses. These areas are an expanding permanent total disability population, an undefined temporary total disability duration, and a lack of flexibility within the vocational rehabilitation hierarchy.

We have in this bill, proposed changes in each of these areas, which will address an injured worker's expectations at the onset of their on-the-job injury. By clarifying and standardizing our wage replacement benefits, the injured worker will have the tools necessary to make informed choices, up front, on the management of their claim and, when possible, get them back to meaningful employment.

This legislative package reinforces that, unless you are permanently and totally disabled under a bright line and clear statutory test, your benefits will end. The intention is to redirect the focus on preparing an injured worker for that eventuality. Understand, this only addresses the wage replacement component of their benefits. Medical care and medical benefits related to the injury will continue for the life of the claim.

Section 1. This section changes the definitions of both permanent total disability as well as temporary total disability. Permanent total disability is changed to provide a more consistent, bright line definition. This new definition should also limit the litigation that is sometimes triggered by the current, more ambiguous, definition. Linking the definition to medically specific injuries or impairments, allows WSI to more readily address an injured worker's expectations.

- Total and permanent loss of sight of both eyes;
- Loss of both legs or loss of both feet at or above the ankle;
- Loss of both arms or loss of both hands at or above the wrist;
- Loss of any two of the members or faculties in subdivision a, b, or c;
- Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
- Third-degree burns that cover at least forty percent of the body and require grafting;
- A medically documented traumatic brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living;
- Or, a compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2. If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

Currently WSI has 980 injured workers who have been declared permanently and totally disabled and are receiving long-term wage replacement benefits. We believe, and our external audit shows, that by providing more clarity, it is expected there will be a reduction in the number of injured workers declared permanently and totally disabled. It is the intent of this legislation to more immediately identify injured workers who have potentially permanently disabling injuries. Likewise, it sets expectations for those who do not meet this new definition and provides them with choices and options for their future.

It is worth noting that under the current law, there are injured workers who have been declared permanently and totally disabled and yet have no discernable permanent impairments. Why the apparent disconnect between severity and permanence of an injury and the awarding of permanent total disability status? Under current law, an injured workers' socio-economic condition, age, and other non-work related factors --which are truly preventing them from returning to work-- are not considered. We believe without this clarification, disability will be paid based on factors other than a work related injury.

On January 10, 2005, Malcolm Dodge of Octagon Risk Services, Inc., testified to you regarding our external audit. In his testimony, he conveyed that the top one percent of the 1998 and 1999 claims are consuming fifty percent of the overall cost. He also stated that "this state has an inordinate number of injured workers who have been declared to be permanently and totally disabled." (Joint House and Senate IB&L Committee Hearing 1-10-05)

To gain a better understanding of why North Dakota has an inordinate number of permanent total disability cases, WSI reviewed the definition for permanent total disability in other jurisdictions throughout the United States. WSI then developed a permanent total disability definition that was more in line with the industry standard. We expect that with the clarity and scope of this definition, the number of injured workers receiving permanent total disability benefits will decrease by approximately twenty percent.

(Moving from roughly fifty a year to forty a year.)

Even with this modest decrease, North Dakota will be at more than twice the national average for those declared permanently and totally disabled. We believe this to be a good compromise between what the external audit concluded and where we are today.

