

FISCAL NOTE
Requested by Legislative Council
12/29/2014

Amendment to: SB 2059

- 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: 12/30/2014

WORKFORCE SAFETY & INSURANCE
2015 LEGISLATION
SUMMARY OF ACTUARIAL INFORMATION

BILL NO: SB 2059

BILL DESCRIPTION: Offer of Employment

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 requires an employer to notify an injured employee of the availability of modified work via registered mail.

FISCAL IMPACT: No fiscal impact to statewide premium levels or reserve levels is anticipated.

DATE: December 30, 2014

FISCAL NOTE
Requested by Legislative Council
12/29/2014

Bill/Resolution No.: SB 2059

- 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						
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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.*

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2015 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2059

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2059
1/7/2015
Job Number 21757

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation job offers.

Minutes:

Attachments

Chairman Klein: Opened the meeting and the roll call was taken.

Jennifer Clark, North Dakota Legislative Council: She helped staff the Interim Workers' Compensation Review Committee. She gave a background on the committee and how it works. This bill comes out of the claim review that they did this last interim. She stated that the number of injured workers' that come in is down. Only one qualified this interim and came in and presented their case. The injured worker was unhappy with everything that took place in the claim. The chairman did a very good job of focusing on what are the legal elements here. One of the things the committee then focused on was what is before you in 2059. When a worker is injured, if their employer offers them a job and they are qualified to do it, they have to take it. If there is a decrease in pay it is possible the injured worker would be eligible for a cost adjustment for their wage loss. The bill says that if the job was offered to that injured worker we need some element of proof that it was really offered. The way to do that is the employer being able to show that by registered mail. (:30-4:36)

Chairman Klein: Registered mail needs to be signed?

Jennifer Clark: It's registered or certified.

Chairman Klein: What the employee is saying is that they didn't get anything, nobody told them. This way they will have proof that says, "you really got this". (5:05-5:22)

Jennifer Clark: That's right because right now it can be done verbally. If the employee says no, they may be disqualified from getting vocational rehab benefits and getting wage loss benefits. The medical would still be covered.

Senator Miller: Asked if it has to be done by the United States mail service or if it could be confirmed by the employees' signature that they have been presented this job offer?

Chairman Klein: Said, that is their ability to fix this further.

Senator Miller: Asked for Jennifer Clark's opinion.

Jennifer Clark: It only comes up when you have a contested job offer. It depends on to what degree you want to have that proof.

Senator Burckhard: Is it common for an employee to say that they don't want to do that job?

Jennifer Clark: It would be better for WSI to speak to that.

Tim Wahlin, Chief of Injury Services with Workforce Safety and Insurance: Opposed. Testimony Attached. (1) (8:10-10:38)

Chairman Klein: What you are saying is that because it says registered mail it takes away the ability to text or email?

Tim Wahlin: That is exactly right. In order for us to consider that offer to have been made it would have to be by delivered registered mail. So a verbal offer or handing an injured worker an offer, if it came back to us as a question, we would rule that ineffective.

Chairman Klein: How does the employer support the fact that he has notified the employee, how do you get through that? (11:35- 11:47)

Tim Wahlin: When they have a contested dispute between an employee and employer, it is sorted out like every other dispute that our adjusters face. Under this bill it would simply be asking the employer for the registered mail and written offer and if it doesn't exist it doesn't matter. (11:50-12:43)

Chairman Klein: It is taking away the other options that we have been using?

Tim Wahlin: Absolutely.

Senator Murphy: Commented that the employer can use any of the previous methods. If the former employee decides to become an employee again, why can't they have this arrangement as proposed in law?

Tim Wahlin: In the situations where there is an offer of employment and acceptance, they have no idea how that happens, they just know it did. The only ones they are looking at are the ones where a dispute arises and they have to weigh both sides.

Senator Poolman: Stated that the way she reads the bill is that it applies to when they say no and they don't want to take that job.

Senator Sinner: The reason for this bill is to address the problem of when you have a transient person who leaves the area you have to be able to get in contact with them. In the case they talked about in the interim committee, the person claimed they never had the

offer. This will show the employer has proven they have made the offer. It doesn't preclude them from using any of the other methods; it forces them to follow up with a certified letter proving that they made the offer.

Tim Wahlin: In the discussion that took place at the board meeting they did not like the restrictiveness that it put on the proof of showing that offer was made.

Senator Sinner: It takes all the ambiguity out of there by a written offer. It looks like the board wants it in there so it's not a solid offer and they can deny the claim.

Tim Wahlin: It will make it easier for our adjuster to sort this issue out. Their concern is the flexibility that is taken away from that relationship.

