

**FISCAL NOTE**  
**Requested by Legislative Council**  
**01/14/2019**

Bill/Resolution No.: HB 1456

- 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.*

	2017-2019 Biennium		2019-2021 Biennium		2021-2023 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.*

	2017-2019 Biennium	2019-2021 Biennium	2021-2023 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 attached

- 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 attached

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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**Date Prepared:** 01/22/2019

**WORKFORCE SAFETY & INSURANCE**  
**2019 LEGISLATION**  
**SUMMARY OF ACTUARIAL INFORMATION**

**BILL NO: HB 1456**

**BILL DESCRIPTION: Mental-Mental; Pre-existing Conditions; Disputes; Fraud; Benefit Calc and Pres for Vol Responders; Appeals; Atty Fees; Treating Physician**

**SUMMARY OF ACTUARIAL INFORMATION:** Workforce Safety & Insurance, together with its consulting actuaries, The Burkhalter Group, has reviewed the legislation proposed in this bill in conformance with Section 54-03-25 of the North Dakota Century Code.

Based on our understanding, the proposed legislation:

- Makes a mental injury arising from a mental stimulus compensable.
- Provides for the compensation of pre-existing conditions.
- Allows health insurers to dispute a workers compensation claim denial and for the insurance commissioner to hear any appeals relating to these types of disputes.
- In cases of employee fraud, requires WSI to establish by clear and convincing evidence an employee was not entitled to benefits and that any work performed must be paid labor.
- Alters the average weekly wage coverage for volunteer firefighters and other emergency volunteers.
- Creates a presumption of compensability for volunteer firefighters and other emergency volunteers for certain conditions.
- Allows injured employee's to appeal managed care decisions through the administrative hearing process and allows an injured employee to request the insurance commissioner to review an order issued by WSI and issue an opinion before filing a subsequent appeal.
- Alters injured employee attorney fees to an average rate paid by WSI for WSI's attorney in the three most recent appeals.
- Establishes that a treating physicians opinion or medical determination is presumed correct.

**FISCAL IMPACT:**

**Section 1 (Part 1)—Mental-Mental Injuries**

Not quantifiable due to insufficient data to permit a comprehensive evaluation of the potential rate level and reserve impact of this proposed legislation. However, WSI anticipates that, if passed in its present form, the legislation will act to significantly increase both rates and reserves. Currently, workplace psychiatric injuries are compensable only if caused by a physical injury and the physical injury is determined to be 50% of the cause of the condition and the condition did not pre-exist the work injury. Further, a mental injury arising from a mental stimulus is not a compensable injury. The proposed legislation eliminates all the above criteria.

Prior to the 2015 legislative session, Sedgwick was selected by the State Auditor's Office to conduct the 2014 Performance Evaluation of WSI. Element Eight of this study was a review of providing coverage for Post-Traumatic Stress Disorder (PTSD). The analysis was limited to three scenarios: (1) first responders; (2) victims of violent crimes; and (3) witnesses to sudden and extraordinary events in the workplace. The range of the annual additional costs of providing coverage in these circumstances was very broad, ranging from a low of \$1.2 million to a high of \$56.6 million.

As detailed in the interim study, approximately one-half of the states do not cover mental injuries where there is no physical injury or cover mental injuries where there is no physical injury in very limited number of specific exceptions. The other half of the states cover mental injuries with fewer restrictions. The only example of very broad mental health-

related workers' compensation claim experience we could locate was some anecdotal information from Australia, specifically Victoria. It was reported that \$273 million was paid out in 2013-14 in Victoria alone for workplace related stress claims. The mental health-related complaints have become Victoria's third leading workplace injury.

### **Section 1 (Part 2)—Pre-Existing Conditions**

Not quantifiable. The proposed change to the terms under which pre-existing conditions are compensable will add to the cost of the bill. WSI does not have an appropriate base of historical experience to permit an actuarial evaluation of anticipated costs associated with this change. Impact to future premium rate levels would likely be significant.

The proposed legislation removes the statutory language regarding "pain" enacted by the Legislature in 2013 following the *Mickelson v. WSI*, 2012 ND 164, decision. Absent the enacted language, it was estimated by WSI's consulting actuaries at that time that rates would have increased in the range of 5.4% to 12.6%. This legislative change appears to broaden the application even further, so it is anticipated the range would be even higher.

### **Section 2—Health Insurer Claim Disputes—Insurance Commissioner to Hear Appeals**

Creating a separate dispute and appeal process for health insurers to ultimately be heard and decided by the Insurance Commissioner may ultimately serve to delay claim decision making and increase overall administrative costs. Likewise, maintaining parallel litigation systems increases the likelihood of uncertainty which increases costs.

Regarding the proposed responsibilities of the Insurance Commissioner within Sections 2 and 6 of this legislation, the Insurance Department submitted that the Department would need an additional FTE at a cost of \$256,000 per biennium in order to conduct the hearings and provide the underlying legal support the Commissioner would need to perform the duties required by this bill.

### **Section 3—Employee Fraud**

We do not have access to an appropriate base of historical experience to use in quantifying the anticipated impact of Section 3 of the proposed legislation on premium rate and reserve levels. However, to the extent the legislation hampers WSI's ability to terminate future benefits when fraud is involved as well as diminish the degree to which the current statutes deter fraud, losses will increase, and future premium levels will be adjusted accordingly.

### **Section 4—Wage Calculations for Volunteer Emergency Responders**

The fiscal impact of establishing a base wage cap for volunteer firefighters and other emergency volunteers in Section 4 of the bill is not quantifiable. However, the fiscal impact on the volunteer firefighter and emergency volunteer classifications will result in future upward rate modifications as this increase in benefit is evidenced in the data.

### **Section 5—Presumption of Compensability for Certain Conditions of Volunteer Emergency Responders**

We do not have access to sufficient data to permit a comprehensive evaluation of the potential rate level impact for Section 5 of this proposed legislation. However, WSI anticipates that, if passed in its present form, the legislation will act to increase costs for the volunteer firefighter and emergency volunteer classifications. To the extent that such costs increase, local governmental entities will be faced with higher workers compensation premiums.

### **Section 6—Injured Worker Appeals/Insurance Commissioner Review of Orders**

Section 6 provides for injured employees to file an appeal in relation to treatment methods and testing methods recommended by their treating physician and proceed through the administrative hearing process versus the existing expedited binding dispute resolution process. The administrative hearing process is much more prolonged, predominantly attorney driven, and would serve to prolong treatment decisions and increase legal and administrative costs associated with the prolonged hearing process.

Regarding the proposed responsibilities of the Insurance Commissioner within Sections 2 and 6 of this legislation, the Insurance Department submitted that the Department would need an additional FTE at a cost of \$256,000 per biennium in order to conduct the hearings and provide the underlying legal support the Commissioner would need to perform the duties required by this bill.

### **Section 7—Injured Worker Attorney Fees**

Section 7 alters the manner in which the rate for an injured employee's attorney fees would be determined when the employee prevails. While, as written, the formula would create some administrative complexity, we are unable to determine the impact of the proposed section although it is likely increases would not be significant.

### **Section 8—Presumption of Treating Physician Opinions**

It would be extremely difficult to determine the rate and reserve level impact of Section 8 of the proposed legislation because Workforce Safety and Insurance does not have an appropriate historical base of experience to make an actuarially based estimate possible. However, the proposed change presuming a treating physician's opinion is correct is likely to increase overall claims costs and result in higher workers compensation premiums.

**DATE: January 22, 2019**