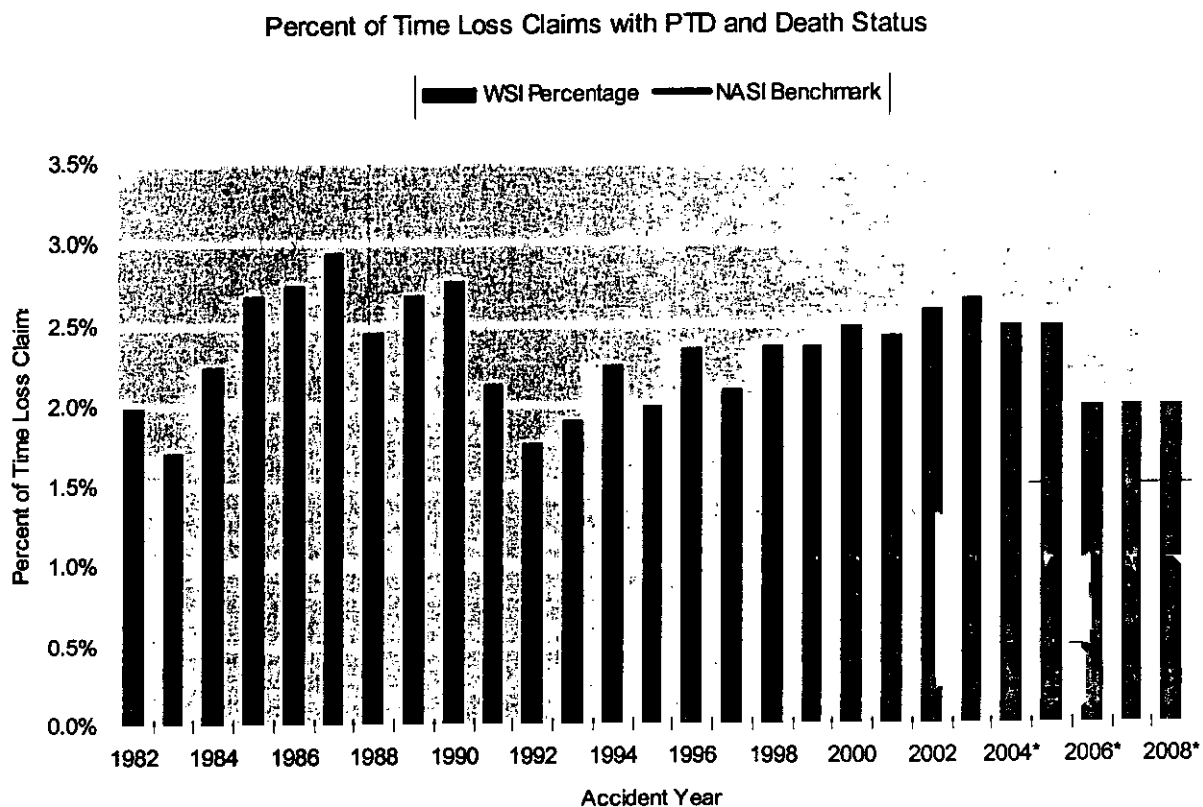


CHART 3

This section also, for the first time, defines temporary total disability as either a maximum of 104 weeks of temporary wage replacement over the life of a claim or maximum medical improvement. Temporary benefits are designed to assist an injured worker with wage replacement on a temporary basis while they heal from a work related injury. As it now exists, an injured worker can receive "temporary" wage replacement benefits for 10, 15 or even 20 years or more in North Dakota. Studies show that returning to work is both physically and mentally beneficial to those who have been hurt. We also know that the longer someone is away from the workplace, the less likely they are to ever return. Work provides more than an income and socialization, it also provides pride, a sense of worth and belonging, and an identity.

Data released by the Guilford Group LTD. of Baltimore, shows that injured workers off the job for twelve weeks have only a fifty percent likelihood of ever returning to work.

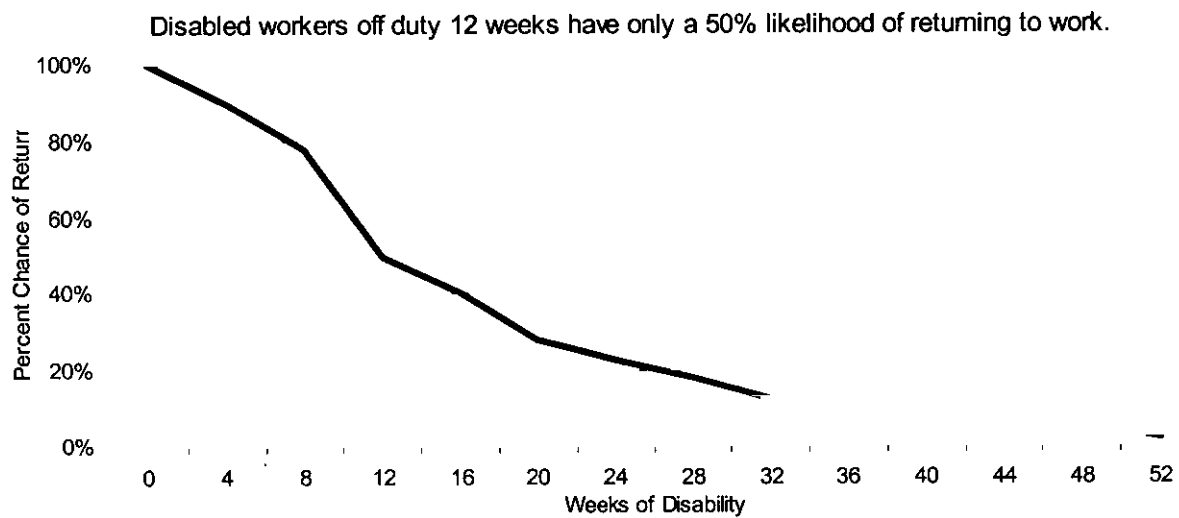


CHART 4

This simply reflects the reality of human nature and psyche. Consequently, by allowing injured workers to sit without facts, assistance, and a plan to get back to work, we are not doing them any favors. By capping the cumulative length of this temporary benefit, we can begin focusing on what is next and how to diligently assist injured workers in healing and returning to work. As the system is designed today, there exists a pressure for injured workers to remain temporarily disabled in order to preserve their wage replacement benefits.

Simply put, there are psychological impacts from being removed from the work environment that must be acknowledged. If it is clear that benefits will end at some predetermined point in time, expectations can be managed. Injured workers will be given options in a timely manner and, based on those options, they can make informed choices about their future. Workers' compensation, as a result, will remain a safety-net with the focus first on healing and then on returning an injured worker to employment. To carry out this mission effectively, it requires each participant –the doctor, WSI, the employer, and the injured worker-- to more readily address the long-term needs and more rapidly determine an appropriate course of action.

As a result of this change, an injured worker will know their position in the system much earlier and be able to plan accordingly with facts and options. This approach to capping temporary benefits is the trend in workers' compensation nationwide. This trend illustrates its success in managing these claims, but is not in itself a justification for North Dakota to adopt this approach.

Average Number of Open Time Loss Claims

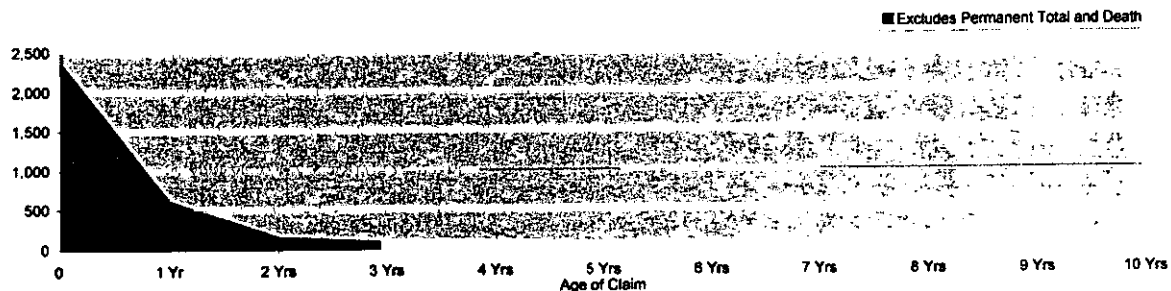


Chart 5

It must be stressed these changes are prospective only. The application will be effective for claims filed on or after January 1, 2006.

