

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1247

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1247

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: January 26, 2009

Recorder Job Number: 7795

Committee Clerk Signature *Eileen LeTang*

Chairman Keiser: Opened the hearing on HB 1247 relating to worker's compensation dependency allowances.

Bill Amerman~Representative from District 26 represent all five counties in southeast North Dakota. This bill here deals with the dependency allowance. I raised the amount to from \$15 to \$30 a week. This is similar of HB 1101 and if we address this issue then, I have no problem with that.

Chairman Keiser: We have a hearing on this bill and if the committee wants to go to this level, what we will do is bring the other bill back, so whatever we do with this bill we will make it consistent with that other bill.

Representative Ruby: Why wouldn't there be a fiscal effect and could you explain that the changes in section two?

Chairman Keiser: Representative Amerman, the fiscal note just came out this afternoon.

Representative Amerman: As far as section two, I can only relate to you with a conversation with LC. It was my understanding that it was capped. If you raise one and lower the other, it might be lowering the other, so you are not really getting any monetary value.

Chairman Keiser: Did the other bill have that same language in it?

Representative Amerman: I'm not sure.

Representative Vigessaa: On the bill we heard this morning, lines 9 & 10 were lines out. What would be your 9 & 10. Would the difference be only children who arrived after August 1 would receive the payment? I morning I thought it would apply to everyone. On you bill, you changed the dates.

Chairman Keiser: No.

Representative Amerman: That is why I asked the question this morning.

Chairman Keiser: We will have Tim Wahlin address that but this covers everybody.

Dave Kemnitz~President of the North Dakota AFL-CIO. See testimony attachment. I support the bill as written.

Sebald Vetter~C.A.R.E. I support this bill especially \$30.

Chairman Keiser: This is a clarification, this is \$30 per week not per month.

Sylvan Loegering~North Dakota Injured Worker Support Group. I'm in support of this bill. I like the change from seven years to three year for the cost of living change. Secondly, the 10 to 15 dollars, I'm concerned with combining the bills.

Chairman Keiser: Point of clarification, we have to be careful, no matter what we do, if we have competing bills, the last bill signed becomes law. When it get to the Senate side, we have no control.

Anyone in opposition to HB 1247.

Tim Wahlin~Chief of Injury Services WSI. See testimony attachment.

Representative Ruby: I guess I'm not clear, if an injured worker, who makes 30,000 a year, gets a replacement of the wage up to a cap 66 2/3%. Now if they have dependents, it's still the same dollar amount , it's still to the same cap?

Wahlin: I have a more complex answer. Explains answer involving dependents, tax structure, more deductions and we reflect that.

Chairman Keiser: Salary replacement is salary replacement. People get paid for doing their job and don't get paid differentially for doing their job or 0, 1, 2 or 6 kids. They get their salary. Worker's comp attempts that salary in some formula. It has nothing to do with the children. What we also then come back in and say, ok, we are trying to work with your salary but now because you have children that add another difficulty for you financially there is this kind of allowance on top of your salary. If obvious, for the lower end, your scenario could happen, where they could actually be getting more reimbursement on WSI payments than they would if they were working. What about the top end of the scale?

Wahlin: Ultimately, it would but you would have to have far more dependents added to the structure. You are still subject to your net as a cap but if we go to the top end of our scale, 66 2/3% is a fair difficult low of your net. The people at the top end of the scale are going to be receiving more benefits for their dependents and you would receive up to 27 dependents at the top end. As the bottom, you are not going to because they are receiving their which is effectively a higher payment than those top end.

Representative Schneider: If we reconsidered 1101 from this morning and amended the death benefits to \$250, 000, but changes the dependent allowance to from 15 to 30. Would that have a significant impact on a fiscal note?

Wahlin: I don't know how it will weigh out.

Chairman Keiser: We can always hold the bills based on a hypothetical scenario. Let's go back the argument that was made, that rate in 1989 at \$10, that sort of suggest that we were way to high or something else. Why isn't there an inflator here in this part of it in the budget constraint?

Wahlin: I think the argument being whether or not there should be an inflator on the dependency benefit was that dependency benefit of \$10 per week. After the formula is applied

to the net and not paying above that, whether it's a \$100 a week effectively still is not very big for that large group of benefit recipients. It doesn't give them \$10 per week; it gives them something smaller because you can only pay up to that cap. Was it too high at the time? One way of looking at it, we are only one of six states who pay it. Is it laudable try to make sure that families are feed? Yes, I think it is.

Chairman Keiser: A second question, if we as a policy, we don't want them to make more that current law allows, if we increase it, even to 15, that offset just increases. If we go to 30, it increases even more. As long as that offset is in there, that combined limit, could have a minimal value at 15, but at 30 they wouldn't gain anymore. Is that correct?

