

FISCAL NOTE
Requested by Legislative Council
04/01/2015

Amendment to: HB 1102

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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

see attachment

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

see attachment

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

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

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

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

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 04/02/2015

WORKFORCE SAFETY & INSURANCE
2015 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: Engrossed HB 1102

BILL DESCRIPTION: WSI Injury Services Bill

SUMMARY OF ACTUARIAL INFORMATION: Workforce Safety & Insurance, together with its actuarial firm, Bickerstaff, Whatley, Ryan & Burkhalter Consulting Actuaries, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

The proposed legislation updates the definition of health care provider; removes language requiring disability or death be sustained in order for the presumption of compensability to apply to certain conditions of full-time, paid firefighters and law enforcement officers; establishes that combined partial disability benefits, dependency allowance, and post injury wage-earning capacity cannot exceed 90% of the pre-injury wages of an employee; expands eligibility for the scholarship fund to include children up through age twenty-six; allows WSI to provide information to other state and federal agencies; provides for issuance of notice of decisions for vocational rehabilitation awards; provides WSI discretion in implementing rehabilitation pilot programs and alters the pilot program reporting requirements; clarifies and expands the eligibility of children that can utilize the educational revolving loan fund; provides clarification for determining compensation benefits for volunteer firefighters, emergency or disaster volunteers, volunteer health practitioners, and community emergency response team members.

FISCAL IMPACT: We don't anticipate the various provisions of this legislative proposal to have a significant impact to statewide premium or reserve levels.

DATE: April 2, 2015

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: HB 1102

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

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see attachment

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see attachment

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

Name: John Halvorson

Agency: WSI

Telephone: 328-6016

Date Prepared: 12/30/2014

WORKFORCE SAFETY & INSURANCE
2015 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: HB 1102

BILL DESCRIPTION: WSI Injury Services Bill

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FISCAL IMPACT: We don't anticipate the various provisions of this legislative proposal to have a significant impact to statewide premium or reserve levels.

DATE: December 30, 2014

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1102

2015 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Peace Garden Room, State Capitol

HB 1102

1/13/2015

21871

Subcommittee

Conference Committee

Eden Letano

Explanation or reason for introduction of bill/resolution:

Relating to definition of a health care provider, presumption of compensability for fulltime paid firefighter and law enforcement.

Minutes:

Attachment 1

Tim Wahlin~Workforce Safety & Insurance (WSI): (Attachment 1).

6:15

Representative M Nelson: I'm confused on the timeline? Why are we changing the law to conform to WSI's current practices? Why doesn't WSI follow current law?

Wahlin: With respect to the application and for disability, within the area of full time paid firefighters and law enforcement, since I've been there, this particular area has been applied to injuries or disabilities happening from that presumption area which is heart, lung and those types of presumptions. We have covered those claims. Even though there may not have been the requisite of the 5 days of disabilities. How that happened, I don't know.

Representative M Nelson: Another area, is there a problem if an injured workers receives greater than 90% of its pre-injury average weekly wages and if he is doing that, then you are not fulfilling the statute where disability includes loss of earning capacity. You are equating earning with earning capacity and I see them as two different things.

Wahlin: With the respect to the application of two different types of benefits, complete loss of earnings capacity as opposed to temporary partial. Temporary partial means they are still going to be some earnings coming in, we will pay the 66 2/3 the difference to bring them up to where we are. The conflict happens between the two statutes. Temporary total disability is defined as disability exceeding 10%. If you lose more than 10%, you now have a disability claim. The conflict comes in the application of the partials. Partial, all of a sudden are a combination of what you're earning and how we calculate, can put you above 90%. Technically it means you don't have a loss of earnings however, we are paying above 90%. What we are doing is making two pieces of law.

Representative M Nelson: You're still equating earning capacity and earning. The law doesn't say you can't earn more than 90%. Do you understand what I saying?

Wahlin: Yes, how we measure is based on what you are earning. We look strictly at what is being earned at the time of the disability. That is what we base on your entire average weekly wage.

Representative Kasper: On section 3, what are you defining as his paycheck from his employer?

Wahlin: This contemplates that you are receiving temporary partial disability. Temporary partial disability means that there is continued work for payment going, just not at the capacity prior to injury. It's at a lower rate or less hours. We are going to making up 66 2/3 of that difference and that's the partial disability payment.

11:20

Representative Kasper: What you are saying is that regardless of the circumstances, the total amount of revenue that the injured worker receives cannot be greater than 90% of his pre-disability earnings?

Wahlin: That's correct.

Representative Kasper: Why are you concerned about the additional 10%.

Wahlin: Anything above 90%, if we look back to the definition of temporary disability & disability you do not have a disability unless you lose at least 10%. Yet, over here, I can receive pay above 10% which puts those two statues in conflict.

Representative Kasper: WSI is saying, we want to error on the injured worker receiving lesser than greater.

Wahlin: That is correct to the extent if there is less than 10% loss of earnings.

Representative Kasper: Greater than 10% loss of earning occurs when the employee is injured and can't totally work. That point in time, the loss is greater than 10%. If the employer continues to pays for the partial, it could exceed 90%. Why does WSI care?

Wahlin: To make consistency between those two statues. That was the recommendation to be corrected.

Representative Kasper: The recommendation didn't tell you to correct one way or the other, just fix the inconsistency?

Wahlin: The recommendation told us to correct that temporary partial calculation, yes.

Chairman Keiser: One way or the other.

Wahlin: No, they directed us for the temporary partial calculation, which is the area of the law we are correcting. They did not direct us to change the definition of disability claim.

Representative Ruby: Section 2, in removing the language, you broaden the scope of the benefit?

Wahlin: That's correct.

Representative Ruby: Section 3, what percentage of wage is replaced?

Wahlin: The most common calculation is $66 \frac{2}{3}$ of the lost wage.

Representative Ruby: As they receive some wages from the employer, that percent goes higher than the $66 \frac{2}{3}$?

Wahlin: No, we are still going to use the $66 \frac{2}{3}$ in most cases; however, if the employer pays money, the lost amount will be $66 \frac{2}{3}$ of the lost amount for our partial payment.

Representative Ruby: The reason behind the $66 \frac{2}{3}$, it's that when you're paying the full amount, all of that tax free. When you are filling the gap, they are paying tax on the first portion, so they don't get as good of a benefit.

Wahlin: That's correct.

17:02

Representative Ruby: I would like more explanation of the change of the definition of child from 18-23 to 23-26.

Wahlin: Child will be defined as the dependent up to the age of 18 to the extent a dependent is a full time enrolled student that will go up to 22. We have altered the definition with respect to just scholarships. We altered the definition the child so you can receive a scholarship past the age of 22, up to the age of 26.

Representative Ruby: Why doesn't it say from 18-26?

Wahlin: The part up refers back to our definition section 65-01-02, which defines child as being up to 18 and up to 22 if they are an enrolled full time student. That's why we broadened to include 23-26 within that definition.

Representative Ruby: On page 5, why did you remove the language for the pilot program?

Wahlin: There was so much required to reporting back, it ran into time constraints. We're basically trimming it out.

Representative M Nelson: Going back to the partial disability benefits, if wages increase over a period of time, but by law, I would still be only 90% pre-period of time. Is that correct?

Wahlin: There are a couple of answers. First, we base all of your payments on your average weekly wages which is derived when you are injured. Should you be on temporary total for three years, there is a cost of living adjustment will be built in. However, the 90%, we are not going to establishing a wage loss on that because you have not hit the 10%. That's where the 90% comes into this.

Representative M Nelson: If I was at 50% loss payment, then one day everyone gets a 20% wage increase, my partial disability payment will come down that same amount of dollars?

Wahlin: That's correct.

Representative M Nelson: I will be stagnant; there is no cost of living, that's the number?

Wahlin: There is a statute for long term, partial disability.

Representative M Nelson: I'm asking temporary partial.

Wahlin: No, it will not be an adjustment.

Representative M Nelson: Isn't it 5 years?

Wahlin: Up to 5 years, yes.

23:15

Representative Boschee: Looking at section 6, does that impact the injured worker's ability to receive benefits during that time period?

