

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1455

# 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1455

**House Industry, Business and Labor Committee**

☐ Check here for Conference Committee

**Hearing Date:** January 27, 2009

**Recorder Job Number:** 7874

Committee Clerk Signature <i>Ellen LeTang</i>
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**Chairman Keiser:** Opened the hearing on HB 1455 relating to worker's compensation benefits for surviving spouse of permanently & totally disable injured employee & provide application.

Representative Thorpe: Introduces the bill and its self explanatory.

Representative Ruby: Can you tell me why you have the level of 10 years of marriage?

Representative Thorpe: It's the one we've been using since we started it.

Representative Ruby: What happens to somebody been injured for 10 years and then marries somebody and now they are now married for 10 years? Now they have just obligated WSI to take care of someone who wasn't married to at the time of injury.

Representative Thorpe: Good question and to be discussed.

Merele Boucher~Representative District 9. I'm appearing in support. See testimony attachment.

Chairman Keiser: There is a policy question here that is important. His wife is a 100% caretaker. She cannot go out in the marketplace and get a job. So he dies and now has to find employment and lose the opportunity on the retirement side to have a significant adjustment. What this bill does is throw everything in there and creates an imbalance. Goes on to explain the imbalance.

Boucher: I know it creates a windfall, but bottom line someone has sacrificed a long time, is it truly a windfall? How much during this course of time have they done without and how much effort have they put in for us? If that wife wasn't there, they would be institutionalized and that would cost us a lot more. There is a lot of things that don't change, cost of running a household still remains the same. With the windfall, you can make an adjustment.

Representative N Johnson: It doesn't say anything about the surviving spouse being the caretaker.

Boucher: You make a good point, there are always the unknown possibilities and we can throw all kinds of scenarios out there that could convolute the whole discussion. Even if they are institutionalized, it still creates extra ordinary costs for the families.

Thopre: Without this bill, isn't the funds through surviving spouse cut off as of now?

Boucher: I believe that's how it works.

Representative Thorpe: What happens to them now? Someone has to take care of them at some other government entity.

Boucher: You made a good point. Every case out there will be different.

Representative Clark: How do other states address this problem?

Boucher: I don't know.

Sebald Vetter: C.A.R.E. Open the law book and on page two code 65-01-01, says "you take care of your family". Stop and think isn't the wife included in the family? I'll be back if this doesn't pass. Anyone who doesn't want to include the wife, there's something wrong.

Leroy Volt~I support this bill. My wife suffered a lot.

Dave Kemnitz~President of North Dakota AFL-CIO. See testimony attachment.

Sylvan Loegering~North Dakota Injured Workers Support Group. Sebald pointed out my concern with the code 65-01-01. I strongly encourage you to pass this bill.

Anyone here is opposition of HB 1455?

Jodi Bjornson~General Counsel for WSI. See testimony attachments.

Representative Nottestad: On the amendment you put in, this would only be for those that home health care services. The amendment would pass along with part of this bill because of this ability, do you anticipate more request for home health care services?

Bjornson: No, we don't believe so.

Chairman Keiser: Your amendment really limits the scope. The group it weeds out is the group that isn't able to work full time because of the partner requirement. They may not be qualifying for home health, but the reality is they are not making the income that would provide a better retirement option. Was there any discussion about them?

Bjornson: What I can tell you is that what was trying to be done was strike a balance.

Chairman Keiser: When WSI pays for home health care to spouse, they have to demonstrate that home health care is related to the injury.

Bjornson: Yes.

Representative Nottestad: Situation, she has been taking care of spouse for many, many years. Our ability to take care of the spouse is no longer able to do it. You would no longer pay them. The other spouse dies, is there any retroactive order or is the spouse not even considered under this amendment?

Bjornson: This amendment will take care any time before prior to the death. We didn't put in any parameters.

Chairman Keiser: If we would have paid the spouse for home health care for one month, and then the partner has to be institutionalized because it's beyond their capacity, then they would be qualified?

Bjornson: Yes.

Chairman Keiser: If they were paid three years ago or five, they would then receive this?

Bjornson: Yes.

Representative Vigesaa: If someone married after they became disabled, you didn't address that in the amendment. Do you have any comments on that?

Bjornson: I don't have a solution for that.

