

2021 House Bill No. 1271
Testimony before the House Industry, Business and Labor Committee
Presented by Tim Wahlin
Workforce Safety and Insurance
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Mr. Chairman and Members of the Committee, my name is Tim Wahlin. I am the Chief of Injury Services at WSI. I am here today to provide testimony regarding HB 1271. The WSI Board does not support this bill.

Section 1

This section alters the definition of what mental injuries are considered compensable and would expand what is currently covered.

Currently, N.D.C.C. section 65-01-02(11)(a)(6) allows for the payment of claims for mental injuries only when the mental injuries are caused by a compensable physical injury, the physical injury is at least 50% of the cause of the mental condition, and the mental condition did not preexist the physical injury. North Dakota law specifically excludes mental injuries arising from mental stimulus. N.D.C.C 65-01-02(11)(b)(10).

This bill proposes to cover all mental or psychological conditions that can be linked to employment which are caused by traumatic event(s) or episodes of high work-related stress or anxiety. For example, an adverse employment action such as a demotion or termination would most likely become a compensable event. Likewise, a conflict with a co-worker, boss or customer would also become a basis for a compensable injury.

This definitional change represents a significant change to North Dakota's workers' compensation landscape and would create proportional impacts to the costs of coverage.

Section 2

On the surface this proposed section appears to provide immunity to employers who substantially comply with COVID-19 rules and regulations and despite this adherence, an employee is exposed or potentially exposed to COVID-19 resulting in a compensable injury due to the exposure.

The organization has uncertainty about how this amendment would function. First, it is the organization's position that employer immunity already exists. At NDCC 65-01-01, North Dakota has provided immunity to insured employers for "all civil actions and civil claims for relief for those personal injuries." Secondly, COVID-19 is not a compensable condition under the statutes as currently written. A small subset of North Dakota employees are being covered under Emergency Orders 12, 12.1 and 12.2, however, as written in the statute this disease is not compensable. So, is it the intent of this bill to create liability for North Dakota employers for whom this coverage does not exist?

Finally, I direct your attention to the fiscal note. WSI actuaries indicate this bill is 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.

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