Wahlin: There will not be a change.

Representative Ruby: Explain further the changes in section one.

Wahlin: This simply goes back to our code and looks, who the state of ND is recognizing and controlling by a particular board, we do that through administrative rule. We never went back and conformed the statutes.

Representative Frantsvog: Section 7, there is no requirement for reporting, is it at your discretion?

Wahlin: In subsection 2, page 5, line 10, we left that language in but that would require us to report to that particular committee the full set of analysis. We will still report on our current pilot programs.

Representative Frantsvog: It doesn't require to provide specific information?

Wahlin: Correct.

27:45

Representative Becker: Back to section 1, could you expound on what you're saying.

Wahlin: We have all sorts of differences. It's going to be applying to health care providers. What we have done in the administrative code, is to include a number of these as they have shown up. Nowhere within the code was it recognized or spelt out because of the evolution process.

Representative Becker: The expanded definition would not be used to either accept or deny a claim as evidence.

Wahlin: In certain circumstances it could, but it rarely happens.

Representative Kasper: Section 5, sharing information, the information is it HIPPA protected.

Wahlin: Yes.

Representative Kasper: Section 9, line 13, compensation benefits, are you excluding the self-employed individuals who don't pay into WSI. Are you saying that there will be no benefits for them?

Wahlin: Yes.

Representative Kasper: With this change, are you taking away benefits from volunteers who are not covered with their primary occupation?

Wahlin: To the extent that there is medical, no, it will not affect that. To the extent of the wage lose payment, currently they do not receive as part of their payments, if they do not have insured wage. We are clarifying this statue, the same way as all of our other definitions.

Representative Kasper: So, there is no additional potential loss of benefit it's just a clarification.

Wahlin: That's correct.

Representative Ruby: Didn't you say that there was a hearing that ruled otherwise?

Wahlin: We did have one instance. We want to make sure it's clarified.

34:30

Representative Amerman: Section 5, line 9, as I read this, it's very broad, you can share any information.

Wahlin: The organization may provide in those first few words, that gives us the ability to say no because we need to communicate. There is a coordination benefit between those agencies.

Representative Amerman: You can't do that now?

Wahlin: We are currently exchanging some of that information under the employer section of the code.

Vice Chairman Sukut: Number 5 on top of page 4, I would like some clarification between must and may.

Wahlin: The first sentence must be awarded by a panel. We may award those scholarships. We wanted clarification so that we wouldn't get into an appeal process when a scholarship has been awarded or denied.

Representative M Nelson: In the rehab services program, could you tell us about the system?

Wahlin: When we get into a rehab section, essentially, we have bad news for an injured worker. We are looking for new way to do that in a constructive fashion, and one we have right now that is a pilot program but, we don't know if that will work.

Representative M Nelson: Are there completed pilot programs where there are final reports?

Wahlin: No, it tends to be that when the next session comes around and we want to add or change addition language.

Representative M Nelson: This is a case where we are changing WSI practice rather than what the statue is.

Chairman Keiser: Section 3, I would ask that you go back and do a comprehensive analysis and assure us that someone is not going to lose income because 40% is coming from wages and the balance, up to 90%, is coming from WSI where the tax is coming out of the wages.

Wahlin: OK.

42:55

Chairman Keiser: Section 9, I believe certain political subdivisions and nonprofits actually do purchase coverage, does this create an unintended consequence for their compensation?

Wahlin: I don't see that it would.

Chairman Keiser: I have a concern that this new language doesn't work and makes it worse.

45:25

Wahlin: You have earnings that are underwritten by us somewhere else.

Chairman Keiser: With this language I have no coverage.

Wahlin: For the indemnity benefit, that's correct.

Chairman Keiser: That could be a real problem.

Wahlin: Yes.

Chairman Keiser: That would be a change from where we are now, correct?

Wahlin: No, this language is the same language up in our average weekly wage definition, which we use to generate everybody's average weekly wage.

46:45

Chairman Keiser: Anyone else here to testify in **support of HB 1102, opposition?**

Renee Pfenning~ND Electrical Workers Council: We do have concerns with section 3 in the bill; there is a difference between disability benefits and earning capacity. A partial disability is a supplementing for the loss of earning capacity not replacing it. In 65-08-08, there they are allowing the employed to earn an additional 10% without any offset but yet, when on partial disability and gone back to work, they are penalize for being injured with a 10% cut. If you look at the definition in 65-05-10, it includes your partial disability benefit, dependency allowance & post injury wage earning capacity? These two are different. That is why we would oppose section 3 of the bill and ask that it to be removed.

Chairman Keiser: If we come back with language that guarantees we hold those people harmless and there isn't a penalty, would you support that?

Pfenning: We could support that as long as the injured worker isn't sliding backwards.

Tom Ricker~President of the AFLCIO: I agree with Renee on Section 3 in opposition. I agree if you come back with a fix, I will support it.

Chairman Keiser: Anyone else here to testify on HB 1102 in opposition, neutral? Closes the hearing on HB 1102.

2015 HOUSE STANDING COMMITTEE MINUTES

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

1102
1/14/2015
21961

- Subcommittee
 Conference Committee

Committee Clerk Signature

Ellen Retang

Explanation or reason for introduction of bill/resolution:

Definition to a health care provider, presumption of compensability for fulltime paid firefighter & law enforcement.

Minutes:

Attachment 1, 2

Chairman Keiser: Opens the work session on HB 1102.

Chairman Keiser: We will deal with section 3 and Tim Wahlin is here to advise us.

Tim Wahlin: (Attachment 1) Reads subsection 8, page 6. This section of statute has been in for a long time. This sets up the parameter where we define those 10% swings that are not going to be paid. With that out there, what happened was that through the process, the Sedgwick evaluations. **(Attachment 2)**~Reads from the Sedgwick evaluation. If you add those two together, we are not compensating that injured worker above the 90% which tends to conflict. On the next page of attachment 2, we tried to provide numbers and colors. Everything in our compensation is based on gross wages. What they wanted us to do is go to the red column and smooth the last column out so that 90% will carry through that column. That was his recommendation. This was recommended by the auditor and this is what the language is attempting to do. Reality is that there are very few workers that fall into that category.

Representative Ruby: Is it likely returning from light duty to full duty work that they gradually increase in this fashion?

Wahlin: No.

Representative Ruby: Hitting the 66 2/3%, if someone is making 20% of their pre-injury wage and you are making up the difference, there's a certain percent of their income is subject to tax. If someone is making 80% of their wage at pre-injury and you are only making up the extra 10%, now higher percentage of their gross wage is subject to tax and they are only getting that 66 2/3%. Even if they are both at 66 2/3, more is subject to tax if it's coming from wage than coming from benefit.

Wahlin: I don't see it that way; we're working off of gross wage.

Representative Ruby: I'm not sure how it wouldn't. Their take home is what I was looking at. It may not be significant because it's not a high wage. I didn't know if you were going to be looking at any equation that would make up that difference.

Wahlin: We haven't considered that. I know that the way we project taxes within our system, it's complicated. Because we don't consider any state taxed in those scenarios, it's always going to benefit the injured worker.

Representative Ruby: You're right, it isn't very much.

Wahlin: There is less than 10, that we were able to run at any particular time that would fall into red boxes on the right where they are receiving more than 90% with the combined payouts.

Representative Frantsvog: Can you pay more than 90%?

Wahlin: No, understand that when our payment is added to their earning sometimes can go above 90%.

Representative M Nelson: How does the temporary partial payment flows. Explains a situation.

Wahlin: No, there is an item that we pay out that is called permanent partial impairments. That's dislocated from any other payments depending upon the severity of the injury. We pay permanent partial impairments sometimes to employee who never had a wage loss, so long as their rating of their injury is above 14%.

Representative M Nelson: Basically what you are saying these temporary partial people, when they get to the end of their payments, that that.

Wahlin: That correct to the extent they return back to work.

Representative M Nelson: What do you mean to the extent that they return back to work?

Wahlin: You are receiving a temporary partial benefit which is replacing wages you lost during that healing process. Temporary totals mean that not earning anything or replacing all of your wages. Temporary partials means you are still earning and we are replacing the portion you have lost.