Representative Vigesaa: Under that scenario, they were disabled and then married to that spouse for 10 years, would qualify for the benefit?

Bjornson: Yes.

Bill Shalhoob~North Dakota Chamber of Commerce. See testimony attachment.

Chairman Keiser: Do you think the amendment brings it back into a work related injury application?

Shalhoob: No.

Chairman Keiser: We have a lot of other programs that you are not in opposition.

Shalhoob: I understand and that it is another step away from WSI. We have other steps in the system.

Anyone here to testify in neutral? Closes the hearing on HB 1455. What are the wishes of the committee?

Representative Nottestad: Motion to adopt Bjornson amendment.

Representative Schneider: Second.

Representative Ruby: It seems even with the amendment, it's carving out a small group. Still issues, what other states are doing and other issues.

Representative Amerman: I have a lot of problem with "not required".

Representative Schneider: There is good public policy behind some modification of this bill.

Six months is a lot of time. It's a good start.

Chairman Keiser: I don't have a problem with the marriage deal; it's the ultimate marriage penalty.

Representative Nottestad: I made the amendment. There are those who given up. The incomes of the women that do give up and are paid for doing it, there is some acknowledgement that yes they have given up something. Yes that group will be eligible for a token amount and time. The six month period give them enough time to do something.

Voting roll call on the amendment of Jodi Bjornson on HB 1455 with 10 yea's, 0 nay's, and 3 absent.

Chairman Keiser: Do you have any idea when the fiscal note will be here. We will hold this bill for a fiscal note.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1455

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: February 4, 2009

Recorder Job Number: 8657

Committee Clerk Signature *Ellen LeTang*

**Chairman Keiser:** Opened the committee work session on HB 1455.

**Representative Nottestad:** Passes out fiscal note for an amendment, see attachment.

**Chairman Keiser:** The fiscal note is based on the amendment that was offered by WSI. This is a spouse qualifying caretaking and being reimbursed no more than six months.

**Representative Nottestad:** This supersedes the first fiscal note?

**Chairman Keiser:** Yes it does.

**Representative N Johnson:** They had to be a caregiver before?

**Chairman Keiser:** Yes and being reimbursed by the bureau.

**Representative Clark:** Any circumstances where the death benefits apply?

**Chairman Keiser:** No.

**Representative Thorpe:** Moves for a Do Pass as Amended.

**Representative Gruchalla:** Seconded.

**Representative Ruby:** The ten years still in it?

**Chairman Keiser:** Yes it is.

**Chairman Keiser:** Further discussion.

Voting rolling was taken on HB 1455 for a Do Pass as Amended with 11 aye's, 1 nay's, 0 absent with Representative Nottestad as the carrier.

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/09/2009

Amendment to: HB 1455

**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 transfers permanent total disability and related benefits to a surviving spouse of a permanently and totally disabled injured employee at the time of death of the injured employee regardless of cause of death for up to six months if certain criteria are met.

**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: Engrossed HB 1455

BILL DESCRIPTION: Permanent Total Disability (PTD) Benefit Continuation for Spouse

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 transfers permanent total disability and related benefits to a surviving spouse of a permanently and totally disabled injured employee for up to 6 months after the death of the injured employee regardless of cause of death and applies to spouses of claimants who die on or after the effective date of this act. Eligibility would be for spouses of injured employees that were permanently and totally disabled for at least ten years; that were married to the surviving spouse for at least ten years; and the surviving spouse provided and was reimbursed by WSI for home health care services that were approved by WSI. Surviving spouse benefits would terminate upon remarriage.

**Reserve Level Impact:** It is anticipated that the proposed legislation will increase discounted reserve levels for known claims by less than \$100,000. To the extent additional claims emerge the cost estimates would be higher.

**Premium Rate Level Impact:** The proposed legislation will serve to increase costs but should not have a material impact on statewide premium rate levels.

DATE: February 7, 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.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	02/09/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/20/2009

Bill/Resolution No.: HB 1455

**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 transfers permanent total disability and related benefits to a surviving spouse of a permanently and totally disabled injured employee at the time of death of the injured employee regardless of cause of death.