Wahlin: Essentially, that correct. I showed the board and when they left, they said "I didn't realize how it worked". It does get some more dollars to injured workers, but it's marginal.

Representative Ruby: Isn't the natural inflator that gets put into it and allow the employee to capture more of the dollars?

Wahlin: That exactly where it reflected.

Representative Clark: Is it wrong to look at this like we are truly replacing wages, that this benefit is sort of a bonus?

Wahlin: Yes, that has been pointed out in heated discussion with our attorneys, but there are anomalies in the system.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment. We hope you defeat this bill and keep HB 1101 intact.

Loeering: What strike me is that we throw the whole bill out because of the cap, could we not go back and remove the overstrike in section two? My suggestion is that you look at that possibility.

Chairman Keiser: That is an option.

Anyone here to testify for, against, or neutral on HB 1247?

Closes the hearing.

What are the wishes of the committee?

Representative Clark: I think we should hold this.

Chairman Keiser: We will pick this up some other time.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1247

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 3, 2009

Recorder Job Number: 8554

Committee Clerk Signature <i>Ellen LeTang</i>

Chairman Keiser: Opened the committee work session on HB 1247.

Chairman Keiser: Dependency allowance would go from 10 to 30 dollars per child and it would remove the disability and dependency award.

Representative Clark: HB 1101 also raises dependency allowances.

Chairman Keiser: That's correct but not this low.

Representative Clark: It is \$15, which is the highest the nation except for Rhode Island which is also \$15. This would double those dependency allowances. There a few other states that also have dependence at 4, 5, 6 dollars.

Chairman Keiser: We have done that. What are the wishes of the committee?

Representative Clark: Moves a Do Not Pass on HB 1247.

Representative Sukut: Second.

Chairman Keiser: Further discussion.

Voting rolling was taken on HB 1247 on a Do Not Pass with 8 aye's, 4 nay's, 1 absent and Representative Nottestad is the carrier.

FISCAL NOTE
Requested by Legislative Council
01/12/2009

Bill/Resolution No.: HB 1247

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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 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.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

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

The proposed legislation increases the weekly dependency allowance from \$10 to \$30 per week for each dependent child and allows for the combined disability benefits and dependency allowance to exceed an injured employee's pre-injury net wage.

B. Fiscal impact sections: *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

WORKFORCE SAFETY & INSURANCE
2009 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1247

BILL DESCRIPTION: Dependency Allowances

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 increases the weekly dependency allowance from \$10 to \$30 per week for each dependent child and allows for the combined disability benefits and dependency allowance to exceed an injured employee's pre-injury net wage.

Reserve Level and Premium Rate Level Impact: Based on the evaluation of data provided in conjunction with the review of HB 1101, we believe that the reserve level impact for existing claims of the increase in the weekly benefit will range between \$1.2 and \$3.0 million. The anticipated premium rate level impact, or the impact on future injuries, would be less than 0.5% increase in statewide premium levels, or less than \$750,000 per year.

We did not have sufficient data to quantify the potential increase resulting from the elimination of the benefit cap. But the change is likely to generate further costs.

DATE: January 25, 2009

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.

Name:	John Halvorson	Agency:	WSI
Phone Number:	328-6016	Date Prepared:	01/25/2009

Date: Feb 3 - 2009
Roll Call Vote # _____

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1247

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☐ Do Pass ☒ Do Not Pass ☐ As Amended

Motion Made By Clark Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman		7
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla		7
Representative N Johnson	7		Representative Schneider		7
Representative Nottestad	7		Representative Thorpe		7
Representative Ruby	7				
Representative Sukut	7				
Representative Vigasaa	7				

Total (Yes) 8 No 4

Absent 1

Floor Assignment Nottestad

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

REPORT OF STANDING COMMITTEE

HB 1247: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **DO NOT PASS** (8 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING).
HB 1247 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1247

ND AFL-CIO Notes

disability benefits, or death benefits, and who has been receiving disability or death benefits for a period of seven three consecutive years is eligible for supplementary benefits.

MON 01/26 08:00 AM Peace Garden Room
HB 1101 H-IBL **Chairman: Rep. G. Keiser**

Comments: ND AFL-CIO supports. ^{Sponsors} (At the request of Workforce Safety and Insurance) Weekly and aggregate benefit subject to a minimum of sixty percent and a maximum of one hundred ten twenty-five percent of the average weekly wage in the state. dependency allowance for each child of the employee at the rate of ten fifteen dollars per week per child. organization shall still pay costs of vocational rehabilitation, burial expenses, travel, other personal reimbursement for seeking and obtaining medical care, and

MON 01/26 08:00 AM Peace Garden Room
HB 1151 H-IBL **Chairman: Rep. G. Keiser**

Comments: No ND AFL-CIO position taken as of 1-23-09. ^{Sponsors} (At the request of Workforce Safety and Insurance) A "wages" means all gross earnings of all employees. The term includes all pretax deductions for amounts allocated by the employee for deferred compensation, medical reimbursement, retirement, or any similar program, but may not include dismissal or severance pay. Employer \$350.00 deductible is eliminated.