Representative M Nelson: It's independent of this, there is no continuation.

Representative Kasper: When a person gets injured, then you determined what the worker falls under. Once you made that determination in the temporary situation, they are injured but they are going to be ok to come back to work. Is that where the temporary comes in?

Wahlin: That's correct.

Representative Kasper: Then on the partial permanent, the worker is injured, went to rehab, but it is determined because of the injury, he's going to have a medical problem for the rest of their working life. We are going to pay them something; the partial payment is forever because they lost their ability to earn. Is that correct?

Wahlin: That's correct. It's a one-time lump.

Representative Kasper: Could that be a large amount?

Wahlin: Currently the top payout is over \$400,000.

Representative Ruby: Section 7, the pilot project changes, was that part of the evaluation or WSI's proposal?

Wahlin: WSI's.

Representative Frantsvog: The onetime payment, is it negotiable?

Wahlin: No it is not. It is based strictly on permanent partial impairment rating under the 6th addition of the AMA guides.

Chairman Keiser: Summarized the bill. The auditor came in, looked at our current law and said our current laws are at 10%. Yet because of the way it's applied, there is a small range that we go outside of the 10% and we should be consistent for all claimants. This would be a discriminatory policy regardless of the amount of money given the statute we have. Is that basically what this bill is about in section 3?

Wahlin: That's exactly how I read it.

Chairman Keiser: What are the wishes of the committee?

Representative Ruby: Recommends a Do Pass.

Representative Laning: Second.

Chairman Keiser: Further discussion.

Representative Ruby: I think a lot of the changes are appropriate as far as updating the code. I think it's a good bill and we don't need any amendments.

Chairman Keiser: We decided 12 years ago, we decided to put more emphasis on the severely injured people. We have a lot of benefits on the top end but not as much on the bottom end. ND is the only state that has these benefits that no other state has. We put pressure to get pilot projects going and find some alternatives. Most people don't realize that the state of North Dakota owns employment insurance and it's called WSI. We run it like an insurance company and we run it with employee premiums.

House Industry, Business & Labor Committee

1102

January 14, 2015

Page 4

Vote roll call was taken on HB 1102 for a Do Pass with 11yes, 2 no, 2 absent and Representative Ruby is the carrier.

Date: Jan 14, 2015

Roll Call Vote: 1

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1102**

House Industry, Business & Labor Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep Ruby Seconded By Rep Laning

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

Total (Yes) 11 No 2

Absent 2

Floor Assignment Rep Ruby

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

REPORT OF STANDING COMMITTEE

HB 1102: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **DO PASS** (11 YEAS, 2 NAYS, 2 ABSENT AND NOT VOTING).
HB 1102 was placed on the Eleventh order on the calendar.

2015 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1102

2015 SENATE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee

Roosevelt Park Room, State Capitol

HB 1102

3/9/2015

Job Number 24462

Subcommittee

Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to privacy of records

Minutes:

Attachment

Chairman Klein: Opened the hearing.

Tim Wahlin, Workforce Safety and Insurance: In support of the bill. Written Testimony Attached (1). (1:06-2:30)

Chairman Klein: Asked how they presumed it initially and what are they doing now?

Tim Wahlin: This section of law is under the presumption that applies to full time paid law enforcement and firefighters. It is the only area of statute that creates a presumption of compensability and it is only for those classes. (2:45-3:58)

Senator Campbell: Asked for an example of before and after of a common claim he has experienced?

Tim Wahlin: With respect to full time paid firefighters and law enforcement, we presume compensability with any pulmonary heart hypertension. They are presumed to be work related and as a result we pay. The difference of before and after on this particular section of law is if we only pay in the result of disability that means we will only be paying on these claims if there is an actual wage loss, they lose work as a result of their heart condition. (4:08-5:45)

Chairman Klein: You are providing the clarity needed because you are already paying both?

Tim Wahlin: Yes.

Senator Sinner: When was this put into code?

Tim Wahlin: This has been in code from the early nineties. He continues going over his testimony. (6:20-8:05)

Senator Sinner: Asked for an explanation of the different kinds of loses.

Tim Wahlin: With respect to the indemnity payments, wage replacement benefits there are basically three. There is permanent total, temporary total and temporary partial. That is what we are dealing with here. He introduced the handouts, Performance Evaluation and TPD Example, Attachments (2) and (3). (8:30-14:00)

Senator Sinner: Asked how long they can stay on these wages.

Tim Wahlin: The temporary total benefit is capped at two years and the temporary partial disability benefit is capped at five years, a total of seven years.

Senator Sinner: Asked if they stay on the same wage for the entire time and if there were any increases do to cost of living.

Tim Wahlin: The cost of living would kick into effect three years in and then the cost of living would be moving with the yearly change in the States average weekly wage. He continues going over his testimony. (15:15-19:57)

Senator Murphy: Asked if pilot programs or rehab were new treatments.

Tim Wahlin: Yes when we talk about vocational practices that is when an injured is unlikely to return to the job they were injured at. He talked about the process and gave some examples of what they can make available to the injured worker. He continues with his testimony, section 8 and section 9. (20:10-26:05)

Chairman Klein: Asked about section 9.

Tim Wahlin: There are certain groups that do not need WSI coverage. There is a list of about eight within that statute. They are looking at group that may volunteer but the wages that are being covered are consistent across the board with the wages that are being covered for everybody else. He continued to give examples to scenarios and hypotheticals that were asked and explained how it would work. (26:20-40:14)

Senator Murphy: Asked if he knew the number of workers' that would be affected by section 3.

Tim Wahlin: First of all in the application in section three, no one will have an adjustment who is currently on benefits, it is prospective only. It is people entering that class after the law becomes effective. It is less than five people who fell into that group. (40:39-41:03)

Renee Pfenning, North Dakota Electrical Workers: In opposition to section three of 1102. She stated that there is a difference between disability benefits and earning capacity. The partial disability is supplementing the injured worker for a loss of earning capacity it is not replacing it. It is like comparing apples and oranges. (42:07-45:10)

Chairman Klein: Said that he heard that the current claimants were all held harmless and it doesn't affect anybody that is currently in the system.

Renee Pfenning: But going forward.

Chairman Klein: And that would relate to possibly five cases.

Renee Pfenning: Went over her calculations of how much money the injured worker would lose. She feels the injured worker would be sliding backwards and is being penalized for being injured. (45:35-48:15)

Tom Ricker, President of the North Dakota AFL-CIO: In opposition to the bill. Written Testimony Attached (4). (50:10-55:21)

Chairman Klein: What we are doing here, as a result of the study, is creating consistency they asked for. It is already in the code and we are applying it to both sections.

Tim Wahlin: That is correct. We are talking about an adjustment of a few dollars. The most he could come up with is thirty six dollars, it is on the handout. (55:45-56:48)

Senator Murphy: Asked if he was asserting that Tom and Renee's testimony was in error.

Tim Wahlin: No they are looking at the two pieces but the piece which defines loss is up in 0508 which is that 90%. At 90% there is a loss likewise an injured worker can earn up to 10% and not affect any benefit paid. That is the definition up front. This one deals with just partials and how we handle partials and whether or not those partials combined can go above 90% and it is Sedgwick that found it was a dislocation. (58:00-58:27)

Senator Murphy: The assertion here is that you are creating consistency. Does this creation of consistency advantage the injured worker or disadvantage the injured worker?

Tim Wahlin: To the extent that there is an application it would disadvantage the injured worker in those top earning levels, correct.

Senator Campbell: Asked about removing section three.

Tim Wahlin: The reason this was brought to us is Sedgwick came in for their performance evaluation and made this a recommendation of their performance evaluation and we are required to respond to those and our response was we will bring legislation.

Chairman Klein: When these audits are completed they are reviewed by the auditor's office and recommendations are looked at to see if they are followed. If they are not the organization is subject to a noncompliance.

Senator Murphy: So WSI is doing what Sedgwick asked them to do but we don't have to if it hurts the worker maybe we can consider that.

Chairman Klein: They could use the legislature didn't let us provide consistency.