**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 1455

BILL DESCRIPTION: Permanent Total Disability (PTD) Benefit Continuation for Spouse

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 transfers permanent total disability and related benefits to a surviving spouse of a permanently and totally disabled injured employee at the time of death of the injured employee regardless of cause of death and applies to claimants who die on or after the effective date of this act. Eligibility would be for spouses of injured employees that were permanently and totally disabled for at least ten years and were married to the surviving spouse for at least ten years. Surviving spouse benefits would terminate upon remarriage.

Reserve Level Impact: The proposed legislation can be expected to increase discounted reserve levels for known claims by more than \$14.5 million. To the extent additional claims emerge the cost estimates would be higher.

Premium Rate Level Impact: The proposal will serve to increase the costs associated with future claims. Currently, it is estimated that 40 Permanent Total Disability claims will arise out of each injury year of which approximately 24 will have a spouse. Based on this assumption, the proposal will serve to increase statewide premium rate levels between 0.5% and 1% or between \$750,000 and \$1,500,000 per year.

DATE: January 26, 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.*

<b>Name:</b>	John Halvorson	<b>Agency:</b>	WSI
<b>Phone Number:</b>	328-6016	<b>Date Prepared:</b>	01/26/2009

February 4, 2009

VR  
2/5/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1455

Page 1, line 11, after "receive" insert "no more than six months of"

Page 1, line 13, after the underscored period insert "A surviving spouse is eligible for benefits under this section if the organization approved the decedent for home health care services and reimbursed the surviving spouse for providing the home health care services. The surviving spouse is not eligible for benefits under this section if the surviving spouse is eligible for benefits under section 65-05-16."

Page 1, line 15, after "to" insert "surviving spouses of"

Renumber accordingly

Date: Jan 27-09  
Roll Call Vote # \_\_\_\_\_

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 1455 - On amendment only

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 \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper <i>AB</i>			Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson			Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 10 No 0

Absent 3

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

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

Date: Feb 4 - 2009  
Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1455

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 Thorpe Seconded By Gruchalla

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

Total (Yes) 11 No 1

Absent 1

Floor Assignment Nottestad

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

**REPORT OF STANDING COMMITTEE**

**HB 1455: Industry, Business and Labor Committee (Rep. Keiser, Chairman)**  
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends  
**DO PASS** (11 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING). HB 1455 was placed on  
the Sixth order on the calendar.

Page 1, line 11, after "receive" insert "no more than six months of"

Page 1, line 13, after the underscored period insert "A surviving spouse is eligible for benefits under this section if the organization approved the decedent for home health care services and reimbursed the surviving spouse for providing the home health care services. The surviving spouse is not eligible for benefits under this section if the surviving spouse is eligible for benefits under section 65-05-16."

Page 1, line 15, after "to" insert "surviving spouses of"

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1455



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1455

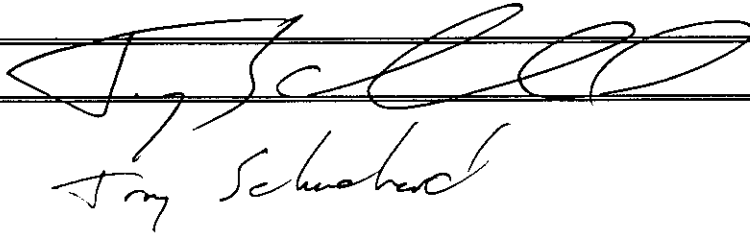
Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 4, 2009

Recorder Job Number: 10131

Committee Clerk Signature



Minutes:

**Chairman Klein:** Opened the hearing on HB 1455, all members present.

**Elwood Thorpe:** Representative District 5; introduced HB 1455 on Tim Efforts. He is on the system as an injured worker and is wheelchair bound. He is usually here and I believe his condition has deteriorated to a point where he wasn't able to make it. So I will try to do justice for Tim in his absence. I didn't prepare any written testimony because this bill explains itself, it states the employee that was permanently totally disabled for at least ten years and was married to the surviving spouse for at least ten years is eligible to receive benefits for 6 months to get all of their business taken care of.