MON 01/26 02:00 PM Peace Garden Room
HB 1201 H-IBL **Chairman: Rep. G. Keiser**

Comments: ^{Sponsor} Representative Keiser, This bill changes the name of Office of Independent Review (OIR) to "Decision Review Office". The ND AFL-CIO is neutral on this bill but would like to see the Office of Independent Review be separated from Worker's Comp. and then actually advocate for claimants. This change in name only is an attempt to change the subject on what OIR should be.

MON 01/26 02:00 PM Peace Garden Room
HB 1247 H-IBL **Chairman: Rep. G. Keiser**

Comments: ^{Sponsors} Representatives Amerman, J. Kelsh, Potter Senators Dotzenrod, Potter ND AFL-CIO supports this bill as written. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of thirty dollars per week per child. Effective August 1, 2009, this rate must be paid to each eligible employee regardless of the date of injury.

MON 01/26 02:00 PM Peace Garden Room
HCR3002 H-IBL **Chairman: Rep. G. Keiser**

Comments: ND AFL-CIO opposes the "mutualization of Workers Comp. in ND. ^{Sponsor} (Interim Industry, Business, and Labor Committee CHAIRED BY REP> BERG) WSI Governance legislative study of the governance structure of Workforce Safety and Insurance and determine the feasibility and desirability of mutualization of Workforce Safety and Insurance.

MON 01/26 02:00 PM Peace Garden Room
HCR3008 H-IBL **Chairman: Rep. G. Keiser**

2009 House Bill No. 1247
Testimony before the House Industry, Business, and Labor Committee
Presented by: Tim Wahlin, Chief of Injury Services
Workforce Safety & Insurance
January 26, 2009

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with WSI. I am here on behalf of WSI to testify in opposition to HB 1247 and to provide information to the Committee to assist in making its determination. WSI's Board of Directors voted unanimously to oppose this bill.

Historically, the dependency benefit arose in North Dakota during the 1943 legislative session and has been a fixture of our system ever since.

Nationally, workers compensation indemnities, or wage loss replacement benefits, are not taxable as income. North Dakota, along with virtually every other jurisdiction, has adopted indemnity guidelines that replace wages subject to this reality. The policy behind this is in order for workers' compensation to work, it cannot pay more for an injured employee to be off work, than on. As a result, policy dictates that an injured employee cannot receive more on our system than they would be receiving at work. This bill will allow just that; and as a result, WSI opposes its passage.

North Dakota currently has a ten dollar weekly dependency allowance subject to a cap of an injured employees net weekly wage after deductions for social security and federal income tax. This bill removes that cap while simultaneously increasing the allowance to thirty dollars per week per dependent.

At ten dollars per week, our dependency benefit is a bit of an oddity in the workers' compensation industry because most systems recognize that the amounts paid to

injured employees are to replace lost wages. In other words, disability payments are based on earnings, not on earnings plus additional sums for dependents.

Our research shows that this type of benefit is paid in only six jurisdictions nationally. For the sake of comparison, four of those six jurisdictions pay the benefit in a weekly manner like North Dakota. Of those four, the highest rate is fifteen dollars per child per week in Rhode Island. The others pay five, six, and ten dollars per week respectively.

North Dakota's current dependency benefit level is one of the highest in the United States. Removing the cap so that dependency benefits when combined with disability benefits are allowed to exceed the amount an injured employee was receiving while at work, counteracts a return-to-work philosophy. WSI would respectfully urge this committee to vote "do not pass" on HB 1247.

This concludes my testimony. I would be happy to answer any questions at this time.



Testimony of Bill Shalhoob
North Dakota Chamber of Commerce
HB 1247
January 26, 2009

Mr. Chairman and members of the committee, my name is Bill Shalhoob and am here today representing the ND Chamber of Commerce, the principle business advocacy group in North Dakota. Our organization is an economic and geographical cross section of North Dakota's private sector and also includes state associations, local chambers of commerce development organizations, convention and visitors bureaus and public sector organizations. For purposes of this hearing we are also representing seven local chambers with total membership over 7,000 members and ten employer associations. A list of those associations is attached. As a group we stand in opposition to HB 1247 and urge a do not pass from the committee on this bill.

We supported the increase in dependency payments from \$10 to \$15 contained in HB 1101 that was heard this morning. We believe a 50% increase is significant and is the appropriate action to take at this time. We have the ability to consider future increases in future legislative sessions. Let's take this subject prudently and judiciously, one step at a time.

Thank you for the opportunity to appear before you today in opposition to HB 1247. I would be happy to answer any questions.

THE VOICE OF NORTH DAKOTA BUSINESS