Section 2. This section changes the vocational rehabilitation statute to allow for an injured worker's input on issues of retraining. Retraining programs, if eligible, become elective, and are at the injured worker's discretion. Currently, our numbers reflect the reality of an overwhelming cost involved in forcing a resistant injured worker into a retraining program. While well intentioned, the mandatory retraining contemplated within the current law has shown itself to be impracticable, unwieldy and generally unsuccessful. When the law requires an injured worker, who cannot return to their previous employment, to attend a school program against their will or face losing their wage replacement benefits, that almost always produces resentment, resistance and failure.

This change is intended to offer that injured worker the option of attending an appropriate program or accepting temporary partial disability benefits for up to five years based upon a presumed earning capacity not below the state's hourly minimum wage. This bill, if enacted, will expand the number of injured workers ultimately entitled to temporary partial disability benefits. This reinforces a finding that even part-time, temporary employment keeps injured workers in the workforce, strengthens their bodies and maintains their self-image.

In addition, this section is changed to eliminate on-the-job training, self-employment and ends the differentiation between long and short-term retraining. This was done after a realization that these options simply are not used despite our best efforts. By requiring our vocational consultants to investigate these options, in each case, unnecessarily increases our administrative expenses without a corresponding benefit to be shown.

As I mentioned at the outset of my testimony, we have proposed one additional amendment to this portion of HB 1171. The amendment grants the organization the flexibility and discretion to depart from the Vocational Hierarchy and grant retraining options of 104 weeks or less, even if an injured worker technically qualifies under a higher option, i.e. returning to a modified or alternative occupation with another employer. This gives WSI the ability, in appropriate cases, to allow an injured worker to pursue additional education to support a new or modified career path.

Section 3. This section changes subsequent statutes to correspond with the changes to the vocational rehabilitation hierarchy.

Section 4. This section changes subsequent statutes to correspond with the changes to the vocational rehabilitation hierarchy. This change also eliminates the requirement to issue formal orders in all vocational rehabilitation discontinuation cases. As a result, it makes the appeals process parallel to that of other agency determinations.

Section 5. This section changes subsequent statutes to correspond with the changes to the vocational rehabilitation hierarchy.

Section 6. Sets the effective date for sections 1 and 2 for claims filed after January 1, 2006.

Section 7. Sets the effective date for all other portions as the effective date of the legislation.

I would request your favorable consideration on HB 1171 and its amendment. I will be glad to answer any questions you might have about House Bill 1171.

North Dakota Human Rights Coalition

P.O. Box 1961, Fargo, ND 58107-1961 (701) 239-9323 Fax (701) 478-4452 www.ndhrc.org



Testimony

House Bill 1171

Senate Industry, Business & Labor Committee

February 28, 2005

Chairman Mutch and members of the Committee, I am Cheryl Bergian, Director of the North Dakota Human Rights Coalition. The Coalition includes a broad-based, statewide membership of individuals and organizations interested in the furtherance of human rights in North Dakota; the Coalition's mission is to effect change so that all people in North Dakota enjoy full human rights.

We oppose the changes in HB 1171 that would weaken the protections for workers in capping temporary total disability benefits at 104 weeks or when maximum medical recovery is achieved. It is our understanding that Workforce Safety & Insurance believes that this has eroded the focus of return to work programs. Surely WSI could formulate ways to work with disabled workers on returning to work without draconian cuts in benefits. There is also a question on why the concept of maximum medical improvement is linked to the question of disability/wage replacement: the question of medical improvement does not equate to the question of whether a worker is disabled.

We also oppose the change to the definition of permanent total disability. This change further reduces the disabled worker's entitlement to "sure and certain" relief when injured on the job. If a disabled worker does not fit the scheduled injuries and does not have a 25% permanent partial impairment, he or she will not be found to have a permanent total disability. Surely there will be disabled workers who will not fit that criteria but who deserve the "sure and certain" relief provided by the workers' compensation framework of our state.

We ask for a do not pass recommendation on House Bill 1171. I appreciate this opportunity to testify on behalf of the North Dakota Human Rights Coalition.

Main Office
1600 East Century Avenue, Suite 1
PO Box 5585
Bismarck ND 58506-5585



Workforce Safety & Insurance

Putting safety to work

www.WorkforceSafety.com
Sandy Blunt, Executive Director/CEO

DOC: 24420978

Fargo Service Center
2601 12th Avenue SW
Fargo ND 58103-2364

December 22, 2004

Glen Baltrusch
312 Alder Ave
Harvey ND 58341-1022

Injured Worker: Glen Baltrusch Birth Date: 05/06/1953
Claim No.: 1978-231375 Injury Date: 02/16/1978
Body Part: Thoracic Spine, Sacrum/Coccyx, Chest, Ribs, Sternum

Dear Glen Baltrusch;

Recently, you may have received correspondence dated August 26, 2004, informing you that Workforce Safety & Insurance (WSI) would be implementing a new pharmacy program. Please be advised that some changes will occur in processing pharmacy charges related to work injuries.

In designing this program, WSI has incorporated industry standards for the days supply limits, quantity limits and refill limits. In reviewing your claim, it has been determined that you currently may be getting medication that could be beyond these limits.

What this will mean to you:

- Medication covered for your work injury will continue to be covered
- Medication used for acute treatment will be dispensed with a 34-day supply
- Medication used for chronic conditions will be dispensed for a 60-day supply
- Refills will be allowed after 80% of the medication has been used
- You can continue to go to the pharmacy of your choice to have your medication filled

With this change, WSI is providing the pharmacy with the access to process the medication charges on-line at the time of dispensing. This will help them provide better service to you when dispensing medications related to the work injury.

If you have questions on this program, please talk with your pharmacist or contact WSI at 1-800-777-5033.