Senator Poolman: Asked if this puts all of the control in terms of whether or not I sign for it on the employee who is denying he was offered employment. If the letter comes and they say I am not going to sign for it or if you can't find the person as it would be the case with many people working in the oil country, isn't that putting a burden on the employer?

Tim Wahlin: I think that is accurate and is some of the concerns regarding the restrictive nature of this mailing.

Chairman Klein: What would happen if you send out the registered letter and the mailman tried to deliver the registered mail and you can't find them what happens then? Does that mean the employer is off the hook because they made an attempt?

Tim Wahlin: In that scenario, I don't know. Does the statute explain that it must be mailed and does mail include delivery or does mailing include being rejected. I know there is a series of rules for this within our rules of civil procedure, rules of criminal procedure within the court system about mailing. Frankly, I don't know.

Senator Campbell: Asked if they exhausted all the ones that he said, plus certified mail, if that would satisfy WSI.

Tim Wahlin: Jumping back to discussions and concerns of the board; they did not note any concerns at all that there be something written for a job offer. Their concerns were mailing registered. Right now there is no requirement that the job offer be written. There is a requirement that if an employee rejects suitable employment, without just cause, that is a termination of benefits.

Senator Murphy: If they want unemployment compensation they will have to be reachable.

Tim Wahlin: I read it the other way to the extent if the employee is not reachable, I don't know how the employer is going to satisfy this requirement.

Senator Murphy: They can't but they tried.

Chairman Klein: It doesn't give us any lead way for trying in here?

Tim Wahlin: In his reading of the statute as it is in the bill, it indicates that the act must be completed.

Chairman Klein: It does say proof of offer of employment "must be established" by registered mail.

Senator Sinner: You can refuse it but the postal service does have to note that it was refused. If it was refused that is a certification that it was offered.

Chairman Klein: In that case, in a refusal case. I heard the fact we may not be able to track those folks down. If we can't track them down we can't get them their benefits.

Tim Wahlin: Many of the benefits are paid electronically into a bank.

Chairman Klein: Any other opposition?

Russ Hanson, Associated General Contractors of North Dakota: Is in opposition of the bill in its current form.

Arik Spencer, North Dakota Motor Carriers: Is in opposition of the bill.

Chairman Klein: Asked if Russ Hanson and Arik Spencer would get together with Tim Wahlin and find the language that they would agree on to be in favor of the bill. He closed the hearing.

2015 SENATE STANDING COMMITTEE MINUTES

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

SB 2059
1/27/2015
Job Number 22638

- Subcommittee
 Conference Committee

Committee Clerk Signature

Eva Lubelt

Explanation or reason for introduction of bill/resolution:

Relating to workers' compensation job offers

Minutes:

Attachment

Chairman Klein: Opened the meeting. He went over the amendment. Amendment Attached (1).

Senator Sinner: Said they could have done it a little easier by saying, by employer's written offer.

Chairman Klein: I am not sure. I guess we will stick with this today.

Senator Murphy: Moved to adopt the amendment.

Senator Burckhard: Seconded the motion.

Chairman Klein: Asked for any other discussion.

Roll Call Vote: Yes-6 No-1 Absent-0

Senator Burckhard: Do pass as amended.

Senator Sinner: Seconded the motion.

Chairman Klein: Called for discussion.

Senator Miller: Said he was still having a little bit of an issue with putting this into law or not, he is still going over it.

Chairman Klein: It was something that the workers compensation review committee worked on, they came to a consensus and it was aired during the interim. There may have been some questions here and we continued to work on it. Do we put a lot of stuff in the

code? Absolutely, we are always looking for clarity in the law. We have a motion from Burckhard and a second from Sinner on a do pass as amended.

Roll Call Vote: Yes-6 No-1 Absent-0

Senator Sinner will carry the bill.

15.0264.03001
Title.04000

Adopted by the Industry, Business and Labor
Committee

January 27, 2015

TD
1/27/15

PROPOSED AMENDMENTS TO SENATE BILL NO. 2059

Page 1, line 11, remove "employer's written offer to the employee by"

Page 1, line 12, replace "registered mail" with "employer in writing"

Renumber accordingly

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2059**

Senate Industry, Business and Labor Committee

Subcommittee

Amendment LC# or Description: 15.0264.03001

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 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) 6 No 1

Absent 0

Floor Assignment _____

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

**2015 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. SB 2059**

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 Burckhard 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) 6 No 1

Absent 0

Floor Assignment Senator Sinner

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

REPORT OF STANDING COMMITTEE

SB 2059: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). SB 2059 was placed on the Sixth order on the calendar.