Senator Campbell: Asked if there was a negative if they don't do what is suggested.

Tim Wahlin: No our response in that case was, we will bring legislation but if the legislation fails to pass our job is done. We want there to be consistency within the statute.

Senator Miller: Currently without section three there are certain workers because they get paid more they are getting a greater benefit?

Tim Wahlin: Yes.

Chairman Klein: Closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1102
3/17/2015
Job Number 24994

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Lebelt

Explanation or reason for introduction of bill/resolution:

Relating to privacy records

Minutes:

Attachment

Chairman Klein: Said we had some discussion which centered around a particular section and Senator Sinner had some amendments that he would like to pass out.

Senator Sinner: Asked if he wanted to bring WSI in. Amendment Attached (1).

Chairman Klein: Said that they would bring WSI in so they could explain what the amendments would do.

Senator Sinner: He went over the amendment.

Chairman Klein: Closed the discussions.

2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1102
3/23/2015
Job Number 25260

- Subcommittee
 Conference Committee

Committee Clerk Signature

Era Lubell

Explanation or reason for introduction of bill/resolution:

Relating to privacy records

Minutes:

Attachments

Chairman Klein: We heard this the 9th of March. This was the cleanup bill for WSI. Senator Sinner proposed an amendment to 1102, it was 15.8027.01005 amendment. Tim Wahlin is here to speak to the amendment. The section that deals with the 90% is where there is concern.

Tim Wahlin, Workforce Safety and Insurance: Handouts Attached - Long-Term temporary partial disability inflation adjustment sheet, Statute 65-05-10.1 (1). He addressed the proposed amendment to HB 1102 that he was given regarding partial disability benefits. He went over the long-term temporary disability inflation adjustment sheet. (1:24-4: 22)

Senator Sinner: Said going back to your testimony where you stated that during that five year period, the pre-injury wage maximum does not change. I was trying to address with my amendment only that period, after three years. He asked for Tim Wahlin to explain to him again the part where it says there is a lump sum inflation adjustment on July 1 of each year and asked who would it go to if these are capped and that amount is stagnate, that pre-injury wage amount stays the same?

Tim Wahlin: This would go to a long-term recipient of temporary partial disability, long being more than five years. Five years is a cap on temporary partial disability unless there is a waiver in place. That group of injured workers that has received a waiver continue to receive outside of the five year cap, will be receiving these lump sum adjustments on a yearly bases based upon what they earned, what was paid and the change of the state's average weekly wage for that year. So they would be retroactive award after we know how much they actually earned for that year and they would receive a onetime check for that year's adjustment. (5:19-6:00)

Senator Sinner: They would get retroactive back for that year or retroactive back for the five years?

Tim Wahlin: Just for that one year and the next year would be adjusted again but that is after the five years. This amendment as we understand it happens at the third year and we understand there would be two years before you qualify but that group of people to the extent that they qualified for both, there has to be a clarification on how they are supposed to compound each other or does one overrule the other?

Senator Sinner: I can tell you it wasn't my intention at all and if that is what it takes to fix this amendment then I would like to have that done. He handed out a copy of scenarios he came up with on the proposed amendment, Temporary Injured Worker Payments, Attachment (2).

Chairman Klein: Let's go back to the original 90% and the reason once again we are doing this. Tell us where it already does it and why we are doing it in this section.

Tim Wahlin: Currently under North Dakota law the 90% threshold, if you earn above 90% that is the point at which we say, we are not making a payment to you. However injured workers benefits will not be changed if they earn 10%. So basically for administrative purposes there has to be a ten percent loss or gain before we are willing to step in and underwrite those disability benefits. That is contained up in the definition of temporary total disability. So there is ten percent either way where we are not going to make that adjustment. Under temporary partial when we combine what you are earning with what we underwrite the auditor came in and said there are times at which an injured worker with that combination is going to be earning more than ninety percent when on temporary partial disability which appears to conflict with what you got over in this other area 65-05-10.1. (7:51-8:57)

Senator Campbell: Where did that ninety percent ever come from?

Tim Wahlin: I don't know that has been in the statute longer than I have been at WSI.

Senator Sinner: He went over his handouts and explained them, Attachment (2) and (3). (9:33-12:20)

Chairman Klein: Tim let's go back to why we are here. Senator Sinner's intentions are to raise that wage up after three years. Your intention is to make what you do, the code, mirror another section, that was your intent. What we may be doing here is changing the intent a little bit but having a vehicle to do that. Are we missing something here that under that temporary injured worker status that we are still providing that lump sum in the middle, we are trying to get people back to work, we are taking care of their medical and we may be getting them some education? The only thing we are missing is we have locked this guy down at that wage over those years that he is drawing the temporary side.

Tim Wahlin: Said after 2006 we only have two years of temporary total disability available and it is not going to apply to that group unless they are on permanent total disability. (14:35-15:00)

Chairman Klein: By striking the ninety percent in section three what does that do?

Tim Wahlin: Nothing happens we are in the same exact system that we are currently in.

Chairman Klein: Adding the ninety just clarifies that it matches this section on the partial disability mirrors the other section?

Tim Wahlin: Right it creates a cap at that ninety percent threshold which mirrors temporary total. Currently the cap does not exist so you can get up to ninety five percent.

Senator Burckhard: Asked to compare the statute to the proposed amendment. Did I understand you to say that the statute has most of that in there that the amendment would cover?

Tim Wahlin: Yes however it is a much smaller group. That is the group that goes over five years and I believe in Senator Sinner's amendment is that this is going to happen at the third year as opposed to the fifth year where this inflationary adjustment would kick in but ultimately I think the net effect of either one of them is going to be a similar dollar payment.

Senator Burckhard: Does this affect a lot of workers?

Tim Wahlin: Under the long-term temporary, receiving the five year waiver our records indicated that last year there were six. Under the three years our records indicated that there were three hundred and fifty will receive this adjustment if it is applied as we currently read it.

Chairman Klein: We want to make sure we understand what we have here. He closed the discussion.

2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1102
3/30/2015
Job Number 25576

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Liebelt

Explanation or reason for introduction of bill/resolution:

Relating to privacy of records

Minutes:

Attachment

Chairman Klein: Called the committee to order. We will start with 1102 which dealt with workers' comp. We were looking for some numbers and some discussion on that and whether or not the amendments would be somewhat workable. We had the amendments handed out. He said he was trying to make every effort to keep things streamlined. He addressed Tim Wahlin. He said you reviewed Senator Sinner's amendments and we had a little discussion and you were going to look into potentially a fiscal impact or whether you could figure that out.

Tim Wahlin, WSI: You remember back there was an amendment to 1102 proposed and what we have done is gone back with our actuary and attempted to review the impacts here. Should this amendment come in WSI would be recommending a number of different changes to it. We haven't worked on any of those changes to clarify where there will be impacts and how they are going to be to avoid that litigation so it is a known expense. Basically what you got before you is two pages that come from our actuary who put together essentially his assumptions for the pricing of this particular amendment. There are a number of assumptions there and a number of assumptions that aren't necessarily built into the statute. Accepting those and taking a look at the impacts of this particular set, he has roughly put together his analysis on the cost of this particular amendment and is saying they are about 3.5 million, almost 3.6 million reserve impact. He explained reserve impacts. Written Testimony Attached (1). (2:48-5:24)

Senator Sinner: Said that he spoke to Tim Wahlin about the fiscal impact of this bill but he had looked at the wage inflation number at 5%. He asked how many times over the past twenty years have they had wage inflation of 5% because I know this last year it was 4.1%.

Tim Wahlin: Correct. We have had significant wage inflation not this last year but the year before that it was 9.9% and the year before that I believe it was 8.2% and then again it was 9% so we have had tremendous wage inflation that we have experienced in the last five years.

Senator Sinner: Asked if he knew what it is over the course of history, the average.

Tim Wahlin: Said that is why he is using 5%. It used to be that we were using 4.2% percent and he has moved that again because of the tremendous impacts we have felt recently.

Senator Sinner: Just to be clear so that the committee knows, the 3.5 million dollar hit to reserves is for eternity and the total amount in our reserve is 1.6 billion. (6:29-6:59)

Chairman Klein: What are the wishes of the committee?