Sincerely,

Lisa Kienzle

Lisa Kienzle, Claims Analyst

**WORKFORCE SAFETY & INSURANCE
2005 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION**

BILL DESCRIPTION: Disability and Vocational Rehabilitation

BILL NO: HB 1171 w/ Amendment

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 caps temporary total disability benefits at 104 cumulative weeks or when maximum medical improvement is reached; redefines permanent total disability; allows an injured worker to decide whether to accept retraining as a vocational rehabilitation option; expands coverage of temporary partial disability benefits; and makes the appeal process relating to noncompliance with vocational rehabilitation consistent with the appeal process for other claims decisions.

The proposed amendment allows WSI at its discretion to allow an injured worker to pursue retraining of 104 weeks or less in cases where the employee's first appropriate option under the rehab hierarchy was c, d, e, or f.

Rate Level Impact: The proposed legislation will serve to reduce long term benefit costs for claims arising out subsequent years, particularly future disability benefit payments that would otherwise extend out beyond 5 to 10 years. With this prospective change, it is estimated that offsets to future premium levels could range from approximately 2% to 3% (or \$2.5 million to \$3.3 million per year based on current premium levels).

Although not quantifiable, the intent of the proposed amendment will serve to increase rehab and retraining related expenses in certain cases as claims that would not have made it to the retraining option under the current hierarchy would potentially be eligible under this proposal.

Reserve Level Impact: We anticipate no reserve level impact as the legislation is designed to be applied prospectively meaning claims incurred prior to the effective date of this legislation are not impacted.

DATE: January 17, 2004

WSI - Claim Related, TTD, PTD, Voc Rehab

Sponsor: Rep. Nancy Johnson, Co-Sponsor: Sen. Jerry Klein

Capping of Temporary Total Disability Benefits

- Caps temporary total disability benefits at 104 cumulative weeks or when Maximum Medical Improvement (MMI) is reached. Currently no cap exists.

WHY - Currently, temporary total disability benefits can extend without limit. This will help focus attention/efforts on return to work options and rehabilitation. Additionally, it will bring a faster review of permanent total disability (PTD) determinations.

Definition of Permanent Total Disability

- Redefines permanent total disability (PTD) in workers' compensation law.

WHY - Clarifies language that leads to inconsistent application. Establishes more concrete guidance to determine whether an injured work qualifies for permanent total disability benefits.

Elective Retraining

- Allows an injured worker to decide whether to accept retraining as a vocational rehabilitation option.
- Expands coverage of temporary partial disability benefits.

WHY - The vocational rehabilitation option of retraining has been generally unsuccessful when retraining is not desired by an injured worker. This new approach focuses on those injured workers who have the desire to participate in retraining programs

Noncompliance with Vocational Rehabilitation Appeals

- Currently our noncompliance statute requires a formal order for adjudication which departs from our appeal processes set forth in 65-01-16. This bill makes the appeal process consistent.

WHY - Provides consistency in the appeal process.

FISCAL NOTE:

Rate Level Impact: The proposed legislation will serve to reduce long term benefit costs for claims arising out of subsequent years, particularly future disability benefit payments that would otherwise extend out beyond 5 to 7 years. With this prospective change, it is estimated that offsets to future premium levels could range from approximately 2% to 3% (or \$2.5 million to \$3.3 million per year based on current premium levels).

Reserve Level Impact: We anticipate no reserve level impact as the legislation is designed to be applied prospectively meaning claims incurred prior to the effective date of this legislation are not impacted.

1. Training
2. Partial disability - up to 5 additional years wage loss
3. Back to work same -
4. " " other -
After 104 wks -

2005 Engrossed House Bill No. 1171
Testimony before the Senate Industry, Business, and Labor Committee
Presented by: Timothy J. Wahlin, Staff Counsel
Workforce Safety & Insurance
February 28, 2005

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin and I am Staff Counsel with Workforce Safety & Insurance (WSI). I am here to testify in support of 2005 Engrossed House Bill 1171 (HB 1171). The WSI Board of Directors supports this bill. This bill was designed after months of research and analysis. It is intended to specifically address areas of ongoing concern, recognized not only by WSI, but by our latest external audit as well.

First, I would like to present some background. Last September WSI received its biennial external audit report produced by a team from Octagon Risk Services, Incorporated. In their review, the auditors expressed concern with the percentage of injured workers declared permanently and totally disabled or what we term reaching "permanent total disability" status. North Dakota's percentage of injured workers on permanent total disability is 2.5 times the national average. Permanent total disability benefits are long-term wage replacement benefits. Only the most severely injured workers, who can never return to any work, are expected to receive permanent total disability benefits.

Prior to the independent audit, WSI detected this increasing trend and began researching its root cause(s) by: a) focusing on the legal definition of permanent total disability and its impact; b) focusing on the duration of temporary benefits prior to the awarding of permanent and total disability benefits; c) reviewing the rehabilitation tools available to our organization to assist a severely injured worker in finding meaningful employment; and, d) researching what other workers' compensation systems were doing in these areas. Taking all this information into consideration, we then trended out the historic patterns to get a sense of what the picture of our future would look like if we did not address this important issue. The recommendations presented in HB 1171 represent our reasonable solutions to this developing trend.