**Merle Boucher:** Representative District 9, testified in support of HB 1455. This bill would convey permanent total disability benefits, supplementary benefits, and additional benefits if an injured employee was eligible to receive and was receiving prior to death, to their surviving spouse. The spouse would have to meet the 3 following minimum eligibility requirements; A) permanently and totally disabled for a period of at least 10 years, B) married to the surviving spouse for a period of 10 years, and C) eligibility would terminate at anytime upon remarriage of surviving spouse. This bill addresses issues socioeconomic fairness. Under many circumstances, total disability has greatly compromised a married couples earnings

capabilities, thus limiting their capabilities to adequately provide for a retirement income plan. Simply, it is likely that a permanently totally disabled individual has not had the financial resources to develop a retirement income source. The loss of the deceased spouses' benefits may greatly reduce the surviving spouses' source of income. This would allow the surviving spouse to sustain their present standard of living. The House has amended it to a six month period and I think that is a good start; however I would like to see that extended even further. I just find this a fairness issue.

**Senator Potter:** You have indicated that you would like to extend the 6 months, to what?

**Merle Boucher:** In my ideal world, I would like to see it extended to a lifetime benefit. A 6 month start is a start in the right direction and hopefully future wise and understanding minds would prevail. If each of us put ourselves in these peoples' shoes, we are talking about someone who is permanently totally disabled by our standards, and those standards are not an easy process. We are talking about someone who is limited to what they got from their benefits plus their spouse. And like any of us, our spouses are going to have the majority of the same responsibilities after we pass away.

**Seibold Vetter:** President of Concerned Advocates Rights of Employees (C.A.RE.) testifies in support of HB 1455. I would like to thank my sponsors because 6 months is better than nothing. I would like to see the benefits go a little farther, say 60%-80% and pay the wife until she dies. When I got hurt, my Social Security was down to \$400. I have been disabled for just about 20 years and when you don't get much; your increases are not much either.

**Sylvan Loergering:** North Dakota Injured Workers Support Group, testified in support of HB 1455. I would like to echo all of the sentiments that have already been expressed and presented. I would like to call your attention to lines 13-16 of HB 1455. It is drastically different than what was introduced Rep. Thorpe and Boucher, in that benefits would continue until

death of the spouse (provided they meet those earlier stated requirements). If we want to do anything that is representative of the intent of this bill, I would direct you to those lines and delete "if the spouse has paid for home health care".

**Senator Potter:** I see some logic to both the 6 month and the limitation. The limitation is clear, the spouse has foregone the opportunity to out into the market, earn money, put away for retirement, gain social security benefits, all that, because they stayed home and provided home health benefits. So those people should obviously be compensated, and I don't know if you should limit it to 6 months because they have done this for 10 years or longer. But it is not the same in the other situation; can you comment on that for me?

**Sylvan Loergering:** The original idea came up and formalized how the spouse took care of the injured worker. I can understand where this delineates. There are a lot of injured workers who are not formally fitting the description or category of home health care. These spouses sacrifice a whole lot because of the lifestyle that has transpired. I think the 6 month adjustment time is not a huge price to pay.

**LeRoy Volk:** Testified in support of HB 1455. Explained his permanently totally disability benefits.

**Jodi Bjornson:** General Counsel @ WSI testified in support of this version of HB 1455.

**Senator Potter:** I want to strike a middle ground here and am wondering if you have done a fiscal analysis? It seems to mean that 6 months is fairly appropriate for the broad category of the 24/year that you estimate, but the survivor benefits for those who provide home health care could continue for 10 years, lifetime, or whatever.

**Jodi Bjornson:** No, not to my knowledge.

**Senator Potter:** Could we get that?

**Jodi Bjornson:** I can look into it. The concern in the House was workers comp death benefits are there to compensate for work related injuries or death and straying further from that and providing additional benefits to a spouse does go against that fundamental principle. However, I think what they tried to do in the House is strike a balance between that cornerstone principle and providing some benefits who have provided care for a spouse for a number of years and give them some financial benefits to help them get back on their feet because they need to get back into the workforce.

**Senator Horne:** I curious about line 16 and 17 could you explain section 6505.16 which would preclude surviving spouses from getting benefits?

**Jodi Bjornson:** 6505.16 is our current death benefit statute and it requires a number of stipulations. (Explanation is given)

**Chairman Klein:** If the surviving spouse received that death benefit, which they certainly could have, she would not be entitled to the six month provision because they have already received them.