Senator Murphy: Moved the Sinner amendments.

Senator Sinner: Seconded the motion.

Senator Sinner: Said he would like to know if people have questions. On an annual basis it is somewhere between one hundred and two hundred thousand dollars to the fund. It is minuscule in terms to what we have in our fund and what we have in terms of rates. It probably won't affect rates at all.

Chairman Klein: In attempt to stay off any conference committees that I can, I went over and spoke with my colleague in the House and we will be up against a road block. The suggestion is if you want to fix that next session but let's not put it in here. I will be resistant to the amendment. Whatever the committee wants to do is fine. If the amendment passes they will not concur. It was the Workers' Compensation cleanup bill.

Senator Sinner: Said he wouldn't disagree with your analyses of whether or not the House might or might not concur to this but I don't think we make our decisions on having them even given the amendment a chance to be discussed with their committee. On the idea that this is a cleanup bill, this is a bill that was brought with WSI. I would disagree that is a cleanup bill because there are a lot of things in there for example it takes away benefits for first responders, there are really nine different sections to this bill that deal with all different sections of the code in terms of weekly benefits. If you are saying it should be a separate issue in a separate bill, I think all of these should be separate bills then instead of bringing it all in one package for us to say yes or no.

Chairman Klein: Said he would only argue that the only discussion that they had in the last three weeks has been surrounding this particular issue they haven't even spoke anymore about the 90% issue which is really an issue brought to them by the consulting company. We didn't speak at all to the emergency responders so obviously we focused our attention on this issue. At this point we got what we got. He asked for any other discussion on the amendment and called for the roll on the amendment.

Roll Call Vote: Yes-2 No-5 Absent-0

Chairman Klein: That failed.

Senate Industry, Business and Labor Committee
HB 1102
March 30, 2015
Page 3

Senator Miller: Made the motion for a do pass.

Senator Burckhard: Seconded the motion.

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

Senator Klein will carry the bill.

2015 SENATE STANDING COMMITTEE MINUTES

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

HB 1102
3/30/2015
Job Number 25588

- Subcommittee
 Conference Committee

Committee Clerk Signature *Eva Leibel*

Explanation or reason for introduction of bill/resolution:

Relating to privacy records

Minutes:

Attachment

Chairman Klein: Lukas found an error that we will need to fix with an amendment. Amendment Attached (1).

Senator Sinner: Moved to reconsider the previous actions.

Senator Burckhard: Seconded the motion.

Chairman Klein: All in favors say "I", opposed no. Alright committee that carried. The change is on page 1, line 3, so that it lines up with line 12.

Senator Miller: Moved to adopt the amendment, 15.0827.01006.

Senator Poolman: Seconded the motion.

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

Senator Miller: Moved a do pass as amended.

Senator Burckhard: Seconded the motion.

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

Senator Klein will carry the bill.

March 17, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1102

Page 3, after line 2, insert:

- "4. If the partial disability exceeds three years, in calculating partial disability benefits the organization shall adjust the amount of the injured employee's average weekly wages before the injury as used for purposes of this section to calculate partial disability benefits. The amount of the adjustment is equal to the annual percentage change in the state's average weekly wage."

Renumber accordingly

15.8027.01006
Title.02000

Adopted by the Industry, Business and Labor
Committee

March 30, 2015

3/30/15
JWC

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1102

Page 1, line 3, replace "65-05-02" with "65-01-02"

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1102**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: Sinner Amendment - 15.8027.01005

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

Motion Made By Senator Murphy Seconded By Senator Sinner

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

Total (Yes) 2 No 5

Absent 0

Floor Assignment _____

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

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1102**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Senator Miller Seconded By Senator Burckhard

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

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

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1102**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Sinner Seconded By Senator Burckhard

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

*Voice
 Vote
 Carried*

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

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

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 HB 1102**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: _____

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

Motion Made By Senator Miller Seconded By Senator Burckhard

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

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Klein

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

REPORT OF STANDING COMMITTEE

HB 1102: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1102 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "65-05-02" with "65-01-02"

Renumber accordingly

2015 CONFERENCE COMMITTEE

HB 1102

2015 HOUSE STANDING COMMITTEE MINUTES

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

HB 1102
4/8/2015
25916

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Definition to a health care provider, presumption of compensability for fulltime paid firefighter & law enforcement.

Minutes:

Representative Ruby: Opens the conference committee session on HB 1102.

Representative Keiser: Moves to accede to the Senate amendments.

Senator Klein: Second.

Roll call was taken for the house to accede to the Senate amendments with Representative Ruby, Representative Keiser, Representative M Nelson, Senator Klein, Senator Campbell, & Senator Murphy voting 6 yes, 0 no, 0 absent.

Date: 4/8/2015

Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO: 1102 as (re) engrossed

House Industry, Business and Labor Committee

- Action Taken: HOUSE accede to Senate Amendments
 HOUSE accede to Senate Amendments and further amend
 SENATE recede from Senate amendments
 SENATE recede from Senate amendments and amend as follows
- Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Representative Keiser Seconded by: Senator Klein

Representatives	Apr 8		Yes	No	Senators	Apr 8		Yes	No
Representative Ruby	x		x		Senator Klein	x		x	
Representative Keiser	x		x		Senator Campbell	x		x	
Representative Boschee	x		x		Senator Murphy	x		x	
Total Rep. Vote			3		Total Senate Vote			3	

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier No Carriers Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1102: Your conference committee (Sens. Klein, Campbell, Murphy and Reps. Ruby, Keiser, Boschee) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ page 1297 and place HB 1102 on the Seventh order.

HB 1102 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

HB 1102

2015 House Bill 1102
Testimony before the House Industry, Business and Labor Committee
Presented by Tim Wahlin
Workforce Safety and Insurance
Date: January 13, 2015

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin with Workforce Safety and Insurance (WSI). I am here today to testify in support of House Bill No. 1102.

Section 1: The current section of the law regarding definition of a health care provider is outdated. The proposed changes update the statute to include additional areas of medical expertise that WSI recognizes as a health care provider. The proposed changes to this statute conform to WSI's current practices of doing business.

Section 2: The current section of the law regarding the presumption of full-time paid firefighters and law enforcement applies only to those claims that result in total or partial disability or death. As a matter of current practice, WSI has been applying this statute to all claims, including medical only claims, disability claims, and death claims. The proposed changes to this statute, which entail removing the words "resulting in total or partial disability or death," clarifies the statute and makes it consistent with WSI's current practice of applying this law to medical only claims, disability claims, and death claims.

Section 3: The proposed changes to the temporary partial disability statute create equivalency between the monetary rates for temporary total disability benefits and temporary partial disability benefits. According to another section of law, NDCC Section 65-05-08, WSI may not pay disability unless the loss of earnings capacity exceeds 10 percent. As noted in WSI's 2014 Performance Evaluation Recommendation No. 4.2, it was discovered that in some cases an injured worker received greater than 90% of his pre-injury average weekly wage when combining the injured worker's temporary partial disability check from WSI and his paycheck from the employer. The proposed changes prevent this from happening by specifically stating the injured worker's combined temporary partial disability check, dependency allowance, and post-injury paycheck may not exceed 90 percent of his pre-injury average weekly wage.

Section 4: The proposed changes to this statute include housekeeping changes to the structure of the section. Currently, the statute reads as one lengthy paragraph. The proposed changes break it down into subsections.

The proposed changes also extend the scholarship award to consistently apply to recipients between 23 and 26 years of age. Currently, the definition of a child is between 18 and 22 years of age. The proposed changes also clarify that scholarships may be awarded at the sole discretion of WSI.

Section 5: This proposed amendment permits WSI to share information with state and federal agencies for the purpose of administering the duties of that state or federal agency. With these changes, WSI can notify Job Service North Dakota of disability payments being issued to an injured worker who may also be receiving unemployment benefits. This amendment will permit WSI to communicate with Medicare, assisting injured workers in untangling eligibility for that program.