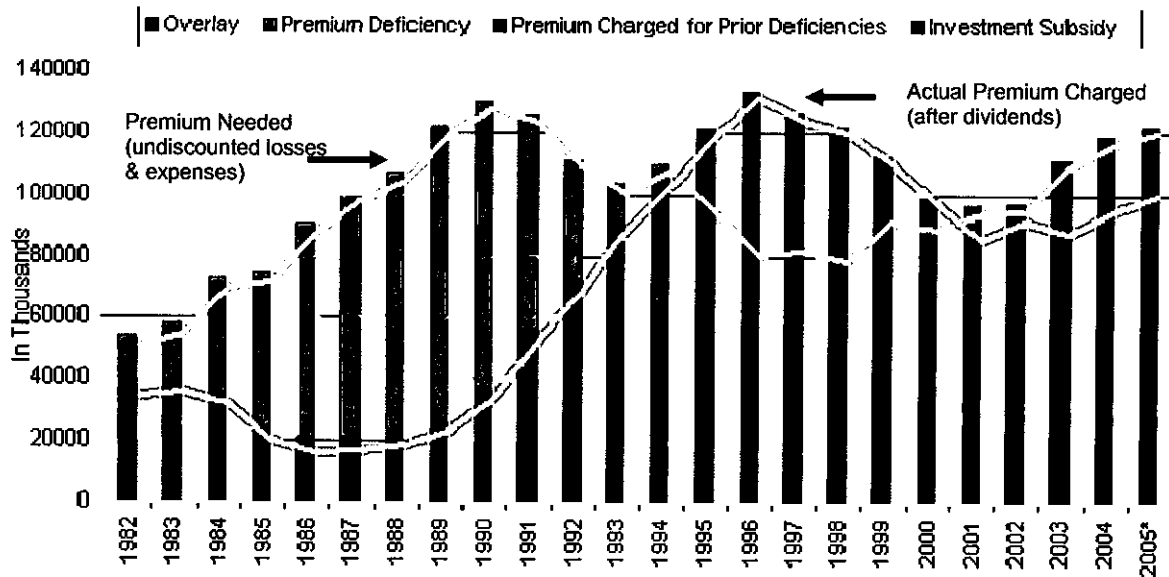


CHART 1

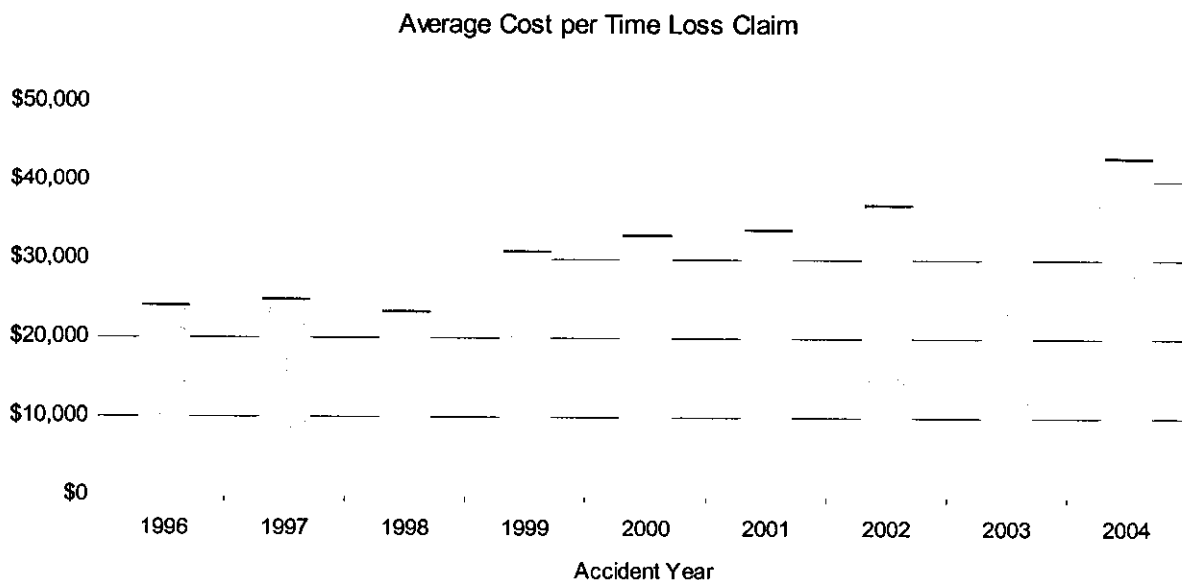


CHART 2

We must also focus on the purpose of the "Fund" as proscribed by the North Dakota Constitution. The Fund has been constitutionally appropriated for "the payment of compensation to injured employees or death claims, duly approved, [and] payable." N.D. Const, Art. X section 12. Consistent with this, since 1919, the legislature has provided WSI with the law for our organization to manage a workers' compensation program for North Dakota's injured workers.

Consistent with our constitutional charge, WSI has identified three specific areas of injured worker benefits that this bill addresses. These areas are an expanding permanent total disability population, an undefined temporary total disability duration, and a lack of flexibility within the vocational rehabilitation hierarchy.

We have in this bill, proposed changes in each of these areas, which will address an injured worker's expectations at the onset of their on-the-job injury. By clarifying and standardizing our wage replacement benefits, the injured worker will have the tools necessary to make informed choices, up front, on the management of their claim and, when possible, get them back to meaningful employment.

This legislative package reinforces that, unless you are permanently and totally disabled under a bright line and clear statutory test, your benefits will end. The intention is to redirect the focus on preparing an injured worker for that eventuality. Understand, this only addresses the wage replacement component of their benefits. Medical care and medical benefits related to the injury will continue for the life of the claim.

Section 1. This section changes the definitions of both permanent total disability as well as temporary total disability. Permanent total disability is changed to provide a more consistent, bright line definition. This new definition should also limit the litigation that is sometimes triggered by the current, more ambiguous, definition. Linking the definition to medically specific injuries or impairments, allows WSI to more readily address an injured worker's expectations.