Page 1, line 11, remove "employer's written offer to the employee by"

Page 1, line 12, replace "registered mail" with "employer in writing"

Renumber accordingly

2015 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2059

2015 HOUSE STANDING COMMITTEE MINUTES

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

SB 2059
2/23/2015
24248

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Workers' compensation job offers & provide for application.

Minutes:

Attachments 1-2

Chairman Keiser: Opens the hearing on SB 2059.

Tim Wahlin~Chief of Injury Services with Work Safety & Insurance (WSI)~Introduces the bill.

Wahlin: (Attachment 1).

Representative Kasper: Who determines suitable offer? Does WSI?

Wahlin: Yes.

Representative Kasper: An offer in writing, does it come from the employer? Who gets the copy?

Wahlin: The offer will be from the employer and its unlikely WSI will ever see the offer.

Representative Kasper: How do you define suitable?

Wahlin: We look at the host capability of the injured worker.

Representative Kasper: What about the income level?

Wahlin: If their pay is less than the original wage, we would pay temporary partial disability and pay the difference.

Representative Kasper: Is that communicated clearly to the employee?

Wahlin: Yes, that discussion takes place.

0:15

Representative Ruby: Why the need for this? It's a whole another step that isn't there and it doesn't need to be there now.

Wahlin: Frankly, you have identified the counter argument.

Representative Amerman: Is there a form for the employee to sign off?

Wahlin: The written communication has to go to the employee in some fashion. There is no requirement for a signature.

Representative Lefor: How many disputes do you have on an annual basis?

Wahlin: We can't extract that number out of the data but we've seen an increase but I can't give you numbers.

Representative Becker: I'm an employer, I made a suitable offer and the employee chooses not to take the offer, where the conflict comes up is they don't want to keep paying in for this person because they were given an offer. The employee says no, it wasn't suitable. The injustice is time between when the offer was allegedly made and when you come in, is it a very long period of time?

Wahlin: Ideally, it's not but because we don't know of this exchange between the employer & employee, until sometime down the road, so it can grow to a long period of time. Under best case scenario, it should not take long.

Representative M Nelson: Is the employee given help to make a decision whether the job is really suitable?

Wahlin: No, they are given a number of different aids though this process. There will be provider input.

Representative M Nelson: On the forms, do you require the employer to notify you or provide anything to WSI about the employer's offer?

Wahlin: No, we don't require anything from the employer to come back to us if an offer has been made.

Representative Amerman: No matter, if the offer is in writing. You determine what is suitable; the only change is that it's in writing?

Wahlin: You are right; the only change in this legislation is that the offer must be in writing.

Representative Louser: It was amended out the registered for district requirements, what is left for the employer to do?

Wahlin: We see a lot of different scenarios, email, text messaging, any of those, the agency would interpret as in writing to the extent that you can show that forwarding an offer to an injured worker would suffice. There is evidence that there was contact. The only one would not be is the verbal one if there wasn't some concurrent written offer that goes with them.

Chairman Keiser: We are now putting 100% burden on every employer. Why can't it be in the case of a dispute, the employer then must present in writing, their option for the employee, only in the case of a dispute?

Wahlin: That could be an idea.

Russ Hanson~Associated General Contractors of North Dakota: The original bill we opposed in the Senate because of the registered mail. The suggestion the chairman made of confining it where there is dispute, we certainly be agreeable tonit. I also have testimony from **Arik Spencer~Executive Vice President of the North Dakota Motor Carriers Association** who could not be here. (Attachment 2).

Representative Kasper: You are supporting the bill as is?

Hanson: We are, however, if you wish to amend it to confine it to the area of dispute, we would ab agreeable to that.

Representative Kasper: How many times has this lack of communication had you seen?

Hanson: Not all that often.

Chairman Keiser: Anyone here to testify in support to SB 2059, opposition, neutral, closes the hearing. There is a fiscal note on this bill but there is no impact. I would like a brief discussion with committee members about the language of only in a case of dispute.

Representative Kasper: I will support your suggestion but I would not support the bill the way it is.

Representative Laning: I don't see anything that requires the employer and the only time you need a letter is if there is a dispute.

Chairman Keiser: Again, this is a case where you need to read the language "for purposes of this subsection, proof of offer of employment must be established by an employer in writing". I don't think we want to go there for every case because it will set us up.

Representative Ruby: I don't see the need for the whole purpose, where there is a dispute, that's when WSI is going to ask what the offer was. I move for a **Do Not Pass**.

Representative Becker: Second.