**Jodi Bjornson:** If they qualify under the death benefit statute, they will be getting a benefit. So the intent is to make sure the client is in one pool or the other.

**Senator Horne:** If the spouse of an injured worker was taking care of said spouse and not getting paid for it, said spouse wouldn't be eligible. Is that correct?

**Jodi Bjornson:** That is correct. This bill is aimed at those people.

**Senator Horne:** How many people are we looking at here?

**Jodi Bjornson:** Right now the best estimate we have is around 10 individuals that are currently receiving home health care from a spouse or relative.

**Senator Horne:** President of the North Dakota AFL-CIO testified in support of HB 1455.

**Senator Horne:** Representing North Dakota Chamber of Commerce testified in support of HB 1455. (See attachment #1)

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1455

Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 9, 2009

Recorder Job Number: 10502

Committee Clerk Signature

*Eva Lubett*

Minutes:

Chairman Klein: House Bill 1455 this provides for the spouse of the injured employee that had provided a particular type of care and ten years of marriage.

Senator Wanzek: Made a motion for a do pass.

Senator Nodland: Seconded.

Row Call Vote: 7-0

Floor Assignment: Senator Wanzek

Date: 3/9  
Roll Call Vote #: 1

## Senate

Committee

☐ Check here for Conference Committee

**Legislative Council Amendment Number**

### Action Taken

☒ **Pass**☐ **Do Not Pass**☐ **Amended**

Motion Made By Senator Wanzek Seconded By Senator Nodland

[illegible]

Total (Yes) 7 No 0

Absent 

Floor Assignment Senator Wanzek

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

**REPORT OF STANDING COMMITTEE (410)**  
March 9, 2009 4:18 p.m.

**Module No: SR-42-4386**  
**Carrier: Wanzek**  
**Insert LC: . Title: .**

**REPORT OF STANDING COMMITTEE**

**HB 1455, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1455 was placed on the Fourteenth order on the calendar.**



2009 TESTIMONY

HB 1455

**WORKFORCE SAFETY & INSURANCE**  
**2009 LEGISLATION**  
**SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1455 with Amendment**

**BILL DESCRIPTION: Permanent Total Disability (PTD) Benefit Continuation for Spouse**

**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 amended legislation transfers permanent total disability and related benefits to a surviving spouse of a permanently and totally disabled injured employee for up to 6 months after the death of the injured employee regardless of cause of death and applies to spouses of claimants who die on or after the effective date of this act. Eligibility would be for spouses of injured employees that were permanently and totally disabled for at least ten years; that were married to the surviving spouse for at least ten years; and the surviving spouse provided and was reimbursed by WSI for home health care services that were approved by WSI. Surviving spouse benefits would terminate upon remarriage.

**Reserve Level Impact:** It is anticipated that the proposed legislation will increase discounted reserve levels for known claims by less than \$100,000. To the extent additional claims emerge the cost estimates would be higher.

**Premium Rate Level Impact:** The proposed legislation will serve to increase costs but should not have a material impact on statewide premium rate levels.

**DATE: January 29, 2009**

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

HB 1455

REPRESENTATIVE MERLE BOUCHER

*Same  
testimony given  
to Senate*

CHAIRMAN KEISER AND MEMBERS OF THE HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE. FOR THE RECORD I AM REPRESENTATIVE MERLE BOUCHER REPRESENTING DISTRICT NINE (9).

I AM APPEARING IN SUPPORT OF HB1455. HB1455 WOULD CONVEY PERMANENT TOTAL DISABILITY BENEFITS, SUPPLEMENTARY BENEFITS, AND ADDITIONAL BENEFITS THAT AN INJURED EMPLOYEE WAS ELIGIBLE TO RECEIVE AND WAS RECEIVING PRIOR TO THEIR DEATH, TO THEIR SURVIVING SPOUSE.

THE SURVIVING SPOUSE WOULD HAVE TO MEET THE FOLLOWING MINIMUM ELIGIBILITY REQUIREMENTS:

- A. the injured employee (decedent) was permanently and totally disabled for ten(10) years.
- B. was married to the surviving spouse for at least ten(10) years.
- C. eligibility to receive benefits would terminate upon the re-marriage of the surviving spouse.