- Total and permanent loss of sight of both eyes;
- Loss of both legs or loss of both feet at or above the ankle;
- Loss of both arms or loss of both hands at or above the wrist;
- Loss of any two of the members or faculties in subdivision a, b, or c;
- Permanent and complete paralysis of both legs or both arms or of one leg and one arm;
- Third-degree burns that cover at least forty percent of the body and require grafting;
- A medically documented traumatic brain injury affecting cognitive and mental functioning which renders an employee unable to provide self-care and requires supervision or assistance with a majority of the activities of daily living;
- Or, a compensable injury that results in a permanent partial impairment rating of the whole body of at least twenty-five percent pursuant to section 65-05-12.2. If the employee has not reached maximum medical improvement within one hundred four weeks, the employee may receive a permanent partial impairment rating if a rating will assist the organization in assessing the employee's capabilities. Entitlement to a rating is solely within the discretion of the organization.

Currently WSI has 980 injured workers who have been declared permanently and totally disabled and are receiving long-term wage replacement benefits. We believe, and our external audit shows, that by providing more clarity, it is expected there will be a reduction in the number of injured workers declared permanently and totally disabled. It is the intent of this legislation to more immediately identify injured workers who have potentially permanently disabling injuries. Likewise, it sets expectations for those who do not meet this new definition and provides them with choices and options for their future.

It is worth noting that under the current law, there are injured workers who have been declared permanently and totally disabled and yet have no discernable permanent impairments. Why the apparent disconnect between severity and permanence of an injury and the awarding of permanent total disability status? Under current law, an injured workers' socio-economic condition, age, and other non-work related factors --which are truly preventing them from returning to work-- are not considered. We believe without this clarification, disability will be paid based on factors other than a work related injury.

On January 10, 2005, Malcolm Dodge of Octagon Risk Services, Inc., testified to you regarding our external audit. In his testimony, he conveyed that the top one percent of the 1998 and 1999 claims are consuming fifty percent of the overall cost. He also stated that "this state has an inordinate number of injured workers who have been declared to be permanently and totally disabled." (Joint House and Senate IB&L Committee Hearing 1-10-05)

To gain a better understanding of why North Dakota has an inordinate number of permanent total disability cases, WSI reviewed the definition for permanent total disability in other jurisdictions throughout the United States. WSI then developed a permanent total disability definition that was more in line with the industry standard. We expect that with the clarity and scope of this definition, the number of injured workers receiving permanent total disability benefits will decrease by approximately twenty percent. (Moving from roughly fifty a year to forty a year.)

Even with this modest decrease, North Dakota will be at more than twice the national average for those declared permanently and totally disabled. We believe this to be a good compromise between what the external audit concluded and where we are today.

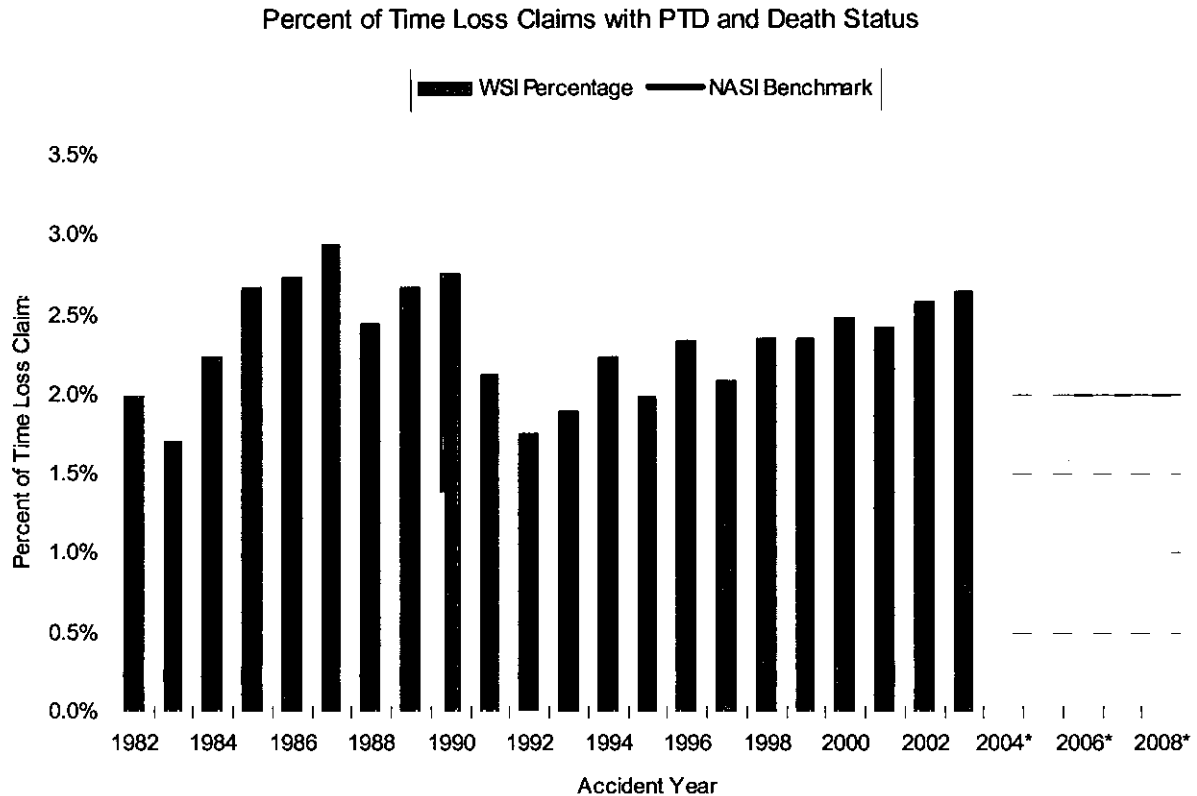


CHART 3

This section also, for the first time, defines temporary total disability as either a maximum of 104 weeks of temporary wage replacement over the life of a claim or maximum medical improvement. Temporary benefits are designed to assist an injured worker with wage replacement on a temporary basis while they heal from a work related injury. As it now exists, an injured worker can receive "temporary" wage replacement benefits for 10, 15 or even 20 years or more in North Dakota. Studies show that returning to work is both physically and mentally beneficial to those who have been hurt. We also know that the longer someone is away from the workplace, the less likely they are to ever return. Work provides more than an income and socialization, it also provides pride, a sense of worth and belonging, and an identity.