Chairman Keiser: Further discussion?

Vice Chairman Sukut: We had this discussion during the interim. An example that was presented to us was benefits for an injured worker to be continued. The injured worker wanted benefits to continue and was offered a position. It was a reduced position because he was no longer able to work at the job he was working. He refused the job even though it was suitable but he wanted the benefits to continue. Then it got down to his word against the employer's word whether the job was actually offered to him. That's how this bill came about to address that issue. I hope we would consider the chairman's solution before we kick the bill out totally.

Representative Laning: It gets to be the "I said, no you didn't" type of thing, when it's a dispute, in writing would be good.

Representative Beadle: The idea of there being proof when there is a dispute, it's valid. My question becomes, when the employer tenders the offer, how are they supposed to know if there is going to be a dispute? I don't see where we are putting down the dispute, you are going to do anything because what the offer is made, you don't know a dispute is forth coming.

Chairman Keiser: If the dispute occurs and it's in writing, hopefully that will give WSI enough authority to make a ruling without going to the administrative law judge to rule. All I'm suggesting is to put in is the employer has the option to submit this and now takes off the table, the dispute between the parties. If the employee doesn't like it, they can still go to the administrative law judge. Hopefully this would be a mechanism that would circumvent getting to the ALJ.

Representative Ruby: Your suggestion would make the bill better, but when the dispute is in place, I don't see why we need to put in law, when there is a dispute, they can put it in writing now and they can ask for it.

Representative M Nelson: I see the original bill different but if there was clarification in the language, I wouldn't oppose it. I think it's a good thing.

Representative Becker: That would occur, if the problem comes up and WSI say put it in writing. To me, that's what it seems would occur without this bill.

Chairman Keiser: What you perception is irrelevant; it's what the ALJ perception is that is important. I would strongly support that when there is a dispute, put it in writing.

Roll call was taken on SB 2059 for a Do Not Pass with 6 yes, 8 no, 1 absent. Motion failed.

Chairman Keiser: Representative Louser is the carrier and would you work with WSI to try and come up with an amendment that might be acceptable to the committee.

2015 HOUSE STANDING COMMITTEE MINUTES

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

SB 2059

3/4/2015

24366

- Subcommittee
 Conference Committee

Ellen Letang

Explanation or reason for introduction of bill/resolution:

Workers' compensation job offers & provide for application.

Minutes:

Chairman Keiser: Opens the work session on SB 2059.

Chairman Keiser: We had a little heartburn about getting it in writing the reemployment offer.

Representative Louser: There wasn't a strong consensus of what direction to go. What you see before you are a couple of ideas. The first says the offer of employment is established in writing of an employer's offer of employment to the employee. If I editorialized that I would say, when is that established? If it after a dispute arises, it's just procedural. If it is established before a dispute, how do you know there is a dispute? I'm struggling with this bill.

Chairman Keiser: WSI doesn't feel strongly about the bill.

Representative Becker: Moves a Do Not Pass.

Representative Beadle: Seconded.

Roll call was taken on SB 2059 for a Do Not Pass with 11 yes, 3 no, 1 absent and Representative Louser will carry the bill.

Date: Feb 23, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2059

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 Becker

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

Total (Yes) 6 No 8

Absent 1

Floor Assignment _____

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

Date: Mar 4, 2015

Roll Call Vote: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2059

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 Rick Becker Seconded By Rep Beadle

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

Total (Yes) 11 No 3

Absent 1

Floor Assignment Rep Louser

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

REPORT OF STANDING COMMITTEE

SB 2059, as engrossed: Industry, Business and Labor Committee (Rep. Keiser, Chairman) recommends DO NOT PASS (11 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2059 was placed on the Fourteenth order on the calendar.

2015 TESTIMONY

SB 2059

2015 Senate Bill 2059
Testimony before the Senate Industry, Business and Labor Committee
Presented by Tim Wahlin
Workforce Safety and Insurance
Date: January 7, 2015

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with Workforce Safety and Insurance (WSI), I am here to provide information on Senate Bill No. 2059. The WSI Board does not support this bill in the current form.

This bill originates from your interim Legislative Workers' Compensation Review Committee and would amend current law to require all post-injury offers of employment be in writing and delivered to an injured employee by registered mail.

Currently, our law ends wage loss benefits when suitable employment is offered to an injured employee. The law does not specify how that offer is required to be conveyed. When it is determined an offer has been made, and the employment is both bona fide and suitable, WSI will end wage loss benefits by issuing an appealable notice of decision.