Section 6: The proposed changes to this statute eliminate the requirement of an administrative order when affirming a vocational rehabilitation plan. The proposed changes will allow WSI to affirm the vocational rehabilitation plan by issuing a Notice of Decision. If the Notice of Decision is appealed by the injured worker or the employer, then WSI will issue an administrative order. These changes are consistent with the current Notice of Decision procedure, as found in N.D.C.C. Section 65-01-16, which is the current practice of doing business on all other decisions and awards.

Section 7: The proposed changes regarding rehabilitation pilot programs do not alter WSI's ability to establish rehabilitation pilot programs, but rather clarifies and simplifies the reporting requirements on existing pilot programs.

Section 8: The proposed changes to this statute regarding WSI's educational loan fund are not substantive. The proposed changes simply clarify that children of injured workers must meet the definition of child at the time of the initial loan application.

Section 9: The proposed changes to this statute regarding the average weekly wage of a volunteer firefighter, emergency or disaster volunteer, volunteer health practitioner, and community response team member clarify that the average weekly wage from the claimant's business or employment can only be included if the claimant's business or employment is covered by WSI or coverage is otherwise secured at the date of first disability. The proposed changes mirror the language in the definition of average weekly wage found in N.D.C.C. Section 65-01-02(5), which requires that for inclusion in the calculation of an injured worker's average weekly wage, the wages must be in employment for which coverage is required or is otherwise secured at the date of first disability.

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

after July 31, 1995. Compensable injuries paid under sections 65-06.2-04 through 65-06.2-08 are not subject to this section.

65-05-08. Disability benefits - Not paid unless period of disability is of five days' duration or more - Application required - Suspended during confinement - Duty to report wages.

No benefits may be paid for disability, the duration of which is less than five consecutive calendar days. An employer may not require an employee to use sick leave or annual leave, or other employer-paid time off work, before applying for benefits under this section, in lieu of receiving benefits under this section, or in conjunction with benefits provided under this section, but may allow an employee to use sick leave or annual leave to make up the difference between the employee's wage-loss benefits and the employee's regular pay. If the period of disability is five consecutive calendar days' duration or longer, benefits must be paid for the period of disability provided that:

1. When disability benefits are discontinued, the organization may not begin payment again unless the injured employee files a reapplication for disability benefits on a form supplied by the organization. In case of reapplication, the award may commence no more than thirty days before the date of reapplication. Disability benefits must be reinstated upon proof by the injured employee that:
 - a. The employee has sustained a significant change in the compensable medical condition;
 - b. The employee has sustained an actual wage loss caused by the significant change in the compensable medical condition; and
 - c. The employee has not retired or voluntarily withdrawn from the job market as defined in section 65-05-09.3.
2. All payments of disability and rehabilitation benefits of any employee who is eligible for, or receiving, benefits under this title must be suspended when the employee is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period of between seventy-two consecutive hours and one hundred eighty consecutive days. All payments of disability and rehabilitation benefits of any employee who is eligible for, or receiving, benefits under this title must be discontinued when the employee is confined in a penitentiary, jail, youth correctional facility, or any other penal institution for a period in excess of one hundred eighty consecutive days.
3. Any employee who is eligible for, or receiving disability or rehabilitation benefits under this title shall report any wages earned, from part-time or full-time work from any source. If an employee fails to report wages earned, the employee shall refund to the organization any disability or vocational rehabilitation benefits overpaid by the organization for that time period. To facilitate recovery of those benefits, the organization may offset future benefits payable, under section 65-05-29. If the employee willfully fails to report wages earned, the employee is subject to the penalties in section 65-05-33. An employee shall report whether the employee has performed work or received wages. The organization periodically shall provide a form to all injured employees receiving disability or rehabilitation benefits which the injured employee must complete to retain eligibility for further disability or rehabilitation benefits, regardless of the date of injury or claim filing. The form will advise the injured employee of the possible penalties for failure to report any work or activities as required by this section. An injured employee who is receiving disability or vocational rehabilitation benefits must report any work activities to the organization whether or not the injured employee receives any wages. An injured employee who is receiving disability or vocational rehabilitation benefits also must report any other activity if the injured employee receives any money, including prize winnings, from undertaking that activity, regardless of expenses or whether there is a net profit. For purposes of this subsection, "work" does not include routine daily activities of self-care or family care, or routine maintenance of the home and yard, and "activities" does not include recreational gaming or passive investment endeavors.

4. An employee shall request disability benefits on a claim form furnished by the organization. Disability benefits may not commence more than one year prior to the date of filing of the initial claim for disability benefits.
5. The provisions of this section apply to any disability claim asserted against the fund on or after July 1, 1991, irrespective of injury date.
6. It is the burden of the employee to show that the inability to obtain employment or to earn as much as the employee earned at the time of injury is due to physical limitation related to the injury, and that any wage loss claimed is the result of the compensable injury.
7. If the employee voluntarily limits income or refuses to accept employment suitable to the employee's capacity, offered to or procured for the employee, the employee is not entitled to any disability or vocational rehabilitation benefits during the limitation of income or refusal to accept employment unless the organization determines the limitation or refusal is justified.
8. The organization may not pay disability benefits unless the loss of earning capacity exceeds ten percent. The injured employee may earn up to ten percent of the employee's preinjury average gross weekly earnings with no reduction in total disability benefits. The employee must report any earnings to the organization for a determination of whether the employee is within the limit set in this subsection.
9. Upon securing suitable employment, the injured employee shall notify the organization of the name and address of the employer, the date the employment began, and the amount of wages being received. If the injured employee is receiving disability benefits, the injured employee shall notify the organization whenever there is a change in work status or wages received.
10. The organization shall pay to an employee receiving disability benefits a dependency allowance for each child of the employee at the rate of fifteen dollars per week per child.
11. Dependency allowance for the children may be made directly to either parent or guardian at the discretion of the organization.

65-05-08.1. Verification of disability.

1. An injured employee's doctor shall certify the period of disability and the extent of the injured worker's abilities and restrictions.
2. A doctor certifying disability shall include in the report filed with the organization:
 - a. The medical basis established by medical evidence supported by objective medical findings for the certification of disability;
 - b. Whether the employee is totally disabled, or, if the employee is not totally disabled, whether the employee is able to return to any employment, and a statement of the employee's restrictions and physical limitations; and
 - c. A professional opinion as to the expected length of, and reason for, the disability.
 - d. A doctor may not certify or verify past disability commencing more than sixty days before the doctor's examination of the employee.
3. The report must be filed on a form furnished by the organization, or on any other form acceptable to the organization.
4. The injured employee shall ensure that the required reports for any period of disability are filed.
5. Prior to the expiration of a period of disability certified by a doctor, if a report certifying an additional period of disability has not been filed, or upon receipt of a report or other evidence indicating an injured employee who is receiving disability benefits has been or will be released to return to work, the organization shall send a notice to that employee of the organization's intention to discontinue benefits, including an explanation of the reason for discontinuing benefits, an explanation of the employee's right to respond, and the procedure for filing the required report or challenging the proposed action. A copy of the notice must be mailed to the employee's doctor. Thereafter, if the required certification is not filed, the organization shall discontinue disability benefits, effective twenty-one days after the date the notice of intention to

**2014 Performance Evaluation of North Dakota Workforce Safety and Insurance
conducted by Sedgwick**

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One oddity that we observed in our review of cases pertains to the method of calculation of temporary partial disability benefits for injured workers who have returned to work but are making less than their pre-injury wages. We provide an example of this oddity in the following paragraph.

The statute requires that WSI pay a temporary partial disability benefit to injured workers whose post-injury earnings are less than 90% of their pre-injury earnings. As an example, one injured worker had pre-injury earnings of \$598.00 and post-injury earnings of \$514.00 for a difference of \$84.00. WSI pays TPD benefits at a rate that is 2/3rds of that difference, or \$56.00. When you add the post-injury earnings and the TPD benefit, the total paid amounts to \$570 or over 95% of the employee's pre-injury income. If the injured worker had post-injury earnings of \$538.20 or 90% of their pre-injury earnings, they would receive no TPD benefit. In short, the way this benefit works now, injured workers may earn more in total income by getting paid less. (See Recommendation 4.2)

Page 91

Recommendation 4.2: High Priority

We recommend that WSI prepare legislation governing the payment of temporary partial benefits for vocational plan participants to be amended such that the combined value of post-injury earnings and TPD may not exceed 90% of one's pre-injury earnings.