Data released by the Guilford Group LTD. of Baltimore, shows that injured workers off the job for twelve weeks have only a fifty percent likelihood of ever returning to work.

Disabled workers off duty 12 weeks have only a 50% likelihood of returning to work.

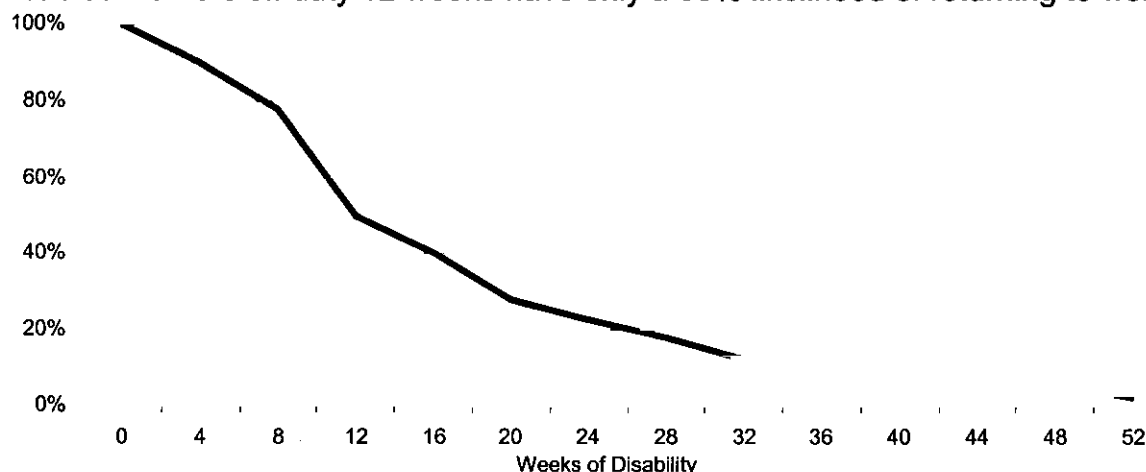


CHART 4

This simply reflects the reality of human nature and psyche. Consequently, by allowing injured workers to sit without facts, assistance, and a plan to get back to work, we are not doing them any favors. By capping the cumulative length of this temporary benefit, we can begin focusing on what is next and how to diligently assist injured workers in healing and returning to work. As the system is designed today, there exists a pressure for injured workers to remain temporarily disabled in order to preserve their wage replacement benefits.

Simply put, there are psychological impacts from being removed from the work environment that must be acknowledged. If it is clear that benefits will end at some predetermined point in time, expectations can be managed. Injured workers will be given options in a timely manner and, based on those options, they can make informed choices about their future. Workers' compensation, as a result, will remain a safety-net with the focus first on healing and then on returning an injured worker to employment. To carry out this mission effectively, it requires each participant –the doctor, WSI, the employer, and the injured worker– to more readily address the long-term needs and more rapidly determine an appropriate course of action.

As a result of this change, an injured worker will know their position in the system much earlier and be able to plan accordingly with facts and options. This approach to capping temporary benefits is the trend in workers' compensation nationwide. This trend illustrates its success in managing these claims, but is not in itself a justification for North Dakota to adopt this approach.

Average Number of Open Time Loss Claims



Chart 5

It must be stressed these changes are prospective only. The application will be effective for claims filed on or after January 1, 2006.

Section 2. This section changes the vocational rehabilitation statute to allow for an injured worker's input on issues of retraining. Retraining programs, if eligible, become elective, and are at the injured worker's discretion. Currently, our numbers reflect the reality of an overwhelming cost involved in forcing a resistant injured worker into a retraining program. While well intentioned, the mandatory retraining contemplated within the current law has shown itself to be impracticable, unwieldy and generally unsuccessful. When the law requires an injured worker, who cannot return to their previous employment, to attend a school program against their will or face losing their wage replacement benefits, that almost always produces resentment, resistance and failure.

This change is intended to offer that injured worker the option of attending an appropriate program or accepting temporary partial disability benefits for up to five years based upon a presumed earning capacity not below the state's hourly minimum wage. This bill, if enacted, will expand the number of injured workers ultimately entitled to temporary partial disability benefits. This reinforces a finding that even part-time, temporary employment keeps injured workers in the workforce, strengthens their bodies and maintains their self-image.

In Section 2, the organization is also requesting the flexibility and discretion to depart from the Vocational Hierarchy and grant retraining options of 104 weeks or less, even if an injured worker technically qualifies under an earlier option (i.e. returning to a modified or alternative occupation with another employer). This provides WSI the ability, in appropriate cases, to allow an injured worker to pursue additional education to support a new or modified career path.

In addition, this section is changed to eliminate on-the-job training, self-employment and ends the differentiation between long and short-term retraining. This was done after a realization that these options simply are not used despite our best efforts. By requiring our vocational consultants to investigate these options unnecessarily increases our administrative expenses without a corresponding benefit to be shown.

Section 3. This section changes subsequent statutes to correspond with the changes to the vocational rehabilitation hierarchy.

Section 4. This section changes subsequent statutes to correspond with the changes to the vocational rehabilitation hierarchy. This change also eliminates the requirement to issue formal orders in all vocational rehabilitation discontinuation cases. As a result, it makes the appeals process parallel to that of other agency determinations.

Section 5. This section changes subsequent statutes to correspond with the changes to the vocational rehabilitation hierarchy.

Section 6. Sets the effective date for sections 1 and 2 for claims filed after January 1, 2006.

Section 7. Sets the application to all claims filed on or after the effective date of this act.

I would request your favorable consideration on Engrossed HB 1171. I will be glad to answer any questions you might have.

tests. There is no single test for RSD/CRPS.