It is WSI's experience that offers of employment are currently made employing all modes of communication: verbal, both in person and by phone; email or text messaging or other electronic methods, through notification of an employee representative; and by mail.

This legislation will reduce those methods to a single mode and also restrict delivery via a single method. If the offer does not comply with the "registered mail" delivery, the offer would be legally ineffective.

WSI anticipates this requirement would reduce the number of effective job offers and thereby increase the number of injured employees remaining on wage loss benefits. Estimating an economic impact however is not possible at this time.

WSI is uncertain whether "registered mail" is available in non-United States locales and how an employer would satisfy this requirement in those instances. Likewise, WSI is uncertain how this requirement may be applied to an injured employee without a valid mailing address, a situation occurring far more frequently with our increasingly transient workforce. It is likely the organization would need to clarify these questions by drafting administrative rules.

During discussions with the WSI Board, they indicated concern with the requirements of both mailing and further restricting that to "registered mail." The members had less concern that the offer be written, so long as that included email and text messages.

This completes my testimony, and I will be happy to answer any questions that may help in the consideration of this legislation.

1/27/2015

#1

PROPOSED AMENDMENTS TO SENATE BILL NO. 2059

Page 1, line 11, replace "employer's written offer to the employee by" with "employer in writing."

Page 1, line 12, remove "registered mail."

Renumber accordingly.

2015 Engrossed Senate Bill 2059
Testimony before the House Industry, Business and Labor Committee
Presented by Tim Wahlin
Workforce Safety and Insurance
Date: February 23, 2015

Mr. Chairman, Members of the Committee:

My name is Tim Wahlin, Chief of Injury Services with Workforce Safety and Insurance (WSI). I am here to provide information on Engrossed Senate Bill No. 2059. The WSI Board supports this bill in the current form.

This bill originates from your interim Legislative Workers' Compensation Review Committee. In its original form it would have amended current law to require all post-injury offers of employment be in writing and delivered to an injured employee by registered mail. The WSI Board did not support the bill in its original form. Following testimony and debate in the Senate, amendments were made removing the registered mailing requirement and clarifying that in order to prove an offer was made, an employer produce a written offer of employment.

Our law ends wage loss benefits when suitable employment is offered to an injured employee. Currently the law does not specify how that offer is required to be conveyed. When it is determined an offer has been made, and the employment is both bona fide and suitable, WSI will end wage loss benefits by issuing an appealable notice of decision. With this change, an employer will be required to make an offer of employment in writing. If it is not written, for WSI's purposes, it will be considered not having been made.

It is WSI's expectation this additional requirement will assist in situations where a dispute has arisen as to the existence of an offer of employment or the terms of that offer.

This completes my testimony, and I will be happy to answer any questions that may help in the consideration of this legislation.

Testimony
Senate Bill 2059
House Industry Business and Labor Committee
February 23rd, 2015

Mr. Chairman and members of the House Industry Business and Labor Committee my name is Arik Spencer, Executive Vice President of the North Dakota Motor Carriers Association. Unfortunately due to other association business I am unable to testify in person to our support of Engrossed Senate Bill 2059.

Engrossed Senate Bill 2059 is a common sense bill which simply requires that when a modified job offer is made to an injured employee, the employer is to do so in writing. The addition of this requirement offers both employees and employers protection from situations where there is disagreement about if a modified job was offered.

Mr. Chairman and committee members we ask for a DO PASS recommendation on Engrossed Senate Bill 2059.

March 4, 2015

Amendment for SB 2059

Page 1, line 10 after "subsection" insert "upon notification of a dispute"

Page 1, line 11 after "established" insert "in writing"

Page 1 line 11 remove "by" and insert immediately thereafter "of"

Page 1 line 11 remove "employer" and insert immediately thereafter "employer's offer of employment to the employee"

Page 1, line 11 remove "in writing"

Section 1. Amendment. Subsection 7 of section 65-05-08 of the North Dakota Century Code is amended and reenacted as follows:

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. For purposes of this section upon notification of a dispute, proof of offer of employment must be established in writing by of an employer employer's offer of employment to the employee.

Or

Amendment for Engrossed SB 2059

Page 1, line 10 replace "proof of offer of" with "an injured employee may request an offer of employment be provided in writing if the request is made within five calendar days of the offer. Failure of an employer to provide the employment offer in writing following a request renders the offer ineffective."

Page 1, line 11 remove "employment must be established by an employer in writing."

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purposes of this section, proof of offer an injured employee may request an offer of employment be provided in writing if the request is made within five calendar days of the offer. Failure of an employer to provide the employment offer in writing following a request renders the offer ineffective employment must be established by an employer in writing.