THIS IS AN ISSUE OF SOCIO-ECONOMIC FAIRNESS. UNDER MANY CIRCUMSTANCES TOTAL DISABILITY HAS GREATLY COMPROMISED A MARRIED COUPLE'S EARNING CAPABILITIES, THUS LIMITING THEIR ABILITY TO ADEQUATELY PROVIDE FOR A RETIREMENT INCOME PLAN. SIMPLY, IT'S LIKELY THEY HAVE NOT HAD THE FINANCIAL RESOURCES TO DEVELOP A RETIREMENT INCOME SOURCE.

THE LOSS OF THE DECEASED SPOUSE'S BENEFITS MAY GREATLY REDUCE THE SURVIVING SPOUSE'S SOURCE OF INCOME, TYPICALLY THIS IS A WIFE. THE CONTINUANCE OF BENEFITS WOULD AT A BASIC MINIMUM ALLOW THE SURVIVING SPOUSE THE OPPORTUNITY TO SUSTAIN THEIR PRESENT STANDARD OF LIVING. I CONSIDER THIS A QUALITY OF LIFE AND FAIRNESS ISSUE.

MEMBERS OF THE HOUSE IBL COMMITTEE, I ENCOURAGE YOU TO GIVE HB1455 A DO PASS RECOMMENDATION. THANK YOU.

**January 27, 2009—House I B & L Committee Testimony on WSI bills.**

**ND AFL-CIO**

**David L. Kemnitz; President**

**HB 1410**

Introduced by; Representatives Wald, Grande, Klein; Senator Wardner  
A BILL for an Act to amend and reenact section 65-05-09.2 of the North Dakota Century Code, relating to workers' compensation offset for social security retirement benefits.

**The ND AFL-CIO supports HB 1410 and feels it is an earnest attempt to rectify some of the 1995 Legislative Session changes that adversely affected claimants.**

**HB 1427**

Introduced by; Representatives Thorpe, Onstad, Zaiser; Senators Bakke, Taylor.  
A BILL for an Act to amend and reenact section 65-05-04 of the North Dakota Century Code, relating to an injured worker's request for workers' compensation to exercise continuing jurisdiction.

**The ND AFL-CIO supports HB 1427. The over struck language on lines 12 thru 14 point to the essence of problems claimants with newly acquired or additional medical information have with getting WSI to review their denied claim. WSI has the ability to review claims but more often than not WSI refuses to review and adjust these claims. Because of this experience with WSI refusal to review newly acquired or additional medical information HB 1427 has been introduced.**

**The new language in lines 15 thru 21 would provide guidance and form for WSI to follow when the question of review comes up. The changes in our opinion are very appropriate in answering WSI claimant pleas for relief under the act.**

**HB 1455**

Introduced by; Representatives Thorpe, Boucher, Ekstrom, Zaiser; Senator Bakke  
A BILL for an Act to create and enact a new section to chapter 65-05 of the North Dakota Century Code, relating to workers' compensation benefits for surviving spouse of permanently and totally disabled injured employee; and to provide for application.

**The ND AFL-CIO supports HB 1455. The surviving spouse of a WSI claimant is more often than not the primary caregiver of the seriously and permanently injured worker. WSI does not provide compensation to these spouses, in addition the wage loss over the period of disability is substantial and resultantly the Social Security benefits for the surviving spouse are drastically reduced. This bill seeks to recognize the support of a surviving spouse/caregiver by awarding a small but measured monthly income stabilizer. This we feel is not only appropriate but also sincerely needed in these instances.**

**HB 1524**

Introduced by; Representatives Amerman, J. Kelsh, Wolf;  
Senators Dotzenrod, Fiebiger, Nething;  
A BILL for an Act to amend and reenact section 65-05-33 of the North Dakota Century Code, relating to workers' compensation fraud; and to provide a penalty.

**2009 House Bill No. 1455**  
**Testimony before the House Industry, Business, and Labor Committee**  
**Presented by: Jodi Bjornson, General Counsel**  
**Workforce Safety & Insurance**  
**January 27, 2009**

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson, General Counsel with WSI. I am here on behalf of the WSI Board of Directors to convey the Board's opposition to this bill in its current form and to provide information to the Committee to assist in making its determination on this bill. The Board did approve an alternative concept to this bill which is provided in the attached amendments.