Early diagnosis and treatment with anti-inflammatory, pain control and physical therapy dramatically improve the chances of remission.

Treatment

Treatments may include: medications; nerve blocks; physical therapy; psychological support; sympathectomy; or implantable devices such as dorsal column stimulator or intrathecal medication pumps. Treatment is highly individualized. Each patient should have a treatment plan that includes pain control, psychological support and physical, occupational or massage therapy.

If you think you have RSD/CRPS

If you have an injury that isn't healing as it should or if the pain and/or swelling is more severe than it should be for the injury

- Ask your doctor if this could be RSD/CRPS
- Make sure that you are getting treatment for the pain
- Try to keep the affected area moving
- Get another medical opinion if you feel that your physician isn't taking your complaints seriously.

Is there a cure?

No, but there is hope! Advances in research on pain and RSD/CRPS have helped find some new and effective treatments. More money and more research is needed to achieve the dual goals of

- No new patients with RSD/CRPS
- Effective treatment and/or cure of those living with RSD/CRPS.

Reflex Sympathetic Dystrophy Syndrome Association of America promotes public and professional awareness of RSD/CRPS and educates those afflicted with the syndrome, their families, friends, insurance and healthcare providers, on the disabling pain it causes. We encourage individuals with RSD/CRPS to offer each other emotional support within affiliate groups. And finally, we are committed to raising funds for research into the cause and cure of RSD/CRPS.

For more information on RSD/CRPS, joining RSDSA, or making a donation, please contact our office or visit our website.

RSDSA

PO Box 502 • Milford, CT 06460

Tel: (203) 877-3790

Toll-free: (877) 662-7737

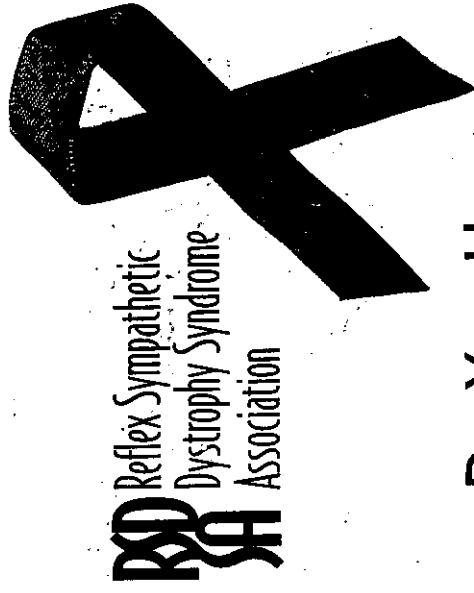
Fax: (203) 882-8362

www.rsds.org

This brochure was made possible by a grant from
Ohio Casualty Corporation, Fairfield, OH

11/03

10K



Do You Have Reflex Sympathetic Dystrophy/ Complex Regional Pain Syndrome?

**A potentially disabling, chronic
neurologic syndrome also
known as:**

RSD

CRPS

www.rsds.org

What is Reflex Sympathetic Dystrophy Syndrome (RSD/CRPS)?

Reflex Sympathetic Dystrophy Syndrome (RSD), also called Complex Regional Pain Syndrome (CRPS) is a chronic neurological disease affecting an estimated 1.5 to more than 6 million Americans.

RSD/CRPS is a malfunction of part of the nervous system that usually develops in response to a traumatic event such as an accident or a medical procedure. A minor injury such as a sprain or fall may trigger RSD/CRPS causing nerves to misfire, sending constant pain signals to the brain.

The term Complex Regional Pain Syndrome (CRPS) was adopted by the International Association for the Study of Pain to define two kinds of CRPS.

CRPS Type I (RSD)

- The presence of an initiating event or injury, such as a sprain or fracture
- Continuing pain, including allodynia (pain resulting from a normal stimulus, like the breeze from a ceiling fan) or hyperalgesia (increased sense of pain); the pain is disproportionate to that associated with the original injury
- Evidence at some time of edema (swelling) changes in skin blood flow (skin color changes, skin temperature

changes more than 1° C or abnormal sweating in the region of pain

- This diagnosis is excluded by the existence of conditions that would otherwise account for the degree of pain and dysfunction

CRPS Type II (Causalgia)

- The presence of continuing pain, allodynia, (pain resulting from a normal stimulus, like the breeze from a ceiling fan); or hyperalgesia (increased sense of pain) after an identifiable nerve injury, not necessarily limited to the distribution of the injured nerve

- Evidence at some time of edema, changes in skin blood flow (skin color changes, skin temperature changes more than 1°C, or abnormal sweating in the region of pain

- This diagnosis is excluded by the existence of conditions that would otherwise account for the degree of pain and dysfunction.

Symptoms (any combination)

- Pain: constant, moderate to severe
- Muscle spasm, loss of motion and use of the affected area
- Swelling that may come and go
- Skin Changes: Color, dryness, excessive sweating, excessive or

decreased hair growth, changes in the nails

- Circulatory changes— cold or hot in the affected areas
- Insomnia and depression due to the other symptoms and life changes

Who can get RSD/CRPS?

Anybody! Anyone can get RSD/CRPS at any age, but studies show that it is more common in people between the ages of 25 and 55, and is more frequently seen in women than in men. It used to be considered rare in children, but there has been a recent increase in the number of cases among adolescents and young adults.

RSD/CRPS is a physical disease

RSD/CRPS affects the nervous system, bones, muscles, skin and the circulatory system. The symptoms may not be easily seen. RSD sufferers may develop psychological problems because of the constant pain, the changes in their life style, and the fact that others do not believe their pain is real. RSD/CRPS is a physical, not a psychological disease

Diagnosis

A physician must make a clinical diagnosis of RSD/CRPS using patient history, a thorough examination and the results of numerous