WSI Response: Concur. WSI will evaluate the need for any changes in legislation necessary to implement this recommendation.

TPD Example

IW Gross Weekly Wage: 598

99
e

Gross Wage					Current Law		Proposed Law		
A	B	C	D	E	F	G	H	I	J
Pre-Injury Gross Weekly Wage	Post-Injury Gross Weekly Wage	Post-Injury as a % of Pre-Injury (B/A)	Difference (Pre-Injury less Post-Injury) A-B	Weekly TPD $\frac{2}{3} * D$	Combined Post-Injury Earnings and TPD B+E	% of Pre-Injury Wage F/A	Combined Post-Injury Earnings and TPD (subject to 90% cap)	% of Pre-Injury Wage H/A	Difference (Proposed less Current) H-F
598	375	63%	223	149	524	88%	524	88%	0
598	400	67%	198	132	532	89%	532	89%	0
598	425	71%	173	115	540	90%	538	90%	(2)
598	450	75%	148	99	549	92%	538	90%	(11)
598	475	79%	123	82	557	93%	538	90%	(19)
598	500	84%	98	65	565	95%	538	90%	(27)
598	514	86%	84	56	570	95%	538	90%	(32)
598	525	88%	73	49	574	96%	538	90%	(36)
598	538	90%	60	0	538	90%	538	90%	0

Note: Proposed law caps combined post-injury earnings and TPD benefits at 90% of pre-injury earnings (0.90*598=538 per week)

2015 House Bill 1102
Testimony before the Senate Industry, Business and Labor Committee
Presented by Tim Wahlin
Workforce Safety and Insurance
Date: March 9, 2015

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin with Workforce Safety and Insurance (WSI). I am here today to testify in support of House Bill No. 1102.

Section 1: The current section of the law regarding definition of a health care provider is outdated. The proposed changes update the statute to include additional areas of medical expertise that WSI recognizes as a health care provider. The proposed changes to this statute conform to WSI's current practices of doing business.

Section 2: The current section of the law regarding the presumption of full-time paid firefighters and law enforcement applies only to those claims that result in total or partial disability or death. Currently, WSI has been applying this statute to all claims, including medical only claims, disability claims, and death claims. The proposed changes to this statute, which entail removing the words "resulting in total or partial disability or death," are intended to clarify the legislative intent regarding application.

Section 3: The proposed changes to the temporary partial disability statute create equivalency between the monetary rates for temporary total disability benefits and temporary partial disability benefits. According to another section of law, NDCC Section 65-05-08, WSI may not pay disability unless the loss of earnings capacity exceeds 10 percent. The reverse also holds true. The employee may earn up to ten percent of their preinjury wage without reduction in the total disability benefit. However in a hand full of scenarios this conflicts with benefit calculations on partial disability payments.

As noted in WSI's 2014 Performance Evaluation, Recommendation No. 4.2, in some partial disability cases an injured worker received greater than 90% of his pre-injury average weekly wage when combining the injured worker's temporary partial disability check from WSI and his paycheck from the employer. The proposed changes prevent this from happening by specifically stating the injured worker's combined temporary partial disability check, dependency allowance, and post-injury paycheck may not exceed 90 percent of his pre-injury average weekly wage.

Section 4: The proposed changes to this statute include housekeeping changes to the structure of the section. Currently, the statute reads as one lengthy paragraph. The proposed changes will break it down into subsections.

Additionally the changes extend the scholarship award to consistently apply to recipients between 23 and 26 years of age. Currently, the definition of a child is

between 18 and 22 years of age. The proposed changes also clarify that scholarships may be awarded at the sole discretion of WSI.

Section 5: This proposed amendment permits WSI to share information with state and federal agencies for the purpose of administering the duties of that state or federal agency. With these changes, WSI can notify Job Service North Dakota of disability payments being issued to an injured worker who may also be receiving unemployment benefits. This amendment will permit WSI to communicate with Medicare, assisting injured workers in untangling eligibility for that program.

Section 6: The proposed changes to this statute eliminate the requirement of an administrative order when affirming a vocational rehabilitation plan. The proposed changes will allow WSI to affirm the vocational rehabilitation plan by issuing a Notice of Decision. If the Notice of Decision is appealed by the injured worker or the employer, then WSI will issue an administrative order. These changes are consistent with the current Notice of Decision procedure, as found in N.D.C.C. Section 65-01-16, which is the current practice of doing business on all other decisions and awards.

Section 7: The proposed changes regarding rehabilitation pilot programs do not alter WSI's ability to establish rehabilitation pilot programs, but reduces and simplifies the reporting requirements on those pilot programs.

Section 8: The proposed changes to this statute regarding WSI's educational loan fund are not substantive. The proposed changes simply clarify that children of injured workers must meet the definition of child at the time of the initial loan application.

Section 9: The proposed changes to this statute regarding the average weekly wage of a volunteer firefighter, emergency or disaster volunteer, volunteer health practitioner, and community response team member clarify that the average weekly wage from the claimant's business or employment can only be included if the claimant's business or employment is covered by WSI or coverage is otherwise secured at the date of first disability. This remains consistent with WSI's current interpretation of the statute. Because there has been a recent case where it was alleged the language was unclear, it is the organization's intent to re-address the matter to the legislature and provide clarification.

The proposed changes mirror the language in the definition of average weekly wage found in N.D.C.C. Section 65-01-02(5), which requires that for inclusion in the calculation of an injured worker's average weekly wage, the wages must be in employment for which coverage is required or is otherwise secured at the date of first disability. This change does not alter WSI's current application.

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

2014 Performance Evaluation of North Dakota Workforce Safety and Insurance

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Recommendation 4.2: High Priority

We recommend that WSI prepare legislation governing the payment of temporary partial benefits for vocational plan participants to be amended such that the combined value of post-injury earnings and TPD may not exceed 90% of one's pre-injury earnings.

WSI Response: Concur. WSI will evaluate the need for any changes in legislation necessary to implement this recommendation.

TPD Example

IW Gross Weekly Wage: 598

Gross Wage A	B	C	D	E	Current Law		Proposed Law		
					F	G	H	I	J
Pre-Injury Gross Weekly Wage	Post-Injury Gross Weekly Wage	Post-Injury as a % of Pre-Injury (B/A)	Difference (Pre-Injury less Post-Injury) A-B	Weekly TPD 2/3*D	Combined Post-Injury Earnings and TPD B+E	% of Pre-Injury Wage F/A	Combined Post-Injury Earnings and TPD (subject to 90% cap)	% of Pre-Injury Wage H/A	Difference (Proposed less Current) H-F
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Note: Proposed law caps combined post-injury earnings and TPD benefits at 90% of pre-injury earnings (0.90*598=538 per week)

HB1102 3/19/15 #3

Good Morning Committee Chairman Klein and members of the Senate Industry, Business and Labor committee.

For the record my name is Tom Ricker, I am the President of the North Dakota AFL-CIO, representing working men and women in North Dakota.

The North Dakota AFL-CIO is opposed to HB 1102, specifically section 3 of this bill.

Section 3 of this bill states "If the injury causes temporary partial disability resulting in decrease of earning capacity, the disability benefit is sixty-six and two-thirds percent of the difference between the injured employee's average weekly wages before the injury and the employee's wage-earning capacity after the injury in the same or another employment. Partial disability benefits are subject to a maximum of one hundred twenty-five percent of the average weekly wage in the state. The combined partial disability benefits, dependency allowance, and post injury wage-earning capacity may not exceed ninety percent of the pre injury weekly wage of the employee after deductions for social security and federal income tax."

This language would essentially result in a ten per cent reduction in benefits to an injured worker collecting partial disability benefits.

This bill would not even allow an employer to decide if they wanted to make up the difference so an injured worker could make the same wages after a workplace injury as prior to the workplace injury while collecting partial disability benefits. That is wrong. Why should WSI be interfering with employers decisions that would negatively impact injured workers.