This bill proposes to extend permanent total disability and related benefits of a permanently and totally disabled employee to the surviving spouse upon the disabled employee's death, regardless of the cause of death, if the deceased was permanently and totally disabled for at least ten years and married to the surviving spouse for at least ten years.. By way of background, an injured employee is generally entitled to permanent total disability (PTD) benefits when a work injury prevents the employee from performing any type of work.

PTD benefit recipients are also eligible for supplementary benefits. These benefits are essentially cost of living adjustments. Generally, supplementary benefits are payable when an individual has been deemed permanently and totally disabled and has been receiving disability benefits for seven consecutive years; or to a survivor who has been receiving death benefits for a period of seven consecutive years. For newer claims, the waiting period is three years. 2009 HB 1064 proposes to reduce the waiting period for all claims to three years.

HB 1455 appears to provide benefits to a surviving spouse to the same extent the deceased disabled employee would have received the benefits had he or she still been

alive. Depending upon the applicable law, certain PTD recipients receive benefits for life; others until they reach retirement age. If benefits terminate when an injured employee reaches retirement eligibility, a post-retirement benefit called Additional Benefits Payable generally based on the length of time and amount of disability benefits previously received is provided.

Please note this bill does not require that the death of the disabled employee be caused by the work injury. For example, under HB 1455, if a PTD benefit recipient was killed in a car accident, this bill would allow for the payment of any remaining PTD benefits to a surviving spouse until their death. This is inconsistent with the fund's history in that traditionally, like most state workers compensation programs, benefits are provided to compensate for a work injury or work-related death.

Furthermore, it is important to remember that current law provides up to \$250,000 in death benefits to a surviving spouse when the death is directly related to a work injury. 2009 HB 1101 proposes to further increase this cap to \$300,000. 2007 HB 1038 expanded these death benefits to long-term catastrophically injured employees who die as a result of a work injury. WSI's initial interpretation of HB 1455 indicates a surviving spouse of a PTD benefit recipient who died as a result of a work injury may also be eligible for both death benefits in addition to the spousal continuation benefits proposed within this bill.

It is anticipated that the fiscal impact of this legislation would increase discounted reserve levels for existing claims by more than \$14.5 million. The anticipated state-wide premium rate level increase to cover the costs of future claims would be between \$750,000 and \$1,500,000, or between .5% and 1% per year.

WSI's Board approved the attached amendments that provide a benefit to a surviving spouse who has provided care to the decedent during the decedent's life. WSI's attached amendments would allow for a PTD benefit recipient's surviving spouse to receive up to six months' of benefits to which the decedent would have been entitled

had the decedent still been alive. However, in order for the surviving spouse to be eligible under the amendments, the decedent must have received at least ten years of PTD benefits, been married to the surviving spouse for at least ten years, and the surviving spouse must have provided and been reimbursed for providing home health care services to the decedent. The home health care services would had to have been previously approved by WSI. In addition, if the surviving spouse qualified for death benefits under 65-05-16, he or she would not be eligible for benefits under the proposed amendments.

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

PROPOSED AMENDMENTS TO HB No. 1455

Page 1, line 11, after "receive" insert "no more than six months of"

Page 1, line 13, after the period, insert "A surviving spouse is eligible for benefits under this section if WSI approved the decedent for home health care services and reimbursed the surviving spouse for providing the home health care services. The surviving spouse is not eligible for benefits under this section if the surviving spouse is eligible for benefits under 65-05-16."

Page 1, line 15, after "to" insert "surviving spouses of"

Renumber accordingly





Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1455  
January 27, 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 1455 and urge a do not pass from the committee on this bill.

We understand the desire to provide survivor benefits, which HB proposes to do. If enacted as proposed it would be a radical departure from the purpose of workers compensation coverage under any system, to provide wage replacement while recuperating or permanent income if disabled from a job related injury. By extending coverage to the surviving spouse it becomes more of an insurance product of some kind than a workers comp product. The requirement for the surviving spouse to be married to the decedent for a minimum of ten years seems arbitrary and difficult to defend to someone married under ten years or a significant other who has been with the decedent for more than ten years.

Thank you for the opportunity to appear before you today in opposition to HB 1455. I would be happy to answer any questions.

*THE VOICE of NORTH DAKOTA BUSINESS*



Testimony of Bill Shalhoob  
North Dakota Chamber of Commerce  
HB 1455  
January 27, 2009

Mr. Chairman and committee members my name is Jeb Oehlke. I represent the North Dakota Chamber of Commerce, the voice of North Dakota business. Our organization is an economic and geographical cross section of the state's private sector and also includes state associations, local chambers of commerce, development organizations, convention and visitors bureaus and public sector organizations. For the purposes of this hearing we also represent sixteen local chambers with total membership of more than 7,000 members and ten employer associations. As a group we stand in support of HB 1455 as it came over from the House.

We understand the desire to provide survivor benefits, which HB 1455 proposes to do. As amended this bill will provide a surviving spouse with an income for a reasonable period of time while the individual is working to get back on his or her feet. The purpose of workers compensation coverage is to provide wage replacement while recuperating or permanent income if disabled from a work related injury. This is a reasonable extension of benefits because it will give a surviving spouse the time needed to enter, or reenter, the workforce if he or she has spent the last decade or more caring for a disabled spouse.

Thank you for the opportunity to appear before you today. I am happy to answer any questions.

*THE VOICE of NORTH DAKOTA BUSINESS*

WSI paid  
LeRoy Vol/K

4 2/6

SSC	WSI	Lawyer	Total
\$10,000	\$2,000	\$2,500	\$4,500
Interest 1yr \$120.	5yr \$600.	10yr \$1,200	15yr \$1,800
Month	End. yr.		Interest
1	\$100.00	\$1,200	\$48.00
2	\$100.00	\$2,400	\$96.00
3	\$100.00	\$3,600	\$144.00
4	\$100.00	\$4,800	\$192.00
5	\$100.00	\$6,000	\$240.00
6	\$100.00	\$7,200	\$288.00
7	\$100.00	\$8,400	\$336.00
8	\$200.00	\$10,800	\$446.00
9	\$200.00	\$13,200	\$546.00
10	\$200.00	\$15,600	\$646.00
11	\$200.00	\$18,000	\$746.00
12	\$200.00	\$20,000	\$830.00
13	\$200.00	\$22,800	\$945.00
14	\$200.00	\$25,200	\$1,046.00
15	\$200.00	\$27,600	\$1,146.00
	\$3,000	\$3,000	\$1,800.00
Total	\$30,600		
	2,946	Total	\$2,946.00
Total	\$32,546		

1	45	\$1,000	\$450.00	\$5,400
2	45	\$1,000	\$450.00	\$2,800
	45	\$1,000	\$450.00	\$16,200
	45	\$1,000	\$450.00	\$21,600
5	45	\$1,000	\$450.00	\$27,000

**2009 Engrossed House Bill No. 1455**  
**Testimony before the Senate Industry, Business, and Labor Committee**  
**Presented by: Jodi Bjornson, General Counsel**  
**Workforce Safety & Insurance**  
**March 3, 2009**

Mr. Chairman, Members of the Committee:

My name is Jodi Bjornson, General Counsel with WSI. I am here on behalf of WSI and its Board of Directors to convey support for this version of the bill.

The original version of this bill proposed to extend permanent total disability (PTD) and related benefits of an employee to the surviving spouse upon the disabled employee's death, regardless of the cause of death, if the deceased was permanently and totally disabled for at least ten years and married to the surviving spouse for at least ten years.

There were a number of concerns with the original version of this bill. As a result, WSI proposed amendments that resulted in the engrossed version of this bill. The engrossed version provides permanent total disability and related benefits to a surviving spouse who has provided care to the decedent during the decedent's life. The surviving spouse may receive up to six months' of benefits to which the decedent would have been entitled had the decedent still been alive.

In order for the surviving spouse to be eligible, the decedent must have received at least ten years of PTD benefits, been married to the surviving spouse for at least ten years, and the surviving spouse must have provided and been reimbursed for providing home health care services to the decedent. In addition, if the surviving spouse qualified for death benefits under 65-05-16, he or she would not be eligible for benefits under this bill.

We do not anticipate a material impact on premium rates or reserves as a result of this legislation.

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