When this bill was heard in the House IBL committee these concerns were raised and considerable discussion about the difference between the injured employee's average weekly wages before the injury and the employee's wage-earning capacity after the injury, I believe those are 2 separate things. The House IBL committee chairman said maybe an amendment was in order to address this issue, however no amendments were added prior to the committee making a recommendation and bringing it to the house floor for passage.

I would like to thank You for allowing me the opportunity to speak in opposition of HB 1102, and I would encourage the Senate IBL to consider an amendment that would correct the reduction in benefits to injured workers in this bill, if there was an amendment to correct this injustice to injured workers we would have no issues with the bill, and I will stand for any questions.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1102

Page 3, after line 2, insert:

"4. If the partial disability exceeds three years, in calculating partial disability benefits the organization shall adjust the amount of the injured employee's average weekly wages before the injury as used for purposes of this section to calculate partial disability benefits. The amount of the adjustment is equal to the annual percentage change in the state's average weekly wage."

Renumber accordingly

65-05-10.1. Long-term temporary partial disability inflation adjustment.

This benefit only applies to claims with a date of first disability or date of successful reapplication occurring after June 30, 1991. For these claims, beginning on the first day of July immediately following the fifth full year of partial disability and every year thereafter, an injured employee who has received a waiver of the five-year cap on partial disability benefits under section 65-05-10 is eligible for a lump sum inflation adjustment. The organization shall calculate the lump sum inflation adjustment under this section on July first of each year by multiplying the previous year's percent increase in the state's average weekly wage, if any, by the total amount of partial disability payments paid to the injured employee in the preceding twelve months, including the preceding year's inflationary adjustment award.

HB 1102 3/23/15 #2

Temporary Injured Worker Payments

Pre-injury wage	\$ 25.00		Pre-injury gross pay: \$ 1,000.00															
Pre-injury hours	40																	
Post-injury wage	\$ 15.00																	
Post-injury hours																		
Max Post Injury Comp	90%		\$ 900.00															
			10%	20%	30%	40%	50%	60%	70%	80%	90%							
Post injury earnings	\$	\$ 60.00	\$	\$ 120.00	\$	\$ 180.00	\$	\$ 240.00	\$	\$ 300.00	\$	\$ 360.00	\$	\$ 420.00	\$	\$ 480.00	\$	\$ 540.00
Difference between New & Old	\$	\$ 940.00	\$	\$ 880.00	\$	\$ 820.00	\$	\$ 760.00	\$	\$ 700.00	\$	\$ 640.00	\$	\$ 580.00	\$	\$ 520.00	\$	\$ 460.00
		@66.67%		@66.67%		@66.67%		@66.67%		@66.67%		@66.67%		@66.67%		@66.67%		@66.67%
WSI Payments	\$	\$ 626.70	\$	\$ 586.70	\$	\$ 546.69	\$	\$ 506.69	\$	\$ 466.69	\$	\$ 426.69	\$	\$ 386.69	\$	\$ 346.68	\$	\$ 306.68
Max. post injury compensaton	\$	\$ 686.70	\$	\$ 706.70	\$	\$ 726.69	\$	\$ 746.69	\$	\$ 766.69	\$	\$ 786.69	\$	\$ 806.69	\$	\$ 826.68	\$	\$ 846.68
Difference:	\$	(313.30)	\$	(293.30)	\$	(273.31)	\$	(253.31)	\$	(233.31)	\$	(213.31)	\$	(193.31)	\$	(173.32)	\$	(153.32)

*This scenario assumes that the injured worker has not reached the compensation maximum of 125% of ave. weekly wage.
 **This also assumes that the worker is earning same hourly wage as previously earned.
 ***Other questions remain.

HB 1102 - Proposed amendment

Example:

Salary before injury: \$25/hour @ 40 hrs = base of \$1,000 per week

Salary after injury: \$20/hr @ 30 hrs = \$600 per week

WSI eligibility: \$400 per week @ .6667 = \$266.67

Total pay: \$866.67 per week. Wage loss: \$133.33/wk

Maximum potential earnings total: \$1000 @ 90% = \$900

According to the testimony by WSI - Wahlin this bill changes this worker's total potential compensation to \$900 for up to five or seven years, no matter what happens to the worker's personal situation.

- If the worker's wages are \$15 @ 20 hrs = \$300, difference is \$700 * .6667 = \$466.67 or \$766.67 - loss of \$233.33 - big loss.
- If the worker's wages increase to \$25/hr @ 30 hrs, the worker earns \$750 and is eligible for \$250 * .6667 or \$166.67 or \$916.67/ week = \$900 max.
- If the worker's wages increase to \$20/hr @ 35 hrs, the worker earns \$700 and is eligible for \$300 * .6667 or \$200 or \$900.00/ week = \$900 max.

These wages limitations are set for five years with no potential for increases.

My amendment would:

- Give the temporarily injured worker who is on this plan for more than three years an increase in the maximum wages by the same index that is used for injured workers who receive wages for permanent partial injuries but only if the injured worker receives wage subsidy beyond three years.

Example: \$900 max with the most recent 4.1% increase means new max is \$936.90 still far below the pre-injury wage. It would take an increase greater than 11.11% to exceed the pre-injury wage.

Procedure / Assumptions:

Annual Wage Inflation: 5.0%

Outstanding TPD Claims as of 2/28/2015:

1. Separated outstanding TPD's as of 2/28/2015 into the following categories:
 - a. LOE of June 30, 1991 and prior
for LOE after June 30, 1991:
 - b. Claimants with cumulative TPD days exceeding 5 years
 - c. Claimants with cumulative TPD days between 4 and 5 years
 - d. Claimants with cumulative TPD days between 3 and 4 years
 - e. Claimants with cumulative TPD days between 2 and 3 years
 - f. Claimants with cumulative TPD days between 1 and 2 years
 - g. Claimants with cumulative TPD days between 0 and 1 years

2. **For a. LOE of June 30, 1991 and prior**
Assumed Lifetime TPD benefits.
Using birth date in the record, calculated Claimant's age and Life Expectancy.
Calculated yearly inflation adjustment, capping at 90% x Pre-Injury Wage - Comp rate - Post Injury earning capacity
Summed across all years through Life Expectancy.

3. **For b. Claimants with cumulative TPD days exceeding 5 years**
No additional costs under the proposed amendment since claims are already passed the 5th year.

4. **For c. Claimants with cumulative TPD days between 4 and 5 years**
Estimated the cost of the weekly COLA adjustment for Year 4-5 as: Pre-Injury AWW x 5% Inflation x .667
Multiplied the calculated inflation adjustment times the number of weeks remaining in Year 4-5

5. **For d. Claimants with cumulative TPD days between 3 and 4 years**
Estimated the cost of the weekly COLA adjustment for Year 3-4 and Year 4-5.
Multiplied the calculated Year 3-4 inflation adjustment times the number of weeks remaining in Year 3-4.
Multiplied the calculated Year 4-5 inflation adjustment times 52 weeks.

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#1

6. For e. **Claimants with cumulative TPD days between 2 and 3 years**
For f. **Claimants with cumulative TPD days between 1 and 2 years**
For g. **Claimants with cumulative PTD days between 0 and 1 years**
Estimated the cost of the weekly COLA adjustment for Year 3-4 and Year 4-5.
Multiplied the calculated Year 3-4 inflation adjustment times 52 weeks.
Multiplied the calculated Year 4-5 inflation adjustment times 52 weeks.

7. **Adjustment for Claims Closure over time.**

For 5. and 6. above, total estimated additional dollars due to the wage inflation calculation adjusted for potential claims closure over time.

Claims closure (here reduction in Open TPD counts) based on Open Count movement over time for All Time Loss claims lagged two years to account for Initial TTD benefits.

8. **IBNR counts for TPD:**

Based on Open claim counts as of 2/28/2015

TPD IBNR counts at the end of year 2-3 assume to be 50% of the outstanding TTD claims for the last three fiscal years at the end of year 2.

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Adopted by the Industry, Business and Labor
Committee

March 30, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1102

Page 1, line 3, replace "65-05-02" with "65-01-02"

Renumber accordingly